

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Pembroke Advanced)	CSR - [_____]
Communications, Inc. Petition for)	
Waiver of 47 C.F.R. § 76.1204(b))	
)	
Implementation of Section 304 of the)	CS Docket No. 97-80
Telecommunications Act of 1996;)	
Commercial Availability of Navigation)	
Devices)	
)	

**PEMBROKE ADVANCED COMMUNICATIONS, INC.'S PETITION FOR
WAIVER FOR A LIMITED TIME OF THE OPEN INTERFACE
REQUIREMENT, 47 C.F.R. § 76.1204(b)**

July 2, 2007

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PETITION FOR WAIVER

Pursuant to section 629(a) and (c) of the Communications Act of 1934, as amended (“Act”),¹ and sections 1.3, 76.7 and 76.1207 of the Commission’s rules,² Pembroke Advanced Communications, Inc. (“Pembroke” or “Petitioner”)³ respectfully request the Commission to grant a waiver of the open interface requirement set forth in section 76.1204(b) of the Commission’s rules until such time as vendors are able to make their products compliant with

¹ 47 U.S.C. § 549(a) & (c).

² 47 C.F.R. § § 1.3, 76.7 & 76.1207.

³ Pembroke is a small cable operator, as that term is defined in section 76.901(e) of the Commission’s rules, serving subscribers of video services in rural communities. The Petitioner is an affiliate of a local exchange carrier and utilizing existing small local exchange carrier infrastructure for the provision of video services.

a national standard or when the FCC has prescribed criteria for compliance with the common interface requirement and vendors are able to incorporate these specifications into their products.⁴

The Petitioner supports the Request for Declaratory Ruling filed by OPASTCO and NTCA⁵ and strongly urges the FCC to issue a clarification of section 76.1204(b)'s interface requirement so that the industry can ensure compliance with the FCC's conditional access rules.⁶ In the event that the FCC does not grant the Request for Declaratory Ruling submitted by OPASTCO and NTCA by the July 1, 2007 compliance deadline, Petitioner seeks waiver of section 76.1204(b) for a limited time.

Such waiver is appropriate and warranted under the specific circumstances described herein because it will allow the Petitioner to provide uninterrupted video services over an all-digital network to the small and rural video markets in which it serves. Accordingly, grant of this waiver will serve the public interest by promoting seamless deployment of advanced technologies and spurring competition in the provision of video services.

⁴ In its *Consolidated Requests for Waiver MO&O*, the Commission granted the limited waiver request of the IPTV Group based on circumstances almost identical to the Petitioner's stated herein. The IPTV Group's waiver request similarly sought waiver of section 76.1204(b)'s interface requirement. The FCC declined to determine whether IPTV downloadable security systems were already compliant with the integration ban of section 76.1204(a)(1) and granted a limited waiver pursuant to that section. Petitioner seeks substantially similar relief in the current petition to the extent that the FCC has not determined whether IPTV downloadable security is compliant with the integration ban as of the date that it provides a decision on the current petition. *See Consolidated Requests for Waiver of Section 76.1204(a)(1) of the Commission's Rules, Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices*, Memorandum Opinion and Order, DA 07-2921, CS Docket 97-80, ¶ 59, fn 241 (June 29, 2007) (“*Consolidated Requests for Waiver MO&O*”).

⁵ OPASTCO is the Organization for the Protection and Advancement of Small Telephone Companies and NTCA is the National Telecommunications Cooperative Association.

⁶ *See generally Petition for Clarification or, in the Alternative, Waiver of Section 76.1204(a), (b) of the Commission's Rules, Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices*, Petition for Clarification, CS Docket No. 97-80 (filed May 4, 2007) (“*Petition for Clarification*”). In its Request for Declaratory Ruling, OPASTCO and NTCA urged that the FCC issue a Declaratory Ruling (1) declaring that MVPD operators utilizing IPTV technology will be compliant with the integration ban as of the July 1 deadline and (2) establishing that MVPD operators will be compliant with section 76.1204(b)'s interface requirement if they are utilizing cable navigation equipment that uses an interface that (i) connects to and functions with the navigation devices of more than one consumer electronics (“CE”) vendor that has successfully integrated its equipment; or (ii) is publicly offered, such as via partnering or licensing, to CE vendors. *Id.*

