

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

In the Matter of:)	
)	
Evolution Broadband, LLC's Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules)	CS Docket No. 97-80
)	
Implementation of Section 304 of the Telecommunications Act of 1996 Commercial Availability of Navigation Devices)	CSR-7902-Z
)	
)	

OPPOSITION TO PETITION FOR RECONSIDERATION



I. Introduction.

ACA opposes the *Petition for Reconsideration*¹ ("*Petition*") filed by Public Knowledge and others² (collectively, "Petitioners"). Petitioners' incorrectly claim that the need for low-cost, limited-capability set-top boxes to facilitate the digital transition has been significantly reduced.³ The vast majority of ACA members continue to operate systems that need to transition channels from analog to digital. Therefore, the

¹ *In the Matter of Evolution Broadband, LLC's Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules, Implementation of Section 304 of the Telecommunications Act of 1996 Commercial Availability of Navigation Devices, CSR-7902-Z, CS Docket No. 97-80 (filed Jun. 29, 2009) ("Petition").*

² See *Petition* at 1 (Petitioners: Public Knowledge, Free Press, Media Access Project, New America Foundation, Open Technology Institute, and U.S. PIRG).

³ *Petition* at 10. Petitioners' concerns about the deployment of CableCARDS to customers are also misplaced. Before the FCC granted Evolution's waiver for a limited functionality set-top box, independent cable operators were deploying set-top boxes with CableCARDS to their customers. Small and medium-sized operators will continue to make CableCard equipment available. See *Petition* at 12-15.

Commission should deny the *Petition* based on the following manifest and compelling public interests:

- Evolution's low-cost, limited-capability set-top boxes will help ACA's members reclaim bandwidth and expedite the deployment of advanced digital services in the smaller and rural markets served by ACA's members; and
- Evolution's low-cost, limited-capability set-top boxes will help ACA's members offer affordable broadband service to consumers.

For these reasons, the Commission should deny the *Petition* and maintain the waiver for its full term.

American Cable Association. Small markets and rural areas across the country receive video, high-speed broadband, and phone service from more than 900 small and medium-sized independent operators represented by ACA.

ACA's membership includes a variety of businesses – family-owned companies serving small towns and villages, multiple system operators serving predominantly rural markets in several states, and hundreds of companies in between. These companies deliver affordable basic and advanced services, such as high definition (“HD”) television, next-generation Internet access, and digital phone, to more than 7 million households and businesses. More than 75 percent of ACA's members serve fewer than 5,000 subscribers. In numerous filings, ACA has shown the critical need for low-cost set-top boxes to be available to small and medium-sized cable operators. Such devices would allow these independent video distributors to upgrade their systems to all-digital platforms and deliver advanced services to their customers, including HD programming choices, and broadband speeds with the potential to approach 100 Mbps.

II. Evolution's low-cost, limited-capability set-top boxes will help ACA's members reclaim bandwidth and expedite the deployment of advanced digital services in the smaller and rural markets served by ACA's members.

For many of ACA's members, turning off the analog signal and reclaiming the bandwidth for digital services hinges on the availability of a low-cost set-top box. Commission approval of a waiver for Evolution's low-cost, limited-capability set-top boxes⁴ finally permits ACA's members to once again start the digital transition process.

These low cost, limited-capability set-top boxes are an important alternative to the otherwise expensive set-top boxes on the market built with functionality unwanted by some consumers, particularly for extra television sets. At \$45-\$55 each, the Evolution boxes are hundreds of dollars less than non-integrated set-top boxes.⁵ By deploying Evolution's low-cost set-top boxes, small and medium-sized cable operators can once again put together viable business models for transitioning to all-digital systems. The benefits for doing so are manifest. Transitioning to an all-digital system allows cable operators to reclaim bandwidth, and provide their customers with more services, including more HD and VOD programming, phone, and increased broadband speeds, particularly in cost-sensitive smaller and rural markets served by ACA members.

As ACA notes above, and has previously noted,⁶ the public interest benefits of this process are manifest and compelling. The Commission must deny the *Petition*.

⁴ *In the Matter of Evolution Broadband, LLC's Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules, Implementation of Section 304 of the Telecommunications Act of 1996 Commercial Availability of Navigation Devices*, Memorandum Opinion and Order, CSR-7902-Z, CS Docket No. 97-80 (rel. June 1, 2009).

⁵ *Id.*, ¶ 11.

