

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

In the Matter of:)	
)	
Charter Communications, Inc.)	CSR No. 5545-Z
)	
AT&T Broadband, L.L.C.)	CSR No. 5548-Z
)	
Insight Communications Company, L.P.)	CSR No. 5558-Z
)	
MediaOne Group, Inc.)	CSR No. 5560-Z
)	
Cox Communications, Inc.)	CSR No. 5561-Z
)	
GCI Cable, Inc.)	CSR No. 5564-Z
)	
Cablevision Systems Corp.)	CSR No. 5566-Z
)	
Adelphia Communications Corp.)	CSR No. 5567-Z
)	
Petitions for Waiver of the Requirement)	
To Provide Point of Deployment Modules)	
Contained in Section 76.1204 of the)	
Commission's Rules)	

ORDER

Adopted: June 29, 2000

Released: June 30, 2000

By the Chief, Cable Services Bureau:

I. INTRODUCTION

1. On June 11, 1998, the Commission adopted *Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices*, to implement the congressional mandate expressed in Section 629 of the Communications Act.¹ Section 629 requires the Commission to assure that navigation devices, or customer premises equipment, used in conjunction with multi-channel video programming distributors ("MVPDs"), are available for commercial retail purchase.² The Commission concluded that the best means to foster a competitive market for navigation devices without jeopardizing operator system security is to require MVPDs to unbundle security from the other

¹ See *Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices*, Report and Order, 13 FCC Rcd 14775 (1998) ("*Navigation Devices Report and Order*").

² 47 U.S.C. § 549.

functions of the navigation device.³ Section 76.1204 requires MVPDs to separate out conditional access or security functions from other functions of its navigation devices by July 1, 2000 and make available modular security components, also called point of deployment modules (“PODs”) to perform these functions.⁴ Subsequently, on reconsideration, the Commission excluded from the POD requirement equipment that employs only an analog conditional access function.⁵ The Commission did not apply this exclusion to hybrid navigation devices (*i.e.*, equipment that performs conditional access for both analog and digital scrambled services) reasoning that hybrid devices could interfere with competition in the marketplace.⁶

2. We have before us the above-captioned petitions filed by certain cable operators seeking a waiver of Section 76.1204 for some of their cable systems that utilize hybrid navigation devices. The petitioners indicate that they will be in violation of the Commission’s rules for systems deploying a hybrid set-top box unless the waiver is granted.

II. DISCUSSION

3. Pursuant to Section 1.3 of the Commission's rules, the Commission may grant a waiver of a provision of its rules upon a showing of "good cause."⁷ Waiver of the Commission’s rules, however, is appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.⁸ In the instant matters, despite a two-year period from the date of Commission adoption of Section 76.1204 until the POD requirement becomes effective, petitioners did not file their waiver requests until the last weeks before the implementation date (July 1, 2000). In fact, the Commission has continued to receive such petitions just days before Section 76.1204 is to take effect. In several cases, the periods for the public to file comments regarding a petition do not close until well after the July 1, 2000 deadline. This delay in seeking action has created an atmosphere in which the Commission does not have sufficient time to adequately evaluate the merits of each petition before the July 1, 2000 deadline.

4. The waiver requests implicate many issues, including the deployment of advanced telecommunications services to consumers. We are averse to interfering with the provision and deployment of these services without sufficient opportunity to fully consider the petitions. We seriously question whether waiver petitions filed so close to the effective date of a Commission rule can be considered to be filed in “good faith,” particularly given that the Commission’s rules require that such petitions receive public notice with opportunity for comment and reply.⁹ Moreover, the filing of petitions at such a late date and without any indication that the rules will be complied with pending action on the requests raises questions as to whether commitments made in the petitions can be relied upon. Nevertheless, we find that the public interest is best served by foregoing enforcement of the Section 76.1204 requirements until the

³ *Navigation Devices Report and Order*, 13 FCC Rcd at 14793.

⁴ 47 C.F.R. § 76.1204.

⁵ *Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices*, Order on Reconsideration, 14 FCC Rcd 7596 (1999).

⁶ *Id.* at 7602.

⁷ 47 C.F.R. § 1.3

⁸ *WAIT Radio*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *cert denied*, 409 U.S. 1027 (1972).

⁹ 47 C.F.R. § 76.7(b)(1) & (c)(3).

Commission has the opportunity to make a thorough evaluation of the waiver requests, collect additional information, if necessary, and take final action. The provisions of this Order are limited to those systems specified in each petition.

III. ORDERING CLAUSES

5. Accordingly, **IT IS ORDERED** that the Commission will forego enforcement of the Section 76.1204 requirements with regard to the systems designated in the petitions for special relief filed by the above-captioned parties for a period of 45 days.

6. This action is taken pursuant to delegated authority pursuant to Section 0.321 of the Commission's rules.¹⁰

FEDERAL COMMUNICATIONS COMMISSION

Deborah A. Lathen
Chief, Cable Services Bureau

¹⁰ 47 C.F.R. § 0.321