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Jeremy M. Kissel  
Admitted in DC and Florida

February 6, 2009

**FILED/ACCEPTED**

**FEB - 6 2009**

Federal Communications Commission  
Office of the Secretary

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
Office of the Secretary  
c/o Natek, Inc.  
236 Massachusetts Ave., NE  
Washington, DC 20002

Via Hand Delivery and ECFS

**Re: In the Matter of Alabama Broadband, L.L.C. Request for Waiver of 47 C.F.R. § 76.1204(a)(1); Reply to CEA's Opposition to Petition for Reconsideration; CSR-7819-Z; CS Docket No. 97-80**

Dear Ms. Dortch:

On behalf of Alabama Broadband, L.L.C. ("Alabama Broadband"), we enclose an original and four copies of Alabama Broadband's Reply to the Consumer Electronics Association's Opposition to Petition for Reconsideration. Alabama Broadband's Reply is also being filed electronically in CS Docket No. 97-80.

Please contact the undersigned should you have any questions.

Sincerely,



Jeremy M. Kissel

Enclosures

cc: Monica Desai (via email: [Monica.Desai@fcc.gov](mailto:Monica.Desai@fcc.gov))  
Nancy Murphy (via email: [Nancy.Murphy@fcc.gov](mailto:Nancy.Murphy@fcc.gov))  
Steven Broecker (via email: [Steven.Broeckaert@fcc.gov](mailto:Steven.Broeckaert@fcc.gov))  
Brendan Murray (via email: [Brendan.Murray@fcc.gov](mailto:Brendan.Murray@fcc.gov))  
Tom Early  
Vickie Davis

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

FILED/ACCEPTED  
FEB 18 2009  
Federal Communications Commission  
Office of the Secretary

In the Matter of: )  
)  
Alabama Broadband, L.L.C. )  
) CSR-7819-Z  
Petition for a Limited Waiver of 47 C.F.R. )  
§ 76.1204(a)(1) ) CS Docket No. 97-80  
)  
To: Chief, Media Bureau )  
)

REPLY

I. Introduction

Alabama Broadband, L.L.C. ("Alabama Broadband") submits this Reply to the Consumer Electronics Association's ("CEA") Opposition<sup>1</sup> to Alabama Broadband's Petition for Reconsideration<sup>2</sup> in this matter.<sup>3</sup> Specifically:

- Alabama Broadband's financial position is good cause to grant a short, six-month extension
- Consumers will benefit from an extension of Alabama Broadband's waiver;
- Alabama Broadband can commit to launching advanced services if the Commission grants its extension request;
- Granting a six month limited waiver extension to Alabama Broadband will have no effect on DTV transition supply problems.

We explain more fully below.

<sup>1</sup> *In the Matter of Alabama Broadband, L.L.C., Petition for Limited Waiver of 47 C.F.R. § 76.1204(a)(1), Opposition of the Consumer Electronics Association to Alabama Broadband, L.L.C. Petition for Reconsideration, CSR-7819-Z (filed Jan. 27, 2009) ("Opposition").*

<sup>2</sup> *In the Matter of Alabama Broadband, L.L.C., Petition for Reconsideration and Report of Compliance Plan, CSR-7819-Z (filed Dec. 15, 2008) ("Petition for Reconsideration").*

<sup>3</sup> *In the Matter of Alabama Broadband, LLC, et al., Memorandum Opinion and Order, CSR-7819-Z, 2008 WL 4899053 (rel. Nov. 14, 2008) ("Order").*

**II. Alabama Broadband's financial position is sufficient cause to grant a short, six-month extension.**

CEA's argument that complying with the Integration Ban is not a business priority for Alabama Broadband is wholly inaccurate and ignores facts clearly established in the record.<sup>4</sup> Financial necessity has forced Alabama Broadband to file a *Petition for Reconsideration* seeking a waiver of the Integration Ban<sup>5</sup> until July 31, 2009.<sup>6</sup> As the Commission noted in its *Order*, Alabama Broadband faces "**extraordinary** financial hardship...."<sup>7</sup> Moreover, since the release of the *Order*, Alabama Broadband's financial situation has not improved, and, in many respects, has deteriorated.<sup>8</sup>

Alabama Broadband operates five financially-troubled cable systems serving seven rural counties in Alabama. As stated in its original waiver request, Alabama Broadband acquired these cable systems in January 2007 in a bankruptcy sale.<sup>9</sup> Since then, Alabama Broadband has experienced extraordinary financial difficulties in upgrading its financially-troubled rural cable systems to provide digital services. The factors that contribute to Alabama Broadband's continued financial difficulty include,

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<sup>4</sup> *Opposition* at 2.

<sup>5</sup> 47 C.F.R. § 76.1204(a)(1).

<sup>6</sup> *Petition for Reconsideration* at 3.

<sup>7</sup> *Order*, ¶ 6 (emphasis added).

<sup>8</sup> To illustrate Alabama Broadband's continued financial difficulty, Alabama Broadband will provide the Commission with updated financial information within fourteen (14) business days of the filing of this Reply.

<sup>9</sup> *In the Matter of Alabama Broadband, L.L.C.*, Petition for Limited Waiver of 47 C.F.R. § 76.1204(a)(1), at 1 (filed Mar. 14, 2008) ("*Waiver Request*") (The systems were formally owned by Southern Cable Services, LLC, which filed for bankruptcy on July 11, 2006. See *In Re: Southern Cable Services, LLC, Debtor*, Bankruptcy Court for the Northern District of Alabama, Southern Division, Bankruptcy Case No. 06-02407-11. On information and belief, Southern Cable Services, LLC itself acquired the systems out of bankruptcy in 2003 from Mallard Cablevision, LLC.).

among others, very high retransmission consent costs, lack of gains in the number of video subscribers due to fierce DBS competition, and the continued high cost of video programming. Moreover, due to significant capital requirements for equipment, it is particularly challenging to offer new technologies such as VOD (Video on Demand), high-definition (HD) programming, and additional video channels. Therefore, there is good cause for an extension of Alabama Broadband's waiver.

