

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

|                                                |   |                     |
|------------------------------------------------|---|---------------------|
| In the Matter of                               | ) |                     |
|                                                | ) |                     |
| Baja Broadband Operating Company, LLC          | ) | CSR-8537-Z          |
| (f/k/a Orange Broadband Operating Company,     | ) |                     |
| LLC and Carolina Broadband, LLC)               | ) |                     |
|                                                | ) |                     |
| Request for Waiver of Section 76.1204(a)(1) of | ) |                     |
| the Commission's Rules                         | ) |                     |
|                                                | ) |                     |
| Implementation of Section 304 of the           | ) | CS Docket No. 97-80 |
| Telecommunications Act of 1996                 | ) |                     |
|                                                | ) |                     |

**MEMORANDUM OPINION AND ORDER**

**Adopted: June 7, 2012**

**Released: June 7, 2012**

By the Chief, Media Bureau:

**I. INTRODUCTION**

1. In this Order, we grant Baja Broadband Operating Company, LLC (“Baja”) a limited, conditional extension of a waiver of the ban on deploying set-top boxes with integrated security as set forth in Section 76.1204(a)(1) of the Commission’s rules.<sup>1</sup> Baja has demonstrated extraordinary financial hardship and indicates that it is unable to obtain one-way set-top boxes without recording capability (commonly referred to as digital transport adapters or “DTAs”), which are not subject to the integration ban.<sup>2</sup> Therefore, we grant Baja’s request subject to the following conditions: (i) Baja must place an order for DTAs; (ii) Baja may only order and deploy new integrated set-top boxes until it receives delivery of the DTAs; (iii) Baja must notify the Commission once it receives delivery of the DTAs; and (iv) Baja must submit to the Commission a sworn affidavit agreeing to these conditions with documentation that demonstrates it will comply with them.<sup>3</sup>

<sup>1</sup> 47 C.F.R. § 76.1204(a)(1). The separation of the security element from the basic navigation device required by this rule is referred to as the “integration ban.”

<sup>2</sup> 47 C.F.R. § 76.1204(a)(2)(i). The integration ban does not apply to one-way navigation devices without recording functionality.

<sup>3</sup> As we explain below, these conditions are similar to those we imposed on Baja when the Bureau deferred its enforcement of the integration ban with respect to Baja in 2007. *See Baja Broadband Operating Company, LLC (f/k/a Orange Broadband Operating Company, LLC) and Carolina Broadband, LLC Request for Waiver of Section 76.1204(a)(1) of the Commission’s Rules*, 22 FCC Rcd 17489 (MB 2007) (“*Baja Deferral Order*”); *see also GCI Cable, Inc. Request for Waiver of Section 76.1204(a)(1) of the Commission’s Rules*, 22 FCC Rcd 8576, 8582-3, ¶ 18 (MB 2007).

## II. BACKGROUND

2. Congress directed the Commission to adopt regulations to assure the commercial availability of navigation devices such as set-top boxes as part of the Telecommunications Act of 1996.<sup>4</sup> The Commission implemented this directive in 1998 through the adoption of the integration ban, which ultimately established July 1, 2007 as the date after which cable operators were prohibited from placing into service any new navigation device that performed both conditional access and other functions.<sup>5</sup> The purpose of the integration ban is to assure reliance by both cable operators and consumer electronics manufacturers on a common, separated security solution.<sup>6</sup> This “common reliance” is necessary to achieve the broader goal of Section 629 – *i.e.*, to allow consumers the option of purchasing navigation devices from sources other than their MVPD.<sup>7</sup> In March of 2010, the National Broadband Plan recommended changes in the CableCARD rules to improve the consumer experience.<sup>8</sup> The Commission

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<sup>4</sup> See Section 629(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 549(a) (requiring the FCC “to adopt regulations to assure the commercial availability, to consumers of multichannel video programming and other services offered over multichannel video programming systems, of converter boxes, interactive communications equipment, and other equipment used by consumers to access multichannel video programming and other services offered over multichannel video programming systems, from manufacturers, retailers, and other vendors not affiliated with any multichannel video programming distributor”); *see also* Telecommunications Act of 1996, Pub. L. No. 104-104, § 304, 110 Stat. 56, 125-126 (1996).

