

February 3, 2012

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: **CSR-8537-Z/CS Docket No. 97-80**
Adams Cable Equipment, Inc. Request for Waiver of the Integration Ban

Dear Ms. Dortch:

On February 2, 2012, I spoke with Michelle Carey, Nancy Murphy, Brendan Murray, and Steven Broeckaert of the Media Bureau on behalf of Adams Cable Equipment, Inc. (“ACE”) to respond to the January 30, 2012 *ex parte* letter filed in this proceeding by the Consumer Electronics Association (“CEA”).

ACE appreciates the interest that CEA’s members have in supporting the devices they develop for consumers. However, CEA’s letter reflects a misunderstanding of the public interest basis for ACE’s requested waiver. CEA complains that ACE is seeking a waiver without making a showing of “financial hardship” as Baja Broadband had done. But the Commission’s purpose in granting ACE’s request would be to help consumers by giving them a new retail option, not to relieve ACE from financial hardship. ACE’s finances and the finances of any participating cable operators are irrelevant to the equation of whether consumers would benefit from the first-ever retail availability of low-cost set-top boxes. The retail availability of such devices was surely Congress’ original intent for Section 629, yet CEA’s members have never offered such devices to the public. The Commission should not let CEA now stand in the way of the creation of that market.

For the same reason, CEA misses the mark in appearing to suggest that any waiver applied to ACE’s devices should be limited to those currently in its inventory. While ACE suspects that its current inventory of approximately 50,000 integrated devices would be sufficient to cover demand for some time,¹ if ACE had the opportunity to acquire and sell more devices, that would represent a policy success for the Commission, not a threat or a failure.

¹ CEA asks the Bureau to require a representation regarding ACE’s existing inventory. ACE already reported its inventory of approximately 50,000 devices in its waiver request, at page 3.

In any event, ACE's waiver could not possibly undermine common reliance on CableCARDS at this point four and a half years after the integration ban became effective, no matter how many additional refurbished integrated devices are put into service. NCTA has reported that cable operators have deployed more than 32 million CableCARD set-top boxes, all in the name of assuring their support for a dwindling base of approximately half a million retail devices.²

CEA concludes that its "position with respect to the Adams Cable waiver request ... is as stated in CEA's unsuccessful opposition to the Baja petition, as filed in Docket 97-80 on Aug. 20, 2009" – a two-year old brief comment regarding an entirely different type of waiver request. CEA's prior comment charged that Baja's request was "audacious" and "frivolous," but the Bureau instead found that "Baja soundly refuted CEA's assertion that" [CEA-member's retail devices] are available at a price point that is competitive with refurbished devices."³ Since CEA's arguments were deemed insufficient to deny the waiver request that it actually addressed, surely those same arguments are also insufficient to deny ACE's request. CEA offers nothing new to refute the Bureau's prior conclusions, and nothing to demonstrate how the retail market or other Commission objectives have in fact been compromised by the Bureau's grant of Baja's waiver. CEA has presented no evidence that Baja's waiver has resulted in lesser support by Baja for retail CableCARD devices or in the purchase of fewer retail devices by Baja's customers.

CEA and others have opposed prior waivers presumably out of concern that such waivers could undermine consumers' access to and use of retail devices. In this case, however, even if a consumer elects not to purchase a CEA member's retail device as a result of this waiver, it will be because that consumer instead decided to purchase a different retail device from ACE. The customer's exercise of such an option would not undermine Section 629; on the contrary, the consumer's ability to choose would reflect the retail market that Congress had hoped to create.

ACE has not suggested that its waiver is the answer for everything the Commission is seeking with regard to set-top boxes. But it would do something in a matter of weeks that no CEA member has done – make low-cost set-top boxes available at retail to consumers who have never been able to purchase them before. Sixteen years after Section 629 was adopted, the Commission should seize that previously elusive practical opportunity without further delay.

Respectfully submitted,



Paul B. Hudson
Counsel for Adams Cable Equipment, Inc.

² See Letter from Neal M. Goldberg, Vice President and General Counsel, National Cable & Telecommunications Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, CS Docket No. 97-80 (Jan. 30, 2012).

³ *Baja Waiver Order*, para. 13.