

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

In the Matter of)	
)	
Implementation of Section 304 of the Telecommunications Act of 1996)	CS Docket No. 97-80
)	
Commercial Availability of Navigation Devices)	
)	
Compatibility Between Cable Systems and Consumer Electronics Equipment)	PP Docket No. 00-67
)	

**COMMENTS of
THE ORGANIZATION FOR THE PROMOTION AND
ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES;
THE NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION;
THE INDEPENDENT TELEPHONE AND TELECOMMUNICATIONS
ALLIANCE;
THE WESTERN TELECOMMUNICATIONS ALLIANCE;
and the
RURAL INDEPENDENT COMPETITIVE ALLIANCE**

I. INTRODUCTION

The Organization for the Promotion and Advancement of Small
Telecommunications Companies (OPASTCO),¹ the National Telecommunications
Cooperative Association (NTCA),² the Independent Telephone and Telecommunications

¹ OPASTCO is a national trade association representing approximately 470 small incumbent local exchange carriers (ILECs) serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve more than 3 million customers. All OPASTCO members are rural telephone companies as defined in 47 U.S.C. §153(37).

² NTCA represents more than 580 rural rate-of-return regulated telecommunications providers. All of NTCA's members are full service local exchange carriers and many of its members provide wireless, cable, Internet, satellite, and long distance services to their communities; each member is a "rural telephone company" as defined in the Communications Act of 1934, as amended.

Alliance (ITTA),³ the Western Telecommunications Alliance (WTA),⁴ and the Rural Independent Competitive Alliance (RICA)⁵ (collectively, the Associations) hereby submit these comments in response to the Commission’s Fourth Further Notice of Proposed Rulemaking⁶ in the above-captioned dockets.

The Associations agree with the FNPRM’s tentative conclusion that the CableCARD model for establishing compatibility between multichannel video programming distributor (MVPD) services and retail navigation devices is not a viable long-term solution. Furthermore, the Commission’s rules that require a separate security element apart from the navigation device did not anticipate or account for the functionality of Internet Protocol television (IPTV) technology. Therefore, the Commission should grant the NTCA-OPASTCO petition for waiver or clarification of these rules for MVPDs that serve consumers through IPTV technology.

II. THE COMMISSION SHOULD GRANT THE NTCA-OPASTCO PETITION FOR CLARIFICATION OR WAIVER OF §76.1204(a) AND (b) OF ITS RULES IN ORDER TO REMOVE LONGSTANDING REGULATORY UNCERTAINTY WITH REGARD TO IPTV DEVICES

The FNPRM observes that section 629 of the Communications Act of 1934, as amended (the “Act”), directed the Commission to adopt regulations to assure the commercial availability of navigation devices used by consumers to access services from

³ ITTA represents mid-size LECs that provide a broad range of high quality wireline and wireless voice, data, Internet, and video telecommunications services to more than 25 million customers in 45 states.

⁴ WTA is a trade association that represents approximately 250 rural telephone companies operating west of the Mississippi River. Most members serve fewer than 3,000 access lines overall, and fewer than 500 access lines per exchange.

⁵ RICA is a national association of nearly 80 competitive local exchange carriers (CLECs) that are affiliated with rural ILECs and provide facilities based service in rural areas.

⁶ *Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices*, CS Docket No. 97-80, *Compatibility Between Cable Systems and Consumer Electronics Equipment*, PP Docket No. 00-67, Fourth Further Notice of Proposed Rulemaking, FCC 10-61 (rel. April 21, 2010) (FNPRM).

MVPDs.⁷ In 1998, the Commission enacted 47 C.F.R. §76.1204(a), which required that MVPDs make available a security element separate from the basic navigation device.⁸ The Commission subsequently adopted standards that arose from agreements between cable operators and the consumer electronics industry that established the technical details of the separate security element, and became known as CableCARD.⁹ The FNPRM seeks comment on whether new technologies, such as IPTV, have rendered the CableCARD model outdated.¹⁰

From the perspective of IPTV providers, CableCARD and the Commission's accompanying rules did not account for IPTV technology from the outset. Many small and mid-sized MVPDs have either deployed IPTV, or have considered it as an option. However, the cable-centric nature of the Commission's rules has maintained a degree of uncertainty regarding the compliance of IPTV devices. Therefore, NTCA and OPASTCO petitioned the Commission in 2007 to either clarify the rules, or waive them for rural LECs that provide MVPD services using IPTV technology until nationally recognized IPTV technical standards are developed.¹¹

The Commission's tentative conclusion that CableCARD is not a viable long-term solution is correct.¹² Furthermore, it illustrates that a waiver of the rules for small and

⁷ *Id.*, ¶2.

