

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

In the Matter of)
)
Motorola, Inc.'s)
)
) CSR-8175-Z
Request for Waiver of)
47 C.F.R. § 76.1204(a)(1)) CS Docket No. 97-80
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**Comments of the Consumer Electronics Association
on Motorola, Inc.'s Request for Waiver of 47 C.F.R. § 76.1204(a)(1)**

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**Comments of the Consumer Electronics Association
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The Consumer Electronics Association (“CEA”) respectfully submits these comments on Motorola, Inc.’s request for waiver of Section 76.1204(a)(1) of the Commission’s rules (the “common reliance rule”).¹ Motorola’s request is based on the Media Bureau’s June 1, 2009 order granting a waiver to certain devices manufactured by Evolution Broadband.² To avoid progressively undermining the Congressionally-mandated goal of a level playing field for competitive cable navigation devices, CEA urges the Commission: 1) to construe the *Evolution Order* narrowly; 2) to clarify that in

¹ *In the Matter of Motorola, Inc.'s Request for Waiver of 47 C.F.R. § 76.1204(a)(1)*, CSR-8175-Z (June 10, 2009) (“Request”). Because the comments address policy issues that may be beyond those permitted by the Media Bureau’s Public Notice (*see* Public Notice, DA-09-1344, rel. June 16, 2009 (footnote 6)), CEA also submits these comments into the Commission’s open proceeding on the Commercial Availability of Navigation Devices, *Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices*, CS Docket No. 97-80.

² *In the Matter of Evolution Broadband, LLC's 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-7902-Z, CS Docket No. 97-80, Memorandum Opinion and Order (rel. June 1, 2009) (“*Evolution Order*”).

the context of cable navigation devices, there is no meaningful distinction between “decryption” and “conditional access;” 3) that if cable operators are to begin deploying DTAs widely, per Section 629, to do what is necessary to allow competitive manufacturers to offer DTA functionality in their own products, such as by requiring cable operators to disclose the full specifications of those devices; and 4) to undertake a rulemaking expeditiously with the goal of creating a downloadable and nationally portable conditional access standard that can be deployed by all multi-channel video programming distributors and eventually serve as a successor to the CableCARD.

CEA opposed the Evolution waiver request on the grounds that creating a broad tier of operator-provided set-top boxes exempt from the common reliance rule would undermine cable operators’ support for competitive devices that rely on the existing national, separable security interface (the CableCARD) or any successor.³ CEA stated that because the competitive retail market for commercial navigation devices mandated by Congress does not yet exist, the Commission should not grant broadly-applicable waivers.⁴

The Commission seeks comment on whether the set-top boxes for which Motorola requests a waiver are “more advanced” than the devices granted a waiver in the *Evolution Order*.⁵ CEA urges caution so as to avoid extending the exemption created by the *Evolution Order* and the *Deferral Order*⁶ to increasingly more feature-rich set-top boxes. There is particular danger of further erosion of the rule and undermining of

³ *In the Matter of Evolution Broadband, LLC Petition for Waiver of 47 C.F.R. § 76.1204(a)(1)*, CS Docket No. 97-80, CSR-7902-Z, Opposition of the Consumer Electronics Association to Evolution Broadband, LLC Petition for Waiver of 47 C.F.R. § 76.1204(a)(1) (June 16, 2008).

⁴ *Id.* at 7.

⁵ Public Notice at 1-2.

⁶ *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 (rel. Mar. 17, 2005).

Section 629 of the Telecommunications Act.⁷ In addition to granting Evolution’s waiver request the Commission has granted over the past few months one operator’s waiver request for HD-capable set-top boxes⁸ and extended waivers for other operators.⁹ And yet another operator has requested an exemption on the grounds that it cannot locate a separable security technology compatible with its proposed system.¹⁰ CEA urges the Commission to maintain the limits apparently established in the *Evolution Order* by requiring waiver applicants to provide 1) a complete specification of any device for which waiver is requested – more complete than the high-level “data sheets” offered by Evolution – and 2) assurances that such device is a one-way, standard-definition device without interactive program guides, video-on-demand, pay-per-view, video recording, switched digital video, broadband Internet, dual tuner capabilities or other advanced or interactive features. These requirements will assure that at least advanced competitive devices will be able to compete fairly with operator-provided devices.

