

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

In the Matter of)	
)	
Intel Corporation)	
Petition for Waiver of 47 C.F.R. § 76.640(b)(4))	CSR-8229-Z
)	
Implementation of Section 304 of the)	CS Docket No. 97-80
Telecommunications Act of 1996;)	
Commercial Availability of Navigation)	
Devices)	
)	

**Comments of the
Consumer Electronics Association**

December 10, 2009

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The Consumer Electronics Association (“CEA”) respectfully submits these comments on Intel Corporation’s request for waiver of Section 76.76.640(b)(4) of the Commission’s rules, which require certain customer premises equipment supplied by cable operators to be equipped with a fully functional IEEE 1394 interface to facilitate the connection of competitively-sourced consumer electronics devices in a home network to MSO-leased set-top boxes. This regulation was jointly recommended to the Commission in 2002 by CEA and prominent members, and the National Cable and Telecommunications Association (“NCTA”) and its prominent members.¹ After public

¹ Cox Communications, et al., Letter to Chairman Michael K. Powell, FCC, Re: Consensus Cable MSO-Consumer Electronics Industry Agreement on “Plug and Play Cable Compatibility and Related Issues,” CS Docket No. 97-80, PP Docket No. 00-67, at 2 (Dec. 19, 2002).

comment, it was adopted by the Commission in October 2003.² As is observed in Intel's petition,³ this regulation has not resulted in appreciable and continued use of the "1394" interface for this intended purpose. Rather, home networking has migrated to technologies based on Internet protocols.⁴

In the context of the present and impending policy review of National Broadband Policy issues and Section 629, as discussed below, CEA does not oppose Intel's petition. CEA reiterates, however, that it does not support, and has not supported,⁵ the Commission acting by indefinite and prolonged waiver and enforcement actions *in lieu of* making considered policy decisions by rulemaking. CEA, however, has not opposed

² *In the Matter of: Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices, Compatibility Between Cable Systems and Consumer Electronics Equipment*, CS Docket No. 97-80, PP Docket No. 00-67, Second Report and Order and Second Further Notice of Proposed Rulemaking (Oct. 9, 2003).

³ *In the Matter of Intel Corporation Petition for Waiver of 47 C.F.R. § 76.640(b)(4), Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices*, CS Docket No. 97-80, CSR-8229-Z, Petition for Waiver 5-6, 13-14 (Oct. 7, 2009) ("Intel Petition"); *see also In the Matter of TiVo Inc. Petition for Waiver of 47 C.F.R. § 76.640(b)(4), Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices*, CS Docket No. 97-80, Petition for Waiver 3-4, 8-9 (Nov. 6, 2009) ("TiVo Petition"); *In the Matter of Motorola Inc. Petition for Waiver of 47 C.F.R. § 76.640(b)(4), Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices*, CS Docket No. 97-80, Petition for Waiver 4-6 (Nov. 25, 2009) ("Motorola Petition").

⁴ Intel Petition at 13-14; *see also* TiVo Petition at 7-8; Motorola Petition at 4-5.

⁵ *See, e.g., In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices, GCI Cable Inc. Request for Waiver of 47 C.F.R. § 76.1204(a)(1)*, CS Docket No. 97-80, CSR-7130-Z, Comments of the Consumer Electronics Association 2 (Apr. 2, 2007) ("All substantive rules impose costs. Stating the obvious proposition that common reliance imposes a nonzero cost on GCI and should therefore be waived is tantamount to challenging the common reliance rule in its entirety, a challenge which is not permissible at this late date nor appropriate to a waiver proceeding."); *In the Matter of Great Plains Television, Inc. Petition for Waiver of 47 C.F.R. § 76.1204(a)(1), Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices*, CS Docket No. 97-80, CSR-7212-Z, Comments of the Consumer Electronics Association 3 (June 14, 2007) ("To the extent the Commission may find any special circumstances for Great Plains based on financial hardship, it should bear in mind too many or too liberal exceptions would serve to ratify the nullification of FCC regulations by larger MSOs and their vendors. Hence, the Commission should do so only in the larger context of addressing the need for a competitive, national, interoperable navigation device market."); *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 3 (June 16, 2008) ("[T]he waiver process is not an avenue for seeking a general repeal of the rule . . ."); *In the Matter of Alabama Broadband, L.L.C. Petition for Waiver of 47 C.F.R. § 76.1204(a)(1)*, CS Docket No. 97-80, CSR-7819-Z, Comments of the Consumer Electronics Association on Petition for Reconsideration and Report of Compliance Plan 3 (Jan. 27, 2009) (similar).

