

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.**

In the Matter of )  
 )  
Bresnan Communications, LLC's ) CSR-7117-Z  
Request for Waiver of )  
47 C.F.R. § 76.1204(a)(1) )

**REPLY COMMENTS OF BRESNAN COMMUNICATIONS, LLC**

Bresnan Communications, LLC (“Bresnan”) respectfully submits these reply comments in support of its request for waiver from the integration ban until the earlier of its deployment of downloadable security or December 31, 2009.

**Introduction**

In prior proceedings, parties have debated the integration ban primarily from the perspective of its impact on Circuit City Superstores in New Jersey or California, or on the Wall Street fortunes of multi-billion dollar, multi-national consumer electronics corporations based around the world. But the integration ban would also have a very significant, and very different, impact on small towns in Bresnan’s service area, in places like Buffalo, Wyoming.

Buffalo is a town of 3900 people in north central Wyoming, 400 miles north of Denver and 800 miles west of Minneapolis.<sup>1</sup> When Bresnan acquired the local cable system in Buffalo in 2003, it did not offer any broadband, and in fact no wireline broadband services were available to consumers from any provider for miles around. Today, Bresnan has upgraded the

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<sup>1</sup> See U.S. Census 2000 data for Buffalo, Wyoming, [http://factfinder.census.gov/servlet/SAFFFacts?\\_event=Search&geo\\_id=86000US82834&\\_geoContext=01000US%7C86000US82834&\\_street=&\\_county=buffalo&\\_cityTown=buffalo&\\_state=04000US56&\\_zip=&\\_lang=en&\\_sse=on&ActiveGeoDiv=geoSelect&\\_useEV=&pctxt=fph&pgsl=860&\\_submenuId=factsheet\\_1&ds\\_name=DEC\\_2000\\_SAFF&\\_ci\\_nbr=null&q\\_r\\_name=null&reg=null%3Anull&\\_keyword=&\\_industry=](http://factfinder.census.gov/servlet/SAFFFacts?_event=Search&geo_id=86000US82834&_geoContext=01000US%7C86000US82834&_street=&_county=buffalo&_cityTown=buffalo&_state=04000US56&_zip=&_lang=en&_sse=on&ActiveGeoDiv=geoSelect&_useEV=&pctxt=fph&pgsl=860&_submenuId=factsheet_1&ds_name=DEC_2000_SAFF&_ci_nbr=null&q_r_name=null&reg=null%3Anull&_keyword=&_industry=)

system to deliver broadband download speeds of up to 8.0 mbps in Buffalo. However, Buffalo's remote location has made delivery of other advanced services more difficult. For example, Bresnan still cannot offer its customers in Buffalo any Video-on-Demand (VOD), and it only delivers limited high-definition (HD) content, in part because of the difficulty in obtaining adequate fiber connectivity to Buffalo from third parties. As it explained in its Request for Waiver, Bresnan wishes to deploy its own fiber-optic network to deliver digital services throughout its rural service territory.<sup>2</sup> Grant of a waiver would provide a critical boost to Bresnan's ability to deploy digital simulcast, VOD, more HD, commercial competitive telephone services, and other advanced services to places like Buffalo and other small towns across Montana, Wyoming, Utah and Colorado.

Not only would grant of the requested waiver therefore deliver much greater consumer benefits in such rural markets, but it would not result in any consumer harms. *Not one person in Buffalo has ever asked Bresnan to supply a CableCARD.* This fact is not surprising. The nearest Best Buy is 170 miles away in Billings, Montana, and the nearest Circuit City is 290 miles away in Cheyenne, Wyoming. Even for consumers willing to make this long drive, the only CableCARD-ready devices available at retail are a \$1000 TiVo and \$1700-\$7000 DTVs.<sup>3</sup> These expensive devices are not likely to interest as many consumers in Buffalo, where the median household income is \$29,000, 30% less than the national median.<sup>4</sup>

The system in Buffalo is a typical Bresnan system, and Bresnan operates many systems that are smaller, more remote, and more in need of upgrades. When the Consumer Electronics

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<sup>2</sup> See Bresnan Request for Waiver at 6.

<sup>3</sup> See CS Docket 97-80, Reply Comments of Charter, at Exhibit A (Sept. 28, 2006) (showing that the only CableCARD-ready devices from Best Buy and Circuit City in September 2006 were DTVs priced from \$1700-7000 and a Tivo Series 3 priced at \$800 plus more than \$150/year in TiVo subscription fees).