⁸ *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, 13 FCC Rcd 14775, 14808, ¶80 (1998) (“*First Report and Order*”); 47 C.F.R. §76.1204(a)(1). As this proceeding unfolded, two potential approaches to compliance became dominant: CableCARD technology designed under cable industry standards, and downloadable security that could be implemented via software upgrades to devices in consumers' homes.

⁹ FNPRM, ¶2.

¹⁰ *Id.*, ¶12.

¹¹ *NTCA-OPASTCO Petition for Clarification or, in the Alternative, Waiver of Section 76.1204(a), (b) of the Commission's Rules; Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices*, CS Docket No. 97-80 (fil. May 4, 2007) (Petition).

¹² FNPRM, ¶12.

mid-sized IPTV providers is the most appropriate approach, pending a longer-term solution. In the absence of a waiver, the clarification requested by the NTCA-OPASTCO petition should be granted. Specifically, the petition requested the Commission to explicitly clarify that: (1) IPTV devices that have downloadable security inherent in their system design are in compliance with the separate security provision of section 76.1204(a); and (2) that absent a standard interface set by a recognized national organization, the criteria for “commonly used interface” for IPTV devices as required by section 76.1204(b) should be determined by the presence of either: (a) an interface that connects to and functions with the navigation devices of more than one consumer electronics (CE) vendor that has successfully integrated its equipment; or (b) an interface which is publicly offered via licensing to CE vendors.¹³ These clarifications would remove the longstanding ambiguity that has unnecessarily hovered over MVPDs that utilize IPTV technology, or that has impeded those that are considering deploying it.

In addition, the proposed new rules regarding CableCARD pricing, billing, and installation¹⁴ further highlight the ambiguity of the current wording of section 76.1204(a). If MVPDs using IPTV technology are subject to a strict technical reading of these rules, then they would also be subject to the requirements of the newly proposed section 76.1205(b). However, this proposed new section is concerned strictly with requirements directly related to the CableCARD model, which IPTV devices do not utilize. As there is no logical reason to apply CableCARD requirements to devices that do not use CableCARD, the case for issuing the requested waiver or clarification is strengthened. Rules that inadvertently attempt to apply CableCARD requirements on IPTV technology

¹³ Petition, pp. 2-7.

¹⁴ FNPRM, ¶¶15-16.

will only serve to confuse manufacturers and MVPDs, thereby impeding the deployment of IPTV hardware that can provide increased choices and functionality to consumers.

At the time the CableCARD standard and the Commission's rules were adopted, the rapid viability of IPTV technology was not foreseen. The Commission is to be commended for now recognizing CableCARD's limitations. As this proceeding attempts to acknowledge that IPTV and other Internet-based video delivery systems are more common and poised to proliferate, the Commission should take this opportunity to grant the NTCA-OPASTCO petition without further delay. The full petition is included in this filing as Attachment A.

III. GIVEN THE RAPID PACE OF TECHNOLOGICAL AND MARKETPLACE DEVELOPMENTS, INTERFACE REQUIREMENTS SHOULD BE AS FLEXIBLE AS POSSIBLE

The Commission is correct in its tentative conclusion that allowing manufacturers greater choice in the specific interface(s) they include in set-top boxes, beyond the current IEEE 1394 interface, will benefit the public interest.¹⁵ The Commission should be wary, however, of developing a specific list of "approved" interface standards. Technological developments, marketplace demands, and consumer expectations evolve rapidly, often much more quickly than the regulatory process can reasonably accommodate. Rather than focusing on what standards might be acceptable, the Commission should first consider what would best serve consumers' interests. IEEE 1394, Ethernet, Wi-Fi, and USB 3.0 interfaces each have potential benefits, yet new interface technologies may develop in the future that could offer additional utility to consumers. As Chairman Genachowski remarked in his statement, the Commission

¹⁵ FNPRM, ¶20.

seeks in this proceeding to “unleash competition and innovation in the retail market for smart video devices.”¹⁶ Regulations should not restrict consumers’ future ability to obtain devices equipped with interface functionality that is not envisioned today.

