

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

In the Matter of)
) CS Docket No. 97-80
)
Gardonville Cooperative Telephone) CSR-7359-Z
Association Request for Waiver)
of 47 C.F.R. § 76.1204(a)(1))
_____)

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

August 1, 2007

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The Consumer Electronics Association (“CEA”) respectfully submits these comments in response to a petition for waiver submitted by the Gardonville Cooperative Telephone Association (“Gardonville”). The purpose of Section 76.1204 of the Commission’s rules is to fulfill Congress’s mandate to ensure the availability of video navigation devices at retail, which can compete with devices leased by cable operators. That purpose should guide application of the Commission’s rules for both QAM-based digital cable and for IPTV technologies. Accordingly, Gardonville and all IPTV systems should not be granted waivers solely on the basis of having deployed IPTV systems with a nominally “downloadable” conditional access element.

As CEA has pointed out in comments on other waiver petitions, and in its *ex parte* comments of April 24, 2007, the presence, without more, of a downloadable security component and one or more licensees *cannot* support a national retail market for

navigation devices.¹ Many IPTV system operators and technology developers have also acknowledged that more is needed if the Commission is to fulfill Congress's goal.

Premier Communications, for example, acknowledges that conditional access technology by Widevine, which is also in use by Gardonville, “[cannot] be used with set-top boxes that have not been configured with the appropriate chipsets or other hardware and software.”² Nearly every IPTV operator to file a petition in this docket has acknowledged that it has the same responsibilities under the Commission's rules as a QAM-based cable operator, and that merely using some “downloadable security” technology does not fulfill those responsibilities.

The reason for this is as obvious as it is fundamental. As CEA observed in its July 5 Comments on Six IPTV Waiver Requests –

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 –***

¹ *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 “CEA April 24 ex parte letter”); *Commercial Availability of Navigation Devices*, CS Docket 97-80, Comments of the Consumer Electronics Association on Six Requests for Waiver of 47 C.F.R. § 76.1204(a)(1) (July 5, 2007) (“CEA July 5 Comments”).

² See, e.g., *Commercial Availability of Navigation Devices, Premier Communications, Inc. Petition for Waiver of Section 76.1204(a)(1)*, CS Docket 97-80, CSR-7349-Z at 6 (June 19, 2007); *Commercial Availability of Navigation Devices*, CS Docket 97-80, CSR-7182-Z, Local Internet Service Company, Petition for Waiver of Section 76.1204(a)(1) at 10-11 (Apr. 2, 2007); CSR-7147-Z, Dumont Telephone Co., Petition for Waiver of Section 76.1204(a)(1) at 6-7 (Mar. 12, 2007); CSR-7177-Z, West Liberty Telephone Company, Petition for Waiver of Section 76.1204(a)(1) at 5-7 (Mar. 13, 2007).

*with individual, proprietary security solutions posing a fundamental obstacle to competitive entry.*³

At least some IPTV operators and their vendors have gone beyond seeking waivers and are actively seeking to comply with Section 76.1204 “in the near future.”⁴ At the same time, a major telecommunications standard-setting body is developing “two distinct solutions for IP-based separable security in the emerging IPTV market that will achieve the objectives set forth by the Federal Communications Commission in CS Docket No. 97-80.”⁵ Those solutions will include “. . .[a]n enhancement of the existing CableCard specification . . . to enable IP flows that are agnostic to the network technology of the [MPVD].”⁶

Gardonville, in marked contrast to these forward-looking efforts, simply requests a waiver exempting its chosen IPTV technology from compliance with the Commission’s rules for the sole reason that the technology contains a downloadable element. It is entirely misleading for Gardonville to request “permission for downloadable security”⁷ when the mere presence of a downloadable element, without more, is not sufficient to comply with Section 76.1201. In fact, Gardonville’s system cannot satisfy Section

³ CEA July 5 Comments at 3.

⁴ *Commercial Availability of Navigation Devices*, CS Docket 97-80, IPTV Operators Group #2 Group Petition for Waiver at 8 (June 19, 2007). To CEA’s knowledge, this petition has not been noticed for comment.

⁵ ATIS IP-Based Separable Security Incubator, Mission Statement, <http://www.atis.org/issi/about.asp> (accessed July 25, 2007) [hereinafter “ATIS Mission Statement”]. ATIS is a telecommunications standard-setting body which “provide[s] the stage for its 300-plus member companies to engage and align in support of the industry’s most critical technology and operational priorities.” ATIS 2006 Annual Report at 4, available at http://www.atis.org/PRESS/53126_Spreads.pdf (accessed July 26, 2007). ATIS called its IPTV standardization effort “this year’s best example of how ATIS addresses the business-driven needs of its member companies.” *Id.*

⁶ ATIS Mission Statement. Although middleware issues are outside the scope of Section 76.1204 (a) and (b), they are equally important to the development of a competitive market for navigation devices, and CEA congratulates the Petitioners for recognizing this. The Commission should address middleware more fully in its consideration of comments on the Third Further Notice of Proposed Rulemaking.

⁷ *Commercial Availability of Navigation Devices*, CS Docket 97-80, CSR-7359-Z, Gardonville Cooperative Telephone Association Request for Waiver of 47 C.F.R. § 76.1204(a)(1) at 6 (June 26, 2007).

76.1204(b), the open interface requirement, any more than it can satisfy the common reliance requirement of 1204(a). Since Gardonville did not even ask for a waiver of 1204(b), its petition as to common reliance is meaningless, and to grant it on the stated grounds would be to eviscerate the open interface requirement.

As CEA has stated previously,⁸ a “commonly used” interface under 1204(b) is one that manufacturers of navigation devices can rely on to build and sell a commercially viable product to a national market. Manufacturers cannot rely on an interface which does not include a separable security specification. Likewise, an interface subject to discriminatory licensing terms, one that will be abandoned unilaterally by cable operators in the near future, or one which will not be scaled to a single national standard, as the CableCARD is, in use on all urban and rural systems, cannot create a viable market for navigation devices. Even “open” interfaces, without more, will not lead to a viable market if cable operators are free to use any one of a multitude of incompatible “standards.” For the reasons discussed above, and in CEA’s July 5 Comments,⁹ a single national standard is needed.

All of these criteria must be met if the Commission is to comply with the Congress’s directive to support commercial entry to the market for navigation devices. As CEA has stated previously, these criteria are far from radical.¹⁰ The CableCARD currently fulfills all of these, and CEA looks forward to a comparable standard for IPTV devices in the near future. While CEA recognizes that a CableCARD or equivalent technology is not yet available for IPTV systems, the Commission should not take actions now that will weaken incentives to develop such systems in the near future. Accordingly,

⁸ See CEA April 24 ex parte letter and CEA July 5 Comments.

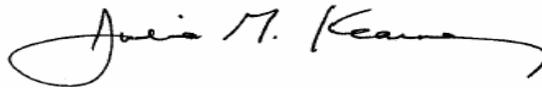
⁹ *Supra* note 1.

¹⁰ CEA April 24 ex parte letter.

Gardonville should not be granted a waiver simply because it has deployed IPTV technology.

Apart from stating no basis for granting a waiver, Gardonville's petition covers two set-top boxes with digital video recording (DVR) functionality. In its Order of June 29, 2007, the Commission specifically denied any waivers as to devices with advanced functionality, which by any definition includes DVR functions. The Commission should continue to refuse any waiver requests as to devices with advanced functionality.

Respectfully submitted,



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Dated: August 1, 2007

CERTIFICATE OF SERVICE

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

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/s/ LaClaudia Dyson
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