

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

In the Matter of)	
)	CSR 7057-Z
Bend Cable Communications, LLC)	CS Docket No. 97-80
Request for Waiver of 47 CFR § 76.1204(a)(1))	

To: The Commission



COMMENTS

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November 30, 2006

I. Introduction and Summary

The American Cable Association (“ACA”) submits these Comments in support of Bend Cable Communications, LLC’s (“BendBroadband”) Request for Waiver of 47 C.F.R. § 76.1204(a)(1) (“Waiver Request”).

In numerous filings in this docket, ACA has shown the critical need for the continued availability of low-cost set-top boxes (“LCSTBs”) – in particular, the Motorola DCT 700 – in lower density and rural markets.¹

In short, the move towards all-digital networks in smaller markets has been made possible by the availability of LCSTBs like the DCT-700. LCSTBs enable ACA members to provide smaller market customers with affordable all-digital service, including local VOD, family, and themed-tier programming. As described in BendBroadband’s Waiver Request and ACA’s filings in this docket, excluding the DCT-700 from the Commission’s ban on integrated navigation devices will allow the digital transition to continue in smaller markets. Conversely, banning the DCT-700 or requiring the addition of CableCARD slots in these boxes will raise the price of all-digital services beyond the reach of many subscribers and significantly slow the digital transition, while producing no corresponding consumer benefits.

ACA therefore fully supports BendBroadband’s Waiver Request. We ask that the Commission promptly grant the waiver request and make clear that it applies to all cable

¹ See, e.g., *In the Matter of Comcast Corporation’s Request for Waiver of 47 C.F.R. § 76.1204(a)(1), Comments of American Cable Association*, CSR 7012-Z, CS Docket No. 97-80 (filed June 15, 2006); *In the Matter of Charter Communications Inc.’s Request for Waiver of 47 C.F.R. § 76.1204(a)(1), Comments of American Cable Association*, CSR 7049-Z, CS Docket No. 97-80 (filed September 18, 2006); *In the Matter of Charter Communications Inc.’s Request for Waiver of 47 C.F.R. § 76.1204(a)(1), Reply Comments of American Cable Association*, CSR 7049-Z, CS Docket No. 97-80 (filed September 28, 2006).

operators using the DCT-700. Even if the Commission finds that an across-the-board waiver is not warranted, the facts and record before the Commission make clear that a waiver is warranted for the DCT-700 for small and medium-sized cable operators. These operators serve the low-density and rural markets that will be hardest hit by the integration ban because the cost of converting to a digital network is much greater in these small, price-sensitive communities.

American Cable Association. ACA represents nearly 1,100 independent cable companies that serve nearly 8 million cable subscribers, primarily in smaller markets and rural areas.² ACA member systems are located in all 50 states, and in virtually every congressional district. The companies range from family-run cable businesses serving a single town to multiple system operators that focus on serving smaller markets. More than half of ACA's members serve fewer than 1,000 subscribers. All ACA members face the challenges of upgrading and operating broadband networks in lower-density markets.

II. Low-cost set top boxes, particularly the DCT-700, are accelerating the digital transition in lower-density markets.

ACA members have invested hundreds of millions of dollars to move towards all-digital networks in lower-density markets. ACA members report that LCSTBs are critical to facilitating this digital transition. This is because operators in lower-density and rural markets must reach a much higher digital penetration rate than their urban counterparts before it becomes financially feasible to transition to an all-digital network. For ACA's members, the DCT-700 is the key to reaching this transition point.

² BendBroadband is a member of ACA.

In its Waiver Request, BendBroadband reports that it has increased its digital penetration 33% in 12 months with the DCT-700.³ BendBroadband's experience is far from unique. The ultra low-cost DCT-700 allows ACA members to provide all-digital services to their subscribers at such attractive prices that they are experiencing unprecedented gains in digital penetration.⁴ For example, ACA member Armstrong Utilities, Inc. has increased its digital box deployment rate almost 500% since deploying the DCT-700.⁵ ACA member Sunflower Broadband has almost doubled its digital penetration rate in the year-and-a-half since it began deploying the DCT-700.⁶ These gains in digital penetration – and early transition to all-digital networks – will be impossible for BendBroadband and other ACA members if they are forced to deploy the more costly DCH-100. By granting BendBroadband's Waiver Request, the Commission can ensure the availability of economical digital services in low-density and rural markets, and facilitate the move to all-digital networks in these markets. Further, such a waiver will have no countervailing negative effects.

