

VIA ECFS

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

In the Matter of)	
)	
Charter Communications, Inc.'s)	MB Docket No. 12-328
Request for Waiver of 47 C.F.R. §)	CSR-8470-Z
76.1204(a)(1) with the Commission)	CS Docket 97-80
)	
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)	

REPLY COMMENTS OF SAMUEL J. BILLER

This letter is filed in response to the Reply Comments received from Charter Communications, Inc. (“Charter”). Charter misconstrues my opposition comments as an objection to anything other than CableCARD¹. A grant by the Commission of Charter’s waiver request would in-fact undermine Common Reliance as the Charter approach does not support national portability of consumer electronics devices purchased at retail. I would, however, fully support an industry-wide downloadable conditional access standard that is portable between all MVPDs. An industry-wide standards-based downloadable security system would in-fact be a suitable successor to CableCARD.

Charter incorrectly asserts that the Commissions grant of a waiver to Evolution Broadband for its low-cost, limited capability, integrated-security Digital Transport Adapters (DTAs) is consistent with their current waiver request to implement integrated security in all

¹ Charter Reply Comments at 4.

of their set-top boxes. In the Evolution Order², the Commission held that even with the new waiver, there would be sufficient common reliance because its rules still require operators to continue to use CableCARDs in their new advanced function set-top boxes (i.e., HD/DVRs) and to make them available for retail devices. In addition, this waiver was granted because, at the time, the Commission was trying to achieve another policy objective – advancing the digital transition. As CEA highlights in their Reply Comments, three Court of Appeals decisions have confirmed the role of common reliance on the implementation of 629. In fact, the Commission Order stated they would “entertain” waiver requests for low-cost, limited-capability converter boxes that do not contain “personal video recording, high-definition, broadband Internet Access, multiple tuner, or other similar advanced capabilities.”³ It is clear that the Charter petition applies to set top boxes with advanced capabilities.

Charter generally alleges that a grant of its waiver would provide “consumer benefits” yet it never explains **how** consumers would benefit. This is because there are no consumer benefits, only consumer drawbacks in terms of allowing Charter to use a security system that will not be used by retail devices, which will inevitably lead to price and service distortions as retail devices won’t have the benefit of the lower-cost solution and, given past history, retail devices likely will be denied access to new services that are not designed to work on retail CableCARD devices.⁴ Charter’s petition provides no public benefit that justifies a waiver. Charter is not suggesting that it will decline to convert to an all digital network

² See In the Matter of Evolution Broadband, LLC's Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules, Memorandum Opinion and Order, FCC 09-46 (rel. June 1, 2009) (“Evolution Order” or “Evolution”).

³ In the Comcast 2005 Deferral Order, the Commission announced that it would entertain requests for waiver for low-cost, limited-capability devices. See 2005 Deferral Order, 20 FCC Rcd 6794,6813-14,137.

⁴ Charter claims it will continue to support CableCARD devices since it uses CableCARDs in its own devices but (1) the FCC well knows that retail CableCARD devices have been denied access to operator CableCARD devices in the past (e.g. switched digital) and (2) Charter makes no promises not to provide services using a downloadable solution that can’t be accessed by retail CableCARD devices. Consequently, the Commission should expect this will be the case – which is the point of common reliance.

without a waiver. That would defy credibility. Most other large operators already have transitioned to digital without seeking a waiver. Charter simply wants to reduce its capital costs as any business does. But that is not a justification for a waiver of an FCC rule designed to effectuate a Congressional mandate that has yet to be fully realized.⁵

In summary, allowing Charter to implement a lower-cost alternative to CableCARD while not at the same time providing a lower-cost alternative to CableCARD that will *in fact* support retail navigation devices as intended by Congress will undermine the competitive environment and further degrade the competitive marketplace for retail navigation devices. Charter's waiver should thus be denied as not being in the public interest.

Respectfully submitted,

/s/ Samuel Biller

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⁵ Charter is not alleging financial hardship as a basis for this waiver.