

BEFORE THE  
Federal Communications Commission  
WASHINGTON, D.C.

In the Matter of	)	
Requests for Waiver of	)	CS Docket No. 97-80
47 C.F.R. § 76.1204(a)(1)	)	
	)	
Millennium Telecom, LLC, d/b/a One Source	)	CSR-7129-Z
GCI Cable, Inc.	)	CSR-7130-Z
JetBroadband, LLC	)	CSR-7131-Z

**COMMENTS OF MOTOROLA, INC.**

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April 2, 2007

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**COMMENTS OF MOTOROLA, INC.**

Motorola, Inc. (“Motorola”) hereby submits these comments in response to the Media Bureau’s Public Notice in the above-captioned proceedings.<sup>1</sup> GCI, One Source, and JetBroadband have filed separate requests for temporary waiver of the Commission’s integration ban rule for one or more Motorola set-top boxes (“Waiver Requests”).<sup>2</sup> Motorola strongly supports these Waiver Requests and urges the Commission to give prompt approval to the requests for the reasons set forth below and those identified in the Waiver Requests.

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<sup>1</sup> See Public Notice, Special Relief and Show Cause Petitions, Report No. 0202 (Mar. 13, 2007).

<sup>2</sup> See *In the Matter of GCI Cable, Inc.’s Request for Waiver of 47 C.F.R. § 76.1204(a)(1)*, Request for Waiver, CSR-7130-Z, CS Dkt. No. 97-80 (Feb. 16, 2007) (“GCI Waiver”) (requesting temporary waiver for all digital boxes); *In the Matter of Millennium Telecom, LLC d/b/a One Source Communications, Petition for Waiver of 47 C.F.R. § 76.1204(a)(1)*, Emergency Petition for Waiver, CSR-71290-Z, CS Dkt. No. 97-80 (Feb. 28, 2007) (“One Source Waiver”) (requesting temporary waiver for DCT-700 and DCT-3416); *In the Matter of JetBroadband VA, LLC, Petition for Waiver of 47 C.F.R. § 76.1204(a)(1)*, Emergency Petition for Deferral, CSR-7131-Z, CS Dkt. No. 97-80 (Feb. 22, 2007) (“JetBroadband Waiver”) (requesting temporary waiver for DCT-1000 and DCT-2000).

Relying on the waiver standard articulated in the Bureau's *BendBroadband Waiver Order*,<sup>3</sup> GCI and One Source are seeking temporary waivers so that they can complete their transitions to all-digital networks before February 17, 2009, the transition date deemed presumptively reasonable in the *BendBroadband Waiver Order*. GCI Cable commits to completing its transition by that date, and One Source indicates that its transition will be finished by December 31, 2007, provided their respective Waiver Requests are granted.<sup>4</sup> GCI and One Source have made clear that the continued availability of integrated digital set-top boxes for a limited period of time is essential to their digital transition plans.

JetBroadband seeks a temporary waiver until the end of 2007 when it expects to receive shipments of set-top boxes that it has ordered from Beyond Broadband Technology ("BBT") that use downloadable security.<sup>5</sup> The Commission has said the use of downloadable security will satisfy the integration ban.<sup>6</sup> In the interim, JetBroadband would like to continue to deploy refurbished DCT-1000 and DCT-2000 series set-top boxes, rather than costlier CableCARD-

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<sup>3</sup> See *In the Matter of BendBroadband's Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, Mem. Opin. & Order, 22 FCC Rcd. 209 ¶ 24 (2007) ("*BendBroadband Waiver Order*").

<sup>4</sup> See GCI Waiver at 1 & Hughes Decl. ¶ 2; One Source Waiver at 4.

<sup>5</sup> See JetBroadband Waiver at 5.

<sup>6</sup> See *In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, Second Report & Order, 20 FCC Rcd. 6794 ¶ 35 (2005) ("*2005 Integration Ban Order*") (concluding that downloadable security comports with the integration ban). See also *In the Matter of Comcast Corporation's Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, Mem. Opin. & Order, 22 FCC Rcd. 228 ¶ 34 (2007) ("[S]hould Comcast deploy a downloadable conditional access security solution that is available today, such as that developed by Beyond Broadband Technology, no waiver of the ban would be necessary."); Public Notice, *Commission Reiterates That Downloadable Security Technology Satisfies The Commission's Rules On Set-Top Boxes And Notes Beyond Broadband Technology's Development Of Downloadable Security*, 22 FCC Rcd. 244 (2007) ("The Commission takes notice that, as the attached letter explains, Beyond Broadband Technology, LLC (BBT) has already developed a downloadable security solution which provides for common reliance.").

enabled boxes, to help drive digital subscribership in its rural cable systems.<sup>7</sup> Since such a plan is consistent with Commission rules and precedent,<sup>8</sup> and since the Commission has previously indicated that the BBT downloadable security solution is an acceptable way of complying with the integration ban, the JetBroadband Waiver should be granted.

With respect to the GCI and One Source waiver requests, both companies indicate that they rely on the DCT-700 as a low-cost option for consumers to access digital programming and services,<sup>9</sup> but will not be able to complete their migration to all-digital networks on schedule if they are forced to purchase more expensive CableCARD-enabled set-top boxes.<sup>10</sup> The simple fact is that the DCT-700 cannot accommodate the CableCARD; rather, an entirely different set-top box, with a larger chassis, greater power supply, and a redesign of the motherboard, among other things, is required.<sup>11</sup> These modifications plus the CableCARD add significantly to the overall cost of the set-top box. Consequently, and in recognition of the lack of marketplace demand for higher cost boxes with only limited features, the current lowest-cost CableCARD-

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<sup>7</sup> See JetBroadband Waiver at 9.

