

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

In the Matter of	)	
	)	CS Docket No. 97-80
	)	
Colo Telephone Company	)	CSR-7218-Z
Griswold Cooperative Telephone Company	)	CSR-7219-Z
Coon Creek Telephone Company and	)	
Coon Creek Telecommunications Corp.	)	CSR-7220-Z
Wellman Cooperative Telephone Association	)	CSR-7221-Z
Interstate Cablevision Company	)	CSR-7222-Z
NTS Communications, Inc.	)	CSR-7227-Z
	)	
Requests for Waiver of Section 76.1204(a)(1)	)	
	)	
Implementation of Section 304 of the	)	
Telecommunications Act of 1996	)	
	)	
Commercial Availability of Navigation Devices	)	
_____	)	

**Comments of the Consumer Electronics Association  
on Six Requests for Waiver of 47 C.F.R. § 76.1204(a)(1)**

July 5, 2007

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**Comments of the Consumer Electronics Association  
on Six Requests for Waiver of 47 C.F.R. § 76.1204(a)(1)**

The Consumer Electronics Association (“CEA”) submits these comments in response to the requests for waiver of Section 76.1204(a)(1) of the Commission’s rules by Colo Telephone Company, Griswold Cooperative Telephone Company, Coon Creek Telephone Company and Coon Creek Telecommunications Corp., Wellman Cooperative Telephone Association, Interstate Cablevision Company, and NTS Communications, Inc. (herein “the Petitioners”).<sup>1</sup>

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<sup>1</sup> *Commercial Availability of Navigation Devices*, CS Docket No. 97-80, CSR-7218-Z, Colo Telephone Company, Petition for Waiver (Apr. 19, 2007) (“Colo Request”); CSR-7219-Z, Griswold Cooperative Telephone Company, Petition for Waiver (Apr. 5, 2007); CSR-7220-Z, Coon Creek Telephone Company and Coon Creek Telecommunications Corp., Petition for Waiver (May 11, 2007); CSR-7221-Z, Wellman

The Commission, through the Media Bureau, has now made clear the limited circumstances under which cable operators such as this “IPTV” group of waiver petitioners will be permitted to continue deploying set-top boxes with integrated conditional access mechanisms.<sup>2</sup> In advisory language as to steps operators such as the instant petitioners – who all will be deploying “downloadable” CA systems that they admit are not compliant – can take so as to achieve compliance with Section 76.1204(a)(1) by July 1, 2008, the Bureau observed that one such course would be to establish “. . . a separable security solution that will allow for interoperability between their system and consumer electronics equipment, preferably a downloadable solution based on open standards.”<sup>3</sup> CEA applauds this direction by the Commission, but urges that the FCC’s guidance in such respect be made crystal clear that:

- (1) in order for such a downloadable solution to in fact be interoperable with consumer electronics equipment, there must be one, and only one, such solution adopted on an industry-wide basis, and
- (2) any such solution must be implemented on a technical and licensing basis that provides for a real-world level playing field for competitive entrants.

CEA interprets the Bureau’s June 29 Memorandum as including these key points, but due to the importance of this issue must emphasize, as it has previously in this docket,<sup>4</sup> that *without these understood provisos, the Commission’s entire efforts in implementing Section 629, which date back to 1997, will come to naught.*

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Cooperative Telephone Association, Petition for Waiver (May 11, 2007); CSR-7222-Z, Interstate Cablevision Company, Petition for Waiver (Apr. 5, 2007); CSR- 7227-Z, NTS Communications, Inc., Petition for Waiver (June 5, 2007) (“NTS Communications Request”).

<sup>2</sup> *Commercial Availability of Navigation Devices*, Consolidated Requests for Waiver of Section 76.1204(a)(1) of the Commission’s Rules, Memorandum Opinion And Order, CS Docket No. 97-80, (rel. June 29, 2007) [DA 07-2921].

<sup>3</sup> *Id.* at ¶ 61.

<sup>4</sup> *See, Commercial Availability of Navigation Devices*, CS Docket 97-80, CSR-7131-Z, letter from Julie M. Kearney to Marlene Dortch, Office of the Secretary, FCC, re “Emergency petition of JetBroadband” (Apr. 24, 2007)(herein “April 24 ex parte letter”).

## **A National Security Interface Is Necessary**

It is vitally important that the Commission recognize the danger of approving a proliferation of incompatible, proprietary conditional access technologies – “downloadable” or not.

*The chipsets and firmware necessary for navigation devices to implement “downloadable” security are not themselves “downloadable.”* Rather, the electronic interface for each system would have to be separately engineered and built into the hardware and software of any television or other navigation device. If there can be any number of such “downloadable” systems – indeed, if more than one – any advantage of separable security would be lost, as there would still be no common security interface. The navigation devices would be no more, and perhaps less, nationally portable than are present integrated-security set-top boxes. And, as in the case of present set-top boxes, a different and perhaps incompatible license would be required from each system vendor. Thus, despite all of its efforts to assure competitive navigation devices via separable security, *a national patchwork of different “downloadable” systems would put the Commission back where it started a decade ago – with individual, proprietary security solutions posing a fundamental obstacle to competitive entry.*

Petitioners, along with many other cable operators, would prefer to use technologies which, in their own words, “do[] not satisfy the common reliance requirement in the FCC’s rules.”<sup>5</sup> If conditional access systems vary from operator to operator and region to region, or if those systems are licensed on discriminatory and burdensome terms, retail navigation devices will *not* be portable, and *no* national market

