

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

|   |   |                     |
|---|---|---------------------|
| In the Matter of                                | ) |                     |
|   | ) |                     |
| Millennium Telcom, LLC d/b/a OneSource          | ) | CSR-7129-Z          |
| Communications                                  | ) |                     |
|   | ) |                     |
| Request for Waiver 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                              | ) |                     |

**MEMORANDUM OPINION AND ORDER**

**Adopted: May 4, 2007**

**Released: May 4, 2007**

By the Chief, Media Bureau:

**I. INTRODUCTION**

1. Millenium Telcom, LLC d/b/a OneSource Communications ("OneSource") has filed with the Chief of the Media Bureau the above-captioned request for a temporary waiver (the "Waiver Request") of the ban on integrated set-top boxes set forth in Section 76.1204(a)(1) of the Commission's rules.<sup>1</sup> Specifically, OneSource seeks a waiver of the integration ban until December 31, 2007, for the Motorola DCT-700 and DCT-3416 integrated digital cable set-top boxes ("DCT-700" and "DCT-3416," respectively), which OneSource argues are critical to its plans to migrate to an all-digital network by December 31, 2007. For the reasons stated below, we conditionally grant OneSource's Waiver Request pursuant to Sections 1.3 and 76.7 of the Commission's rules with respect to deployment of the DCT-700, but deny its request to continue deployment of the DCT-3416.<sup>2</sup>

**II. BACKGROUND**

**A. Section 629 of the Act**

2. Section 629(a) of the Communications Act of 1934, as amended (the "Act"), requires the Commission to:

adopt regulations to assure the commercial availability, to consumers of multichannel video programming and other services offered over multichannel video programming

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

<sup>2</sup> 47 C.F.R. §§ 1.3, 76.7.

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.<sup>3</sup>

Through Section 629, Congress intended to ensure that consumers have the opportunity to purchase navigation devices from sources other than their multichannel video programming distributor (“MVPD”).<sup>4</sup> 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.”<sup>5</sup> At the same time, Congress recognized that MVPDs have “a valid interest, which the Commission should continue to protect, in system or signal security and in preventing theft of service.”<sup>6</sup> Similarly, Congress also sought to avoid Commission actions “which could have the effect of freezing or chilling the development of new technologies and services.”<sup>7</sup> Under Section 629(c), therefore, the Commission may grant a waiver of its regulations implementing Section 629(a) when doing so is necessary to assist the development or introduction of new or improved services.<sup>8</sup>

3. To carry out the directives of Section 629, the Commission in 1998 required MVPDs to make available by July 1, 2000 a security element separate from the basic navigation device (the “host device”).<sup>9</sup> The integration ban was designed to enable unaffiliated manufacturers, retailers, and other vendors to commercially market host devices while allowing MVPDs to retain control over their system security. MVPDs were permitted to continue providing equipment with integrated security until January 1, 2005, so long as modular security components, known as point-of-deployment modules (“PODs”),<sup>10</sup> were also made available for use with host devices obtained through retail outlets. 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.<sup>11</sup> Then, in 2005, again at the urging of cable operators,<sup>12</sup> the Commission further extended that date until July 1, 2007.<sup>13</sup> In that decision, the Commission stated that it would “entertain certain requests for waiver of the prohibition on integrated devices for limited capability integrated digital cable boxes.”<sup>14</sup>

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<sup>3</sup> 47 U.S.C. § 549(a).

<sup>4</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).

<sup>5</sup> H.R. REP. NO. 104-204, at 112 (1995).

<sup>6</sup> *Id.*

<sup>7</sup> S. REP. 104-230, at 181 (1996) (Conf. Rep.).

<sup>8</sup> 47 U.S.C. § 549(c).

<sup>9</sup> *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, 13 FCC Rcd 14775, 14808, ¶ 80 (1998) (“*First Report and Order*”); 47 C.F.R. § 76.1204(a)(1).

<sup>10</sup> For marketing purposes, PODs are referred to as “CableCARDS.”

<sup>11</sup> *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, 18 FCC Rcd 7924, 7926, ¶ 4 (2003).

<sup>12</sup> *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, 20 FCC Rcd 6794, 6802-03, ¶ 13 (2005) (“*2005 Deferral Order*”), *pet. for review denied*, *Charter Communications, Inc. v. FCC*, 460 F.3d 31 (D.C. Cir. 2006).

<sup>13</sup> *Id.* at 6814, ¶ 31.

