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."[1] 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."[2] 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.[3] The same process and extension occurred again in 2009.[4]

In granting the waiver and similar waivers to other operators, the Bureau attached particular importance to a showing of negative free cash flow.[5] Cash flow is critical to enable an operator to make the necessary investments to deliver next-generation broadband, HD, VOD,

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[1] *James Cable, LLC's Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, CSR-7216-Z, Memorandum Opinion and Order, DA 07-3316, ¶ 39 (rel. July 23, 2007) ("*Waiver Order*").

[2] *Id*. at ¶ 40.

[3] *James Cable, LLC's Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, CSR-7216-Z, Memorandum Opinion and Order and Order on Reconsideration, DA 09-469 (rel. Feb. 25, 2009).

[4] *James Cable, LLC's Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, CSR-7216-Z, Memorandum Opinion and Order, DA 09-1571 (rel. July 21, 2009) ("*July 2009 Waiver Extension Order*").

[5] *Waiver Order* at ¶ 39.

and other advanced services. The Bureau previously found James Cable's negative free cash flow of **[REDACTED]** to warrant an extension of its waiver. The attached audited financial statements show that James Cable's free cash flow in 2009 was again much worse than it had been in 2007, **[REDACTED]**.[6] This unfortunate result occurred even though James Cable reduced its capital expenses from 2008, foregoing additional needed investment in upgraded Internet, video and telephone services.

The continuation of negative free cash flow occurred, among other reasons, due to the continuing high capital cost of non-integrated HD and DVR set-top boxes that are not covered by James Cable's existing waiver. An ever increasing percentage of consumers desire HD and/or DVR functionality, despite the fact that James Cable has not marketed these services as aggressively due to the exclusion of the higher-cost set-top boxes from its waiver. In 2009, CableCARD devices represented the significant majority of its set-top box expenditures.

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. 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 2011. But in light of the foregoing continued financial shortfalls caused by the cost of HD/DVRs, the Bureau should also modify the waiver to include the same relief recently provided to Baja Broadband,[7] with a permanent[8] conditional waiver for previously-used, refurbished integrated devices. James Cable would be willing to file a declaration committing to the same conditions imposed on Baja: that it would only purchase

[6] *See* Confidential Exhibit 1 (summarizing and attaching audited financial statements). [EXHIBIT REDACTED]

[7] *See Baja Broadband Operating Company, LLC's Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, CSR-7111-Z, Memorandum Opinion and Order, DA 10-373 (rel. Mar. 4, 2010) ("*Baja Broadband Waiver Order*").

[8] As the Commission noted in the *Baja Broadband Waiver Order*, no expiration date would be necessary for waivers for refurbished devices because "the availability of refurbished, integrated set-top boxes will diminish over time and, in the future, more of the refurbished boxes will be compliant devices." *Id.* at ¶ 14.

refurbished set-top devices from companies that also commit to sell identical devices directly to James Cable subscribers, and that it would notify all of its subscribers of the opportunity to purchase such previously-used devices from the refurbishing company within 30 days of the devices becoming commercially available.[9]

The Bureau found that such a waiver for refurbished devices would benefit the public interest because it would provide Baja's subscribers with another retail option for navigation devices. In addition, because refurbished set-top boxes are far less expensive than new devices, this option would enable James Cable to devote additional investment to digital and telephone upgrades and to pass savings on to consumers.

It appears that Baja's waiver for refurbished devices may only apply to HD and DVR devices, and not to standard-definition devices that do not include a DVR. Given the established public interest benefits from allowing the use of low-cost refurbished devices, there is no apparent benefit to excluding such devices from the scope of a refurbished device waiver. While James Cable is simultaneously requesting the extension of its waiver to allow it to purchase new such devices, the additional option of even lower-cost refurbished devices should be included in the waiver.

In the July 2009 extension, the Bureau stated that "the Bureau has encouraged the company to take steps to come into compliance with the integration ban, and committed to 'work with Petitioner, [the Consumer Electronics Association], and set-top box manufacturers over the coming months to explore ways to bring these systems into compliance, consistent with their financial condition.'"[10] James Cable is willing to cooperate in any way that the Commission

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[9] *See id.* at ¶ 13.

[10] *July 2009 Waiver Extension Order* at ¶ 4 (quoting *James Cable, LLC's Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, CSR-7216-Z, Memorandum Opinion and Order, DA 08-1632 (rel. July 10, 2008) at ¶ 9).

believes would be constructive. At the same time, it should be emphasized that James Cable *already* satisfies the objective of the integration ban through its deployment of more than 2500 CableCARD HD and DVR devices. Even with its waiver, James Cable has deployed far more CableCARDs in its own devices than it has 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 extension and modification of its 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 and grant James Cable a permanent waiver permitting the company to acquire and deploy refurbished set-top boxes.

Respectfully submitted,

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