I. INTRODUCTION

The Petitioner is utilizing a new video platform called Internet Protocol Television (“IPTV”) to provision video services to subscribers over broadband networks. IPTV technology is a digital video solution delivered over a high-speed connection. The Petitioner is using existing telecommunications infrastructure, including the core fiber optic network and twisted copper pairs, or fiber-to-the-home (“FTTH”), to subscriber premises, to deliver both IP video and high-speed internet services. The addition of video revenues allows the company to spread the costs of enhancing and expanding their broadband networks over two income sources, and as such, has allowed Petitioner to increase its broadband footprint and increase the broadband speeds available to customers. As a result, IPTV has allowed the Petitioner to increase competition in its service area not only in all- digital video services but in broadband data services as well.

IPTV technology is already in compliance with the integration ban set forth in section 76.1204(a)(1) of the Commission’s rules because it contains non-integrated downloadable conditional access (“DCAS”) functions.⁷ But, section 76.1204(b) requires an MVPD’s conditional access interfaces to be in accordance with either a standard set by a national standards organization or a commonly used interface. As mentioned previously, IPTV is a new technology which is still developing. There are currently no national standards for the conditional access interface, so IPTV cannot meet a national standard. Also, criteria for a common interface have not been defined. Therefore, the Petitioner can not be certain how to comply with the common interface requirement. Once criteria are identified, the Petitioner can follow those criteria when purchasing equipment. Only the IPTV vendors have control over whether a particular conditional

⁷ The non-integrated conditional access functions are explained in detail in the Technical Synopsis provided in Exhibit A. *But see, Consolidated Requests for Waiver MO&O*, fn 241. The Petitioner seeks substantially similar relief to the extent that the FCC has not determined whether IPTV downloadable security is compliant with section 76.1204(a)(1)’s ban as of the date it provides a decision on the current petition.

access product is “using the same technologies and standards available to manufacturers of commercially available devices. . . .”⁸ Accordingly, the Petitioner must rely on vendors’ specifications to comply with the interface requirement.

As stated previously, the Petitioner support the Request for Declaratory Ruling submitted by OPASTCO and NTCA and urge the FCC to grant the requested relief to establish how MVPD operators can comply with section 76.1204(b).⁹ In the meantime, however, and as discussed below, the Petitioner’s seek waiver of section 76.1204(b) until a national standard has been developed, or the FCC has defined criteria for compliance with the interface requirement, and vendors are afforded the opportunity to make their products compliant.

II. DISCUSSION

A. Standard for Waiver

Section 629(a) of the Act prescribes that the Commission “adopt regulations to assure the commercial availability” of video navigation devices.¹⁰ The goal of Congress in enacting section 629 was to “ensure that consumers have the opportunity to purchase navigation devices from sources other than their [MVPD].”¹¹ Congress also sought to avoid Commission actions having “the effect of freezing or chilling the development of new technologies and services.” Furthermore, section 629(c) states that the Commission *must* waive a regulation where the waiver standard of that section has been met.¹²

⁸ See *Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices*, Second Report and Order, fn 136 (March 17, 2005) (*2005 Second Report and Order*).

⁹ See generally *Petition for Clarification*.

¹⁰ 47 U.S.C. § 629(a).

¹¹ See *Charter Communications, Inc., Request for Waiver of Section 76.1204(a)(1) of the Commission’s Rules, Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices*, Memorandum Opinion and Order, ¶2 (rel. May 4, 2007) *citing* S. Rep. 104-230, at 181 (1996)(Conf. Rep.).

¹² See 47 U.S.C. § 549 (c) stating, “[t]he Commission shall waive a regulation adopted under subsection (a) for a limited time upon an appropriate showing . . . that such waiver is necessary to assist the development or introduction of a new or improved multichannel video programming or other service offered over multichannel video programming systems, technology, or products. Upon an appropriate showing, the Commission shall grant any such waiver request within 90 days of any application filed under this subsection. . . .”