<sup>14</sup> *Id.*

4. On January 10, 2007, the Media Bureau acted upon three requests for waiver of Section 76.1204(a)(1) of the Commission's rules.<sup>15</sup> The Bureau found that waiver was not warranted for any of the parties pursuant to Section 629(c) because none of the parties had demonstrated that waiver was necessary to assist in the development or introduction of a new or improved service.<sup>16</sup> The Bureau also found that devices with two-way functionality did not meet the waiver policy announced in the 2005 *Deferral Order* for low-cost, limited-capability set-top boxes.<sup>17</sup> The Bureau found good cause, however, to conditionally grant Bend Cable Communications d/b/a BendBroadband ("BendBroadband") a waiver of Section 76.1204(a)(1) of the Commission's rules.

5. In the *BendBroadband Order*, the Bureau "recognize[d] that the ability to rapidly migrate to an all-digital network would produce clear, non-speculative public benefits," and therefore conditionally granted BendBroadband's waiver request pursuant to Sections 1.3 and 76.7 of the Commission's rules.<sup>18</sup> As a condition of waiver, the Bureau determined that BendBroadband first must: (1) file with the Media Bureau a sworn declaration in which it commits to move to an all-digital network by 2008; (2) notify all of its analog customers of its plans to go all digital at least six months in advance of that event and submit a sworn declaration to the Commission confirming that such notice has been provided; (3) ensure that, at least six months prior to its migration to an all-digital network, it has in its inventory or has placed orders for enough set-top boxes to ensure that each of its customers can continue to view BendBroadband's video programming on their television sets and submit a sworn declaration to the Commission confirming that this is the case; and (4) publicly commit to the plan by sworn declaration.<sup>19</sup>

#### B. The Waiver Request

6. On February 28, 2007, OneSource filed a request for waiver of the integration ban to allow it "to continue to deploy the Motorola DCT-700 and DCT-3416 low-cost set top boxes until the company completes its all-digital conversion at the end of 2007."<sup>20</sup> OneSource states that it cannot complete conversion without the waiver since it "does not have the budget to complete its conversion with non-integrated set-top boxes, which are much more expensive."<sup>21</sup> The DCT-700 offers an electronic programming guide ("EPG"), video-on-demand ("VOD"), pay-per-view ("PPV") services, and certain interactive television ("ITV") capabilities, and will cost OneSource approximately \$80 per device. In contrast to the DCT-700, the DCT-3416 offers not only two-way functionality, such as an EPG, VOD, PPV, and ITV, but also a number of other more sophisticated features such as digital video recording ("DVR") capabilities, an all-digital dual tuner and HD capability.<sup>22</sup> In addition, it is our understanding

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<sup>15</sup> See *Bend Cable Communications, LLC d/b/a BendBroadband Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, 22 FCC Rcd 209 (2007) ("*BendBroadband Order*"); *Cablevision Systems Corporation's Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, 22 FCC Rcd 220 (2007) ("*Cablevision Order*"); *Comcast Corporation Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, 22 FCC Rcd 228 (2007) ("*Comcast Order*"). Collectively, these orders are referred to as the "*January 10 Orders*."

<sup>16</sup> *BendBroadband Order*, 22 FCC Rcd at 213-214, ¶¶ 11-15; *Cablevision Order*, 224-225, ¶¶ 12-16; *Comcast Order*, 22 FCC Rcd at 235-238, ¶¶ 15-23.

<sup>17</sup> *BendBroadband Order*, 22 FCC Rcd at 214-215, ¶¶ 16-20; *Comcast Order*, 22 FCC Rcd at 238-241, ¶¶ 24-30.

<sup>18</sup> *BendBroadband Order*, 22 FCC Rcd at 218, ¶ 27.

<sup>19</sup> *Id.* at 218, ¶ 26.

<sup>20</sup> Waiver Request at 1.

<sup>21</sup> *Id.* at 2.

<sup>22</sup> *Id.* at Exhibit 1, Specifications for Motorola DCT-3400 Series.

that both devices support the use of switched digital capabilities.

7. OneSource states that it is attempting to reclaim analog capacity since its system is virtually channel-locked, and would like to “offer more robust broadband and digital services including VOD, local VOD and ethnic tiers.”<sup>23</sup> OneSource states that, if granted a waiver, it will

- Transition to an all-digital network by December 31, 2007.
- Notify all of its analog customers of its plans to go all-digital in an insert in the first subscriber bill issued after the Commission’s grant of the waiver.
- Submit a sworn declaration to the Commission confirming that such notice has been provided.
- Ensure that, as soon as possible following grant of the waiver, it has inventory or has placed orders for enough set-top boxes to ensure that each of its customers can continue to view its video programming on analog television sets.
- Submit a sworn declaration to the Commission confirming its inventory of set-top boxes.<sup>24</sup>

8. OneSource asserts that grant of the requested waiver would have clear, non-speculative public interest benefits because it will permit it to move “to an all-digital system within a clearly defined timeframe,” and will allow it to “reclaim capacity to provide new digital video services and more robust high-speed broadband services.”<sup>25</sup> Further, a denial of the waiver, according to OneSource, would cause irreparable harm since some viewers would not be able to view digital broadcast signals after the DTV transition date.

