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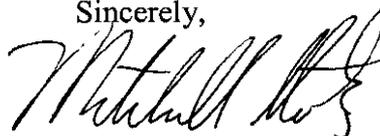
Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
c/o Natek, Inc.
236 Massachusetts Avenue, N.E.
Suite 110
Washington, DC 20002

Re: CS Dkt. 97-80; CSR-8145-Z

Dear Ms. Dortch:

Enclosed please find an original and four copies of the Opposition of the Consumer Electronics Association to TruVista Communications Request for Waiver. This Opposition was also filed electronically in CS Docket 97-80.

Sincerely,



Mitchell L. Stoltz

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List ABCDE

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

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In the Matter of)
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)
Fairfield Communications, Inc.) CSR-8145-Z
d/b/a TruVista Communications)
)
Request for Waiver of 47 C.F.R.)
Section 76.1204(a)(1))
)
_____)

**Opposition of the Consumer Electronics Association
to TruVista Communications Request for Waiver**

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Federal Communications Commission
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**Opposition of the Consumer Electronics Association
to TruVista Communications Request for Waiver**

The Consumer Electronics Association (“CEA”) respectfully submits these comments in opposition to a request by Fairfield Communications, Inc., d/b/a TruVista Communications (“TruVista”) for a waiver of Section 76.1204(a)(1) of the Commission’s rules.¹ TruVista does *not* claim to be in financial distress. Moreover, TruVista seeks to loosen the criteria used by the Media Bureau in granting prior waivers, to the point where the exception will effectively swallow the rule. For each of these reasons, the Commission should deny TruVista’s request.

The Commission and the Bureau have consistently maintained that merely facilitating the deployment of all-digital cable television, broadband, and video-on-demand does not justify a waiver of Section 76.1204(a)(1) on the basis of Section 629(c)

¹ 47 C.F.R. § 76.1204(a)(1) (2007).

of the Telecommunications Act.² The Commission and the Bureau have also maintained that the Motorola DCT-700 is not a “limited capability integrated digital cable box[]” for which the Commission may “entertain” waiver requests under its 2005 Report and Order in this docket (the “2005 Deferral Order”).³ TruVista acknowledges, correctly, that the Commission and the Bureau have not granted waivers for use of the DCT-700 under either of these provisions.⁴ Accordingly, TruVista has requested a waiver pursuant to the Commission’s general waiver authority.⁵ However, TruVista’s request is devoid of any actual evidence that granting a three-year waiver will produce a non-speculative public benefit which outweighs the harm to competition in navigation devices that would likely result.

TruVista purports to rely on the Bureau’s “BendBroadband Order.” However, that Order granted a waiver in return for an operator’s commitment to migrate to an all-digital network in time for the broadcast digital transition, in order to ease that transition.⁶ With the broadcast transition well under way, and required to be complete as of June 12, 2009,⁷ the specific rationale behind the BendBroadband Order no longer applies.⁸ The

² 47 U.S.C. § 549(c).

³ *In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices*, CS Docket No. 97-80, Second Report and Order ¶ 37 (rel. Mar. 17, 2005).

⁴ *In the Matter of: Fairfield Communications, Inc. d/b/a TruVista Communications Request for Waiver of 47 C.F.R. § 76.1204(a)(1)*, Request for Waiver of 47 C.F.R. § 76.1204(a)(1) at 3-4 (Mar. 2, 2009) (the “Request”).

⁵ 47 C.F.R. §§ 1.3, 76.7.

⁶ *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, Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, CSR-7057-Z, CS Docket No. 97-80, Memorandum Opinion and Order ¶ 24 (rel. Jan. 10, 2007) (the “BendBroadband Order”).

⁷ DTV Delay Act, S. 328, 111th Cong., Pub. L. 111-4, Section 4 (2009), available at <http://thomas.loc.gov/cgi-bin/query/D?c111:1:/temp/~c111aV393W::>

⁸ CEA has noted in other submissions that, unlike broadcasters, cable operators have no statutory deadline for a transition to digital. Nonetheless, to the extent the Bureau’s BendBroadband Order recognized a linkage between the cable and broadcast digital transitions and has granted waivers on that basis, that rationale is moot after June 12, 2009. Once the broadcast transition is complete, television viewers will

other rationale specified in that Order, allowing an operator to “focus its capital on other new digital services,”⁹ was roundly rejected by the full Commission and the U.S. Court of Appeals for the District of Columbia Circuit as a standalone basis for granting a waiver, in response to a request by Comcast.¹⁰ Thus, even if the BendBroadband Order has any relevance to post-Transition waiver requests such as TruVista’s, it has been superseded by the full Commission’s Comcast Order.