The FCC promulgated section 76.1207 to implement the waiver requirement of section 629(c).¹³ Section 76.1207 instructs an MVPD, among other providers of multichannel video programming and equipment, to bring a waiver request pursuant to section 76.7 of the Commission's rules where (a) requesting a waiver for a limited time; and (b) upon a showing that "waiver is necessary to assist the development or introduction of a new or improved multichannel video programming or other service over multichannel video programming systems, technology or products."¹⁴ Any grant of a waiver pursuant to section 76.1207 is effective for all service providers and products in the category for which waiver is granted.¹⁵

The FCC may also generally waive its rules for good cause shown.¹⁶ Under section 1.3 of the rules, a waiver is appropriate where the "particular facts would make strict compliance inconsistent with the public interest."¹⁷ Furthermore, the District of Columbia Circuit Court of Appeals has held that the Commission is always required to "take a 'hard look' at meritorious applications for waiver, and must consider all relevant factors," especially where the application of a general rule under particular circumstances would not serve the public interest underlying that rule.¹⁸

With this instant Petition, the Petitioner demonstrates how it satisfies the waiver standards for section 629(c), as well as sections 1.3, 76.7, and 76.1207 of the Commission's rules. The

¹³ Section 76.1207 tracks the text of section 629(c) almost exactly. *See* 47 C.F.R. § 76.1207.

¹⁴ *Id.*

¹⁵ *See id.*

¹⁶ 47 C.F.R. § 1.3.

¹⁷ *AT&T Wireless Services, Inc. et al. v. Federal Communications Commission*, No. 00-1304 (D.C. Cir. 2001), *citing* *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) ("*Northeast Cellular*").

¹⁸ *KCST-TV, Inc. v. FCC*, 699 F.2d 1185, 1191, 1192 & 1195 (D.C. Cir. 1983) (vacating FCC denial of a waiver request, holding that once the premise of the rule had been shown not to apply, the "logic of applying [the rule] collapses," and it was arbitrary to apply the rule). *See also* *WAIT Radio v. FCC*, 418 F.2d 1153, 1157-1159 (D.C. Cir. 1969)(stating, "a general rule, deemed valid because the overall objectives are in the public interest, may not be in the 'public interest' if extended to an applicant who proposes a new service that will not undermine the policy, served by the rule, that has been adjudged in the public interest.").

Petitioner demonstrates why waiver for a limited time of the deadline for compliance with the interface requirement is within the public interest.

B. The Petitioner Request a Waiver for a Limited Time

In accordance with section 629 of the Act and section 76.1207 of the Commission's rules, the Petitioner is seeking a waiver for a limited time until a national standard has been developed for conditional access interfaces, or until the FCC has defined criteria for compliance with the common interface requirement, and vendors have the opportunity to develop products in accordance with such standard or criteria. IPTV is still developing and does not yet have a national standard interface or a common standard based on wide spread general use. Companies are just now implementing IPTV technology commercially so there is little embedded base of equipment. However, the Petitioner and their equipment vendors are taking steps to become fully compliant with section 76.1204 in the near future. Since IPTV systems are already designed to use downloadable security functions, the Petitioner is already meeting the Commission's objective of employing downloadable security.¹⁹

The Petitioner is currently attempting to become compliant with the interface requirement of section 76.1204(b). The Petitioner is encouraging its IPTV vendors to make efforts to open their systems even as IPTV technology is still being developed. Vendors of middleware and encryption products have begun to open a dialogue with other middleware, encryption and consumer electronics ("CE") vendors on DCAS interoperability and are offering the use of their product specifications for the purpose of such development.²⁰

¹⁹ See 2005 Second Report and Order, ¶ 36.

²⁰ See *IPTV Operators Group's Petition for Waiver of 47 C.F.R. § 76.1204(b), Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices*, The Petitioner [sic] of the IPTV Operators for Waiver for a Limited Time of the Open Interface Requirement, 47 C.F.R. § 76.1204(b), p.9 (filed June 1, 2007) ("*IPTV Operators Group Petition*").

