

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

In the Matter of:)	
)	
Atlantic Broadband Finance, LLC)	CS Docket No. 97-80
)	
Request for Waiver of)	CSR-7110-Z
47 C.F.R. § 76.1204(a)(1))	
)	
To: Chief, Media Bureau)	

Motion to Strike and Reply of Atlantic Broadband Finance, LLC

I. Introduction and Summary

Atlantic Broadband Finance, LLC (“Atlantic Broadband”) moves to strike the late-filed comments filed by the Consumer Electronics Association (“CEA”) in this matter.¹

CEA has not even attempted to show good cause for its tardiness in filing its Comments.

In any event, CEA’s arguments against Atlantic Broadband’s Request for Waiver are internally inconsistent, disregard Commission precedent, and are factually incorrect and intentionally misleading. The Commission should recognize CEA’s Comments for what they are – a thinly-veiled attempt to enrich the \$155 billion consumer electronics industry² at the price of smaller-market consumers.

¹ *Comments of the Consumer Electronics Association on Atlantic Broadband Finance, LLC’s Petition for Waiver of 47 C.F.R. § 76.1204(a)(1)*, CS Docket No. 97-80, CSR-7110-Z (filed March 12, 2007) (“Comments”).

² See *CEA Forecasts Consumer Electronics Revenue Will Surpass \$155 Billion in 2007*, viewed at http://www.ce.org/Press/CurrentNews/press_release_detail.asp?id=11220 on March 12, 2007.

Further, Atlantic Broadband notes that CEA's Comments were the only comments filed in opposition to its Request for Waiver. Other commenters strongly support Atlantic Broadband's Request for Waiver.³

Atlantic Broadband addresses CEA's failure to show good cause to accept its late-filed comments and each of CEA's major arguments below.

II. The Commission should strike CEA's untimely Comments.

As CEA acknowledges in its Motion to Accept Late-Filed Comments,⁴ its Comments were not filed timely. In fact, CEA filed its Comments a week late. Under Commission rules and precedent, an extension of time for a filing requires a showing of good cause. Yet CEA's Motion to Accept Late-Filed Comments does not even attempt to show good cause for the requested extension.

A. An extension of time requires a showing of good cause. The Commission's rules and policies governing extensions are straightforward. Extensions will not to be routinely granted,⁵ and may only be granted upon good cause shown.⁶ The Commission specifically disfavors requests for extensions of time filed on short

³ See *Comments of Motorola, Inc.*, CS Docket No. 97-80, CSR-7110-Z (filed March 5, 2007) and *Comments of the American Cable Association in Support of Requests for Waivers of 47 C.F.R. § 76.1204(a)(1)*, CS Docket No. 97-80, CSR-7110-Z (filed March 5, 2007).

⁴ *Motion of the Consumer Electronics Association to Accept Late-Filed Comments and for Extension of Time to File Reply Comments*, CS Docket No. 97-80, CSR-7110-Z (filed March 12, 2007) ("*Motion to Accept Late-Filed Comments*").

⁵ 47 C.F.R. § 1.46(a).

⁶ See, e.g., *In the Matter of Application by Verizon New Jersey, Inc., et al. for Authorization to Provide In-Region, InterLATA Services in New Jersey*, Order, 17 FCC Rcd. 6116 (2002) at ¶ 4.

notice.⁷ When viewed in light of the Commission's rules and these well-settled policies, CEA's Motion to Accept Late-Filed Comments must fail.

B. CEA has not shown good cause for an extension.

CEA's only explanation for the untimeliness of its comments is that "the large number of such filings spread over more than one docket led to a misunderstanding as to the comment dates."⁸

CEA's explanation not only makes no sense, it falls far short of good cause.

As an initial matter, CEA has been actively involved in this docket from the beginning. A search of the Commission's ECFS system shows that CEA has made eighty filings in this docket. Obviously, CEA has been closely monitoring this docket and cannot claim to be taken by surprise by Atlantic Broadband's Request for Waiver.

Further, Atlantic Broadband's Request for Waiver was included in the same public notice⁹ as the City of San Bruno's Request for Waiver, for which CEA filed timely comments.¹⁰ How could CEA have had a "misunderstanding as to the comment dates" for Atlantic Broadband's Request for Waiver when it clearly had no confusion regarding the City of San Bruno's? Moreover, ACA and Motorola were both able to accurately pinpoint the comment deadline and file timely comments supporting Atlantic

⁷ *In the Matter of Amendment of Parts 2 and 25 of Commission's Rules to Permit Operation of NGSO FSS Systems in KU-Band Frequency Range, Order Extending Reply Comment Period*, 16 FCC Rcd. 7070 (2001) at ¶ 3. CEA filed its *Motion to Accept Late-Filed Comments* a week after the filing deadline. In other words, CEA's request for an extension was filed on no notice, much less short notice.

