

September 14, 2006

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

Re: *Ex Parte*: In the Matter of Comcast Corporation's Request for Waiver of 47 C.F.R. § 76.1204(a)(1), CSR-7012-Z, CS Docket No. 97-80.

Dear Ms. Dortch:

On September 14, 2006, Jim Coltharp, Chief Policy Advisor for FCC & Regulatory Policy at Comcast Corporation, Jim Casserly, Willkie Farr & Gallagher LLP, David Rudd, Palmetto Group, and the undersigned met with Rudy Brioché, legal advisor to Commissioner Adelstein, to discuss Comcast's request for waiver of the integration ban for certain low-cost, limited-capability set-top boxes.

Mr. Coltharp and counsel underscored the substantial public interest benefits that would result from approval of the waiver, including, among other things, accelerating consumer adoption of digital programming and services and facilitating Comcast's -- and other cable operators' -- transition to digital. They highlighted the broad support for the waiver request and provided Mr. Brioché with a handout (which is attached) quoting from comments made in the record by various parties.

Mr. Coltharp and counsel also discussed the characteristics of the boxes subject to the waiver request. They explained that the boxes do not support high-definition, personal video recording, multiple tuners, or Internet access -- the capabilities that the Commission had previously identified as "advanced." They also noted the Commission's prior statements -- in the *2005 Integration Ban Order* and the Commission's subsequent advocacy before the D.C. Circuit in the appeal of that *Order* -- regarding the filing of waiver requests for such devices. These prior statements are reprinted in the second attachment to this *ex parte*.

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Kindly direct any questions regarding this matter to my attention.

Sincerely,

/s/ Jonathan Friedman
Jonathan Friedman
Counsel for Comcast Corporation

Attachments

cc: Rudy Brioché

SUPPORT FOR COMCAST SET-TOP BOX WAIVER REQUEST

RCN

“Grant of a waiver of the integration ban for low-cost, limited-capability set-top box equipment will help accelerate consumer adoption of digital programming and services. These types of set-top boxes provide a cost-effective way for cable consumers with analog televisions to access a wide array of digital programming, including VOD, parental control technologies, and tiered programming. . . [F]ailure to grant the waiver would result in harm to cable operators and consumers because making limited-capability set-top boxes compliant with the Commission rules would require a substantial redesign and would greatly increase the overall cost of the device.” RCN Reply at 3, 5 (June 30, 2006)

American Cable Association

“The move towards all-digital networks in smaller markets has been made possible by the availability of low-cost, limited-capability set-top boxes. These boxes allow ACA members to provide small market customers with digital services that they can afford, including local VOD, family, and themed-tier programming. . . Banning these low-cost set-top boxes or requiring the addition of CableCARD slots will raise the price of digital services beyond the reach of many subscribers and significantly slow the digital transition, negatively impacting ACA members and their smaller-market subscribers.” ACA Comments at 2 (June 15, 2006).

Thomson

“Grant of a waiver will reflect recent technological developments and marketplace changes and better position the nation for a more rapid and consumer-friendly transition. . . Not granting a waiver for low-end set-top boxes would mean a significant incremental cost and therefore slow down the transition to all-digital services and technologies. . . Diversion of Comcast’s resources to solutions that may have been bypassed by technology will not enhance the robustness or competitiveness of the future digital marketplace.” Thomson Comments at 1 (June 14, 2006)

Panasonic

“Comcast’s ability to offer such limited-capability set-top boxes would assist in the Nation’s transition to all-digital television. . . [W]e believe that first-time exposure of basic and/or analog-only cable subscribers to even a limited number of digital services . . . will broaden awareness of the digital transition and encourage cable subscribers to learn more about their overall digital television choices. . . [T]he sooner Comcast can free up the space in its cable systems currently occupied by relatively bandwidth-hungry analog channels, the faster Comcast would be able to provide additional digital programming channels and other services to its customers, including more HDTV programming. . . Because the availability of HDTV programming is the driving and motivating force for consumers to participate in the digital transition, Panasonic deems more HDTV programming to be essential to the transition.” Panasonic Comments at 3, 6-7 (June 15, 2006)

American Public Television Stations

“As public television continues to develop and distribute high-quality multicast services to address the educational needs of local communities, it is important that cable subscribers have access to these services, including the large number of cable subscribers with analog television sets who use the set-top box models described in Comcast’s waiver petition.” APTS Letter at 1 (June 29, 2006).