At least one of the IPTV vendors used by the Petitioner is openly offering partnering opportunities.²¹ In a statement released by Minerva, Petitioner's middleware vendor, the company states that "Minerva Networks certifies, as required by the FCC, that the interface specifications used to integrate Conditional Access/Digital Rights Management . . . systems with Minerva's middleware and applications are available to [customer premise equipment] device vendors under non-discriminatory terms and conditions."²² In addition to the intent of certain vendors to work with other vendors of IP to integrate their systems,²³ the industry has also begun preliminary steps toward the development of an industry standard of DRM interoperability.²⁴ Thus, it is clear that the industry is committed to the earliest possible development and implementation of interoperability standards for IPTV DCAS.

The Petitioner urges the FCC to take the same approach to granting the Petitioner a deferral of the July 1 deadline for the interface requirement as it took for granting the deferral of the integration ban in 2005.²⁵ In the *2005 Second Report and Order*,²⁶ the FCC extended the phase-out of integrated cable navigation devices until July 1, 2007 to "afford cable operators additional time to determine whether it is possible to develop a downloadable security function that will permit them to comply with our rules without incurring the cable operator and consumer costs associated with the separation of hardware."²⁷ In the case of IPTV, it is not the

²¹ The Petitioner can provide additional information regarding partnering programs upon request by Commission staff.

²² See Minerva's Statement (May 7, 2007), attached hereto as Exhibit B. Some member companies of the Petitioner are utilizing Minerva middleware components in their systems. Additional information regarding the specific member companies utilizing Minerva for middleware is available for presentation to FCC staff upon request.

²³ See *IPTV Operators Group Petition*, p.9.

²⁴ See, e.g. IPTV DRM Interoperability Requirements, ATIS – 0800001 (April 2007) available at <https://www.atis.org>

²⁵ See *2005 Second Report and Order*, ¶ 31 & 36.

²⁶ *Implementation of Section 304 of the Telecommunications Act of 1996*, Second Report and Order, 20 FCC Rcd 6794 (2005).

²⁷ *2005 Second Report and Order*, ¶ 31.

downloadable security that needs to be developed; instead, it is the national standard and/or the criteria for common reliance that needs development.

Petitioner seeks waiver of the July 1, 2007 deadline for compliance with the interface requirement only until such time as a national standard has been developed, or until the FCC has defined the criteria for common reliance, and vendors have had the opportunity to develop products in accordance with such standard or criteria. As previously mentioned, the Petitioner supports the Request for Declaratory Ruling filed by OPASTCO and NTCA and encourages the FCC to make a determination as to the relief requested in that Request.²⁸ Once a method for compliance has been established through the development of a national standard or the declaration of criteria for a common interface, the Petitioner will be able to take steps to bring its IPTV systems into compliance.

C. Waiver Is Required to Assist in the Development of New and Improved Video Technologies and Services

Also in accordance with section 629 of the Act and section 76.1207 of the Commission's rules, the Petitioner demonstrate below that waiver is necessary to assist the development of IPTV technology, an improved multichannel video programming technology. IPTV is a new technology, only a few years old, which utilizes the same protocols as data services. Since IPTV uses the same platform, it promises to allow video and data to seamlessly integrate so customers can control what they are watching and enhance the video experience with interactive data functions.

²⁸ See *Petition for Clarification*. As previously summarized, OPASTCO and NTCA urge the FCC to declare that MVPD operators utilizing IPTV technology will be compliant with the integration ban as of the July 1 deadline, and that compliance with section 76.1204(b) includes an MVPD utilizing cable navigation equipment that uses an interface connecting to and functioning with the navigation devices of more than one CE vendor that has successfully integrated its equipment; or which is publicly offered, such as via partnering or licensing, to CE vendors. *Petition for Clarification, supra*.

IPTV technology is an improvement to multichannel video programming services because it expands competition in the rural video services market by enabling telephone providers in rural markets to provision video services over existing wireline infrastructure without the costly construction of a separate network. The Petitioner is an affiliate of a rural landline telephone company that has sought to expand its telephone service market to video services. Through building upon its current telephone business and leveraging the current infrastructure, the Petitioner has been able to add IPTV video capability to their businesses.

