

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

In the Matter of)	
)	
James Cable, LLC's)	CSR-7216-Z
Request for Waiver of)	
47 C.F.R. § 76.1204(a)(1))	

REPLY COMMENTS OF JAMES CABLE, LLC

James Cable, LLC (“James Cable”) submits the following reply comments in support of its request for waiver (“Request”) from the integration ban. Two parties, the American Cable Association and Motorola, strongly supported the entirety of James Cable’s requested waiver, while the Consumer Electronics Association (CEA) opposed only one part of the requested relief. As demonstrated in James Cable’s Request and below, the public interest would be best served by at least a temporary grant of all of James Cable’s requested relief, but at a minimum the Commission should grant the portion of James Cable’s relief that matches the relief granted in the *Charter Waiver Order*,¹ which no commenter opposed.

I. At a Minimum, the Commission Should Grant James Cable a Financial Hardship Waiver for Limited-Function Devices.

Neither CEA nor any other party challenged James Cable’s position that its recent 28% loss of subscribership, recent bankruptcy, negative free cash flow of at least \$3 million in each of four of the past five years, and expected negative free cash flow this year and for the foreseeable future collectively present a specific and unambiguous demonstration of “financial hardship” to

¹ *Charter Communications, Inc. Request for Waiver of Section 76.1204(a)(1) of the Commission’s Rules*, CSR-7049-Z, CS Docket No. 97-80, Mem. Opinion and Order, DA 07-2008 (rel. May 4, 2007) (“*Charter Waiver Order*”).

meet the standard upon which the Commission granted a waiver to Charter.² The severe financial constraints under which James Cable attempts to operate forced it to severely curtail capital expenditures and to sell some of its systems in 2006, and the company is still unable to offer any Video on Demand (VOD) or competitive telephone services, or hardly any high-definition (HD) programming.³ Nor did any party challenge James Cable's position that the integration ban would cost it proportionally more than it would Charter,⁴ and no party challenged James Cable's showing that its systems are smaller, more rural, and pass fewer homes per mile than Charter's,⁵ all factors cited in the *Charter Waiver Order*.⁶

Accordingly, while CEA objected to James Cable's request for waiver for advanced devices, it did not oppose James Cable's "constructive"⁷ alternative request for relief similar to that the Commission granted to Charter on the grounds of financial hardship, so long as the relief is (as was Charter's) "strictly time-limited and conditioned on future compliance" with the Commission's Section 629 rules and applied only to "specifically identified limited-functionality set-top boxes."⁸ James Cable urges the Commission at a minimum to grant this unopposed portion of James Cable's request – a time-limited waiver for its limited-function DCT-700 and DCT-2500 set-top boxes.⁹

² See James Cable Request for Waiver at 7-8; see also CSR-7216-Z, Letter from Paul B. Hudson, Counsel for James Cable, LLC, to Monica Desai, Chief, Media Bureau, Federal Communications Commission (June 25, 2007) (providing audited financial statements, filed as confidential pursuant to Section 0.459 of the Commission's Rules).

³ James Cable Request for Waiver at 2, 7.

⁴ See James Cable Request for Waiver at 8.

⁵ James Cable Request for Waiver at 2-3, 8.

⁶ *Charter Waiver Order* at ¶¶ 11, 18, 19.

⁷ CEA Comments at 2.

⁸ CEA Comments at 3.

⁹ The DCT-700 and DCT-2500 were included in the *Charter Waiver Order*. If the Commission does not confirm that refurbished devices are not subject to the integration ban, then for avoidance of doubt James Cable also requests a waiver for the even more limited-function DCT-2000, DSR-410 and DSR-470 devices. See James Cable Request for Waiver at 10; see also CSR-7201-Z, Reply Comments of Choice Cable T.V. at 4-5 (June 18, 2007). These discontinued models are even more basic than the aforementioned devices, see James Cable Request at Exhibit 2.

Regarding the appropriate time period for such a limited waiver, CEA did not respond to James Cable's proposal that any "financial hardship" waiver be granted for at least the same length as the two-year waiver granted to Cablevision, rather than the one-year renewable waiver granted to Charter, given James Cable's smaller size and lesser influence with equipment vendors.¹⁰ If the Commission granted only a one-year waiver, James Cable would need to decide within a few months whether to reapply for a renewal. The record in such a renewal proceeding just a short time from now would likely be nearly identical to the record in this existing docket. If instead the Commission granted a waiver of at least two years, there would be a more substantial record available to the Commission to evaluate the impact of waivers that had been granted, and the impact of the ban where waivers had not been granted by the time of any consideration of renewal.

Imposition of the integration ban on James Cable's "advanced" devices would still suppress consumers' ability to receive high-definition and other advanced services in James Cable's highly rural service areas, with little if any benefit in return. However, a two-year waiver for limited-function devices would at least significantly contain the otherwise devastating impact of the ban on James Cable's difficult financial situation. Therefore, good cause exists for the Commission to grant at least a two-year waiver for James Cable's limited-function set-top boxes as specified in its Request.

II. The Consumer Benefits of a Short-Term Waiver for HD/DVR Devices Exceed its Supposed Costs in James Cable's Rural Service Areas.

