

Section 624a explicitly requires to review its rules periodically to ensure that they continue to protect the ability of consumers to attach third-party devices. The Commission should undertake such a review – as well as a review of rules implementing Section 629 – as part of the National Broadband Plan.

- The existing rules are further undermined by the practice of the Media Bureau encouraging waiver applications in place of a comprehensive rulemaking. There are numerous pending waivers before the Bureau, many of which impact the entire industry. The constant grant of waivers creates uncertainty in the industry, discourages investment, and makes long-term business planning impossible because the application of the rules may change at any time in ways that impact the entire industry.
- The Cablevision waiver application, MB Docket No. 09-168, is a classic example of the problem of industry rulemaking by waiver. The entire cable industry will undergo a “cable digital conversion.” This will have many benefits for consumers and should be facilitated as part of the National Broadband Plan. However, the Commission must manage this process to mitigate harm to consumers as set forth in Public Knowledge’s comments in that proceeding.
- The MPAA application is another example of the problem of inviting waivers for special interests. The MPAA has produced no evidence explaining why it requires this waiver as a precondition to shorten its release window. Indeed, recent deals between Comcast and Time Warner show that individual companies can and will shorten the release window under the existing rules as a result of negotiations. The possibility that the Bureau will grant this (and other) waivers, however, creates a “moral hazard” where companies decline to negotiate because it would undermine their position before the agency and because of the possibility that the Bureau will grant the request.
- For all these reasons, the Bureau should cease the practice of rulemaking by waiver and instead undertake a comprehensive rulemaking under Section 624a, 629, and to ensure that the cable digital conversion promotes the National Broadband Plan while protecting consumers.

In accordance with the Commission's rules, a copy of this notice is being filed with your office today.

Sincerely,

/s/

Harold Feld
Legal Director
Public Knowledge

cc: Phil Bellaria