<sup>5</sup> See *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, 13 FCC Rcd 14775, 14803, ¶ 69 (1998) (“*First Report and Order*”) (adopting Section 76.1204 of the Commission’s rules, subsection (a)(1) of which (1) required multichannel video programming distributors (“MVPDs”) to make available by July 1, 2000 a security element separate from the basic navigation device (*i.e.*, the CableCARD), and, in its original form, (2) prohibited MVPDs covered by this subsection from “plac[ing] in service new navigation devices ... that perform both conditional access and other functions in a single integrated device” after January 1, 2005); *see also* 47 C.F.R. § 76.1204(a)(1) (1998). In April 2003, in response to a request from cable operators, the Commission extended the effective date of the integration ban until July 1, 2006. *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, 18 FCC Rcd 7924, 7926, ¶ 4 (2003). Then, in 2005, again at the urging of cable operators, the Commission further extended that date until July 1, 2007. *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, 20 FCC Rcd 6794, 6802-03, 6814 ¶¶ 13, 31 (2005) (“*2005 Deferral Order*”).

<sup>6</sup> See *Cablevision Systems Corporation’s Request for Waiver of Section 76.1204(a)(1) of the Commission’s Rules*, 22 FCC Rcd 220, 226, ¶ 19 (2007) (“*Cablevision Order*”) (citing *2005 Deferral Order*, 20 FCC Rcd at 6809, ¶ 30) (explaining why the Commission “require[d] MVPDs and consumer electronics manufacturers to rely upon identical separated security with regard to hardware-based conditional access solutions”).

<sup>7</sup> See S. REP. 104-230, at 181 (1996) (Conf. Rep.). *See also* *Bellsouth Interactive Media Services, LLC*, 19 FCC Rcd 15607, 15608, ¶ 2 (2004). As the Bureau noted, Congress characterized the transition to competition in navigation devices as an important goal, stating that “[c]ompetition in the manufacturing and distribution of consumer devices has always led to innovation, lower prices and higher quality.” *Cablevision Order*, 22 FCC Rcd at 221, ¶ 2. In April 2010, the Commission adopted rules to improve the CableCARD regime and further the goals of Section 629. Specifically, the Commission adopted rules to (1) require cable operators to support the reception of switched digital video services on retail devices; (2) prohibit price discrimination against retail devices; (3) require cable operators to allow self-installation of CableCARDs; (4) require cable operators to provide multi-stream CableCARDs by default; and (5) clarify that CableCARD device certification rules are limited to certain technical features. The Commission also modified its rules to encourage home-networking by simplifying our set-top box output requirements and adopted a rule to promote the cable industry’s transition to all-digital networks by exempting all one-way set-top boxes without recording functionality from the integration ban. *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, 25 FCC Rcd 14657 (2010) (“*Third Report and Order and Order on Reconsideration*”).

<sup>8</sup> See FEDERAL COMMUNICATIONS COMMISSION, CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN 52 (2010).

subsequently modified its rules in October of 2010 and included an exemption to the integration ban for all one-way devices without digital video recording (“DVR”) capability.<sup>9</sup> In limited circumstances, operators may be eligible for waiver of the integration ban.<sup>10</sup>

3. The Bureau first granted Baja a deferral of the integration ban for high-definition (“HD”) and DVR functionality navigation devices in September 2007, but only until such time as Baja could obtain compliant set-top boxes.<sup>11</sup> Since then, the Commission has granted several waivers and extensions of waiver of the integration ban to Baja, including a waiver for all refurbished set-top boxes<sup>12</sup> and a waiver for low-cost, standard definition boxes.<sup>13</sup> On April 7, 2011, the Media Bureau extended the waiver for low-cost standard-definition boxes, but noted that “when the rules adopted in the *Third Report and Order and Order on Reconsideration* become effective, the integration ban will no longer apply to one-way set-top boxes without recording capability, and the financial burden of integration ban compliance will decrease significantly.”<sup>14</sup>