⁸ *Motion to Accept Late-Filed Comments* at 2.

⁹ *Public Notice, Special Relief and Show Cause Petitions* (February 12, 2007).

¹⁰ *Comments of the Consumer Electronics Association on the City of San Bruno Request for Waiver of 47 C.F.R. § 76.1204(a)(1)*, CS Docket No. 97-80, CSR-7116-Z (filed March 5, 2007).

Broadband's Request for Waiver. Apparently, the comment deadline was not easily misunderstood.

In short, CEA has failed to show any credible reason why it filed its Comments in an untimely manner, much less good cause for the late filing. Consequently, the Commission must strike CEA's late-filed Comments.

III. CEA's arguments are internally inconsistent, ignore Commission precedent and attempt to mislead the Commission with factual inaccuracies.

Even if the Commission accepts CEA's late-filed Comments, it should disregard CEA's internally inconsistent arguments and ignorance of Commission precedent. Further, the Commission should censure CEA's transparent attempts to mislead the Commission with factual inaccuracies.

CEA first argues that "further postponement of common reliance...will undermine Congress's basic intention of creating...a true competitive market for navigation devices."¹¹ But as CEA itself admits, smaller cable operators like Atlantic Broadband are "effectively at the mercy of the product decisions taken by the major MSOs and the unilateral dictates of entrenched vendors..."¹² In other words, CEA itself is conceding

¹¹ *Comments* at 1. CEA makes a similar argument in its opposition to Atlantic Broadband's request for clarification that refurbished boxes are not included under the integration ban. *Comments* at 2. This argument must be disregarded for the same reason set forth above: As CEA admits, Atlantic Broadband's continued deployment of integrated boxes will have absolutely no effect on the competitive market for navigation devices. Further, manufacturers hardly lack incentives to develop downloadable security. To the contrary, the market is eager to adopt downloadable security, which is inherently more flexible and less expensive than the CableCARD. Once effective downloadable security is available, Atlantic Broadband (and, undoubtedly, large numbers of other cable operators) will be glad to deploy it. Moreover, CEA's argument willfully ignores facts already on the record in this docket. As numerous commenters have shown, substantial progress has been made on a downloadable security solution. See, e.g., *Reply Comments of the National Cable & Telecommunications Association*, CS Docket No. 97-80, CSR-7056-Z (filed December 11, 2006) at 3 and 16-21.

¹² *Id.* (emphasis added).

that (1) granting Atlantic Broadband's Request for Waiver will have absolutely no adverse effect on the competitive market for navigation devices, and (2) denying the request will not facilitate competitive entry. Consequently, there is absolutely no reason to deny Atlantic Broadband's Request for Waiver.

Moreover, there is no reason that CEA's members cannot enter the set-top box market to compete with Motorola and Scientific Atlanta, other than the fact that CEA's members understandably prefer the large profit margins on expensive digital TV sets to the small margins on low-cost set top boxes.

CEA also argues that the Motorola DCT-2500 and Scientific Atlanta Explorer 3100, 3200 and 3250 are "not low cost nor limited functionality devices..."¹³ CEA's argument ignores Commission precedent.

The boxes for which Atlantic Broadband seeks waivers¹⁴ are among the lowest-cost, most limited-capability boxes available. None of these boxes contain PVRs, multiple tuners, HD capabilities, or provide broadband Internet access.¹⁵ Accordingly,

¹³ *Comments* at 1.

¹⁴ Atlantic Broadband seeks waivers for the Motorola DCT-700 and DCT-2500 boxes. The only difference between the DCT-700 and DCT-2500 boxes are that the DCT-2500 also contains an analog tuner. Atlantic Broadband uses the DCT-2500 in systems with an analog tier because the all-digital DCT-700 cannot be used to receive analog channels. Atlantic Broadband also seeks a waiver for the Scientific Atlanta Explorer 3100, 3200 and 3250 boxes, which it uses in its systems with Scientific Atlanta headend equipment.