<sup>4</sup> See *supra* note 1.

Association (CEA) opposes waivers from the integration ban, it has nothing to do with the market for retail navigation devices in these small communities. Although the CEA filed a nominal two-page opposition to Bresnan's request, it did not address any of the merits of Bresnan's demonstration of the uniquely important need for a waiver for operators of rural systems. Neither CEA nor any other party submitted any evidence that rebuts Bresnan's specific and extensive showing that the application of the integration ban in Bresnan's rural service areas would impose greater costs on consumers while delivering fewer benefits, in comparison to the costs and benefits of the rule nationwide. It is doubtful that CEA has thought much about the difficulties, and much greater costs, of providing advanced communications services in Buffalo, Wyoming compared to Buffalo, New York.

Meanwhile, the comments of the American Cable Association<sup>5</sup> and the League of Rural Voters<sup>6</sup> make clear that relief from the integration ban is uniquely and especially critical to small and rural operators, and to the digital transition in small-town and rural America. Grant of Bresnan's requested waiver would deliver specific, important benefits to consumers in Montana, Wyoming, Utah and Colorado. The construction of a new Video Processing Center in Cheyenne, Wyoming to serve as a hub of a new fiber-optic network would enable Bresnan to greatly increase its deployment of digital simulcast and the number and reach of its HD and VOD offerings. In addition, a waiver would facilitate Bresnan's introduction of new wireless broadband services, a promising technology critical to bridging the digital divide for rural America. Based on this record, Bresnan's request should promptly be granted.

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<sup>5</sup> Comments of the American Cable Association (Mar. 5, 2007).

<sup>6</sup> CS Docket 97-80, Letter from Niel Ritchie, Executive Director, League of Rural Voters, to Hon. Kevin Martin, Chairman, Federal Communications Commission (Oct. 2, 2006) at 1-2.

**I. Application of the Integration Ban to Small Operators Would Not Significantly Impact the Cost of CableCARDs.**

Numerous waiver requests, including Bresnan's, have demonstrated that the cost of the integration ban would hit hardest on small operators, who pay more for set-top boxes and who also face higher per-subscriber costs in funding their digital transitions. CEA argues in response only that, "If all of the waiver applications on file were to be granted, and the benefits extended to those similarly situated, the [reductions in CableCARDs hoped for by CEA] would be much less likely to occur."<sup>7</sup>

CEA's hypothesis clearly overstates the impact of small operator volumes on the national market for CableCARDs. The nine largest MVPDs hold an 88% market share.<sup>8</sup> Bresnan, by contrast, has a market share of only three-tenths of one percent. As the American Cable Association noted, grant of all eight of the waiver petitions filed by its members would affect only 1% of the MVPD market.<sup>9</sup> Even if the Commission temporarily granted all of these pending waiver requests, the resulting decline in the number of CableCARDs deployed would be only marginally significant, if at all.<sup>10</sup>

CEA also argues that if the Commission had implemented the integration ban 6 ½ years ago, CableCARD devices would cost less today, which would in turn have softened the blow of the integration ban on small operators' digital transitions. But if the Commission had prohibited small operators from offering low-cost integrated devices in 2001, the types of harms that will, absent a waiver, occur in 2007 would have occurred earlier. The growth of digital cable, VOD,

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<sup>7</sup> Comments of the Consumer Electronics Association on RCN Waiver Request at 4 (Mar. 5, 2007).

<sup>8</sup> Twelfth Annual Report to Congress on Video Competition, FCC 06-11, Table 9.

<sup>9</sup> Comments of the American Cable Association at 11 (March 5, 2007).

<sup>10</sup> In addition, the Commission cannot reasonably invoke increased volume as a basis for applying the integration ban to Bresnan and its 290,000 customers unless it first applied the requirement to DirecTV and EchoStar (which have a combined U.S. subscribership of more than 26 million digital customers).

HD, cable broadband, competitive telephone and other services that consumers have received over the past 6 ½ years would have been adversely affected. CEA's argument is therefore an illusion.