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<sup>5</sup> See, e.g., Colo Request at 6; NTS Communications Request at 6 (“[T]he requirement for common reliance does not appear to be met because the Latens solution is a proprietary downloadable conditional access system.”).

for such devices can ever come to be. Therefore, granting waivers, or deciding that a solution is compliant, so no waiver is necessary, where multiple and incompatible approaches are employed will eviscerate competitive availability as well as common reliance. It would perpetuate a status quo that, the Commission observed, does not provide a level playing field for competitive entrants.<sup>6</sup>

Petitioners acknowledge that conditional access systems which are “closed” and “proprietary”<sup>7</sup> do not comply with the Commission’s rules. Petitioners recognize that equipment with a “severable security component” does *not*, without more, comply with the Commission’s rules for common reliance and competitive availability.<sup>8</sup> As CEA explained in its *ex parte* letter of April 24, 2007, a multitude of conditional access systems that are not nationally portable will inhibit the development of any retail market for navigation devices.<sup>9</sup> Therefore, a cable operator cannot demonstrate compliance with Section 76.1204(a)(1) on the sole basis that the proprietary security technology of its vendor is offered by license to consumer electronics manufacturers and is in use by several cable systems, thus is compliant because it is “commonly used.”<sup>10</sup>

For the purpose of ensuring competitive availability of navigation devices nationwide, only a nationally standard interface can be considered “commonly used.”

The many waiver applications themselves provide evidence that the *status quo* integrated

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<sup>6</sup> *Commercial Availability of Navigation Devices*, Second Report And Order, CS Docket No. 97-80 ¶ 28 (rel. Mar. 17, 2005). “CableCARD-equipped devices are available at retail and are being used by consumers. Yet it is clear from the record that the market for equipment used in conjunction with the distribution of digital cable video programming presently remains a nascent market.”

<sup>7</sup> See, e.g., Colo Request at 6; NTS Communications Request at 6-7.

<sup>8</sup> NTS Communications Request at 7 (“Latens satisfies the FCC’s ‘severable security component requirement.’ However, the Latens solution does not meet the requirement for common reliance.”).

<sup>9</sup> April 24 *ex parte* letter.

<sup>10</sup> Such an assertion is made in a recent SES Americom-NRTC *ex parte* filing. See, e.g., *Commercial Availability of Navigation Devices*, CS Docket No. 97-80, letter from Alan Young, CTO, SES Americom, Inc.; Mark C. Ellison, S.V. P. Business Affairs & General counsel, National Rural Telecommunications Cooperative to Chairman Kevin J. Martin, re “IPTV Compliance with 47 C.F.R. § 76.1204(a)(1), (b)” (June 28, 1007).

security techniques are also “commonly used.” The reason that the cable industry itself proposed a separable security solution a decade ago is not that the existing, integrated approaches were not “commonly used.” They were. It is that they failed to provide for a national interface that supports a competitive device market, as the Congress instructed the Commission to achieve. The Commission will have accomplished nothing if it fails to achieve such an interface in any successor or alternative to the CableCARD.

**Though Necessary, A National Interface Is Not Sufficient**

For these petitioners and any others seeking a Commission determination, a national interface is necessary, but not sufficient to achieve Congress’s goal. A true level playing field for competitive devices, such as to *assure* the circumstances for competitive entry, depends on the following attributes, *all* of which are currently fulfilled by the CableCARD via the DFAST license:

- (1) a national interface so that a DTV television receiver or competitive product can be nationally marketed and moved by the consumer from one local system to another,
- (2) manufacturer input into the specification and any planned changes, and manufacturer review prior to final adoption,
- (3) reasonable host device implementation specifications and support for competitive home networks,
- (4) self-certification of implementation,
- (5) support of competitive home networks,
- (6) true renewability to the software, including updates to the host end of the interface via firmware,
- (7) licensing terms that comport with FCC regulations limiting MSO control over devices to assurance against theft of service and harm to the cable network, and

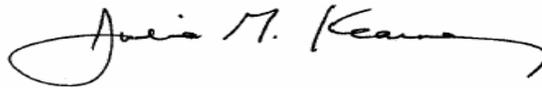
- (8) compliance with all other FCC regulations pertaining to cable systems and competitive availability of devices.

The CableCARD, if adequately supported, is the *only* conditional access technology with all of these attributes, and the only technology that can “ensure the commercial availability” of competitive navigation devices today. Any successor or alternative needs to satisfy these attributes as well.

**Conclusion**

CEA applauds the Commission for its concrete steps to fulfill Congress’s mandate of eleven years ago, to facilitate a competitive market in navigation devices for MVPD services. However, the Commission should recognize, as Petitioners apparently have, that a proliferation of incompatible, proprietary, but nominally “downloadable” technologies will *not* lead to a competitive retail market for navigation devices. The Commission has taken a major step towards fulfilling Congress’s mandate and should not now throw that progress away.

Respectfully submitted,



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## CERTIFICATE OF SERVICE

I do hereby certify that on July 5, 2007 I caused a true and correct copy of the foregoing Comments of the Consumer Electronics Association on Six Requests for Waiver of 47 C.F.R. § 76.1204(a)(1) to be served via overnight mail on the following:

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