IV. CONCLUSION

The Commission has correctly ascertained that CableCARD is not a viable long-term solution to the goal of establishing compatibility between MVPD services and retail navigation devices. Furthermore, CableCARD was never designed to account for IPTV devices. Therefore, the Commission should grant the NTCA-OPASTCO petition for clarification or waiver of its rules that require MVPDs to make available a security element separate from the basic navigation device for those MVPDs that deliver video using IPTV technology.

¹⁶ FNPRM, Statement of Chairman Julius Genachowski, p. 22.

Respectfully submitted,

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June 14, 2010

ATTACHMENT A

**Before the
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Petition for Clarification or, in the Alternative, Waiver of Section 76.1204(a), (b) of the Commission's Rules)	
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Implementation of Section 304 of the Telecommunications Act of 1996)	CS Docket No. 97-80
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**PETITION FOR CLARIFICATION OR WAIVER
of the
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
and the
ORGANIZATION FOR THE PROMOTION AND
ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES**

I. INTRODUCTION

The National Telecommunications Cooperative Association (NTCA)¹ and Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO)² (the Associations) hereby submit this petition for clarification regarding Sections 76.1204(a) and (b) of the Commission's rules, or, in the alternative, a

¹ The National Telecommunications Cooperative Association (NTCA) represents more than 570 rural rate-of-return regulated telecommunications providers. All of NTCA's members are full service incumbent local exchange carriers (ILECs) and many of its members provide wireless, cable, Internet, satellite and long distance services to their communities. Each member is a "rural telephone company" as defined in the Act.

² OPASTCO is a national trade association representing over 525 small ILECs serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve over 3.5 million customers. All OPASTCO members are rural telephone companies as defined in 47 U.S.C. §153(37).

waiver of those rules for rural Local Exchange Carriers (LECs) using broadband technologies to enter the Multichannel Video Programming Distributor (MVPD) market.

The Associations respectfully request that the Commission explicitly clarify the following: (1) that Internet Protocol Television (IPTV) devices that have downloadable security inherent in their system design comply with the separate security provision of Section 76.1204(a); and (2) that absent a standard interface set by a recognized national organization, the criteria for “commonly used interface” for IPTV devices as required by Section 76.1204(b) should be determined by the presence of either: (a) an interface that connects to, and functions with, the navigation devices of more than one Consumer Electronics (CE) vendor that has successfully integrated its equipment; or (b) an interface which is publicly offered via licensing to CE vendors. These clarifications are necessary because the rules were primarily designed for traditional coaxial cable equipment, leaving a degree of uncertainty regarding equipment designed for MVPDs using innovative broadband technologies to deliver video services, most notably IPTV.

In the absence of such clarifications, the Commission should grant a waiver of the rules as they apply to rural LECs serving as MVPDs until such time as the Commission addresses these issues. Otherwise, the uncertainty regarding compliance with the rules will impede the deployment of innovative video services and companion broadband services, contrary to the Commission's goals.

II. THE COMMISSION SHOULD CLARIFY HOW COMPLIANCE FOR IPTV DEVICES CAN BE DETERMINED

Section 629 of the Communications Act of 1934, as amended, (the “Act”) directs the Commission to adopt regulations to assure the commercial availability of navigation devices used by consumers to access services from MVPDs. In 1998, the Commission

enacted 47 C.F.R. §76.1204(a), which required that MVPDs make available a security element separate from the basic navigation device.³ The Commission has set the effective date of the rule as July 1, 2007,⁴ by which date MVPDs are to cease selling, leasing, or using new navigation devices that perform both conditional access functions and other functions in a single integrated device.⁵

