

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
CenturyTel, Inc.)	CS Docket No. 97-80
)	
Request for Waiver of Section 76.1204(a)(1))	CSR-7178-Z
)	
Implementation of Section 304 of the)	
Telecommunications Act of 1996)	
)	
Commercial Availability of Navigation Devices)	
_____)	

**Comments of the Consumer Electronics Association
on CenturyTel, Inc. Request for Waiver
of 47 C.F.R. § 76.1204(a)(1)**

May 3, 2007

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The Consumer Electronics Association (“CEA”) submits these comments in response to the request for waiver of Section 76.1204(a)(1) of the Commission’s rules by CenturyTel, Inc (CenturyTel).¹ CenturyTel’s is yet another styled in the manner of Bend Broadband, but which actually most closely resembles those of Comcast² and WideOpenWest,³ though it contains additional defects and advances some unique but egregious arguments in favor of acceptance.

CenturyTel asks the Commission to reward it for apparently *stockpiling* new noncompliant set-top boxes despite having *nine years’ notice* of its common reliance obligations. In fact, CenturyTel’s Request makes clear that it has never intended to

¹ *Commercial Availability of Navigation Devices*, CS Docket No. 97-80, CSR-7178-Z, CenturyTel, Inc. Request for Waiver (Mar. 9, 2007) (“CenturyTel Request”).

² *Commercial Availability of Navigation Devices*, CS Docket No. 97-80, CSR-7012-Z, *Comcast’s Petition for Waiver* (May 17, 2006); *see Commercial Availability of Navigation Devices*, CS Docket No. 97-80, CSR-7139-Z, *Memorandum Opinion & Order Denying Comcast’s Petition for Waiver* (Jan. 10, 2007) (the “Comcast Order”).

³ *Commercial Availability of Navigation Devices*, CS Docket No. 97-80, CSR-7139-Z, *WideOpenWest Finance, LLC’s Petition for Waiver* (Feb. 28, 2007).

comply with its obligations under the common reliance rule, or, even more fundamentally, to support CableCARD-reliant retail devices. The Commission should not condone the violation of several FCC rules by granting a waiver as to one of them and allowing the petitioner to ignore the rest. That, in sum, is what this petitioner asks.

I. CenturyTel Should Comply With All Other Relevant Regulations Or Request All Necessary Waivers.

Nine years ago, the Commission determined that the best way to fulfill Congress’s mandate to “assure the commercial availability” of competitive navigation devices is to require cable operators to support navigation devices purchased at retail, and later to require operators to rely on the same physically separable conditional access technology that they support for retail devices. The Commission has repeatedly reconfirmed its commitment to thus assuring competition. The Court of Appeals for the District of Columbia Circuit has twice rejected challenges to this common reliance rule.⁴

Nonetheless, CenturyTel apparently requests a waiver of its common reliance obligations even though some of its systems do not currently comply with the more fundamental requirement to support competitive devices purchased at retail.⁵ CenturyTel admits that its “illustrat[ive]” cable system supports only one model of receiving device, and that customers requesting CableCARDs must wait for a future upgrade of CenturyTel’s headend equipment.⁶ While important in its own right, the purpose of the common reliance rule is to enhance the requirement of support for competitive devices, which has now been in effect for seven years. Accordingly, before considering any

⁴ *General Instrument Corp. v. FCC*, 213 F.3d 724 (D.C. Cir. 2000); *Charter Communs., Inc. v. FCC*, 460 F.3d 31 (D.C. Cir. 2006).

⁵ 47 C.F.R. 1204(a)(1); more specific obligations are imposed by 47 C.F.R. 640.

⁶ CenturyTel Request at 5 & n.10.

waiver, the Commission should require a detailed and sufficient record of any petitioner's compliance with all past, present, and future navigation device requirements.

II. CenturyTel's Stockpiling of Noncompliant Devices Should Not Be Rewarded.

CenturyTel requests a waiver in order to justify its investment in a warehouse full of noncompliant, "proprietary," and security-integrated DSR 470 set-top boxes.⁷

Apparently, despite nine years' notice, CenturyTel has stockpiled noncompliant boxes in the belief that it will never be subject to the common reliance rule (or for that matter, be called to account for failing to support CableCARD-reliant devices at all). The Commission warned against such behavior as early as 1999. It should not reward CenturyTel or any other petitioner for gambling on the avoidance of its obligations.

Eight years ago, on the initiative of the consumer electronics and information technology industries, the Commission agreed on reconsideration to relieve cable operators from its requirement of establishing an *analog* national security interface, so the operators could concentrate their resources on a national digital security interface. At the same time, the Commission declined to grant CEA's petition to move up the effective date for the common reliance provision of Section 1204(a)(1), based on an explicit expectation that competition would enter and be supported, by separate security modules, in the year 2000. Almost exactly eight years ago, Commissioner Ness voiced the concern⁸ that the "loophole" created by the long gap between the dates of the requirement for operators to provide separate security modules (July 1, 2000) and the requirement to rely on such modules in their own devices (initially January 1, 2005) might allow some

⁷ CenturyTel Request at 4.

