



# PUBLIC NOTICE

Federal Communications Commission  
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DA 06-2258

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## MEDIA BUREAU ACTION

### REQUEST FOR WAIVER OF 47 C.F.R. § 76.1204(a)(1) FILED WITH THE COMMISSION

CSR-7057-Z/CS Docket No. 97-80

**Comment Date: November 30, 2006**

**Reply Comment Date: December 11, 2006**

Bend Cable Communications, LLC d/b/a BendBroadband (“BendBroadband” or “Petitioner”) has filed a request pursuant to Section 629(c) of the Communications Act of 1934, as amended,<sup>1</sup> Section 706 of the Telecommunications Act of 1996,<sup>2</sup> and Sections 1.3, 76.7, and 76.1207 of the Commission’s rules,<sup>3</sup> for waiver of the prohibition set forth in Section 76.1204(a)(1) of the Commission’s rules on offering navigation devices that perform both conditional access and other functions with respect to the Motorola DCT-700 set-top box (the “DCT-700”).<sup>4</sup> BendBroadband asserts that its Waiver Request is limited in scope to the type of device the Commission identified in the *2005 Integration Prohibition Order* (i.e., a low-cost, limited-capability set-top box) and that grant of the Waiver Request would not undermine the goal of a competitive navigation device market.<sup>5</sup> BendBroadband claims that grant of the Waiver Request is critical because BendBroadband, as a small cable operator, does not have enough market power to affect set-top box manufacturers’ decisions to build low-end devices,<sup>6</sup> and low-end digital set-top boxes like the DCT-700 are vital to its plan to move to an all-digital network by 2008.<sup>7</sup> According to BendBroadband, grant of the Waiver Request would serve the public interest by allowing it to focus its capital on additional digital services “such as [high-definition and video-on-demand] content, wireless,

<sup>1</sup> 47 U.S.C. § 549(c).

<sup>2</sup> 706(a) of the Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (1996) (1996 Act), reproduced in the notes under 47 U.S.C. § 157.

<sup>3</sup> 47 C.F.R. §§ 1.3, 76.7, 76.1207.

<sup>4</sup> See BendBroadband’s Request for Waiver of 47 C.F.R. § 76.1204(a)(1) (filed Oct. 4, 2006) (“Waiver Request”).

<sup>5</sup> Waiver Request at 11-13.

<sup>6</sup> *Id.* at 3-4.

<sup>7</sup> *Id.* at 5-11. BendBroadband claims that it would be willing to withdraw the Waiver Request if a consumer electronics vendor offered a compliant set-top box with features similar to the DCT-700 at a comparable price by July 1, 2007. *Id.* at 9.

business services, and other advanced services.”<sup>8</sup> Finally, BendBroadband argues that direct broadcast satellite (“DBS”) providers DirecTV and Echostar have changed their policies to remove competition from the DBS navigation device market.<sup>9</sup> Accordingly, BendBroadband asks the Commission to grant the Waiver Request in the interest of regulatory parity or, alternatively, to defer for three years the prohibition set forth in Section 76.1204(a)(1) of the Commission’s rules for all multichannel video programming distributors (including DBS providers).<sup>10</sup> We seek comment on BendBroadband’s request.

This proceeding will be treated as “permit but disclose” for purposes of the Commission’s *ex parte* rules.<sup>11</sup> As a result of the permit-but-disclose status of this proceeding, *ex parte* presentations will be governed by the procedures set forth in Section 1.1206 of the Commission’s rules applicable to non-restricted proceedings.<sup>12</sup>

Comments and oppositions are due November 30, 2006. All filings should refer to the case identifier, CSR 7057-Z, and CS Docket No. 97-80 and must be submitted in CS Docket No. 97-80. Pleadings sent via e-mail to the Commission will be considered informal and will not be part of the official record. Comments and oppositions filed must indicate that they have been served on Petitioner. All comments and oppositions must be served on Petitioner:

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

Petitioner’s reply is due December 11, 2006.

Comments may be filed using: (1) the Commission’s Electronic Comment Filing System (ECFS), (2) the Federal Government’s eRulemaking Portal, or (3) by filing paper copies.<sup>13</sup>

Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.

For ECFS filers, in completing the transmittal screen, filers should include their full name, U.S. Postal service mailing address, and the applicable docket number: CS Docket No. 97-80. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and include the following words in the body of the message: “get form”. A sample form and instructions will be sent in response.

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<sup>8</sup> *Id.* at 10.

<sup>9</sup> *Id.* at 12-13.

<sup>10</sup> *Id.* at 18.

<sup>11</sup> See 47 C.F.R. §§ 1.1200-1.1216.

<sup>12</sup> 47 C.F.R. § 1.1206.

<sup>13</sup> See *Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-113, Report and Order, 13 FCC Rcd 11322, 11326, para. 8 (April 6, 1998).

Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE, Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.

Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12<sup>th</sup> Street, SW, Washington, D.C. 20554.

One copy of each pleading must be sent to Brendan Murray, Media Bureau, Room 4-C841, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554 or [Brendan.Murray@fcc.gov](mailto:Brendan.Murray@fcc.gov).

Copies of the Waiver Request and any subsequently filed documents in this matter are also available for inspection in the Commission's Reference Information Center:

445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554  
(202) 418-7092

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For further information, contact Brendan Murray of the Media Bureau, (202) 418-1573. Press inquiries should be directed to Rebecca Fisher of the Media Bureau, (202) 418-2359. TTY: (202) 418-7172 or (888) 835-5322.

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