However, the regulations were primarily designed with regard to traditional coaxial cable technology. Since the original publication of the rule, IPTV technology has become increasingly viable. As a result, a degree of uncertainty has arisen regarding how to determine whether devices based on IPTV technology are in compliance. Therefore, the Associations respectfully request that the Commission explicitly clarify that: (1) IPTV devices that have downloadable security inherent in their system design are in compliance with the separate security provision of Section 76.1204(a); and (2) that absent a standard interface set by a recognized national organization, the criteria for “commonly used interface” for IPTV devices as required by Section 76.1204(b) should be determined by the presence of either: (a) an interface that connects to and functions with the navigation devices of more than one CE vendor that has successfully integrated its equipment; or (b) an interface which is publicly offered via licensing to CE vendors.

³ *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, 13 FCC Rcd 14775, 14808, ¶80 (1998) (“*First Report and Order*”); 47 C.F.R. §76.1204(a)(1). As this proceeding unfolded, two potential approaches to compliance became dominant: CableCard technology designed under cable industry standards, and downloadable security that could be implemented via software upgrades to devices in consumers’ homes.

⁴ *Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices*, 20 FCC Rcd 6794, 6814, ¶31 (2005) (“*2005 Deferral Order*”), *pet. for review denied*, *Charter Communications, Inc. v. FCC*, 460 F.3d 31 (D.C. Cir. 2006).

⁵ 47 C. F.R. §76.1204(a)(1).

A. The Commission Should Clarify That IPTV Devices With Downloadable Security Inherent In Their Design Are Compliant With Section 76.1204(a)

Unlike traditional coaxial cable, IPTV video systems by their nature perform separate conditional access functions. It is the Associations' understanding that downloadable security is a universal feature of IPTV. In an IPTV system, when a customer changes a channel, the set top box sends a message to the network requesting the new channel. The network checks a database which stores the channels the customer is authorized to view. If the customer is authorized to view the channel, a message is sent to the set top box to allow the program to be viewed. None of the security functions are performed in the set top box. Authorization is transmitted every time a channel is changed.

In addition to the normal authorization for a channel change, some programmers require their programs to be encrypted. When a customer requests an encrypted channel, the network, via the middleware, will authorize the customer to view the channel, and will obtain an encryption key to the channel that is also sent to the set top box. When the set top box receives both the authorization and the encryption key, the customer can view the content. In short, all authorizations/security is downloaded to a set top box every time a channel is changed in an IPTV environment.⁶

Therefore, the Commission should explicitly state that IPTV devices that have downloadable security inherent in their system design satisfy the requirements of Section

⁶ In an IPTV system, two types of software are used: middleware and encryption software. Middleware facilitates a subscriber's viewing of video programming or the electronic program guide, and it defines what video rights or video management the subscriber may access to view subscription video services, pay-per-view or video-on-demand services. Encryption software controls access to the video signal going to the set top box through identity validation or authentication, service authorization, and media protection, or encryption. The main function of encryption software is to provide protection from unauthorized copying of video signals.

76.1204(a). This clarification would remove a degree of uncertainty regarding compliance that currently afflicts MVPDs (or carriers that may become MVPDs) that utilize or are considering IPTV solutions. Further, it would be consistent with Commission precedent that reiterates that downloadable security solutions comply with the Commission's rules.⁷

B. Absent Standards Set By A Recognized National Organization, The Commission Should Establish That The Criteria For “Commonly Used Interface” For IPTV Devices Under Section 76.1204(b) Should Be Determined By The Presence Of Either (A) An Interface That Connects To, And Functions With, The Navigation Devices Of More Than One CE Vendor That Has Successfully Integrated Its Equipment; Or (B) An Interface Which Is Publicly Offered Via Licensing To Other CE Vendors

According to Section 74.1204(b), conditional access equipment made available pursuant to the integration ban of Section 76.1204(a)(1) must be designed to connect to, and function with, other navigation devices available through the use of a commonly used interface or an interface that conforms to appropriate technical standards promulgated by a national standards organization.⁸ However, at this time there are no national standards of this nature for IPTV products.⁹ The Commission has “declined to specify any particular standard . . .” for Section 76.1204(b)'s interface requirement.¹⁰ Until such time as a standard interface is established by a recognized national organization, the Commission should clarify that the criteria for “commonly used interface” for IPTV devices as required by Section 76.1204(b) should be determined by the presence of

⁷ *Commission Reiterates That Downloadable Security Technology Satisfies The Commission's Rules on Set-Top Boxes And Notes Beyond Broadband Technology's Development Of Downloadable Security Solutions*, CS Docket No. 97-80, Public Notice, 22 FCC Rcd 244.