IPTV technology is also an improvement over traditional CATV services because it is an all-digital service containing downloadable conditional access software elements inherent in the system. The inherent DCAS makes this technology already compliant with the Commission's integration ban, unlike many traditional CATV technologies. In an IPTV system, the conditional access security functions exist in the MVPD's network, separate from other service management functions contained in customer premise equipment, such as the set top box. Since the security and non-security service management functions are not integrated within a single device, operators using IPTV DCAS are in compliance with the criteria set forth in section 76.1204(a)(1) of the Commission's rules.²⁹

The grant of a waiver for a limited time to the Petitioner is necessary to assist in the continued development of IPTV technology and the achievement of continued expansion to competition in the rural video services market. If waiver is not granted, consumers will be severely limited in their choices of service providers and the types of available video services technologies in rural markets. The Petitioner will not be able to deploy new IPTV set top boxes if waiver is not granted and, accordingly, will not be able to expand its customer base and provide expanded competition in rural video services.

Also, continued deployment of IPTV technology in the Petitioner's rural service areas would be halted, at minimum, and likely would have to be abandoned due to a lack of growth in subscriber revenues. The continued deployment of IPTV technology and service is in the public interest. The Commission has recognized that digital cable services such as IPTV are advanced video services.³⁰ It has stated that the "deployment of advanced video services is a recognized public interest benefit."³¹ Accordingly, it is in the public interest that the Commission grant waiver to the Petitioner to enable them to begin or continue the deployment of IPTV.

D. Strict Compliance with Section 76.1204(b)'s Interface Requirement is Inconsistent with the Public Interest

In the previous sections, the Petitioner has demonstrated why waiver should be granted pursuant to section 629 of the Act and section 76.1207 of the Commission's rules. The Petitioner also demonstrates in the discussion below that strict application of section 76.1204(b) with respect to Petitioner would be contrary to the public interest and to the Act's goal of deploying advanced telecommunications to all Americans.

The public interest requires that broadband deployment occur even in sparsely populated areas such as the rural service markets of the Petitioner. If waiver is not granted, however, it would become cost ineffective for the Petitioner to continue upgrades and expansion of its broadband networks in such areas. Since IPTV and data are both delivered over broadband, Petitioner can spread the costs of broadband network upgrades and expansion between both video and data revenue sources. The video revenue portion helps to support the deployment of higher speed data services over broadband. Since the broadband network must be upgraded and

²⁹ See 47 C.F.R. § 76.1204(a)(1).

³⁰ See, e.g., *Applications for Consent to the Assignment and/or Transfer of Control of Licenses Adelphia Communications Corporation*, MB Docket No. 05-192, 21 FCC Rcd 8203 (2006) at para. 246.

³¹ See *id.* at para. 256 (footnote omitted).

expanded for IPTV services,³² the Petitioner is currently able to simultaneously offer higher speed data services that would otherwise have taken years to deploy on data services revenues alone. Thus, a grant of a waiver for a limited time promotes the public policy objective of delivering higher speeds of broadband to rural communities.

A waiver for a limited time also promotes video competition in the rural service territories of the Petitioner in the public interest. The Petitioner has only recently entered the video market and is currently building market share in this market. If waiver is denied, however, the Petitioner's market growth could not occur because the Petitioner would not be able to add new customers. It is not feasible for the Petitioner to continue entering the market or supporting a video product if there is no opportunity to reach its market penetration target, or Petitioner is unable to win new customers from competitors. The Petitioner would be forced to cease providing all video services due to economic constraints resulting from the inability to capture new customers and revenues. Thus, a video competitor would be eliminated from the Petitioner's markets.

Some areas served by the Petitioner is so sparsely populated it is not cost effective for the traditional cable companies to build out their networks. Thus, Petitioner has made wireline video services available over a larger and less dense area than the competing cable company. Video subscribers would no longer have their choice of a service provider for cable services in these areas of Petitioner's market.³³ Thus, if the Commission does not grant this waiver, it would effectively be removing competitive services from the market, contrary to the public interest.

³² Typically, IPTV service uses between eight and twenty-one Mbps of bandwidth to the home.

³³ The Petitioner is providers of IPTV service, which is a non-traditional cable landline MVPD service. In many of Petitioner's markets, there may be providers of services in other video categories, such as satellite television. If the Commission would like more specific information on which markets contain competitors in other categories of services, such information may be provided upon request.

