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November 30, 2006

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: CSR-7057-Z; CS Docket No. 97-80

Dear Ms. Dortch:

I am writing on behalf of the National Cable & Telecommunications Association in support of the "Request for Waiver" filed by Bend Cable Communications LLC d/b/a BendBroadband on October 4, 2006 ("BendBroadband Request").¹ In that request, BendBroadband seeks a limited waiver of the Commission rule prohibiting certain multichannel video programming distributors ("MVPDs") from offering navigation devices (*e.g.*, set-top boxes) that perform both conditional access and other functions in the same integrated device ("the integration ban").² BendBroadband requests a waiver of that rule so that it may deploy the Motorola DCT-700 low-cost set-top box after July 1, 2007, when the rule is scheduled to become effective. For the reasons stated below and in the BendBroadband Request, the Commission should expeditiously grant the BendBroadband Request and confirm that the waiver applies to other MVPDs to the extent they deploy the same set-top box for which waiver was sought in the BendBroadband Request.

NCTA is the principal trade association representing the cable television industry in the United States. Its members include cable operators serving more than 90% of the nation's cable television subscribers, as well as more than 200 cable programming networks. NCTA's members also include suppliers of equipment and services to the cable industry.

¹ See Public Notice, *Request For Waiver of 47 C.F.R. § 79.1204(a)(1) Filed with the Commission*, DA 06-2258, CSR-7057-Z; CS Docket No. 97-80, October 31, 2006 (setting November 30, 2006, as the date for filing comments on the BendBroadband Request).

² 47 C.F.R. § 76.1204(a)(1).

The BendBroadband Request, like similar requests filed by Comcast and Charter is exactly the type of request that the Commission has repeatedly said it would entertain and view “favorably.”³ The device for which BendBroadband seeks waiver does not have “advanced” capabilities such as high-definition outputs, multiple tuners, digital video recorder (DVR) recording or storage, or broadband Internet access.⁴

In its request, BendBroadband demonstrates that (1) low-cost set-top boxes are critical to its moving to an all-digital network and bringing the full benefit of digital television to consumers;⁵ (2) grant of its waiver request will not undermine the Commission’s objectives in adopting the integration ban,⁶ and (3) it is no longer reasonable for the Commission to prohibit BendBroadband (or other operators) from leasing low-cost integrated set-top boxes while allowing DBS to do so.⁷

Denial of BendBroadband’s waiver request would slow rather than speed its transition to digital. All customers must have a set-top box or a CableCARD before a cable system can be converted to all-digital. Applying the integration ban to even the lowest-cost devices would greatly increase the cost of the equipment needed to go all-digital and discourage customers from accepting the additional equipment. This in turn would impair the ability of the cable operator to convert systems to digital.

Implementation of the integration ban would also drain financial and technical resources away from cable operators at the very time they are attempting to invest such resources in the digital transition. This impact will be greatest on operators with limited financial liquidity, and/or operators with small systems, where the per capita cost of transitioning to digital is greatest.

These very factors are among those that led the Commission to conclude that it would consider the type of waiver now requested by BendBroadband. As the Commission explained:

[A]chieving consumer choice by establishing a competitive market should not displace a low-cost set-top box option for MVPD subscribers. It is critical to the DTV transition that consumers have access to inexpensive digital set-top boxes that will permit the viewing of digital programming on analog television sets both during and after the transition. The availability of low-cost boxes will further the cable industry’s migration to all-digital networks, thereby freeing up spectrum and increasing service offerings such as high-definition television. Accordingly,

³ *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, Second Report & Order, 20 FCC Rcd. 6794, 6813-14 (2005) (“*Second Report and Order*”).

⁴ *Second Report and Order*, 20 FCC Rcd. at 6814.

⁵ BendBroadband Request at 5-11.

⁶ *Id.* at 11-13.

⁷ *Id.* at 13-18

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as cable systems migrate to all-digital networks, we will also consider whether low-cost, limited capability boxes should be subject to the integration ban or whether cable operators should be permitted to offer such low-cost, limited capability boxes on an integrated basis.⁸

Given the statutory directive that any “waiver shall be effective for *all service providers* and products in that category *and* for all providers of services and products,”⁹ the Commission should acknowledge that any waiver granted in this proceeding is effective for any other MVPD to the extent it deploys the DCT-700 set-top box.

For the reasons stated above and in the BendBroadband Request, NCTA respectfully requests that the Commission expeditiously grant the waiver requested by BendBroadband and confirm that any such waiver is effective for other devices and MVPDs as the statute directs.

Respectfully submitted,

/s/ Neal M. Goldberg

Neal M. Goldberg

cc: Donna Gregg, Chief, Media Bureau
Andrew Long
Rick Chessen
Brendan Murray

⁸ *Id.* at 6813-14.

⁹ 47 U.S.C. § 549(c) (emphasis added).

Certificate of Service

I do hereby certify that on November 30, 2006, I caused a true and correct copy of the foregoing to be served via US Mail, First Class postage paid and email, on the following:

Amy C. Tykeson
President and CEO
Bend Cable Communications, LLC
d/b/a BendBroadband
63090 Sherman Road
Bend, OR 97701

/s/ Neal M. Goldberg

Neal M. Goldberg