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September 18, 2006

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: CSR-7049-Z; CS Docket No. 97-80

Dear Ms. Dortch:

I am writing on behalf of the National Cable & Telecommunications Association in support of the "Request for Waiver" filed by Charter Communications, Inc. on July 14, 2006 ("Charter Request").¹ In that request, Charter seeks a limited waiver of the Commission rule prohibiting certain multichannel video programming distributors ("MVPDs") from offering navigation devices (*e.g.*, set-top boxes) that perform both conditional access and other functions in the same integrated device ("the integration ban").² Charter requests a waiver of that rule so that it may deploy the low-cost devices specified in its request after July 1, 2007, when the rule is scheduled to become effective. For the reasons stated below and in the Charter Request, the Commission should expeditiously grant the Charter Request and confirm that the waiver applies to other MVPDs to the extent they deploy the same set-top boxes for which waiver was sought in the Charter Request or set-top boxes that share similar characteristics.

NCTA is the principal trade association representing the cable television industry in the United States. Its members include cable operators serving more than 90% of the nation's cable television subscribers, as well as more than 200 cable programming networks. NCTA's members also include suppliers of equipment and services to the cable industry.

¹ See Public Notice, *Request for Waiver of 47 C.F.R. § 76.1204(a)(1) Filed with the Commission*, CSR -7049-Z/CS Docket No. 97-80, DA 06-1733, Aug. 29, 2006 (setting September 18, 2006, as the date for filing comments on the Charter Request).

² 47 C.F.R. § 76.1204(a)(1).

The Charter Request, like a similar request filed by Comcast on April 19, 2006 (“Comcast Request”), is exactly the type of request that the Commission has repeatedly said it would entertain and view “favorably.”³ The devices for which Charter seeks waiver do not have “advanced” capabilities such as high-definition outputs, multiple tuners, digital video recorder (DVR) recording or storage, or broadband Internet access.⁴ In addition to the devices covered by the Comcast Waiver, Charter has sought waiver for certain low-cost devices that include an analog tuner, which remains critical in the short term for many cable operators like Charter that are serving rural and small cable systems. This is because it is economically and operationally infeasible for many operators to eliminate all analog transmission before July 2007 in order to make use of the all-digital set-top boxes covered by the Comcast Request. An analog tuner is obviously not the type of “advanced capabilit[y]”⁵ that the Commission believed might not be suitable for waiver.

Denial of Charter’s waiver request would slow rather than speed these operators’ transition to digital. All customers must have a set-top box or a CableCARD before a cable system can be converted to all-digital. Applying the integration ban to even the lowest-cost devices would greatly increase the cost of the equipment needed to go all-digital and discourage customers from accepting the additional equipment. This in turn would impair the ability of the cable operator to convert systems to digital.

Implementation of the integration ban would also drain financial and technical resources away from cable operators at the very time they are attempting to invest such resources in the digital transition. This impact will be greatest on operators with limited financial liquidity, and/or operators with small systems, where the per capita cost of transitioning to digital is greatest.

These very factors are among those that led the Commission to conclude that it would consider the type of waiver now requested by Charter. As the Commission explained:

[A]chieving consumer choice by establishing a competitive market should not displace a low-cost set-top box option for MVPD subscribers. It is critical to the DTV transition that consumers have access to inexpensive digital set-top boxes that will permit the viewing of digital programming on analog television sets both during and after the transition. The availability of low-cost boxes will further the cable industry’s migration to all-digital networks, thereby freeing up spectrum and increasing service offerings such as high-definition television. Accordingly, as cable systems migrate to all-digital networks, we will also consider whether low-cost, limited capability boxes should be subject to the integration ban or

³ Charter Request at 4-5, citing *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, Second Report & Order, 20 FCC Rcd. 6794, 6813-14 (2005) (“*Second Report and Order*”), and the FCC’s statements to the D.C. Circuit in its brief and at oral argument.

⁴ See Charter Request at 2-7, citing *Second Report and Order*, 20 FCC Rcd. at 6814.

⁵ *Second Report and Order*, 20 FCC Rcd. at 6814.

whether cable operators should be permitted to offer such low-cost, limited capability boxes on an integrated basis.⁶

For this reason, among others, the Charter Request should be granted.

Given the statutory directive that any “waiver shall be effective for *all service providers* and products in that category *and* for all providers of services and products,”⁷ the Commission should acknowledge that any waiver granted in this proceeding is effective for any other MVPD to the extent it deploys devices that are the same as or similar to those for which waiver is granted.

For the reasons stated above and in the Charter Request, NCTA respectfully requests that the Commission expeditiously grant the waiver requested by Charter and confirm that any such waiver is effective for other devices and MVPDs as the statute directs.

Respectfully submitted,

/s/ Neal M. Goldberg

Neal M. Goldberg

cc: Donna Gregg, Chief, Media Bureau
Andrew Long
Rick Chessen
Brendan Murray

⁶ *Id.* at 6813-14.

⁷ 47 U.S.C. § 549(c) (emphasis added).

Certificate of Service

I do hereby certify that on September 18, 2006, I caused a true and correct copy of the foregoing to be served via US Mail, First Class postage paid and email, on the following:

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