Motorola

“[F]ailure to approve the waiver could slow the development and implementation of downloadable security. . . The participants in the downloadable security initiative will likely have to shift manpower and other resources away from downloadable security to develop CableCARD alternatives to low-cost set-top boxes. . . Motorola is concerned that reallocating resources in this way will slow progress on downloadable security and deny cable operators, cable customers, and CE manufacturers the many public interest benefits associated with downloadable security and generally detract from further innovation with respect to cable equipment.” Motorola Comments at 5 (June 15, 2006)

Cisco

“Including CableCARD functionality in low cost set-top boxes will almost double the cost of the boxes and will effectively mean that they are no longer low cost boxes. The availability of low cost set-top boxes is crucial to the cable industry’s transition from mixed analog/digital platforms to an all-digital platform. The analog spectrum can then be repurposed for better services including High Definition broadcasts and higher speed broadband Internet access.” Cisco *Ex Parte* at 1 (August 11, 2006)

FCC STATEMENTS REGARDING LOW-COST, LIMITED-CAPABILITY SET-TOP BOXES

2005 Integration Ban Order (March 17, 2005)

“We are also in agreement with NCTA’s assertion that achieving 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 whether cable operators should be permitted to offer such low-cost, limited capability boxes on an integrated basis. We are inclined to believe that provision of such devices by cable operators will not endanger the development of the competitive marketplace envisioned in Section 629, particularly because the more advanced devices offered by cable operators for primary home use will be required to rely on the same CableCARD technology as devices offered at retail by consumer electronics manufacturers. In the interim, we will entertain requests for waiver of the prohibition on integrated devices for limited capability integrated digital cable boxes. We do not believe that waiver will be warranted for devices that contain personal video recording (‘PVR’), high-definition, broadband Internet access, multiple tuner, or other similar advanced capabilities. Any request for waiver in this regard should include the full specifications for any device(s) for which waiver is sought.” *2005 Integration Ban Order* ¶ 37.

FCC Brief to D.C. Circuit (March 7, 2006)

“[T]he Commission promised to mitigate the potential short-term cost burdens of the integration ban by entertaining requests for waiver of the ban with respect to certain ‘low-cost, limited capability boxes.’” FCC Brief at 14, *Charter v. FCC*, No. 05-1237 (D.C. Cir. Mar. 7, 2006).

“[R]ecognizing the value of preserving a low-cost set-top box option for consumers, at least until volume usage of CableCARDS over time reduced the price of host devices, the Commission undertook to consider waivers of the integration ban with respect to limited capability set-top boxes (*e.g.*, boxes that do not contain capability for recording, display of high-definition programming, or broadband Internet access). The Commission determined that waivers for such boxes would benefit those cable subscribers most concerned about the cost of equipment, while maintaining the overall benefits of the integration ban with respect to boxes with more advanced capabilities (and therefore more likely to be the subject of a competitive market).” FCC Brief at 30, *Charter v. FCC*, No. 05-1237 (D.C. Cir. Mar. 7, 2006).

FCC Statements at Oral Argument to D.C. Circuit (May 11, 2006)

“The Commission, in other places in the order, for instance, it announced that it would receive waiver requests from cable companies that wanted to continue providing no frills, simple digital set-top boxes on an integrated basis. The Commission said it would be favorably inclined to view waiver requests for these boxes, as another way of controlling costs in this area, and, in fact, the Commission has already received such a waiver request from Comcast.” Oral Argument Transcript at 21, *Charter v. FCC*, No. 05-1237 (D.C. Cir. May 11, 2006).