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Via Electronic Filing

December 13, 2012

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth St., S.W.
Washington, DC 20554

Re: In the Matter of Charter Communications, Inc.'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-8470-Z, MB Docket No. 12-328, CS Docket No. 97-80, PP Docket No. 00-67.

Dear Ms. Dortch:

This letter is filed in response to the Reply Comments received from Charter Communications, Inc. ("Charter") and Beyond Broadband Technology, LLC ("BBT"). Taken together, these Reply Comments, which competitively tout different and incompatible approaches to "downloadable" security, illustrate that "downloadable security" will never be standards-based and will never support competitive products as intended by Section 629. With this door now conclusively slammed shut, the Commission needs to proceed, as urged by Public Knowledge, Samuel Biller, and the AllVid Tech Company Alliance, with a rulemaking to identify a common, IP-based interface to support competitive products on MVPD systems.

CEA's Comments made these points about the Charter petition, the expired Cablevision waiver, and other versions of "downloadable" security:

- The one cable industry attempt at a standards-based and nationally interoperable system failed and was abandoned – despite NCTA and CableLabs *promises* to the FCC that it would be deployed by 2008.¹

¹ CEA notes that neither NCTA, CableLabs, nor any other cable operator has filed comments on Charter's petition.

- The waiver granted to Cablevision, cited as precedent, has expired, without further FCC action or guidance.
- Neither Cablevision’s nor any other “downloadable” system, such as BBT’s, has led to competitive entry.
- Since the CableLabs project no “downloadable” system has ever promised device interoperability with any other operator’s deployment of “downloadable” security.
- Charter’s application assumes that it would have *no* obligation to support CableCARDS after a two-year transitional period – despite the expiration of the Cablevision waiver. There is no considered FCC precedent on which the Bureau could base such an action.
- There are no promised consumer benefits or efficiencies.
- Grant of this waiver would be effectively the same as providing a blanket waiver for all integrated security set-top boxes, and thus would impermissibly eviscerate the rule itself.

The Charter and BBT filings amplify rather than refute these concerns. BBT, in supporting Charter’s waiver, does not claim that its own technology or Charter’s is standards-based, does not claim that its technology is interoperable with Charter’s or with Cablevision’s, and cannot cite a single instance of a competitive device operating on a system that uses BBT technology. Indeed, BBT uses the FCC comment forum to urge Charter to adopt the BBT system *in preference to the one for which a waiver is sought*. BBT:

- Cites the FCC as recognizing downloadable security as “potentially” better than CableCARD, but admits that the only system that was promised, like CableCard, to be nationally interoperable “failed.”²
- Admits that its system is microchip-based and can cite only “cable set-top boxes” as employing this microchip.³
- Urges that its own system is “the best approach” but admits it would be “foolish” to claim it is the only approach that will be deployed.⁴

² BBT Comments at 5.

³ *Id.* at 4.

⁴ *Id.*

- Urges Charter to adopt the BBT technology in preference to the technology for which Charter has sought this waiver.⁵
- Does not address or acknowledge the obligation of operators to support CableCards, or reply to CEA’s argument that granting this waiver would appear to terminate this obligation without replacing it with a standard, nationally interoperable system like CableCARD.

Charter also does not contravene any of CEA’s observations about its system. Like BBT, Charter invites other MSOs to conform on its *own* preferred chip and technology, but cannot predict that a single other MSO will do so.⁶ Charter clarifies that it does not seek a waiver from its “independent obligation to provide and support CableCARDS”⁷ but acknowledges that the Cablevision waiver has expired.⁸

If the Bureau were to act on this record it would effectively allow and invite system after system to “opt out” of common reliance without any promise or pretense of any new support for competitive devices. Three Court of Appeals decisions have confirmed the role of common reliance in the implementation of Section 629.⁹ Charter and BBT effectively admit that they are asking for a Bureau-level action to allow any system, citing Cablevision as a “precedent,” to opt out of common reliance by moving from integrated security to “downloadable” integrated security. This would not be permissible even for a Commission-level action by waiver grant rather than by rule.¹⁰

As CEA observed in its Basic Tier Encryption Comments¹¹ and as the FCC acknowledged in the Basic Tier Report & Order,¹² chip-level security, whether single-system “downloadable” or nationally uniform CableCARD, can no longer satisfy MVPD obligations as we move into an era of IP-based distribution. The BBT and Charter Comments, in their attempt to isolate Section 76.1204 from the FCC’s overall mission, serve only to prove this point. The only solution, as tabled in the Comments of CEA, Public Knowledge, and Samuel Biller, and as endorsed in the Reply Comments of the AllVid Tech Company Alliance, is a rulemaking in furtherance of an IP-based gateway solution, as proposed by the Commission itself in the National Broadband Plan and as initially aired in the AllVid Notice of Inquiry.

⁵ *Id.* at 4 – 5.

⁶ Charter Comments at 2 – 3.

⁷ *Id.* at 3.

⁸ *Id.* at 6 & n.4.

⁹ See CEA Comments at 7 & n.19.

¹⁰ *Id.* at 6 & n.14.

¹¹ *In the Matter of Basic Service Tier Encryption*, MB Dkt. No. 11-169, PP Dkt. No. 00-67, Comments of CEA, at 10-12 (Nov. 28, 2011).

¹² *In the Matter of Basic Service Tier Encryption*, MB Dkt. No. 11-169, PP Dkt. No. 00-67, Report and Order, at 26 n.162 (rel. Oct. 12, 2012).

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This letter is being provided to your office in accordance with Section 1.1206 of the Commission's rules.

Respectfully submitted,

/ Julie M. Kearney /

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