4. On March 9, 2012, Baja filed a Request for Extension of Waiver for low-cost standard definition set-top boxes.<sup>15</sup> Baja asserts that it recently discovered that there is a shortage of DTAs in the market, and that set-top box manufacturers are shipping DTAs only to companies that place orders larger than Baja wishes to place.<sup>16</sup> In addition, Baja reports that its financial position has not improved over the past year.<sup>17</sup> The Consumer Electronics Association filed an *ex parte* letter opposing additional waivers of the integration ban due to DTA shortages as a matter of principle, but no party specifically argued the facts of Baja’s request or filed a formal opposition to Baja’s request under the procedures set forth in Section 76.7(b)(1) of the Commission’s rules.<sup>18</sup>

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<sup>9</sup> *Third Report and Order and Order on Reconsideration*, 25 FCC Rcd at 14680-1, ¶¶ 47-49.

<sup>10</sup> For example, Section 629(c) provides that the Commission shall grant a waiver of its regulations implementing Section 629(a) upon an appropriate showing that such waiver is necessary to assist the development or introduction of new or improved services. 47 U.S.C § 549(c). Furthermore, petitioners who have shown good cause have received waivers of the integration ban pursuant to Sections 1.3 and 76.7 of the Commission’s rules. See *Charter Communications, Inc. Request for Waiver of Section 76.1204(a)(1) of the Commission’s Rules*, 22 FCC Rcd 8557, 8564-5, ¶¶ 18-19 (2007) (“*Charter Waiver Order*”).

<sup>11</sup> *Baja Deferral Order*, 22 FCC Rcd at 17492-5, ¶¶ 6-11.

<sup>12</sup> *Baja Broadband Operating Company, LLC (f/k/a Orange Broadband Operating Company, LLC and Carolina Broadband, LLC)*, 25 FCC Rcd 2200, 2204-2206, ¶¶ 11-14 (MB 2010) (“*2010 Baja Waiver Order*”). This waiver for refurbished integrated devices was permanent subject to certain conditions, including that Baja purchase refurbished integrated devices only from companies that will sell devices directly to Baja’s subscribers. *Id.*

<sup>13</sup> *2010 Baja Waiver Order*, 25 FCC Rcd at 52205, ¶ 12 (MB 2010). The initial waiver for new navigation devices with integrated security based on Baja’s financial hardship was limited to one year, and the Bureau has granted a one-year extension of the waiver based on Baja’s continued financial hardship. *Baja Broadband Operating Company, LLC (f/k/a Orange Broadband Operating Company, LLC and Carolina Broadband, LLC)*, 26 FCC Rcd. 5114 (MB 2011) (“*2011 Extension Order*”).

<sup>14</sup> *2011 Extension Order*, 26 FCC Rcd at 5117, ¶ 8 citing *Third Report and Order and Order on Reconsideration*, 25 FCC Rcd 14657, 14679-14682, 14701 ¶¶ 45-51 (2010) (amending Section 76.1204 of the Commission’s rules).

<sup>15</sup> *Baja Broadband Request for Extension of Waiver*, CS Docket No. 97-80 (filed March 9, 2012) (“*Extension Request*”).

<sup>16</sup> *Id.* at 1-2.

<sup>17</sup> *Id.* at 2, 4.

<sup>18</sup> See Letter from Julie M. Kearney, Vice President, Regulatory Affairs, to Marlene H. Dortch, Secretary, Federal Communications Commission, CS Docket No. 97-90 (filed March 15, 2012); 47 C.F.R. § 76.7(b)(1).

### III. DISCUSSION

5. Based on the lack of DTA boxes available to Baja and Baja's continued financial hardship, we conclude that Baja has demonstrated good cause for a limited, conditional waiver. As we explained in the *2011 Extension Order* and established over five years ago in the *Charter Waiver Order*, the Bureau will grant waiver of the integration ban as appropriate when a petitioner demonstrates that waiver is necessary due to financial hardship.<sup>19</sup> We have also recognized that cable operators' ability to deploy DTAs will decrease set-top box-related costs for cable operators with demonstrated financial hardship to the point that integration ban waivers are no longer necessary.<sup>20</sup> But we did not foresee that there would be a shortage of those boxes when we adopted the *2011 Extension Order*. Specifically, Baja explains that DTAs are being shipped first to the larger cable operators and that DTA manufacturers will not provide a committed delivery date for smaller orders.<sup>21</sup> Accordingly, Baja has had difficulty procuring the equipment that should decrease the financial burden of the integration ban. Because Baja still faces financial hardship,<sup>22</sup> and because, based on the evidence in the record, DTAs are not currently available to Baja, we find good cause to grant Baja a limited, conditional waiver.

