



OPASTCO

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April 22, 2008

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street SW
Washington, DC 20554

Ex Parte Notice

**Re: 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**

Dear Ms. Dortch:

Earlier today, Jill Canfield of the National Telecommunications Cooperative Association (NTCA), Stephen Pastorkovich of the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO), and John Becci of JSI, Inc. met with Elizabeth Andrion, Interim Legal Advisor for the Office of the Chairman. The meeting was held to discuss the NTCA-OPASTCO petition in the above-referenced proceeding. Section 76.1204 of the Commission's rules requires the separation of navigation and security functions in set-top boxes.

In the petition, NTCA and OPASTCO requested clarification regarding security requirements, as well as clarification regarding how compliance with the rule's "commonly used interface" requirements could be fulfilled in an Internet protocol television (IPTV) environment. In the alternative, the petition requested temporary waivers for small carriers providing IPTV services pending resolution of these issues and/or the development of applicable industry standards. NTCA and OPASTCO provided a written summary of the situation, along with proposed means of resolution, attached.

In accordance with FCC rules, this letter and the presentation are being filed electronically in the above-captioned docket.

Sincerely,

/s/ Stephen Pastorkovich

Stephen Pastorkovich
Business Development Director/
Senior Policy Analyst
OPASTCO

cc: Elizabeth Andrion



The NTCA-OPASTCO Petition On Set-Top Boxes Should Be Granted

Many rural carriers entered the IPTV market to provide consumer choice and expand broadband penetration. Section 76.1204 of the Commission's rules, which require separation of the security and navigation functions of set-top boxes, was written before the emergence of viable IPTV solutions. The rules became effective July 1, 2007, incorporating cable industry standards.

However, similar standards have not yet been developed for IPTV technologies. This ambiguity has required cutting-edge companies to pay large filing fees for waivers that should not be necessary. These cutting-edge carriers deploying the most robust broadband networks and bundling video and broadband together for maximum customer penetration, are effectively being penalized for their efforts.

The Commission has granted open-ended waivers for specific companies using boxes with certain capabilities. However, set-top boxes that feature DVR and HD capabilities are facing a deadline of July 1, 2008 (22 FCC Rcd 11804, ¶61).

As demand for HD and DVR-capable systems increase, considerable confusion remains as to what equipment, services and providers are subject to the separate security rules.

Prolonged Regulatory Uncertainty Impedes Investment In Broadband Infrastructure And Improved Consumer Choice In The Video Market

In the Local Franchising Report and Order, the Commission recognized that the "ability to offer video service and to deploy broadband networks are linked intrinsically, and the federal goals of enhanced cable competition and rapid broadband deployment are interrelated" (22 FCC Rcd 5132, ¶62). Scores, and possibly hundreds, of rural carriers are considering deploying IPTV to provide increased choice and improved broadband to consumers, but are deterred in part by regulatory uncertainty over the disposition of set top box rules. Furthermore, a footnote in a March 19, 2008 Memorandum Opinion & Order explicitly declined to clarify whether IPTV systems comply with Section 76.1204(a)(1) of the Commission's rules, although it granted such systems a waiver from that requirement. Yet it is not clear if this applies to all IPTV providers, or only to those noted in the Memorandum's appendix.

Granting The NTCA-OPASTCO Petition Will Relieve Regulatory Uncertainty And Facilitate Rural LEC Entry Into The Video Marketplace, Spurring Video Competition And Increased Broadband Deployment And Investment.



TIMELINE

May 4, 2007 – After multiple meetings with Commission staff on this topic, the National Telecommunications Cooperative Association (NTCA) and the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) jointly filed a Petition for Clarification in order to establish what constitutes compliance for IPTV equipment, pending the development of standards. In the alternative, the Petition requested a waiver for all providers of IPTV services pending clarification (consistent with OPASTCO's December 11, 2006 filing in CS Docket No. 97-80). The Petition also noted that the Regulatory Flexibility Act allows for different compliance requirements for small entities (5 U.S.C. § 603(c)).

June 19, 2007 - After additional filings and meetings with Commission staff, NTCA and OPASTCO were asked to file a Form 159 under 47 C.F.R. § 1.1104(9)(g) for the “waiver request.” Although NTCA and OPASTCO are not service providers, and the Petition was for clarification, with a request for waiver for a class of carriers as an alternative, NTCA and OPASTCO nonetheless complied with the request by filing a Form 159 and paying the associated fee.

June 26 - 28, 2007 - NTCA and OPASTCO met with the Media Advisors of Chairman Martin and Commissioners Copps, McDowell, and Tate to discuss the Petition.

June 29, 2007 - The Media Bureau released a Memorandum Opinion and Order (22 FCC Rcd 11780) granting certain waiver requests for roughly 122 carriers' systems that were, or were becoming, all-digital (clarified by a July 6, 2007 Erratum). At 22 FCC Rcd 11804, ¶61 it also granted temporary waivers for HD and DVR devices with integrated security elements for use on IP, ATM, and hybrid QAM/IP systems until July 1, 2008.

July 1, 2007 – The rules went into effect. The NTCA-OPASTCO Petition has never been put out for comment or otherwise acted upon.

March 19, 2008 - The Media Bureau issued a Memorandum Opinion and Order (DA 08-437) granting further waiver requests. At footnote 4, it granted a waiver from Sec. 76.1204(a)(1) of the Commission's rules for IPTV systems; however, it is unclear if this waiver applies to all IPTV systems going forward, or only those that are named in the Memorandum's Appendix. The footnote also reiterated the temporary waivers for HD and DVR devices for IP, ATM and hybrid QAM/IP systems that are set to expire on July 1, 2008. This impending deadline results in continued prolonged confusion and concern, hampering the efforts of rural LECs to enter the video market, and improve and expand broadband deployment.

Resolution

The Commission should either grant a blanket waiver for small MVPDs using IPTV, ATM, or hybrid QAM/IPTV technology regardless of the capabilities of the set top boxes in question. At the very least, the Commission should utilize its authority under the Regulatory Flexibility Act to establish different compliance timetables for small entities, especially those deploying video over broadband.