TruVista does *not* claim that it is experiencing special financial hardship, but only that complying with the common reliance rule – which has now been in effect for almost two years – would require “expenditure of scarce capital.”¹¹ This amounts to an assertion that a waiver is justified because of TruVista’s business priorities, rather than any documented hardship or necessity. Nearly any cable operator could credibly claim to have “scarce capital” in “this time of economic instability,”¹² thus, a waiver on this ground without a showing of special hardship or impending insolvency would amount to a general waiver for all comers, something the Commission has consistently and wisely rejected.

Moreover, TruVista offers no evidence for its claim that lack of a waiver “will *preclude* TruVista’s migration to an all-digital network in the foreseeable future.”¹³ If TruVista’s cost data is accurate, the price of CableCARD-compatible, non-integrated set-top boxes has in fact decreased since the common reliance rule took effect, while

need no government incentives to purchase digital televisions, as discussed in Paragraph 24 of the BendBroadband Order.

⁹ BendBroadband Order ¶ 25.

¹⁰ *In the Matter of Comcast Corporation 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, Application for Review, CSR-7012-Z, CS Docket No. 97-80, Memorandum Opinion and Order ¶¶ 16-20 (rel. Sept. 4, 2007); Comcast Corp. v. FCC, 526 F.3d 763, 766 (2008).*

¹¹ Request at 6.

¹² *Id.*

¹³ *Id.* (emphasis added).

integrated devices, which continue to be produced and priced under monopolistic conditions, have remained at essentially the same price.¹⁴

If the Bureau grants waivers on the terms requested by TruVista, the development of a competitive navigation device market will in fact be harmed. The common reliance rule is grounded in the Commission's observation that a competitive market in navigation devices cannot develop, as mandated by Congress, unless cable operators have a business incentive, in addition to a regulatory incentive, to provision and support CableCARDs adequately. If operators such as TruVista can continue to deploy integrated set-top boxes to a majority of their customers for an additional three years, extending some *five years* after the effective date of the common reliance rule on July 1, 2007, then CableCARDs will remain a specialty item, outside the standard operating routine of the operator's technicians and support personnel.

As TruVista is not seeking a waiver under the 2005 Deferral Order "limited capability" criteria, its reliance on that Order to show a lack of harm to competition is misplaced.¹⁵ That the Commission believed in 2005 that continued deployment of truly "limited capability" devices would not endanger competition in devices does *not* establish that continued broad deployment of the DCT-700 is compatible with the formation of a competitive market in 2009, let alone 2012. TruVista's claim that its digital transition will drive adoption of higher-end CableCARD-reliant devices in sufficient number to ensure consistent support is not credible, because the "advanced services" that TruVista intends to deploy ("video on demand, broadband service . . . and

¹⁴ Compare *In the Matter of BendBroadband's Request for Waiver of 47 C.F.R. § 1204(a)(1)*, CSR-7057-Z, Request for Waiver at 9 (Oct. 4, 2006) (quoting the price of Motorola's integrated set-top box at \$79 and its non-integrated box at \$190) with Request at 5 & n.18 (quoting prices of \$78 and \$176, respectively).

¹⁵ Request at 7.

caller ID functionality”)¹⁶ are either supported by the DCT-700 or are not television services. Thus, if TruVista continues to deploy the DCT-700, TruVista’s customers will not have any special incentive to purchase CableCARD-reliant devices, as TruVista claims in its Request.

For each of these reasons, the Commission should deny TruVista’s request.

Respectfully submitted,

/s/ James W. Hedlund

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Dated: April 2, 2009

¹⁶ Request at 5.

CERTIFICATE OF SERVICE

I do hereby certify that on April 2, 2009 I caused a true and correct copy of the foregoing Opposition of the Consumer Electronics Association to TruVista Communications Request for Waiver to be served via first-class mail on the following:

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/s/ Patricia O'Keefe
Patricia O'Keefe