<sup>8</sup> See *In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, Order on Reconsideration, 14 FCC Rcd. 7596 ¶ 35 (1999) (stating that integration ban rule is not “intended to render equipment obsolete that has already been manufactured and deployed and still has a useful life”).

<sup>9</sup> See GCI Waiver at 5; One Source Waiver at 6. As Motorola has explained previously in this docket, the DCT-700 is the lowest-cost, most limited-capability device built by Motorola for U.S. cable operators, and has been very popular with cable operators and their customers -- with over six million shipped in North America. See, e.g., Motorola Comments, filed in CSR-7124-Z, at 1-2 (Mar. 19, 2006); Motorola Comments, filed in CSR-7109-Z, at 2 (Mar. 5, 2007). The Media Bureau acknowledged the importance of the DCT-700 to cable’s digital transition efforts in its *BendBroadband Waiver Order*. See *BendBroadband Waiver Order* ¶ 24 (recognizing that conditional grant of a waiver for the DCT-700 would “facilitate BendBroadband’s rapid transition to an all-digital network (*i.e.*, by 2008)”; see also *2005 Integration Ban Order* ¶ 37 (2005).

<sup>10</sup> See GCI Waiver at 5; One Source at 3-4.

<sup>11</sup> See, e.g., Motorola Comments, filed in CSR-7109-Z *et al.*, CS Dkt. No. 97-80, at 4 (Mar. 5, 2007); Motorola Comments, filed in CSR-7012-Z, CS Dkt. No. 97-80, at 3 (Feb. 14, 2007); Motorola Comments, filed in CSR-7012-Z, CS Dkt. No. 97-80, at 4 (June 15, 2006).

enabled set-top box Motorola is manufacturing -- the DCH-100 -- will cost substantially more than the DCT-700, even in higher volumes.

Motorola is not alone in describing this marketplace reality as Pace and Cisco have also filed comments in this docket about the prohibitive costs and impracticability of incorporating CableCard technology into low-cost set-top boxes.<sup>12</sup> Furthermore, as other commenters in this docket have noted, the CableCARD requirement will have significant cost impacts on *all* digital set-top boxes, not merely low-cost boxes.<sup>13</sup> These added costs -- and the circumstances surrounding the digital transition plans of these particular waiver applicants -- justify grant of the time-limited waivers for any higher-end set-top box covered by the Waiver Requests, such as the DCT-3416.<sup>14</sup>

GCI and One Source underscore the real-world negative effects that denial of their waiver requests would have on their digital transition plans. GCI notes that purchase of costlier CableCARD-enabled boxes would divert scarce capital from network conversion, diminish consumer interest in taking digital services, and slow the recapture of analog spectrum for new

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<sup>12</sup> See, e.g., Pace Comments, filed in CSR-7012-Z, CS Dkt. No. 97-80, at 3 (Feb. 14, 2007); Cisco Comments, filed in CSR-7012-Z, CS Dkt. No. 97-80, at 2 (Feb. 14, 2007).

<sup>13</sup> See *In the Matter of NCTA's Request for Waiver of the Set-Top Box Integration Ban*, 47 C.F.R. § 76.1204(a)(1), Request for Waiver, CS Dkt. No. 97-80, CSR-7056-Z, at 7-8 (Aug. 16, 2006) ("The cable industry has estimated that the re-engineering required to enable their leased devices to work with CableCARDS would add approximately \$72-93 per box -- which translates into two or three dollars more in monthly lease charges to consumers -- and that the direct cost to the cable industry to implement the CableCARD would exceed \$500 million per year."); see also *In the Matter of Verizon's Petition for Waiver of the Set-Top Box Integration Ban*, 47 C.F.R. § 76.1204(a)(1), Petition for Waiver, CS Dkt. No. 97-80, DA 06-1734, at 15 and Whitton Decl. ¶ 12 (Aug. 8, 2006) (noting that CableCARD requirement would add upwards of \$95 to the wholesale price of the device -- \$25 for CableCARD-components in the set-top box and an additional \$50-70 for the CableCARD itself).

<sup>14</sup> As noted, *supra* note 2, the Waiver Requests cover the DCT-700 and other integrated digital set-top boxes, including boxes with greater functionality than the DCT-700. For example, the DCT-3416 referenced in the One Source Waiver includes HD and DVR capabilities, among other things. See <http://broadband.motorola.com/consumers/products/dct3400/default.asp>.

video services, faster broadband speeds, and competitive phone services.<sup>15</sup> These harms will impair GCI's ability to compete effectively against DBS providers (which are not subject to the integration ban) and new telco video entrants.<sup>16</sup> Likewise, One Source explains that it "does not have the money in its budget to continue its digital transition with more expensive non-integrated set-top boxes," so failure to grant its waiver request will stop its transition plans dead in its tracks.<sup>17</sup>

It also bears emphasis that the continued availability of the DCT-700 and other low-cost boxes will aid the broadcasters' digital transition. As GCI notes, "the continued availability of low-cost boxes will maintain a suitably priced box option for those subscribers that will require boxes in the future" to access digital broadcast services.<sup>18</sup>

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<sup>15</sup> See GCI Waiver at 6-11.

<sup>16</sup> See *id.* at 10.

<sup>17</sup> One Source Waiver at 3-4, 7.

<sup>18</sup> GCI Waiver at 7-8. See also One Source Waiver at 6 (noting the benefits to broadcast transition).

For the foregoing reasons, and those set forth in the Waiver Requests, Motorola respectfully asks that the Commission approve the GCI, One Source, and JetBroadband requests for temporary waiver of the integration ban.

Respectfully submitted,

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April 2, 2007

**CERTIFICATE OF SERVICE**

I, Steve B. Sharkey, hereby certify that, on April 2, 2007, copies of the attached Comments of Motorola, Inc. were served via regular mail, on the following:

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