

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

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

To: Chief, Media Bureau



COMMENTS

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I. Introduction and Summary

The American Cable Association (“ACA”) submits these Comments in support of JetBroadband VA, LLC, and JetBroadband WV, LLC’s (collectively “JetBroadband”), Emergency Petition for Deferral of the July 1, 2007 deadline in 47 C.F.R. 76.1204 (“JetBroadband Petition”). JetBroadband requests the deferral so that it can receive and deploy separable-security, low-cost navigation devices ordered from Beyond Broadband Technology, LLC (“BBT”).

Granting the deferral is in the public interest. Such a deferral will primarily benefit consumers in the small rural markets served by JetBroadband and indirectly benefit consumers in all small markets. JetBroadband notes that the BBT device provides a low-cost set top box that can help drive consumers in the small, rural markets served by JetBroadband to digital services. JetBroadband anticipates that the availability of the low-cost separable security BBT box will allow it to convert the majority of its customers to digital services by the DTV February 17, 2009 transition date.¹

A deferral also benefits the public interest by furthering the development of competitive navigation devices. BBT – a new entrant in the set-top box marketplace – offers a box half the cost of the lowest non-integrated box available.² JetBroadband is the first operator to order the BBT box and has initially ordered 3,000 boxes. The success of the BBT box could have a positive

¹ *In the Matter of JetBroadband’s Emergency Petition for Deferral of Enforcement of July 1, 2007 Deadline in 47 CFR § 76.1204(a)(1)*, CS Docket No. 97-80, CRS-7131-Z, at 5 (filed Feb. 14, 2007) (“*JetBroadband Petition*”).

² *JetBroadband Petition* at 4-5.

effect on competition in the set-top box market, giving consumers an inexpensive box and helping the migration to digital, especially in small and rural markets.

ACA supports JetBroadband's Petition and request for expedited relief. As ACA has stated on multiple occasions, a low cost set-top box is critical to converting customers to digital service in the small and rural markets served by ACA members.³

American Cable Association. ACA represents nearly 1,100 independent cable companies that serve more than 8 million cable subscribers, primarily in smaller markets and rural areas. 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. The Commission should grant the deferral to promote the digital conversion and encourage competition in the market for set-top boxes.

³ 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) ("ACA Comcast Waiver Comments"); *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 Sept. 18, 2006) ("ACA Charter Waiver Comments"); *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 Sept. 28, 2006) ("ACA Charter Waiver Reply Comments"); *In the Matter of Bend Cable Communications, LLC d/b/a BendBroadband, Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, Comments of American Cable Association, CSR-7057-Z, CS 97-80, DA 07-47 (filed Nov. 30, 2006).

ACA members have invested hundreds of millions of dollars to bring digital services to small and rural markets. A key to converting a customer to digital is the availability of a low-cost digital set-top box. As frequently noted, the integration ban will increase the cost of set-top boxes, delaying the digital transition, especially in the low-density and cost-conscious smaller markets served by ACA members.⁴

JetBroadband has premised its plans for continued growth in the digital conversion on the ability to obtain low-cost separable security digital set-top boxes. Unfortunately, those plans are jeopardized by BBT's inability to deliver the boxes until the 4th quarter of 2007.

The Commission should not force JetBroadband to abandon its plans to deploy the BBT boxes. As explained below:

- Ample authority exists to grant the deferral; and
- The deferral will further the Commission's statutory mandate to develop a competitive market for set-top boxes, which is critical for ACA members' ability to convert customers to digital services.

Granting the deferral will directly benefit consumers in the small markets served by JetBroadband by keeping digital costs affordable.

A. Ample authority exists to grant the deferral.

The Commission has expressly provided for deferrals of enforcement for small operators with a pending order for non-integrated set-top boxes:

[W]e understand the difficulties that small cable operators may face in complying with the July 1, 2007 deadline...therefore...if Bend Broadband chooses not to accept this conditional waiver, it can

⁴ See, e.g., *ACA Comcast Waiver Comments*; *ACA Charter Waiver Comments*; *ACA Charter Waiver Reply Comments*.

request that we defer enforcement of the July 1, 2007 deadline so long as it can demonstrate that it has placed orders for set-top boxes that comply with the integration ban but that its orders will not be fulfilled in time for it to comply with the deadline.⁵

In accordance with this established Commission policy, JetBroadband has submitted an affidavit demonstrating that JetBroadband ordered the non-integrated set-top boxes but will not receive delivery prior to the 4th quarter of 2007. In addition, JetBroadband proposes to deploy refurbished Motorola DCT-2000 boxes for digital conversions until the BBT boxes arrive. This will avoid the introduction of any new integrated boxes into the stream of commerce. Thus, JetBroadband's deferral request meets the criteria set forth by the Commission and should be granted.

B. Granting the deferral will encourage set-top box competition.

Granting the deferral will further the development of a competitive marketplace for navigation devices by providing BBT with an initial outlet for its non-integrated low-cost set-top boxes. As noted, the BBT box is half the cost of the lowest non-integrated digital box.⁶ The Commission has also confirmed that the BBT boxes satisfy its requirements for separable security.⁷

⁵ *In the Matter of Bend Cable Communications, LLC d/b/a BendBroadband, Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, Memorandum Opinion and Order, CSR-7057-Z, CS 97-80, DA 07-47, ¶ 10 (rel. Jan. 10, 2007) (emphasis added).

⁶ *JetBroadband Petition*, at pp. 4-5.

⁷ *See 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 Solution, Public Notice*, CS Docket No. 97-80, DA 07-51 (rel. January 10, 2007) ("we note that, 'consistent with the Commission's goal of "common reliance," BBT is offering its technology on an "open standard" basis...to all CE and set-top box manufacturers.'").

In numerous filings, ACA has repeatedly shown the critical need for a low-cost set-top box in lower density and rural markets.⁸ Like JetBroadband, the majority of ACA members will need to offer their customers the lowest-cost digital services possible to increase their digital penetration rates.⁹ The BBT box could help drive the competitive market toward a true low-cost separable security box, lessening one of the costly burdens of the digital transition.

The Commission should encourage the development of new entrants in the set-top box market by not requiring JetBroadband to abandon its plans with BBT. In accordance with this policy, the Commission should grant the deferral request on an expedited basis.

III. Conclusion

The Commission should grant JetBroadband's deferral request on an expedited basis. Granting the deferral will benefit the customers in the small towns served by JetBroadband, further the digital transition, and encourage the development of competition in the set-top box market place. For these reasons, the Commission should grant the requested deferral.

⁸ See *supra* note 3.

⁹ *JetBroadband Petition* at 4.

Respectfully submitted,

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