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March 22, 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:

On March 21, 2013, as counsel on behalf of the Consumer Electronics Association ("CEA"), the undersigned met with Zachary Katz, Chief of Staff, and Lyle Elder, Legal Advisor, to Chairman Genachowski; and Bill Lake, Chief, and Michelle Carey, Deputy Chief, of the Media Bureau, with respect to the above entitled matters. The undersigned reiterated CEA's opposition to Charter's pending waiver petition, as expressed in CEA's Opposition of November 30, 2012, and in *ex parte* letters from Julie Kearney, Vice President, Regulatory Affairs, dated December 13, 2012, January 28, 2013, February 14, 2013, February 28, 2013, March 7, 2013, and March 15, 2013. The undersigned summarized CEA's position as expressed in the March 15 *ex parte* letter (emphasis in original):

Charter's March 13 letter concludes by claiming CEA was wrong to be concerned about the waiver for Cablevision because CableCARDS continue to be deployed on its systems. The question, however, is whether "downloadable" security can be a substitute for CableCARDS in supporting retail devices. Six years after the 2007 waiver and four years after the 2009 extension, *no retail product has emerged that can rely on Cablevision's, or any other operator's, version of "downloadable" security*. Precisely for the reasons cited by CEA in 2005, 2007 and 2009 and reviewed above, Charter's filings offer no hope that any retail product can be based on the system for which Charter now seeks a waiver.

The undersigned also stressed that, as reviewed in the March 15 *ex parte* letter, CableCARDS are offered by MSOs pursuant to a mutually agreed licensing regime that provides for a *national* interface, manufacturer input on specification changes, support for competitive home networks, self certification of implementation, software and firmware renewability, appeal to the Commission re changes in service terms, and mutual respect for Commission regulations. Charter's assurances as to licensing include no such commitments and no offer to negotiate terms.

The undersigned noted that when the prospect of a truly interoperable “DCAS” downloadable regime was raised by CableLabs prior to 2005, CEA and its members expressed interest and potential enthusiasm (although specifics were held under NDA). In 2004 and 2005 the NCTA promised to be prepared to deploy DCAS in 2008; on this basis, on March 17, 2005, the Commission again deferred the implementation of common reliance on CableCARDS. However, in mid-2009, with an MSO member citing “cost,” NCTA announced that it was ending, rather than readying for deployment, the CableLabs DCAS system whose implementation had been promised to the FCC. Since that date, no “downloadable” system has purported to offer national interoperability. Indeed, the undersigned noted that BBT, in nominal support of the Charter waiver petition, insisted in its Reply Comments that its own “downloadable” system was superior to Charter’s, so Charter should shelve its proffered “downloadable” system in favor of BBT’s. Charter has not offered to do so.

The undersigned reiterated CEA’s concern that, given the non-interoperable nature of Charter’s system as described, and the lack of any tangible assurance as to licensing or future support, a waiver that is nevertheless granted on the basis proffered by Charter would induce a flood of follow-on waivers on behalf of disparate systems, premised only on purported cost savings. This would be contrary to Bureau, Commission, and court precedent. In establishing Common Reliance in Section 76.1204(a)(1) of its rules in the First Report & Order implementing Section 629, the FCC recognized there would be a cost to requiring operators to commonly rely on CableCARDS, but that any such cost was justified by the benefits of common reliance. In its May 14, 1999, Order On Reconsideration, the Commission rejected MSO petitions to reconsider this determination:

“We continue to believe that the ban on integrated devices will serve the public interest. In the Navigation Devices Order, we stated our belief that competition among equipment manufacturers in the marketplace will lead to increased consumer choice and a corresponding decrease in the cost of equipment.”

When challenged by Charter in its court appeal of a footnoted statement in the March 17, 2005 “deferral” order, this Commission policy determination was specifically upheld by the Court of Appeals for the D.C. Circuit. 460 F.3d 31 (2006). The next year, in the MO&O granting the 2007 Cablevision waiver, the Media Bureau specifically *rejected* the argument that cost and related considerations were grounds for grant of a waiver under Section 629(c), observing that such a grant “effectively would nullify the goal of Section 629(a).” 2007 MO&O at 14-15. Rather, the Bureau found good cause to give Cablevision a waiver due only to “extraordinary circumstances.” *Id.* at 20.

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The undersigned expressed CEA's position that if the Bureau were now to grant a waiver on the grounds put forward by Charter the result – even if CableCARDS remain on offer – would be further system development away from CableCARDS at a time when the Commission has taken no steps (as promised in the National Broadband Plan, in the Basic Tier order, and elsewhere) to identify a successor common interface pursuant to its obligations under Section 629. The legally impermissible result would be a waiver that eviscerates the rule under which it is issued.

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

Respectfully submitted,

Robert S. Schwartz

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Cc:

Zac Katz
Lyle Elder
Bill Lake
Michelle Carey