Instead, the Commission can provide needed mitigation of the impact of the ban on small and rural systems by granting temporary relief in these markets during the period through 2009 when compliance would be the costliest, and when low-cost devices are most needed for the digital transition. During this brief period, the application of the ban, or not, to operators the size of Bresnan will make no material difference in these developments. On the other hand, such temporary relief will make a very real and significant difference to the digital transition and delivery of advanced services to consumers in small-town and rural America.

## **II. Bresnan Has Not Asked the Commission to Rely on the Forthcoming Availability of DCAS.**

CEA states that “Bresnan cannot use the purportedly imminent availability of downloadable security as a rationale for requesting a waiver.”<sup>11</sup> But Bresnan's waiver does not rely on any imminent availability of downloadable security. Bresnan's waiver would expire no later than the end of 2009 even if DCAS has not been deployed, and it is justified for small and rural systems whether or not DCAS is ever deployed. Bresnan is not in a position to report on the status of DCAS, but notes that many of CEA's own members have devoted substantial resources and substantial praise to the very DCAS system that CEA here dismisses.<sup>12</sup> The

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<sup>11</sup> CEA Comments at 2.

<sup>12</sup> For example, CEA member LG Electronics has praised DCAS as “a compelling security solution that will help enable nationwide interoperability of advanced two-way cable services” that “benefits CE manufacturers by lowering material costs and reducing entry barriers in the digital cable receiver equipment market.” See Press Release, “LG Electronics, CableLabs Sign Downloadable Security Technology Agreement (Jan. 4, 2006); Press Release, “LG Electronics, Comcast, NagraVision Conduct First Public Demonstration of Downloadable CAS Technology (Jan. 4, 2006). See also CS Docket 97-80, Reply Comments of the National Cable & Telecommunications Association (Feb. 6, 2006) at 4.

Commission has already found that the potential of DCAS can be sufficient to tilt the public interest scales in favor of relief from the integration ban. It already did so in 2005 when DCAS was just an idea. It can certainly do so now when DCAS has been publicly demonstrated and is in the process of actual development.

### **III. CEA Ignores the Commission's Parallel Obligation to Promote Advanced Services in Rural America.**

CEA argues, in effect, that even if the Commission grants a waiver to small and rural operators for low-cost set-top boxes, as it did conditionally for BendBroadband, it should reject Bresnan's additional request for temporary relief for advanced devices.<sup>13</sup> In doing so, CEA focuses exclusively on the Commission's obligations under Section 629, and entirely ignores the Commission's other obligations, including those established by Section 706 of the 1996 Act. Nothing in Section 629 or the legislative history of the 1996 Act suggests that Congress intended the goals of Section 629 to override indiscriminately the Act's direction that the Commission promote the spread of advanced services to all Americans, including rural Americans. If anything, the opposite is true, as Congress instructed the Commission to "avoid actions [under Section 629] which would have the effect of freezing or chilling the development of new technologies and services."<sup>14</sup> But that is exactly what implementation of the integration ban to Bresnan's high definition and DVR devices would do in its rural service areas of Montana, Wyoming, Utah and Colorado. In its waiver request, Bresnan explained:

Bresnan supports BendBroadband's waiver request and urges that the Commission apply it to all smaller operators, including Bresnan. But to stop there would turn upside down the goal of the 1996 Act to deliver *advanced*

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<sup>13</sup> See CEA Comments at 2 ("a blanket waiver for ... integrated devices with advanced features is particularly inappropriate.").

<sup>14</sup> Joint Explanatory Statement of the Committee of Conference, S. Conf. Rep. 104-230, 104th Cong., 2d Sess. at 181 (1996).

services to rural America, and Congress' goal of encouraging the transition to high-definition digital television. If the Commission granted only a low-cost waiver to BendBroadband and Bresnan, but still required CableCARDS to be included in their HD and DVR leased boxes, it would be imposing an artificial regulatory disincentive for consumers to upgrade to HD and more advanced devices – the antithesis of what federal policy demands.

CEA does not respond at all to square Section 706 with such an artificial regulatory suppression of advanced services in rural America. The Commission therefore can and should rely on Section 706 as a basis to grant the entirety of Bresnan's requested waiver.

### **CONCLUSION**

For the reasons set forth in Bresnan's Request for Waiver and herein, the interests of consumers in rural America would be best served by grant of a waiver to Bresnan until the earlier of its deployment of DCAS or December 31, 2009.

Respectfully submitted,



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