6. Baja requests that we "extend the duration of its waiver for at least six months, but preferably for at least one additional year" because DTAs are unavailable.<sup>23</sup> We believe that it makes more sense to tie the duration of Baja's waiver to the ability of Baja to receive DTAs because the delivery date is not certain.<sup>24</sup> Under similar circumstances—when small operators had trouble obtaining compliant set-top boxes as the integration ban went into effect—the Bureau granted Baja a deferral of the integration ban, conditioned upon Baja providing us with evidence that it had purchased compliant devices and was awaiting delivery.<sup>25</sup> We believe that similar conditions are appropriate here. Accordingly, we condition the waiver on the following terms: (i) Baja must place an order for DTAs; (ii) Baja may only order and deploy new integrated set-top boxes until it receives delivery of the DTAs; (iii) Baja must notify the Commission once it receives delivery of the DTAs; and (iv) Baja must submit to the Commission a sworn affidavit agreeing to these conditions with documentation that demonstrates it will comply with them (such as an order form or receipt acknowledging that Baja has made an order for DTAs).<sup>26</sup> This waiver will expire once Baja receives delivery of DTAs.<sup>27</sup>

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<sup>19</sup> *2011 Extension Order*, 26 FCC Rcd at 5116-7, ¶¶ 5-7; *Charter Waiver Order*, 22 FCC Rcd at 8564-5, ¶¶ 18-19.

<sup>20</sup> *2011 Extension Order*, 26 FCC Rcd at 5117, ¶ 8; see also Pace Americas, Inc. Comments, CS Docket No. 97-80, at 2 (filed June 14, 2010) ("DTAs, which are substantially cheaper than CableCARD-enabled devices, are generally provided to customers at little or no cost."); Letter from Jonathan Friedman, Counsel for Comcast Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission, CS Docket No. 97-80 at 2 (October 1, 2010) ("the HD DTA is a low-cost, limited-capability device whose primary purpose is to give customers a no-cost or low-cost way to access linear HD content on their HDTVs"); Motorola Comments, CS Docket No. 97-80, at 14 (filed June 14, 2010) ("DTAs are substantially cheaper than CableCARD-enabled devices that provide more advanced capabilities.").

<sup>21</sup> Extension Request at 2. DTA manufacturers have suggested that delivery will take at least seven months. *Id.*

<sup>22</sup> *Id.* at 2, 4.

<sup>23</sup> *Id.* at 3.

<sup>24</sup> *Id.* at 2 ("Smaller orders such as Baja's for HD DTAs are not being provided with a committed delivery date, but are expected to take longer than seven months.").

<sup>25</sup> *Baja Deferral Order*, 22 FCC Rcd at 17492-5, ¶¶ 6-11.

<sup>26</sup> Baja shall file these documents in the dockets captioned at the top of this Order.

<sup>27</sup> As with the previous financial hardship waivers that we granted Baja, this waiver extends only to non-HD, non-DVR set-top boxes. *2011 Extension Order*, 26 FCC Rcd at 5117, ¶ 7. The waiver for refurbished devices that are

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**IV. CONCLUSION**

7. We conclude that limited, conditional grant of Baja's extension request is justified under Sections 1.3 and 76.7 of the Commission's rules.

**V. ORDERING CLAUSES**

8. Accordingly, **IT IS ORDERED** that, pursuant to Sections 1.3 and 76.7 of the Commission's rules, 47 C.F.R. §§ 1.3, 76.7, the request for waiver of the second sentence of Section 76.1204(a)(1) of the Commission's rules, 47 C.F.R. § 76.1204(a)(1), filed by Baja Broadband Operating Company, LLC, **IS GRANTED** to the extent described above.

9. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules, 47 C.F.R. § 0.283.

FEDERAL COMMUNICATIONS COMMISSION

William T. Lake  
Chief, Media Bureau