

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

In the Matter of)	
)	
Knology, Inc.)	CS Docket No. 97-80
)	
Request for Waiver of Section 76.1204(a)(1))	CSR-7200-Z
)	
Implementation of Section 304 of the)	
Telecommunications Act of 1996)	
)	
Commercial Availability of Navigation Devices)	
_____)	

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

May 24, 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 Knology, Inc. (Knology), as supplemented by its April 12 filing.¹ As with WideOpenWest Finance LLC, Knology essentially bases its waiver request on its status as an overbuilder.² The Commission has never granted a waiver of the common reliance rule to one cable operator solely to give that operator an advantage over its larger competitors, and the Commission should not do so for Knology, which does not offer any new services over its competitors. For this and other reasons, the Commission should deny Knology’s request.

According to its petition at 3, Knology “is placing” a single order for CableCARD-compliant set-top boxes. In addition to asking for a waiver based on

¹ *Commercial Availability of Navigation Devices*, CS Docket No. 97-80, CSR-7178-Z, Knology, Inc. Request for Waiver (Apr. 2, 2007) (“Knology Request”).

² *Id.* at 4 (“Knology faces video competition from an incumbent cable operator.”).

possible late delivery of an apparently very recent order, Knology (at 3-4) is asking for *advance* approval to revert to non-compliance, whenever this single order has been exhausted, in the hope and expectation that some future “DCAS” system will have been found by then to provide a fully compliant alternative to CableCARD support.

CEA leaves to additional fact-finding and discretion by the Commission whether Knology’s delay in becoming compliant merits a time-limited waiver for it to become so. CEA has strongly opposed every waiver argument, however, that is otherwise based on (1) overbuilder status, (2) vendor nonperformance or nullification, (3) a vague expectation that there will be a national “DCAS” system and interface that will be installed in competitive devices at some future date so that they will not need to rely on CableCARDS, or (4) an argument that *any* DCAS system, even if not nationally scalable or interoperable, will satisfy the requirements of Section 629 of the Communications Act and Sections 76.1204(a)(1) and 76.640 of the Commission’s regulations.

(1) Overbuilder Status. Knology’s status as an overbuilder does not provide any grounds for a waiver. As CEA has argued in its comments on the WideOpenWest Finance, LLC petition,³ competition with incumbent providers does not justify an exemption from this generally applicable rule. Just like WideOpenWest, Knology is not providing new services not already available in its service area. The Commission has already determined that services “already available” to cable subscribers in a given area are not “new or improved” services under Section 629(c) of the Telecommunications

³ *Commercial Availability of Navigation Devices*, CS Docket No. 97-80, CSR-7139-Z, Comments of the Consumer Electronics Association on the WideOpenWest Finance, LLC Request for Waiver (May 3, 2007).

Act.⁴ As the common reliance rule will cover older and newer MSOs alike, the rule does not interfere with competition among operators.

(2) Vendor Nullification. A common thread in many of the pending waiver petitions is a claim, for which CEA has expressed some sympathy, that the dominant industry vendors of set-top boxes and CableCARDS have not been responsive even to those cable operators who do seek an economical path to acquiring compliant devices. Granting waivers on this basis, however, would simply give Commission ratification to vendor nullification of its regulations, and of congressional intent.⁵ In this case, however, Knology seeks to extend its vendor concerns to future orders, when the price of compliance at that time cannot be known. The Commission can reject any such speculative request for a waiver out of hand, without even needing to consider whether a vendor has placed a cable operator in an untenable position.

(3) Vague Expectation of Future Compliant National DCAS System. CEA has dealt with such vague, indefinite purported grounds for a waiver in many Comments, beginning with comments on the NCTA and Comcast petitions.⁶ No such system, from CableLabs or anyone else, is sufficiently on the horizon and open to public comment to be a definitive basis of FCC action in a public-comment proceeding. Moreover, Section 1204(a)(1) is directed to support of *competitive* devices, not MSO-provided devices. Even if such a system *were* judged to be fully compliant and available on a date certain,

⁴ *In the Matter of Bend Cable Communications, LLC d/b/a BendBroadband Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules, Commercial Availability of Navigation Devices*, CS Docket No. 97-80, CSR-7057-Z, Memorandum Opinion and Order at 5 ¶¶ 11-13 (Jan. 10, 2007).

⁵ CEA hereby incorporates by reference its discussion of this issue in its Comments on the Bernard waiver petition, also filed in this Docket on this date.

⁶ *See, Commercial Availability of Navigation Devices*, CS Docket No. 97-80, CSR-7192-Z, Comments of the Consumer Electronics Association on Bernard Telephone Company Inc. Petition for Waiver of 47 C.F.R. § 76.1204(a)(1) at 4 n.8; *see also Commercial Availability of Navigation Devices*, CS Docket No. 97-80, Comments of the Consumer Electronics Association on Requests for Waiver Filed by Nine Iowa Cable Operators n.1 (May 3, 2007).

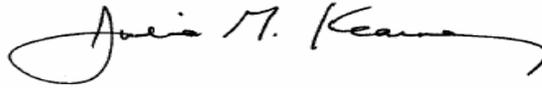
most or all competitive devices at that time will still be reliant on CableCARDS. It will be a factual determination by the Commission, *at that time*, as to when some percentage of MSO-provided devices would no longer have to rely on CableCARDS in order to fulfill the purposes of common reliance. Hence, granting a waiver *now* would clearly – even under such improbable assumptions – be premature.

(4) Assumption That Non-scalable, Non-national DCAS is Compliant. CEA incorporates by reference its *ex parte* letter of April 24, 2007.⁷ There we demonstrated that a “downloadable security” technology cannot satisfy Sections 76.1204 and 76.640 of the Commission’s rules unless, *inter alia*, it also provides a nationally deployed interface that can foster a nationwide market for competitive navigation devices. CEA is unaware of any such technology, other than the CableCARD, that currently has that attribute. Therefore, simply invoking the speculative arrival of “downloadable security” is no basis for a waiver of Knology’s present obligations.

CONCLUSION. CEA leaves to the Commission’s fact-finding and discretion whether Knology’s apparent delay in placing an order for compliant navigation devices merits a time-limited waiver, including a determination as to what such a time limit should be. As to all other requests and grounds, the Commission should deny Knology’s request.

⁷ *Ex parte* letter from Julie M. Kearney to Marlene Dortch, Office of the Secretary, FCC, CS Docket No. 97-80, CSR-7131-Z, regarding the “Emergency” petition of JetBroadband (Apr. 24, 2007).

Respectfully submitted,



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