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

In the Matter of	)	
	)	
Request of Motorola Inc.	)	
for Waiver of 47 C.F.R. § 76.640(b)(4)	)	CSR-8251-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

February 22, 2010

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The Consumer Electronics Association ("CEA") respectfully submits these comments on the request of Motorola, Inc. for waiver of Section 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). NCTA seems to have forgotten its prior endorsement of this regulation and, instead, now attacks Rule 76.640(b)(4) as if it were born from a quixotic Commission desire to "pick winners and losers." *See In the Matter of A National Broadband Plan for Our Future, et al.*, GN Docket Nos. 09-47, 09-51, 09-137, and CS Docket No. 97-80, Reply Comments of the National Cable & Telecommunications Association on NBP Public Notice #27 at 23-24 (Jan. 27,

comment, it was adopted by the Commission in October 2003.[2] As is observed in Motorola'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]

CEA reiterates 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

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2010). To the contrary, the purpose of Rule 76.640(b)(4) remains as sound today as it was then: to ensure that consumers obtain and preserve in their cable-supplied navigation devices "additional functionality for home-networking and recording capability," particularly where protection measures are applied to control or limit consumer copying of content the consumer lawfully acquires. *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 ¶ 16 (rel. May 28, 2009). Any waiver of the 1394 Rule, or any successor thereto, must continue to serve this fundamental, pro-consumer purpose.

[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 at 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 at 3-4, 8-9 (Nov. 6, 2009) ("TiVo Petition"); *In the Matter of Motorola Inc.'s Request 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 at 4-6 (Nov. 25, 2009) ("Motorola Petition").

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

[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 at 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 at 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*

considered policy decisions by rulemaking. CEA, however, has not opposed 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. As noted above, CEA and several CEA member companies have submitted comments in that proceeding that place into sharp focus both the importance of these issues to the future of the consumer electronics and computing industries, and the pitfalls of the current regulatory implementation that have delayed or prevented those "future" navigation devices from already reaching retail shelves and consumer homes.

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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 at 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, Opposition of the Consumer Electronics Association on Petition for Reconsideration at 3 (Jan. 27, 2009) (similar).

[6] *See, e.g., In the Matter of Guam Cablevision LLC, Guiness 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*, CS Docket No. 97-80, CSR-7193-Z, CSR-7202-Z, CSR-7201-Z, Comments of the Consumer Electronics Association 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 (June 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 at 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.

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]

Therefore, 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 Motorola's petition. Notwithstanding, CEA cautions that, consistent with Motorola'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. 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 in part to the obsolescence of that regulation. It should not make the same mistake now, *especially* in the context of an application for the waiver of an obsolete prescriptive measure. In the present case it should not be necessary to do so: Motorola has requested specific relief. To the extent

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[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).

the Commission may later take an approach to home networking not anticipated by Motorola, Motorola and its products would be at risk.

Respectfully submitted,

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