**III. Consumers will benefit from an extension of Alabama Broadband's waiver.**

CEA argues that Alabama Broadband has presented no consumer benefit grounds for granting its *Petition for Reconsideration*.<sup>10</sup> This claim does not withstand even superficial scrutiny.

In addition to the consumer benefits noted in its *Petition for Reconsideration* (detailed below), many of Alabama Broadband's rural customers rely on Alabama Broadband for their video programming and other services. Should Alabama Broadband succumb to the extraordinary financial difficulties that it currently faces, many of its customers would not be able to obtain video programming services in a competitive marketplace. Some of them may also not be able to obtain broadband Internet access because such services are not otherwise available in certain portions of rural Alabama that are currently served by Alabama Broadband. As detailed in Alabama Broadband's waiver request, the public interest in the deployment of advanced services to rural markets is well-established.<sup>11</sup> Therefore, an extension of Alabama Broadband's waiver would provide substantial consumer benefits.

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<sup>10</sup> *Opposition* at 3.

<sup>11</sup> *Waiver Request* at 7, citing, *In the Matter of Colo Telephone Company, et al., Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation*

**IV. Alabama Broadband can commit to launching advanced services if the Commission grants its extension request.**

In order to address and alleviate CEA's concerns about Alabama Broadband's commitment to launching advanced services in the next five months,<sup>12</sup> Alabama Broadband can commit to rolling out Voice over Internet Protocol ("VoIP") service and broadband Internet access services to its customers, provided the Commission grants it a waiver extension until July 31, 2009.<sup>13</sup>

**V. Granting Alabama Broadband a limited waiver extension until July 31, 2009 will have no effect on DTV transition supply problems.**

CEA argues that additional waivers of the common reliance rule will perpetuate problems related to the available supply of compliant set-top boxes.<sup>14</sup> CEA also argues that the supply problems for compliant set-top boxes could have been prevented by the earlier adoption of the common reliance rule.<sup>15</sup> Earlier adoption of the common reliance rule was impossible for Alabama Broadband given that it acquired its cable systems in a bankruptcy sale. As with most new business ventures, the cable systems did not have the benefit of a revenue stream. As a result, financial hardship was, and continues to be, the basis for Alabama Broadband's waiver requests. Moreover, granting a six

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*Devices*, Memorandum Opinion and Order, 22 FCC Rcd. 13,428, ¶ 14 (2007); *In the Matter of Consolidated Requests for Waiver of Section 76.1204(a)(1) of the Commission's Rules, Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices*, Memorandum Opinion and Order, 22 FCC Rcd. 11780, ¶ 59 (2007).

<sup>12</sup> *Opposition* at 3.

<sup>13</sup> See Sworn Declaration of Tom Early, Vice President of Operations, Alabama Broadband, attached hereto as *Exhibit 1*.

<sup>14</sup> *Opposition* at 4.

<sup>15</sup> *Id.* at 3.

month limited waiver extension to a struggling small cable operator in rural Alabama will not affect the supply issues and the "navigation device duopoly" that CEA describes.<sup>16</sup>

**VI. Conclusion**

For the reasons set forth in Alabama Broadband's *Petition for Reconsideration*, as well as herein, Alabama Broadband respectfully requests that the Commission grant Alabama Broadband a limited waiver of 47 C.F.R. § 76.1204(a)(1) until July 31, 2009.

Respectfully submitted,

By: 

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Attorneys for Alabama Broadband, L.L.C.

February 6, 2009

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<sup>16</sup> *Id.* at 4.

**EXHIBIT 1**

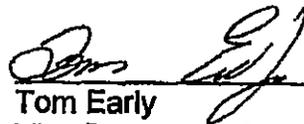
**Sworn Declaration of Tom Early**

**Vice President of Operations, Alabama Broadband, L.L.C.**

**SWORN DECLARATION OF TOM EARLY**

I, Tom Early, make this affidavit based upon personal knowledge, and can testify if necessary as to the truth of the matters asserted herein:

1. I have been employed by Alabama Broadband, L.L.C. ("Alabama Broadband") as the Vice President of Operations since January 16, 2007. In my capacity as Vice President, I am responsible for all aspects of the daily operations and profitability of the Alabama Broadband cable systems. I have read the foregoing Reply to the Consumer Electronics Association's Opposition to Alabama Broadband's Petition for Reconsideration, and attest that the facts stated therein are true and correct to the best of my knowledge, information, and belief. I also attest that I am authorized to give this Sworn Declaration on behalf of Alabama Broadband.
2. If the foregoing Petition for Reconsideration is granted, Alabama Broadband will commit to deploying both Voice over Internet Protocol (VoIP) and Broadband Internet services to its customers July 31, 2009



Tom Early  
Vice President of Operations

Alabama Broadband, L.L.C.

Subscribed and sworn to before me this 6 day of February, 2009.



Notary Public

My Commission Expires  
May 12, 2010



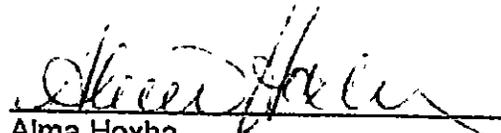
CERTIFICATE OF SERVICE

I do hereby certify that on February 6, 2009, I caused a true and correct copy of the foregoing Reply to the Opposition of the Consumer Electronics Association to Broadstripe, L.L.C.'s Petition for Reconsideration Petition for Reconsideration to be served via first-class mail on the following:

Of counsel

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