E. Grant of Petitioner’s Waiver Request Would Not Undermine the Policy Objective of Section 76.1204(b)

The policy objective of section 76.1204(b) would be promoted with grant of a waiver to the Petitioner for a limited time. The FCC promulgated section 76.1204 of the Commission’s rules to effect a transition to commercially available navigation devices and to implement section 629 of the Act. Section 629 was enacted “to afford consumers the opportunity to purchase navigation devices from other than their [MVPD].”³⁴ The objectives of section 629 “are in keeping with the 1996 Act’s general goal of ‘accelerating rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition.’”³⁵

While it is progressive and beneficial for consumers in the video markets to be able to make a choice about the equipment they will utilize to receive video signals, the policy objective of section 76.1204, as it relates to the Act’s overall objective of deploying advanced telecommunications and information technologies and services to all Americans, would ultimately be undermined if the Commission does *not* grant the Petitioner a waiver because consumers in Petitioner’s market would not have a choice in their cable services provider and development of new innovative IPTV technologies would be stifled in rural areas. In addition, if waiver is not granted and there is a cessation of cable service to new customers provisioned by Petitioner, the potential for the provision of competitive cable services could be effectively be removed from Petitioner’s market. Further, it may not be cost efficient for the Petitioner to continue to upgrade and expand its broadband network for the provision of higher speed data service in its service area if they are prohibited from coupling that service with new video services.

³⁴ See *BellSouth Interactive Media Services, LLC and BellSouth Entertainment, LLC*, Memorandum Opinion and Order, DA 04-2544 (rel. Aug. 18, 2004) (“2004 BellSouth MO&O”).

The grant of a waiver would not undermine the policy objective of section 76.1204, additionally, because Petitioner holds a very small percentage of the overall MVPD market. Thus any impact on the overall transition of MVPD providers to commercially available devices would be negligible.

In total, the Petitioner's service area is less than 0.0000001% of the entire U.S. MVPD market³⁶, with a total of approximately 1086 subscribers. Thus, if Petitioner is granted a waiver and permitted to continue the use of non-integrated boxes that do not have a standard interface, the policy objective of section 76.1204 would not be undermined because there would be little to no impact on the overall transition to commercially available devices and new customers of Petitioner would continue to have access to advanced digital video services over high-speed broadband networks.

F. The Petitioner's Circumstances Are Consistent with FCC Policy Reflected In the Grant of Previous Waivers

The Petitioner's current petition is consistent with the rationale that the FCC utilized in granting limited waivers in its *Consolidated Requests for Waiver MO&O*³⁷. For example, in granting waivers for the Rural ATM Digital Video Providers Group and the IPTV Operators Group, the FCC considered such statements by the groups that each were utilizing existing telecommunications infrastructure in the provision of video services, that their subscribers would be prohibited from adding or change any service requiring a new set-top box, and that the Act's overall objective of deploying advanced telecommunications and information technologies and

³⁵ See *Implementation of Section 304 of the Telecommunications Act of 1996*, Report and Order, ¶ 2 (rel. Jun. 24, 1998) ("1998 Report and Order").

³⁶ Based on the FCC's Video Assessment, the total number of U.S. households currently subscribed to a MVPD service totals 94.2 million. See *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 05-255 (Feb. 10, 2006).

³⁷ *Consolidated Requests for Waiver of Section 76.1204(a)(1) of the Commission's Rules, Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices*, Memorandum Opinion and Order, DA 07-2921, CS Docket 97-80, ¶ 59, fn 241 (June 29, 2007).

services to all Americans would be undermined if waiver was not granted.³⁸ The FCC also considered that the ATM and IPTV Groups were already providing video services over all-digital networks.³⁹ The Petitioner requests that the FCC take note that Petitioner has demonstrated substantially similar circumstances in the current petition for waiver. Accordingly, Petitioner respectfully requests that the FCC grant substantially similar relief under the same rationale that it utilized in the *Consolidated Requests for Waiver MO&O*.⁴⁰

In granting other previous waivers of its navigation rules, the FCC has focused on Commission policy, as well as the Act's objectives.⁴¹ In *2007 Cablevision MO&O*,⁴² the Commission recognized extraordinary circumstances surrounding Cablevision's early migration to the use of smart card technology, which incorporated separate security functions.⁴³ In that proceeding, the Commission stated, "[w]e find it particularly persuasive that Cablevision began implementing its SmartCard-based approach in 2001, more than three years before the Commission clarified that the integration ban requires reliance on an identical security function."⁴⁴ The Commission recognized further that Cablevision had implemented its technology "whereas other cable operators are only now beginning to place orders for digital cable set-top boxes that do not include integrated security in order to meet the July 1, 2007 deadline"⁴⁵

³⁸ See *id.* at ¶ 53.