⁶ See, e.g. *In the Matter of Cable One, Inc.*, Request for Waiver of 47 C.F.R. § 76.1204(a)(1), CSR-8080-Z, Comments of the American Cable Association (filed Nov. 28, 2008).

III. Evolution's low-cost, limited-capability set-top boxes will help ACA's members offer affordable broadband service to consumers.

The affordability of Evolution's one-way, limited-functionality set-top boxes will increase broadband deployment, especially in cost-sensitive and sparsely populated rural markets served by ACA's members.

With low-cost set-top boxes, small and medium-sized cable operators can (i) free up spectrum for, and (ii) redirect their limited resources toward, broadband deployment. This is especially important for cable systems that want to deploy broadband to smaller market and rural subscribers. In these areas, ACA members face inherent difficulties deploying affordable advanced services. Here, because ACA members serve far fewer homes per mile than larger MVPDs, the cost and burden of upgrading a system is substantially increased. As the Commission recognizes, there are fewer homes per mile of plant in these areas.⁷ More miles of plant, and more pole attachments, are required to bring broadband to each subscriber's home. Consequently, these increased costs often impede the delivery of broadband.

Therefore, the availability of a low-cost set-top box is vitally important. By freeing up spectrum, and redirecting limited resources, small and medium-sized cable can offer broadband services at affordable prices. The Commission must deny the *Petition*.

⁷ See, e.g., *In the Matter of Amendment of Rules and Policies Governing Pole Attachments*, Report and Order, 15 FCC Rcd. 6453, ¶ 118 (2000) ("The Commission has recognized that small systems serve areas that are far less densely populated. . . . A small rural operator might serve half of the homes along a road with only 20 homes per mile, but might need 30 poles to reach those 10 subscribers."); *In the Matter of Caribbean Communications Corp., Petition for Special Relief*, Memorandum Opinion and Order, 17 FCC Rcd. 7092, ¶ 14 (2002) (noting that systems with more than 15,000 subscribers average 68.7 subscribers per mile, while small systems service on average only 35.3 subscribers per mile. More than half of ACA's members' serve fewer than 1,000 subscribers and serve even fewer subscribers per mile).

IV. Conclusion.

The public interest benefits of a low-cost, limited capability set-top box are manifest and compelling. For small and medium-sized operators, low-cost set-top boxes are necessary to transition to all-digital systems and to provide their customers with affordable advanced digital services, especially broadband. Therefore, the Commission must deny the *Petition*.

Respectfully submitted,

By: Ross Lieberman

Matthew M. Polka
President and CEO
American Cable Association
One Parkway Center
Suite 212
Pittsburgh, Pennsylvania 15220
(412) 922-8300

Ross J. Lieberman
Vice President of Government Affairs
American Cable Association
4103 W Street, N.W., Suite 202
Washington, DC 20007
(202) 494-5661

July 9, 2009

CERTIFICATE OF SERVICE

I, Ross Lieberman, Vice President of Government Affairs of the American Cable Association, certify that a true and correct copy the American Cable Association Opposition to the Petition for Reconsideration, served on the following individuals by first class mail on July 9, 2009:

Harold Feld
Legal Director
Public Knowledge
1875 Connecticut Ave, NW
Suite 650
Washington, DC 20009

Chris Egan
Executive Vice President
Evolution Broadband
7347 S. Revere Pkwy, Bldg A
Centennial, CO 80112

Brian Markwalter
Vice President, Technology and Standards
Consumer Electronics Association
1919 S. Eads St.
Arlington, VA 22202

Arthur H. Harding
Attorney for CableOne, Inc.
Fleischman and Harding, LLP
1255 23rd St., N.W.
Eighth Floor
Washington, DC 20037

David J. Curtin
Chief Operating Officer and
Executive Vice President
TVMax Houston, LP
P.O. Box 702807
Dallas, TX 75370-2807

Hance Price
General Counsel
Frankfort Plant Board
317 W. Second Street
P.O. Box 308
Frankfort, KY 40602

Chris Riley
Adam Lynn
Free Press
501 Third Street NW
Suite 875
Washington, DC 20001

Robert S. Schwartz
Mitchell L. Stoltz
Constantine Cannon, LLP
1627 Eye Street, N.W.
10th Floor
Washington, DC 20006

Steve Delgado
Chief Operating Officer
Baja Broadband
1061-521 Corporate Center Dr.
Fort Mill, SC 29707



Ross J. Lieberman
July 9, 2009