¹⁵ The potential networking capability in the Scientific-Atlanta boxes does not make them "advanced capability" devices. Rather than repeat arguments on this topic already made in this docket, Atlantic Broadband refers to the Commission to Comcast Corporation's *Application for Review*. See *In the Matter of Comcast Corporation's Request for Waiver of 47 C.F.R. § 76.1204(a)(1), Application for Review*, CS Docket No. 97-80, CSR-7012-Z (filed January 30, 2007) at 9-10. Further, Atlantic Broadband offers to certify to the Commission that it will not configure or authorize these boxes to be used for networking or "functional PVRs."

these are precisely the types of boxes for which the Commission said it would consider waivers.¹⁶

More seriously, CEA asserts that the Motorola DCT-2500 and Scientific Atlanta Explorer 3100, 3200 and 3250 all provide HD video.¹⁷ Atlantic Broadband deploys all these set-top boxes and can assure the Commission that they do not provide HD functionality. Moreover, Atlantic Broadband could find absolutely no reference to HD functionality for any of these set-top boxes on the webpages cited by CEA.¹⁸ In short, none of these set-top boxes provide HD video. There are HD versions of the Scientific Atlanta set-top boxes, but they have different model numbers and are not the boxes for which Atlantic Broadband requests waivers.¹⁹ The Commission should censure these transparent attempts by CEA to mislead the Commission.

IV. Conclusion

CEA's Comments were untimely filed. Yet CEA has shown no cause at all for the late filing – much less good cause. Accordingly, CEA's Comments should be stricken from the record.

¹⁶ See *In the Matter of Implementation of Section 304 of the Communications Act of 1996, Second Report and Order*, 20 FCC Rcd. 6794 (2005) at ¶ 37. Again, for the sake of brevity, Atlantic Broadband refers the Commission to the arguments on this matter made in Comcast Corporation's *Application for Review*.

¹⁷ *Comments* at 2.

¹⁸ See <http://broadband.motorola.com/consumers/products/dct2500/> and http://www.scientificatlanta.com/products/consumers/new_explorer3100HD.htm, viewed March 17, 2007). In fact, the Scientific Atlanta webpage expressly lists the Explorer 3100, 3200 and 3250 under the heading "SD [Standard Definition] Cable Boxes."

¹⁹ The Explorer 3100HD, Explorer 3200HD and Explorer 3250HD are high definition boxes, but these are not the boxes referenced in Atlantic Broadband's *Request for Waiver*.

In any event, CEA's Comments rely on internally inconsistent arguments, ignore Commission precedent, and attempt to mislead the Commission with factual inaccuracies.

At the bottom, CEA's Comments endorse (1) higher prices for consumers, (2) slowing the digital transition for Atlantic Broadband's subscribers, and (3) saddling Atlantic Broadband with higher costs that will reduce MVPD competition. And why? To raise the price of using an analog television set so that CEA's members can sell more expensive digital TV sets to consumers. The Commission should recognize CEA's comments for what they are – an attempt to transfer money from the pockets of consumers to the behemoth consumer electronics industry. Atlantic Broadband's Request for Waiver shows good cause for the requested waivers for the DCT-700, DCT-2500 and Explorer 3100, 3200 and 3250. Atlantic Broadband respectfully requests that the Commission grant these waivers.

Respectfully submitted,



Nicole E. Paolini-Subramanya
Cinnamon Mueller
307 N. Michigan Avenue
Suite 1020
Chicago, IL 60601

(312) 372-3930

Attorneys for Atlantic Broadband Finance, LLC

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CERTIFICATE OF SERVICE

I, Megan Petruelis, paralegal with the law firm of Cinnamon Mueller, certify that a true and correct copy of the *Motion to Strike and Reply of Atlantic Broadband Finance, LLC* was mailed to the following individuals by first class USPS mail on March 21, 2007:

Julie M. Kearney
Senior Director and Regulatory Counsel
Consumer Electronics Association
2500 Wilson Boulevard
Arlington, VA 22201

Robert S. Schwartz
Mitchell L. Stoltz
Constantine Cannon LLP
1627 Eye Street, N.W., 10th Floor
Washington, D.C. 20006

Matt Polka
American Cable Association
One Parkway Center
Suite 2121
Pittsburgh, PA 15220

Steve B. Sharkey
Director, Spectrum and Standards Strategy
Jason E. Friedrich
Assistant Director, Telecommunications Regulation
Motorola, Inc.
1455 Pennsylvania Avenue, NW
Suite 900
Washington, DC 20004



Megan Petruelis