⁸ *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, CS Docket 97-80, Order on Reconsideration, Separate Statement of Commissioner Susan Ness (rel. May 14, 1999).

operators to “stockpile” noncompliant devices, and field a great number of them just *prior* to the 2005 effective date for common reliance (emphasis added):

“I write separately to highlight my concern over a potential loophole that remains. As of January 1, 2005, our rule prohibits MVPDs from placing in service new navigation devices that have security integrated with other features. But our rule apparently would allow an MVPD to stockpile integrated devices even after separated security modules become widely available, and to deploy unlimited numbers of integrated devices *on the eve of the phase-out deadline.*”⁹

The conduct that this petitioner now asks the Commission to bless is far more egregious than that over which Commissioner Ness was concerned. CenturyTel now asks for the Commission’s blessing to distribute stockpiled devices *after* the “phase-out deadline” – a scenario beyond even the most pessimistic worries of the Commission that released this regulation.

It is CenturyTel’s brinksmanship, not the common reliance rule, that underlies the cost figures cited in the Request.¹⁰ Naturally, CenturyTel may face higher costs to upgrade from now-obsolete and unsupported headend equipment, even leaving aside the cable industry’s failure, for nine years, to take advantage of scale economies or other “Moore’s Law” efficiencies. To carry out Congress’s instructions, the Commission should give incentives to operators to install open, compatible equipment which will support competitive navigation devices, rather than *discourage* operators from upgrading noncompliant, incompatible systems.

III. CenturyTel Cannot Meet Any of the Commission’s Waiver Standards or Announced Requirements.

Section 629(c) of the Telecommunications Act allows the Commission to grant waivers only when they are “necessary to assist” the development or introduction of new

⁹ *Id.*

¹⁰ CenturyTel at 5.

services. CenturyTel's Request conveniently leaves out the word "necessary."¹¹ Of course, to grant a waiver whenever it will in any way "assist" a cable operator in continuing to deploy integrated hardware would be to repeal the common reliance rule. The Commission has interpreted Section 629(c) to require true necessity as to the development of services not yet offered to customers¹² -- making clear that an operator's desire to spend resources elsewhere does not amount to a "necessity" in any way.

Likewise, the waiver standard under the 2005 Second Report and Order is "first and foremost, a narrow one."¹³ It excludes two-way devices, and devices with any advanced features, including video on demand, enhanced third-party program guides, and other interactive applications.¹⁴ The devices for which CenturyTel seeks a waiver have precisely these advanced features.¹⁵

Finally, under the Commission's general waiver regulations, CenturyTel has demonstrated no commitment to completing a digital transition in the near future. The company would prefer to deploy only analog-compatible boxes.¹⁶ CenturyTel notes "very low take-up rates" for digital service despite its stockpile of integrated boxes.¹⁷ Apparently, CenturyTel intends to maintain the status quo until February 2009, when subscribers will no longer have the option of analog broadcasting.¹⁸ The goal of transitioning the nation to digital television and the goal of accomplishing that transition with competitive end-user hardware choices are and ought to be complementary. It is

¹¹ CenturyTel Request. at 3.

¹² Comcast Order at 8 ¶ 15.

¹³ Comcast Order at 12 ¶ 26 (Jan. 10, 2007).

¹⁴ *Id.* at 12-13 ¶¶ 27-30.

¹⁵ See CenturyTel Request, Exs. A-B (specifications of the Motorola DSR470 and DCT2000).

¹⁶ CenturyTel Request at 3.

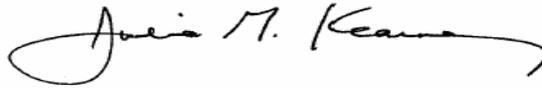
¹⁷ CenturyTel Request at 4.

¹⁸ See CenturyTel at 5 ("CenturyTel's inventory . . . which it planned to roll out until February 2009 . . .").

only CenturyTel and other operators' decision to ignore the impending common reliance deadline that would create any tension between these important objectives.

CenturyTel can satisfy none of the bases for a waiver. Its Request should be denied.

Respectfully submitted,

A handwritten signature in black ink that reads "Julie M. Kearney". The signature is fluid and cursive, with a long horizontal flourish extending to the right. Below the signature is a solid black horizontal line.

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Dated: May 3, 2007

CERTIFICATE OF SERVICE

I do hereby certify that on May 3, 2007 I caused a true and correct copy of the foregoing Comments of the Consumer Electronics Association on the CenturyTel, Inc. Request for Waiver of 47 C.F.R. § 76.1204(a)(1) to be served via overnight mail on the following:

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