³ See *Waiver Request* at 1 and 7.

⁴ As described in ACA's filings in this docket, the low cost of the DCT-700 allows ACA members to provide digital programming to their subscribers for just a few dollars more per month than analog expanded basic.

⁵ See *In the Matter of Armstrong Utilities, Inc. Emergency Request for Waiver of 47 C.F.R. § 1204(a)(1)* (November 7, 2006) at 3.

⁶ See *In the Matter of The World Company d/b/a Sunflower Broadband, Request for Waiver of 47 C.F.R. § 1204(a)(1)* (November 20, 2006) at 3.

III. Granting BendBroadband's Waiver Request will have no negative effect on the commercial market for navigation devices.

The Commission's stated purpose for the integration ban is to implement Section 629's⁷ mandate to promote a commercial market for navigation devices.⁸

Granting BendBroadband's Waiver Request will have no discernible negative effect on competition in the set-top box market.

To begin with, the consumers who gain access to digital services through the DCT-700 are not the target market for more expensive, non-integrated boxes. The DCT-700 is so limited in its functionality⁹ that it appeals only to the most price-sensitive consumers – those on lower or fixed incomes, or those who do not place much value on digital services. These consumers will not turn to more expensive non-integrated boxes if the DCT-700 is not available. They will simply opt to live without digital services.

Further, as BendBroadband notes, its share of the MVPD market is approximately 0.036%.¹⁰ With its 34,000 subscribers, BendBroadband does not come close to having the buying power to influence the direction of an industry that manufactures and ships 15.5 million digital cable set-top boxes every year.¹¹ For that matter, neither does ACA. With a total of nearly 8 million subscribers, all of ACA's

⁷ 47 U.S.C. § 549.

⁸ See, e.g., *In the Matter of: Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices, Second Report and Order*, 20 FCC Rcd. 6794 (2005) ("Second Report and Order") at ¶ 27.

⁹ The DCT-700 is a mere analog-to-digital converter. It provides no HD, PVR, dual tuner, Internet, or other advanced capabilities.

¹⁰ *Waiver Request* at 3.

¹¹ See <http://www.instat.com/catalog/Ccatalogue.asp?id=162> (visited November 22, 2006).

members combined do not wield enough buying power to influence the \$125.9 billion consumer electronics industry.

Accordingly, ACA asks that, at a minimum, the Commission grant a waiver for small and medium-sized cable operators for the DCT-700. Such a waiver will have no effect on the development of competitive navigation devices, and will allow the deployment of digital services to continue in the cost-sensitive low-density and rural markets that will be most adversely affected by the integration ban.

IV. Conclusion.

In the smaller markets served by ACA members, the DCT-700 allows operators to provide affordable digital services such as local VOD, themed tiers and digital music to subscribers, and is the only feasible means of moving to an all-digital network. Consumers benefit by receiving additional services that they desire at a lower cost.

In contrast, the only thing that a ban on the DCT-700 will accomplish is a reduction in digital penetration in low-density and rural markets. Aside from being highly undesirable, this result is at odds with the Commission's mandate to increase the availability of digital services.

To promote deployment of digital services in low-density markets, the Commission should promptly grant BendBroadband's Waiver Request. We also ask that the Commission make clear that the waiver applies to all cable operators deploying the DCT-700. Even if the Commission finds that an across-the-board waiver is not warranted, the facts and record before the Commission make clear that a waiver is warranted for the DCT-700 for small and medium-sized cable operators.

Respectfully submitted,

AMERICAN CABLE ASSOCIATION



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CERTIFICATE OF SERVICE

I, Amy Bowin, paralegal with the law firm of Cinnamon Mueller, certify that a true and correct copy of the American Cable Association's Comments was served on the following individuals by either first class mail or electronically on November 30, 2006:

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