Commission action to address exigent circumstances, *provided* that the regulations in question are under active and public review by the Commission.⁶

The Commission raised home networking issues in its Further Notice of Proposed Rulemaking of June 29, 2007, and CEA has urged the Commission to pursue solutions that support and facilitate home networking.⁷ The Commission has also raised home networking and Internet Protocol issues in its NBP Public Notice # 27 released December 3, 2009. Accordingly, CEA is confident that issues relating to home networking, and other pressing issues with respect to Section 629 and competitive availability of navigation devices, will be addressed expeditiously by the Commission.⁸

CEA would caution that, consistent with Intel's narrow request for relief, the FCC *not* use this or any other waiver petition (or enforcement action)⁹ as a platform to make policy decisions that should be taken after inviting public notice and comment. In the

⁶ See, e.g., *In the Matter of Guam Cablevision LLC, Guinness Communications, Inc. d/b/a/ Delta Cablevision, Puerto Rico Cable Acquisition Corp. Requests for Waiver of 47 C.F.R. § 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, CS Docket No. 97-80, CSR-7193-Z, CSR-7202-Z, CSR-7201-Z, at 2 (May 24, 2007); *In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices NTS Communications Inc. Petition for Extension of Waiver of 47 C.F.R. § 76.1204(a)(1) of the Commission's Rules*, Comments of the Consumer Electronics Association, CS Docket No. 97-80, CSR-7915-Z, at 2-3 (July 23, 2008).

⁷ *In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices, Compatibility Between Cable Systems and Consumer Electronics Equipment*, CS Docket No. 97-80, PP Docket No. 00-67, Third Further Notice of Proposed Rulemaking ¶ 13 (rel. June 29, 2007); *In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices, Compatibility Between Cable Systems and Consumer Electronics Equipment*, CS Docket No. 97-80, PP Docket No. 00-67, Consumer Electronics Association Comments on Third Further Notice of Proposed Rulemaking 5-6, 16-18 (Aug. 24, 2007). CEA has urged that interfaces directed to home networking must support the bidirectional movement and recording of content, as protected by FCC Subpart W Encoding Rules, and must be based on industry standards without undue license restriction. See *id.* at 17-18.

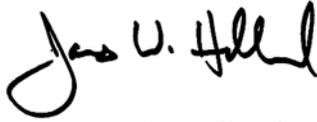
⁸ The NCTA has also expressed this view. See Letter from Kyle McSlarrow to Carlos Kirjner and William Lake, GN Docket Nos. 09-47, 09-51, 09-137, CS Docket No. 97-80 (Dec. 4, 2009).

⁹ See, e.g., *In the Matter of Oceanic Time Warner Cable, et al.*, File Nos. EB-07-SE-351, EB-07-SE-352, NAL/Acct. Nos. 200832100074, 200932100001, 200932100002, 200932100003, 200932100008, 200932100022, and 200932100023, Petition for Reconsideration or Clarification of TiVo, Inc. (July 27, 2009); *In the Matter of Oceanic Time Warner Cable, et al.*, File Nos. EB-07-SE-351, EB-07-SE-352, NAL/Acct. Nos. 200832100074, 200932100001, 200932100002, 200932100003, 200932100008, 200932100022, and 200932100023, *Ex Parte* Letter of CEA (Aug. 26, 2009).

present case it should not be necessary to do so: Intel has requested specific relief for a specific product type and line. To the extent the Commission may later take an approach to home networking not anticipated by Intel, Intel and its products would be at risk.

What CEA would strongly oppose would be for the Commission now to prescribe as sufficient any particular approach, by cable MSOs or MVPDs generally. The Commission never has adequately clarified what “functional” means in Section 76.640(b)(4) – perhaps contributing to the obsolescence of that regulation (although other factors are cited). It should not make the same mistake now, *especially* in the context of a very specific application for the waiver of an obsolete prescriptive measure.

Respectfully submitted,

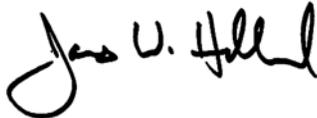


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Dated: December 10, 2009

CERTIFICATE OF SERVICE

I do hereby certify that on December 10, 2009 I caused a true and correct copy of the foregoing Comments of the Consumer Electronics Association on the Petition of Intel Corporation for Waiver of 47 C.F.R. § 76.640(b)(4) to be electronically filed in the FCC ECFS system according to the Public Notice released Nov. 9.

A handwritten signature in black ink, appearing to read "James W. Hedlund". The signature is written in a cursive style with a large initial "J".

James W. Hedlund