CEA opposes James Cable's request for waiver for "advanced" devices on the grounds that grant of such a waiver would create "a vast competition-free zone, covering most of the

¹⁰ See Request for Waiver at fn. 21. CEA's erroneous suggestion (CEA Comments at 1) that James Cable requested an "indefinite" waiver results from CEA's failure to carefully read James Cable's Request. James Cable's references to waiver periods of "at least" a certain length simply reflects that James Cable would not object if the Commission found that a longer waiver period would better serve the public interest.

country, in which cable subscribers cannot purchase a navigation device at retail.”¹¹ This is false. CEA’s members are free to sell retail CableCARD navigation devices in rural America today. In fact, CEA’s own comments proudly state that they do exactly that.¹² The principal reason that so few rural consumers have purchased CableCARD devices is not the absence of CableCARDS in James Cable’s leased devices – it is because **retail CableCARD devices cost more than an acre of land in much of James Cable’s service area.**

CEA tries to evade this fact by hypothesizing that the integration ban will stimulate the development and offering of new retail CableCARD devices that rural consumers will want to buy. But here again, CEA offers no response to James Cable’s actual pleading, which anticipated CEA’s argument.¹³ Given that this secondary rationale for the integration ban (the first being anchoring support for existing CableCARD products) is so speculative, it would be reasonable for the Commission to test the theory first in markets where there are at least a modest number of CableCARD devices for MVPDs to support. If it is really true that consumer electronics companies will finally develop affordable CableCARD products because the integration ban has been implemented in Philadelphia and Los Angeles, they won’t change their mind if they find out that the ban has temporarily been deferred for two years in Possum Kingdom, Texas.¹⁴ But if the implementation of the integration ban in the areas where most people live still isn’t enough to entice the CE industry to produce affordable retail devices,

¹¹ CEA Comments at 2.

¹² See CEA Comments at 2, fn. 8.

¹³ James Cable Request for Waiver at 5.

¹⁴ The result of CEA’s insistence that the ban must be implemented everywhere all at once would be similar to a requirement in February 1996 for all incumbent LECs to spend millions of dollars to proactively build out collocation space for the CLECs that the Commission hoped would come. Even if such a policy would have served the public interest in Manhattan, New York or even Manhattan, Kansas, it would have only been a senseless waste of resources for the rural LECs in the types of very small towns served by James Cable, where for the most part CLECs never came.

CEA's theory will have been proven wrong and the Commission could consider itself fortunate not to have subjected James Cable's rural customers¹⁵ to the failed experiment.

To be clear, James Cable supports the Act's objective of assuring the commercial availability of navigation devices from unaffiliated retailers or other providers. Indeed, James Cable would be happy if more consumers would buy navigation devices from third parties. Set-top boxes tie up millions of dollars of James Cable's capital budget, investment dollars that James Cable would prefer to spend to bring broadband and other advanced services and high-definition programming to its customers. James Cable's preferred business is the selling of services, not the leasing of equipment that often breaks before its costs are recovered. CEA is therefore completely mistaken in conjuring the red herring argument that James Cable is attempting to ward off "competitors" to its own set-top box offerings.

But it is the responsibility of the Commission to balance the goals of Section 629 with the other goals of the Act. CEA argues that Section 629 should never be made "subordinate" to the Commission's other goals for rural America.¹⁶ But CEA is urging the Commission, in effect, to do the reverse – impose the integration ban to the maximum extent possible, even in ways that undermine the Commission's promotion of advanced services to rural communities or the expansion of HD offerings prior to the DTV transition. Nothing in the Act suggests that the Commission's Section 629 regulations should take automatic precedence over other fundamental goals of the Act. In fact, Congress directed that it is the Commission's Section 629 regulations that must give way to the extent they would impede the development of new or improved MVPD

¹⁵ CEA incorrectly states that James Cable has asked the Commission to "repeal" the integration ban throughout the entirety of "rural America" "indefinitely." James Cable seeks relief for itself only, for a temporary period of at least 30 months, based on specific data and facts from its own systems and service areas, such as details of the capacity, density and capabilities of its systems, and the income and demographics of consumers in its specific service areas.

¹⁶ CEA Comments at 2.

services;¹⁷ or jeopardize security of MVPD services;¹⁸ or prohibit MVPDs from offering their own navigation devices to consumers;¹⁹ or delay or impede “the deployment ... of advanced telecommunications capability to all Americans” or impose “barriers to infrastructure investment.”²⁰ James Cable has shown that imposition of the integration ban on its HD and DVR devices in the near-term would hurt its customers far more than it could help them, and would hurt James Cable’s ability to invest in new and improved services for its rural communities. The Commission should therefore find good cause to grant James Cable a waiver for all devices through at least 2009.

CONCLUSION

The Commission should grant the requested waiver, or, at a minimum, grant James Cable a two-year waiver for low-cost devices on the basis of the *Charter Waiver Order*.

Respectfully submitted,



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June 25, 2007

¹⁷ Section 629(c), 47 U.S.C. § 549(c).

¹⁸ Section 629(b), 47 U.S.C. § 549(b).

¹⁹ Section 629(a), 47 U.S.C. § 549(a).

²⁰ See Section 706 of the Telecommunications Act of 1996, Pub. L. No. 104-104, § 706, 110 Stat. 56, 153 (codified in notes under 47 U.S.C. § 157) (directing the Commission “to encourage the deployment ... of advanced telecommunications capability to all Americans ... by utilizing, in a manner consistent with the public interest, convenience, and necessity ... regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment.”)