

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

In the Matter of	)	
	)	
JetBroadband VA, LLC and	)	CS Docket No. 97-80
JetBroadband WV, LLC	)	
	)	
Emergency Petition for Deferral of	)	CSR-7131-Z
Enforcement of July 1, 2007 Deadline in	)	
47 C.F.R. § 76.1204(a)(1)	)	

**Comments of the Consumer Electronics Association  
on the JetBroadband VA, LLC and JetBroadband WV, LLC  
Petition for Deferral of 47 C.F.R. § 76.1204(a)(1)**

April 2, 2007

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Nine years ago, the Commission announced a rule that, beginning in 2005, cable operators would be required to rely on the same separable security technology as competitive device makers in the retail market.<sup>1</sup> That rule, known as common reliance, was delayed twice, most recently to July 1, 2007.<sup>2</sup> Cable operators have now had nine years' notice of this requirement. Nonetheless, JetBroadband VA, LLC and JetBroadband WV, LLC ("JetBroadband") now request a further deferral of common reliance in order to be the first to deploy navigation devices from Beyond Broadband Technology (BBT).<sup>3</sup> BBT's downloadable security technology is, as of now, a secret, proprietary protocol that does not allow for national portability of navigation devices. As the BBT system is not scalable for nationwide compatibility, it is not suitable for

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<sup>1</sup> 47 C.F.R. § 76.1204(a)(1).

<sup>2</sup> *Second Report and Order*, in the Matter of Implementation of Section 304 of the Telecommunications Act of 1996, CS Docket No. 97-80 at 2 ¶3 (Mar. 17, 2005) (hereinafter "2005 Deferral Order").

<sup>3</sup> *JetBroadband, VA LLC & JetBroadband WV, LLC, Emergency Petition for Deferral of Enforcement of July 1, 2007 Deadline in 47 C.F.R. § 76.1204(a)(1)*, CS Docket No. 97-80, CSR-7131-Z, at 1 (Feb. 14, 2007).

common reliance and cannot justify a deferment. JetBroadband's request should be denied.

Common reliance is the means to achieving the goal set out by Congress in Section 629 of the Telecommunications Act: to "assure the commercial availability" of video navigation devices from competitive retail sources.<sup>4</sup> The Commission has made clear that its goal is full compliance with Congress's mandate, and that incremental progress towards that goal does not eliminate the need for effective common reliance.<sup>5</sup>

With that goal in mind, the Commission made clear that separation of security and navigation components is a necessary element of common reliance, but not the only element.<sup>6</sup> A downloadable security technology complies with the rules only "to the extent" that it "provides for common reliance."<sup>7</sup> A system that provides for common reliance must be nationally portable, because a retail market for navigation devices will be severely limited if consumers cannot move their devices from one cable system to another. Geographic portability is the Commission's primary justification for its continued forbearance as to DBS providers.<sup>8</sup>

In addition, a retail market for navigation devices cannot arise if cable operators use multiple, incompatible protocols for separable security. Major MSOs have signaled their intent to use "DCAS" downloadable security,<sup>9</sup> and Motorola has announced another

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<sup>4</sup> 47 U.S.C. § 548(a) (2000 & West 2006).

<sup>5</sup> *2005 Deferral Order* at 15-16 ¶ 28.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 14-15 ¶ 27.

<sup>8</sup> *Id.* at 21, ¶ 38.

<sup>9</sup> *In the matter of Nat'l Cable & Telecom. Ass'n Request for Waiver of 47 C.F.R. § 76.1204(a)(1)*, CS Docket No. 97-80 (Aug. 16, 2006). "[I]t is also now clear that the cable industry is strongly committed to the earliest possible development and implementation of its downloadable security solution, the Downloadable Conditional Access System . . . .").

downloadable security technology.<sup>10</sup> If MSOs begin using multiple, incompatible protocols for downloadable security, navigation devices will be no more portable than they are under an integrated security regime. Nor can a downloadable security protocol support common reliance if it is licensed to retailers under unfair and discriminatory terms.

The BBT protocol has not been publicly demonstrated, and its specification has not been disclosed, except under nondisclosure agreements. A representative of BBT has informed CEA that the technology is currently suited only for small MSOs. Even if all small MSOs were to deploy BBT, retail devices implementing BBT would work in less than 20% of the nation's cable households. This would not fulfill the mandate of Section 629. Although BBT has promised an open protocol, neither its protocol nor its proposed licensing terms have yet been made public.

In summary, to serve as a basis for common reliance, a downloadable security technology must be a) part of a single, nationwide standard; b) licensed to retail electronics manufacturers on fair and reasonable terms that are consistent with FCC regulations; and c) publicly disclosed – both the license terms and the technology – with the exception of core secrets. Based on BBT's public statements, its technology could potentially meet some of those criteria. However, not enough is known about BBT for the Commission or anyone else to determine its eligibility. If BBT is in fact suitable only for smaller MSOs, or if retailers are not given an adequate opportunity to evaluate it, or if it is accompanied by unacceptable license terms, then it cannot support a national retail market for compatible navigation devices. Before BBT can serve as a platform for

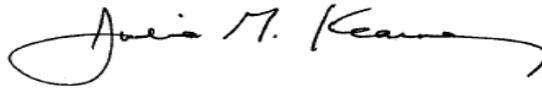
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<sup>10</sup> Steve B. Sharkey, Notice of Ex Parte Meeting, CS Docket No. 97-80 (Mar. 21, 2007) (“Motorola is pleased to inform the Commission of the development of ‘Downloadable MediaCipher’ (DM).”).

common reliance, it must resolve these questions. Until then, JetBroadband cannot delay its common reliance obligations by, or for the purpose of, deploying BBT technology.

Therefore, the Commission should deny JetBroadband's request.

Respectfully submitted,

A handwritten signature in black ink, reading "Julie M. Kearney". The signature is written in a cursive style with a long, sweeping tail that extends to the right. Below the signature is a solid horizontal line.

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Dated: April 2, 2007

## **CERTIFICATE OF SERVICE**

I do hereby certify that on April 2, 2007 I caused a true and correct copy of the foregoing Comments of the Consumer Electronics Association on the JetBroadband VA, LLC and JetBroadband WV, LLC Petition for Deferral of 47 C.F.R. § 76.1204(a)(1) to be served via overnight mail on the following:

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*/s/ Patricia O'Keefe*  
Patricia O'Keefe