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Via Electronic Filing

February 14, 2013

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 February 6, 2013 *ex parte* submission by counsel Paul Glist on behalf of Charter. The February 6 letter, in seeking to provide some principled basis for granting Charter's petition, reverts to arguments previously rejected by the Bureau. Charter's counsel argues that (1) the nature of Charter's "footprint" provides for a greater per-unit cost in implementing "downloadable security," and (2) Charter's fielding of the noncompliant boxes it purportedly has arranged to purchase would aid in an "all digital" transition. Again, Charter's touchstone is the now-expired Cablevision waiver granted on January 10, 2007¹ and extended by the Bureau through December 31, 2010.² Neither the Cablevision M&O nor any other Commission or Bureau action would justify a waiver on these bases.

In the Cablevision M&O, the Bureau explicitly considered and explicitly rejected any "transition to digital" basis for a purported "downloadable" waiver for an established cable operator:

¹ *In the Matter of Cablevision Systems Corporation's Request for Waiver of Section 76.1204(a)*, CSR-7078, CS Dkt. No. 97-80, Memorandum Opinion and Order (rel. Jan. 10, 2007) (Cablevision M&O).

² *In the Matter of Cablevision Systems Corporation's Request for Waiver of Section 76.1204(a)*, CSR-7078, CS Dkt. No. 97-80, Memorandum Opinion and Order (rel. Jan. 16, 2009).

13. Cablevision argues that denial of the Waiver Request “would divert substantial financial, technical and human resources from Cablevision’s effort to deliver new and improved services.” Specifically, Cablevision claims that it is improving its digital service offering to include “more digital, switched-digital, high-definition, interactive, and on-demand entertainment services.” Cablevision also claims that waiver is necessary to encourage consumers to choose digital cable – according to Cablevision, denial of the Waiver Request would require a redesign of its set-top boxes, which would significantly increase the cost of those boxes.

14. As a general matter, we do not find compelling Cablevision’s argument that grant of the Waiver Request is necessary to assist the development or introduction of the majority of these services. First, we note Cablevision reported that as of September 2006, approximately 77 percent of its subscribers already are digital cable subscribers. Thus, a significant portion of Cablevision’s subscribers already receive many of the services described in the Waiver Request, and it appears that those services have achieved success in the marketplace. The waiver could hardly be “necessary” for the “introduction” of these services as they already exist.

15. To the contrary, we believe that, under the circumstances, grant of Cablevision’s Waiver Request under Section 629(c) effectively would nullify the goal of Section 629(a). The purpose of Section 629(c) is to allow for waivers where *necessary* to assist the development or introduction of new or improved services that otherwise would be prohibited by rules adopted pursuant to Section 629(a). And while it could be argued that a waiver under Section 629(c) would assist the development or introduction of virtually any service offered by an MVPD, we do not believe that Congress intended for us to interpret this narrowly tailored exception in such a lenient manner. Indeed, such an interpretation would effectively negate any rules adopted pursuant to Section 629(a).³

Charter has not asserted that its planned procurement of non-compliant customer premises equipment is necessary to its transition to digital techniques. Indeed, Charter has assured investors that if the waiver is not granted it has both the resources and the incentive to move to all-digital techniques and will do so in any event.⁴ Moreover, Charter is not

³ Cablevision M&O at 5 – 6.

⁴ “[W]e’ve gone to the FCC and actually asked for a waiver so that we can buy an even less expensive box. But our strategy isn’t predicated on the FCC approving it, but we think it would be great if they did, because it would actually take cost out of the business and

seeking the waiver to be able to provide “DTAs” for analog-reliant customers – the Commission provided such an exemption to *all* operators in its Third Report and Order.⁵

CEA noted in its Reply Comments and in its January 28 letter that there is no justification for providing any waiver on the basis or purported “downloadable” attributes:

- Charter’s system requires a system-specific chip that must be installed in the navigation device.
- The system cannot work if the specific chip is not installed.
- The chip must be specifically and irrevocably programmed at the factory with non-downloadable elements that cannot be changed by any future download.
- The chip affords access only to a single conditional access system, and only Charter systems are likely to be able to download software that uses the conditional access hardware in the chip.

In the 2007, now-expired, waiver grant to Charter, the Bureau explained that Cablevision’s limited-time waiver was being granted *despite* such attributes, *not* because of them:

Although Cablevision’s approach is not a fully separated conditional access solution and does not further the goal of common reliance, we nevertheless conclude that Cablevision’s longstanding use of the SmartCard separated security solution justifies a limited, two-year extension of the deadline for compliance with the integration ban. ***

We also find it particularly persuasive that Cablevision began implementing its SmartCard-based approach in 2001, more than three years before the Commission clarified that the integration ban requires reliance on an identical security function. To require Cablevision to

ultimately get us to a place where we could go all-digital faster.” Corrected Transcript, UBS Global Media and Communications Conference, response of Thomas M. Rutledge, president, Chief Executive Officer & Director, Charter Communications, Inc., Dec. 3, 2012. The full transcript may be purchased at [http://www.alacrastore.com/research/thomson-streetevents-Charter at UBS Global Media and Communications Conference-T4963408](http://www.alacrastore.com/research/thomson-streetevents-Charter%20at%20UBS%20Global%20Media%20and%20Communications%20Conference-T4963408).

⁵ CEA does not agree with the baseless insinuation by Charter’s Counsel that Commission actions in the Third Report & Order such as the exemption for DTAs that can process HDTV signals, and the strengthening of operators’ CableCARD installation and support obligations, that are unrelated to the Second Report and Order, may have been put in doubt by the *Echostar* litigation. Hence CEA does not question the continued validity of the Third Report & Order’s DTA exemption. Nor does CEA understand Charter to question the validity of that DTA exemption.

modify its devices that effectively further the goals of the integration ban would only serve to punish it for seeking to comply with the Commission's rules in a timely manner. Given these extraordinary circumstances, we believe that Cablevision has shown good cause for a two-year extension of the integration ban.⁶

Charter's application, by contrast, occurs more than twelve years *after* the requirement of common reliance, and is premised simply and entirely on a desire to save money by identifying overseas suppliers, rather than by facilitating retail competition as Section 629 requires. It is not limited to one-way, non-DVR products and is not necessary for any transition to digital techniques. There is no principled basis on which this waiver could be granted.

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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cc:

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⁶ Cablevision M&O ¶ 20.