CEA also requests that the Commission clarify that “decryption” and “conditional access” have the same meaning for purposes of Section 76.1204, such that any set-top box that decrypts a digital cable signal should be considered a conditional access device and subject to that rule. It is CEA’s understanding that the devices described in Motorola’s request are conditional access devices , and the fact that Motorola filed for

⁷ 47 U.S.C. § 549.

⁸ *In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices, Cable One, Inc. ’s Request for Waiver of Section 76.1204(a)(1) of the Commission’s Rules*, CS Docket No. 97-80, CSR-8080-Z, Memorandum Opinion and Order (rel. May 28, 2009).

⁹ *In the Matter of RCN Corp. Request for Waiver of Section 76.1204(a)(1) of the Commission’s Rules*, CSR-7113-Z, Memorandum Opinion and Order (rel. June 22, 2009); *In the Matter of WideOpenWest Finance, LLC Request for Waiver of Section 76.1204(a)(1) of the Commission’s Rules*, CSR-7139-Z, Memorandum Opinion and Order (rel. June 22, 2009).

¹⁰ *In the Matter of Petition of Lafayette City-Parish Consolidated Government of Lafayette, Louisiana, d/b/a Lafayette Utilities System, for Waiver of Section 76.1204(a) of the Commission’s Rules, Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices*, CSR-8152-Z, CS Docket No. 97-80 (Mar. 25, 2009).

waiver of the integration ban suggests that Motorola agrees. Nevertheless, CEA is concerned with the apparent suggestion that decryption is somehow distinct from conditional access.¹¹

Motorola's request also appears to create some confusion in describing activation of the DTAs' conditional access function via a "software download."¹² This description could suggest that the DTAs support a form of downloadable conditional access that is entirely separate from the box itself.¹³ While activation of the conditional access system requires a software download from the operator's headend, the security hardware (the "standard core silicon system-on-a-chip") and latent conditional access functionality¹⁴ remain integrated within the DTAs. At a minimum, the Commission should clarify that the DTAs that are the subject of Motorola's request include integrated security and activation of the latent security feature without a waiver would violate Section 76.1204 of the Commission's rules. Furthermore, if cable operators are to begin deploying DTAs widely, per Section 629, the Commission should do what is necessary to allow competitive manufacturers to offer DTA functionality in their own products, such as by requiring cable operators to disclose the full specifications of those devices.

Finally, the Commission should undertake a rulemaking with the goal of creating a downloadable and nationally portable conditional access standard that can be deployed by all multi-channel video programming distributors and eventually serve as a successor to the CableCARD. As operators deploy new architectures for pay television services and utilize DTAs that include a "downloadable" element, such a rulemaking is critical to

¹¹ Request at 5 ("The DTAs include no integrated conditional access security (*i.e.*, they do not include the MediaCipher chip found in integrated Motorola STBs)..."]

¹² *Id.*

¹³ It is not known whether it is separate from or integrated into the DTAs.

¹⁴ Request at 5.

prevent confusion and fragmentation of the market for conditional access systems, which would render a competitive navigation device market impossible. The Commission should make it clear to MVPDs that compliance with Section 629 should be part of their new technology plans. In this way, the Commission will help usher in the competitive retail marketplace for video navigation devices envisioned by Congress when it enacted Section 629.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that on June 26, 2009 I caused a true and correct copy of the foregoing Comments of the Consumer Electronics Association on Motorola, Inc.'s Request for Waiver to be served via first-class mail on the following:

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