³⁹ See *id.*

⁴⁰ See generally *id.*

⁴¹ See generally, *2004 BellSouth MO&O; Bend Cable Communications, LLC d/b/a BendBroadband*, Memorandum Opinion and Order, CSR-7057-Z (rel. Jan 10, 2007)("2007 BendBroadband MO&O"); *Cablevision Systems Corporation's Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, Memorandum Opinion and Order, CSR-7078-Z (rel. Jan. 10, 2007)("2007 Cablevision MO&O").

⁴² *Cablevision Systems Corporation's Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, Memorandum Opinion and Order, CSR-7078-Z (rel. Jan. 10, 2007).

⁴³ See *2007 Cablevision MO&O*, ¶ 20.

⁴⁴ *Id.*

⁴⁵ *Id.*

Petitioner has also achieved these extraordinary circumstances. As previously stated, Petitioner is utilizing IPTV technology, which, by its nature, incorporates downloadable security consistent with the FCC's separate security objectives. Thus, the FCC should grant a waiver of section 76.1204(b) to allow Petitioner to continue to deploy services over equipment that meets the Commission's integration ban until either the criteria for a common interface is defined or a national standard for IPTV is developed.

In *2007Bend MO&O*,⁴⁶ the Commission granted a waiver of its navigation rules to BendBroadband. In doing so, the Commission considered BendBroadband's commitment to migration to an all-digital system by 2008 and the obstacles it would face if it were forced to discontinue the use of the Motorola DCT-700 set-top box after July 1, 2007.⁴⁷

Unlike BendBroadband, Petitioner has already achieved the provision of services over all-digital networks. Like BendBroadband, however, Petitioner would face having to cease the provision and marketing of new digital video services if a waiver is not granted.

In the *2004 BellSouth MO&O*,⁴⁸ the Commission granted BellSouth a permanent waiver from the technical standards of sections 76.602 and 76.640 of the Commission's rules associated with non-integrated security.⁴⁹ In granting a waiver to BellSouth, the Commission considered BellSouth's status as a "small cable company," serving a very small percentage of the MVPD market.⁵⁰ The Commission also found that waiver was in the public interest because "grant of a

⁴⁶ *Bend Cable Communications, LLC d/b/a BendBroadband*, Memorandum Opinion and Order, CSR-7057-Z (rel. Jan 10, 2007).

⁴⁷ See *2007 BendBroadband MO&O*, ¶ 10.

⁴⁸ *BellSouth Interactive Media Services, LLC and BellSouth Entertainment, LLC*, Memorandum Opinion and Order, DA 04-2544 (rel. Aug. 18, 2004).

⁴⁹ See *2007 BellSouth MO&O*, ¶ 8.

⁵⁰ See *id.*, ¶ 5.

waiver will allow BellSouth to continue to deliver digital services to its subscribers and remain a viable competitor in the MVPD marketplace.”⁵¹

In this instance, Petitioner qualifies as a “small cable company” as that term is defined for purposes of section 76.901(e).⁵² Under this section a small cable company is one serving 400,000 subscribers or less. As previously stated, Petitioner is currently serving only 1086 susbcribers. Thus, Petitioner gives special emphasis to the fact that very few subscribers would be affected by a waiver to Petitioner. Just as with BellSouth, grant of a waiver would also allow Petitioner to continue to deliver digital video services as viable competitors in its rural market. Furthermore, it would ensure the continued development and deployment of broadband networks in the rural market.

Finally, in granting a waiver to Charter Communications in *2007 Charter Communications, Inc. MO&O*,⁵³ the FCC took notice of the circumstances surrounding Charter’s provision of services in rural markets stating, “[w]e are sympathetic to the fact that Charter’s financial difficulties may be due, in part, to its predominantly rural customer base.”

