

**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)	)	

**REPORT OF UPDATED FINANCIAL INFORMATION**

In its Memorandum Opinion and Order issued in this proceeding on July 23, 2007 (the “*Waiver Order*”), the Commission granted a limited waiver from the integration ban to James Cable, LLC for a period of one year, based upon James Cable’s “demonstrated dire financial straits.”<sup>1</sup> The *Waiver Order* further directed that if James Cable believes “that, as a result of continuing, non-speculative financial difficulties, extensions of the waiver beyond this initial one-year period are warranted, [it] may submit updated financial and other information for our consideration.”<sup>2</sup> In April 2008, James Cable accordingly submitted updated 2007 financial information showing continued financial distress, including another year of negative free cash flow. Based upon that information, the Commission extended the waiver for another year.<sup>3</sup>

In granting the waiver and similar waivers to other operators, the Bureau attached particular importance to a showing of negative free cash flow.<sup>4</sup> Cash flow is critical to enable an operator to make the necessary investments to deliver next-generation broadband, HD, VOD,

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<sup>1</sup> *James Cable, LLC's Request for Waiver of 47 C.F.R. § 76.1204(a)(1)*, CSR-7216-Z, Memorandum Opinion and Order, DA 07-3316, ¶ 39 (rel. July 23, 2007) (“*Waiver Order*”).

<sup>2</sup> *Id.*, ¶ 40.

<sup>3</sup> The waiver was initially extended only for a portion of the year, and then on reconsideration the full year was granted. *James Cable, LLC's Request for Waiver of 47 C.F.R. § 76.1204(a)(1)*, CSR-7216-Z, Memorandum Opinion and Order, DA 08-1632 (rel. July 10, 2008); *James Cable, LLC's Request for Waiver of 47 C.F.R. § 76.1204(a)(1)*, CSR-7216-Z, Memorandum Opinion and Order and Order on Reconsideration, DA 09-469 (rel. Feb. 25, 2009).

<sup>4</sup> *Waiver Order* at ¶ 39.

and other advanced services. The Bureau previously found that James Cable's negative free cash flow of [REDACTED] to warrant an extension of its waiver. In 2008, James' Cable's free cash flow deteriorated significantly as a result of flat revenues and increased expenses. The attached audited financial statements show that James Cable's negative free cash flow [REDACTED].<sup>5</sup> This unfortunate result occurred was despite the fact that James Cable reduced its capital expenses from 2007, foregoing additional investment in upgraded Internet, video and telephone services.

James Cable's systems still need substantial capital investment to be able to offer Video on Demand (VOD), competitive telephone services, faster broadband, and other services. But if James Cable loses its waiver for the second half of 2009, its costs for new set-top boxes would increase sharply, depriving it of its already too-limited dollars available for the investments that must be made to remain competitive with DBS and to deliver to consumers all of the services they want. The public interest therefore would be best served by an extension of James Cable's limited waiver for at least one additional year, through July 2010.

In the prior extension, the Bureau stated that "While we recognize petitioner's financial distress, we believe that we must begin to chart a course to bring it into compliance with the integration ban. Therefore, we will work with Petitioner, CEA, and set-top box manufacturers over the coming months to explore ways to bring these systems into compliance, consistent with their financial condition."<sup>6</sup> James Cable is willing to cooperate in any way that the Commission believes would be constructive. At the same time, it should be emphasized that James Cable *already* complies with the integration ban with respect to its HD and DVR devices. Even with its waiver, James Cable has deployed far more CableCARDS in its own devices than it has

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<sup>5</sup> See Confidential Exhibit 1 (summarizing and attaching audited financial statements). [EXHIBIT REDACTED]

<sup>6</sup> Waiver Extension Order, fn. 28.

received requests for CableCARDS for retail devices. The Commission has never held that “common reliance” requires that all of an operator’s devices use CableCARDS; even operators without any waivers continue to use millions of legacy, used boxes, and James Cable’s waiver simply allows it to use a few more. There is no evidence in the record that James Cable’s use of these few additional, limited-function integrated devices has caused it to provide inferior support for retail devices than those operators that do not have such a waiver. James Cable therefore already has sufficient common reliance on CableCARDS, and there would be no incremental public interest benefit from denial of the requested limited extension of the existing waiver.

### **CONCLUSION**

For the foregoing reasons, James Cable respectfully requests that the Commission extend the duration of James Cable’s waiver for at least one additional year.

Respectfully submitted,



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