⁸ 47 C.F.R. §76.1204(b).

⁹ Several manufacturers, as well as the Alliance for Telecommunications Industry Solutions (ATIS), have announced efforts to develop various IPTV standards. See, e.g., <http://www.atis.org/PRESS/pressreleases2007/012607.htm>.

¹⁰ *Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices*, CS 97-80, Second Report and Order, FCC 6794, 6809, fn. 136 (2005).

either: (a) an interface that connects to, and functions with, the navigation devices of more than one CE vendor that has successfully integrated its equipment; or (b) an interface which is publicly offered via licensing to CE vendors.

The clarifications described above would provide rural MVPD providers with the framework necessary to make purchasing decisions based on clear rules. The clarification complies with the intent of the regulations and is simple to understand for both vendors and rural LECs who provide IPTV.

III. IN THE ABSENCE OF THE REQUESTED CLARIFICATIONS, THE COMMISSION SHOULD ISSUE A WAIVER FOR RURAL LECs PROVIDING MVPD SERVICES

The relevant standard for consideration of a request for waiver is found in Section 629(c) of the Act and Section 76.1207 of the Commission's rules. Section 629(c) provides that the Commission:

shall waive a regulation adopted under subsection [629](a) for a limited time upon an appropriate showing by a provider of multichannel video programming and other services offered over multichannel video programming systems, or an equipment provider, that such waiver is necessary to assist the development or introduction of a new or improved multichannel video programming or other service offered over multichannel video programming systems, technology, or products.¹¹

Similarly, Section 76.1207 provides that the Commission "may waive a regulation" adopted under the applicable subpart for a limited time, subject to the showing required under Section 629(c).¹²

In the absence of the requested clarifications, rural LECs attempting to deploy video services, especially IPTV based services, face an additional barrier to further video and broadband deployment. Congress specifically allowed the Commission to avoid

¹¹ 47 U.S.C. §549(c).

¹² 47 C.F.R. §76.1207.

actions “which could have the effect of freezing or chilling the development of new technologies and services.”¹³ IPTV and the broadband data services it relies upon for delivery to customers are precisely the kind of new technologies and services Congress anticipated when it provided for the waiver process.

Granting a waiver until such time as the Commission clarifies how IPTV providers may ensure compliance would not negatively impact the goal of separate security due to the relatively small MVPD market share possessed by rural LECs, especially in the IPTV sector. While an increasing number of rural LECs are entering the MPVD market using IPTV technology, the number of customers served by such LECs is quite small compared to the major cable companies.¹⁴ Because of the lack of market power held by rural LECs that purchase navigation devices, waiving the rule for these carriers would have a negligible impact on the Commission’s efforts to oblige large national cable providers to adhere to the current schedule.

IV. CONCLUSION

For the reasons outlined above, the Associations respectfully request that the Commission explicitly clarify the following: (1) that IPTV devices that have downloadable security inherent in their system design comply with the separate security provision of Section 76.1204(a); and (2) that absent a standard interface set by a recognized national organization, the criteria for “commonly used interface” for IPTV devices as required by Section 76.1204(b) should be determined by the presence of either: (a) an interface that connects to, and functions with, the navigation devices of

¹³ S. REP. 104-230, at 181 (1996) (Conf. Rep.).

¹⁴ The Regulatory Flexibility Act provides further grounds for a waiver at 5 U.S.C. § 603(c), which allows for different compliance requirements or exemptions for small entities.

more than one CE vendor that has successfully integrated its equipment; or (b) an interface which is publicly offered via licensing to CE vendors.

Absent such clarifications before the July 1, 2007 integration ban deadline, the Commission should waive Section 76.1204(a) and (b) as the rules apply to small, rural LECs deploying IPTV, at least until such time as a means to achieving compliance is clear for IPTV providers.

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