The Petitioner is serving a rural market with a sparse population. Competition in this area coupled with low revenues resulting from lower subscriber counts compounds the financial difficulty Petitioner would be facing if waiver is not granted.

In all the waivers discussed above, the FCC has granted waiver of the separate security rule allowing continued deployment of integrated devices. The Petitioner is already equipped to provide non-integrated devices so are compliant with integration ban portion the FCC rule. The Petitioner is only requesting an extension of the compliance date for a limited time for the open

⁵¹ See *id.*, ¶ 8.

⁵² 47 C.F.R. § 76.901(e); See also *2005 Second Report and Order*, App. C & fn 185.

interface portion of the rule to allow their innovative IP technology to develop to a point where a common interface and/or a national standard can be implemented.⁵⁴

⁵³ Charter Communications, Inc., Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules, Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices, Memorandum Opinion & Order, CSR-7049-Z, ¶ 18 (May 4, 2007).

⁵⁴ See, e.g., Charter Communications, Inc., Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules, Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices, Memorandum Opinion and Order, CSR-7049-Z (May 4, 2007); Millennium Telcom, LLC d/b/a OneSource Communications, Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules, Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices, Memorandum Opinion and Order, CSR-7129-Z (May 4, 2007); GCI Cable, Inc., Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules, Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices, Memorandum Opinion and Order, CSR-7130-Z (May 4, 2007).

III. CONCLUSION

WHEREFORE, for the reasons stated herein, Petitioner requests that the Commission grant this Petition for Waiver for a limited time of the open interface requirement set forth in section 76.1204(b) of the Commission's rules.

Respectfully submitted,

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Vice-President and Chief Operating Officer

July 2, 2007

EXHIBIT A

EXHIBIT A

Technical Synopsis

The IPTV system utilizes switched digital video (“SDV”), which is uniquely different from traditional cable television (“CATV”) based on its video channel delivery method and conditional access authentication. Unlike a traditional CATV system, which broadcasts every channel in its system to every home, SDV only delivers one to three channels to a home at one time. Accordingly, a user only receives channels that have been explicitly requested and only where the user is authorized to receive such channels. Whereas traditional CATV systems authenticate and store video entitlements either in the set-top box or on a Cable Card/Smart Card system, the IPTV SDV system stores authentication or video entitlements in the network in the middleware and digital rights management (“DRM”) software and not on the set top box.

The IPTV system topography is built on three major hardware components - the headend, the distribution equipment and the set top box - plus software that controls the overall system. The headend receives video content broadcast signal from satellites and off-air antennas and then transforms those signals into digital format for encoding and delivery into the distribution system. The distribution system encapsulates the video in an IP format for delivery of the video and other broadband service to the customer premise. The distribution system utilizes either DSL or fiber to the home technologies. The set top box receiving the video signal reformats it and delivers it to the TV.

The software of the IPTV system; middleware and DRM, manages the customers, tracks assignments, provides maintenance functions, changes channels for customers, provides the program guide and performs the conditional access functions. There are two software packages, middleware and DRM. Both the middleware and DRM are located at the in the core network. The

middleware provides a security function – validation of a customer’s authorization to view a channel. Each time the subscriber changes a channel , the set top box sends a signal back into the network for permission to view the called upon channel. Once the authorization is received from the middleware, the distribution system switches the channel to the customer line.

DRM provides and manages video content control and copy protection in the distribution of video signals within the MVPD’s network. In an IPTV system the DRM is downloadable. DRM system works with other systems such as middleware and billing systems also located at the service node and utilize a series of secret information keys that code and decode video signals sent from the network to each set top box.

EXHIBIT B

Minerva's statement

"Minerva Networks offers the following statement regarding compliance with the Federal Communications Commission's (FCC's) "set-top box" rule. The FCC set-top box rule requires that by July 1, 2007, all video/cable providers must cease selling or leasing new boxes with integrated security and non-security functions. Minerva Networks certifies, as required by the FCC, that the interface specifications used to integrate Conditional Access/Digital Rights Management (CA/DRM) systems with Minerva's middleware and applications are available to CPE device vendors under non-discriminatory terms and conditions."

5/7/2007