

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
GCI Cable, Inc.)	CSR-7130-Z
)	
Request for Waiver of Section 76.1204(a)(1) of the Commission’s Rules)	
)	
Implementation of Section 304 of the Telecommunications Act of 1996)	CS Docket No. 97-80
)	
Commercial Availability of Navigation Devices)	

To: Chief, Media Bureau

REPLY COMMENTS OF GCI CABLE, INC.

GCI Cable, Inc. d/b/a GCI (“GCI”) submits these replies in further support of its request for waiver, pursuant to Sections 1.3 and 76.7 of the Commission’s rules,¹ of the July 1, 2007 ban on integrated set-top boxes as set forth in Section 76.1204(a)(1).² As set forth in detail in the Request for Waiver,³ grant of the requested waiver should be granted because it will ensure the availability of the capital and operational resources necessary for GCI to complete the conversion of its cable platform to fully digital operations by February 17, 2009. In addition, GCI has committed to the conditions of waiver previously established in the *BendBroadband Order*.⁴

¹ 47 C.F.R. §§ 1.3, 76.7.

² 47 C.F.R. § 76.1204(a)(1).

³ GCI Cable, Inc., Request for Waiver of Section 76.1204(a)(1) of the Commission’s Rules, CSR-7130-Z (filed Feb. 16, 2007).

⁴ *Id.* at ¶¶ 24-25.

GCI's waiver request generated two comments – one in support by Motorola and one in opposition by the Consumer Electronics Association (“CEA”), consistent with CEA's prior opposition to all requests thus far. Its blanket and generic approach to opposition provides no fact-specific challenge to GCI's waiver request and makes no attempt to distinguish the existing precedent and standard for waiver of Section 76.1204(a)(1) from these facts. Given Bureau precedent, any request satisfying the established standard must also be granted.⁵ Because GCI demonstrated that it meets the standard established in the *BendBroadband Order*, and its satisfaction of waiver requirements is uncontroverted, the waiver should be granted without delay.

CEA does not, as it cannot, challenge the specific merits of GCI's petition. GCI demonstrated that continued provision of integrated set-top boxes will allow its transition to an all-digital network across all of its systems no later than February 17, 2009. Completion of that transition will in turn will provide for a glidepath to the Congressionally-mandated DTV transition deadline, expanded programming and digital service offerings, and efficient use of spectrum to maximize bandwidth speeds, while also promoting broadband deployment and adoption, and competitive entry for voice service and advancement of universal service in rural Alaska.⁶ GCI also demonstrated that grant of its requested waiver would not harm development of a competitive navigation device market.⁷ In response, CEA glibly miscasts the petition as seeking a “nonzero cost.”⁸ This utter lack of substantive response shows that CEA has no specific opposition to the GCI request, but that it generally opposes the grant of *any* waiver, regardless of the public interest equities. This argument is a dead letter. The Commission, in the

⁵ *Melody Music, Inc. v. FCC*, 345 F.2d 730 (D.C. Cir. 1965) (holding that failure to apply Commission rules consistently to similarly-situated parties is arbitrary and capricious).

⁶ GCI Waiver Request at 6-11.

⁷ *Id.* at 12-13.

⁸ CEA Comments (filed Apr. 2, 2007) at 2.

2005 Deferral Order, and the Bureau, in its prior waiver orders, have already refused CEA's invitation blindly to follow this path, and GCI has demonstrated the tangible public interest benefits that merit granting its waiver request.

CEA next claims that, in any event, no waiver of integrated DVR boxes is appropriate because "CableCard-reliant DVRs sold at retail are increasingly available and their price is rapidly declining" (at 2-3). Not only does this unsubstantiated claim have no bearing on GCI's specific case for waiver, but it also is refuted by Motorola. Commenting on CableCARD implementation for boxes across the board, Motorola states, "the CableCARD requirement will have significant cost impacts on *all* digital set-top boxes, not merely low-cost boxes."⁹ So CEA's proffer that coming lower box costs will cure all ills of its "no waiver" stance does not hold up. Equally unpersuasive is CEA's attempt to turn the lack of CableCARD demand in Alaska into a basis for elevating implementation of the July 1, 2007 integration ban over the public interest benefits from waiver from the ban (at 5), which include facilitating the DTV transition and promoting consumer adoption of digital services, broader video service offerings, faster broadband speeds, and competitive phone services in rural Alaska. Under no rationale would such an evaluation satisfy the public interest standard embodied in Sections 1.3 and 76.7 of the Commission's rules.

Finally, though CEA incorporates by reference its comments filed in response to the San Bruno Cable and RCN waiver requests,¹⁰ no relevant claims or rebuttals to GCI's request are offered there either. In turn in those filings, CEA first argues against any waiver at all on any basis¹¹ (as it did here) -- a position the Bureau has already rejected in the *BendBroadband* and

⁹ Motorola Comments (filed (Apr. 2, 2007) at 4.

¹⁰ CEA Comments at 2 (citing CEA Comments, San Bruno Waiver Request, CSR-7116-Z (filed Mar. 5, 2007) ("CEA Comments, San Bruno") and CEA Comments, RCA Waiver Request, CSR-7113-Z (filed Mar. 5, 2007) ("CEA Comments, RCN")).

¹¹ CEA Comments, San Bruno at 4-5; CEA Comments, RCN at 2-3.

Comcast Orders; then questions DCAS as a solution for segregable security issues¹² -- an argument on which the GCI Waiver Request does not rely; and ultimately proffers its own assertion that there is no merit to granting any waiver because integrated equipment will no longer actually be available.¹³ First, this self-serving claim about potential post-grant equipment availability is both speculative and fails to take into account the possibility for provider inventory. Second, it is utterly irrelevant to assessing the substantive merits of any waiver request, GCI's included. In fact, the suggestion that integrated equipment may not be available at some future date argues against CEA's apparent position that waivers must be denied to force the adoption of more expensive, segregated boxes.

* * *

The substantive bases for GCI's Request for Waiver are unchallenged. Therefore, for the reasons set forth therein and in these replies, the Bureau should waive the integration ban as requested because such a waiver is in the public interest.

Respectfully submitted,

GCI CABLE, INC.

/s

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¹² CEA Comments, RCN at 3.

¹³ CEA Comments, San Bruno at 4; CEA Comments, RCN at 4.

CERTIFICATE OF SERVICE

I, Colleen Nunez, hereby certify that, on April 12, 2007, copies of the foregoing Reply Comments of GCI Cable, Inc., were served via postage prepaid, U.S. regular mail, on the following parties:

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