### C. Comments

9. Three parties filed comments in response to the Waiver Request. OneSource also filed a reply to these comments. The American Cable Association (“ACA”) and Motorola, Inc. (“Motorola”) fully support grant of the waiver. The American Cable Association states that the waiver should be granted in accordance with the Media Bureau’s recent decision granting a conditional waiver of the integration ban to BendBroadband Communications, LLC d/b/a BendBroadband.<sup>26</sup> Motorola states that the added costs associated with CableCARD-enabled boxes justify grant of time-limited waivers.<sup>27</sup> The Consumer Electronics Association, referencing filings with respect to other waiver requests, states that, while it is sympathetic to OneSource’s situation, it does not see how grant of a waiver will address its situation. It claims that the February 17, 2009, digital television transition date applies only to broadcasters, and that the DCT-700 will not prevent subscribers from losing service as it cannot tune digital broadcast channels. In reply, OneSource argues that its subscribers will be affected by the DTV transition since they will “be unable to receive any digital broadcast signals unless they have a digital set-top box like the DCT-700, or the cable company downconverts the digital signal to lower-quality analog signals.”<sup>28</sup>

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

<sup>24</sup> *Id.* at 4.

<sup>25</sup> *Id.* at 6.

<sup>26</sup> ACA Comments at 2 (citing *BendBroadband Order*, 22 FCC Rcd at 217-218, ¶¶ 24-26).

<sup>27</sup> Motorola Comments at 4.

<sup>28</sup> OneSource Reply at 3.

### III. DISCUSSION

10. OneSource makes its request pursuant to the general waiver provisions of Section 1.3 and 76.7 of the Commission's rules,<sup>29</sup> or, alternatively, Section 629(c) of the Telecommunications Act of 1996 and Section 76.1207 of the Commission's rules.<sup>30</sup> In addition, because OneSource characterizes both the DCT-700 and the DCT-3416 as "low-cost" devices, we will evaluate the request under the waiver policy announced in the *2005 Deferral Order* as well.<sup>31</sup> For the reasons previously set forth in the *January 10 Orders*, we decline to grant the Waiver Request under the standard set forth in Section 629(c) or under the waiver policy set forth in the *2005 Deferral Order*.<sup>32</sup> We do, however, find that OneSource's commitment to transition to an all-digital network by the end of 2007 would produce clear, non-speculative public interest benefits, particularly when considered in the context of the Commission's goal of promoting the broadcast television digital transition.<sup>33</sup> The details of the conditional grant, which apply only to deployment of the DCT-700, are set forth below.

#### A. Section 629(c) of the Act

11. Section 629(c) states in relevant part that:

[t]he Commission shall waive a regulation adopted under subsection (a) of this section for a limited time upon an appropriate showing . . . that such waiver is necessary to assist the development or introduction of a new or improved multichannel video programming or other service offered over multichannel video programming systems, technology, or products.<sup>34</sup>

As mentioned above, the principal goal of Section 629 of the Act is to foster competition and consumer choice in the market for navigation devices.

13. In its Waiver Request, OneSource argues that grant of the waiver would permit it to move to an all-digital network by the end of 2007, thus freeing up spectrum for more robust broadband and digital services including VOD, local VOD and ethnic programming tiers. As we stated in the *January 10 Orders*, we do not find that such arguments generally justify a waiver under Section 629(c) of the Act.<sup>35</sup>

<sup>29</sup> Waiver Request at 1.

<sup>30</sup> *Id.* at 1, n.1. Section 76.1207 of the Commission's rules, 47 C.F.R. § 76.1207 implements Section 629(c) of the Act and tracks the language of that statutory provision almost verbatim.

<sup>31</sup> *2005 Deferral Order*, 20 FCC Rcd at 6813-6814, ¶ 37.

<sup>32</sup> *See BendBroadband Order*, 22 FCC Rcd at 213-215, ¶¶ 11-20, *Comcast Order*, 22 FCC Rcd at 238-241, ¶¶ 24-30.

<sup>33</sup> *See, e.g., Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion To Digital Television*, FCC 07-69, ¶¶ 9-14 (rel. May 3, 2007) (adopting a labeling requirement for analog-only television receivers while noting that "[t]he government has a strong interest in ensuring a timely conclusion of the digital transition"); *Requirements for Digital Television Receiving Capability*, 21 FCC Rcd. 9478, 9480, ¶ 7 (2006) (stating that "consumers must be able to receive digital TV signals for the DTV transition to move forward to a successful completion"); *Requirements for Digital Television Receiving Capability*, 20 FCC Rcd 18607, 18609, ¶ 6 (2005) (stating that consumers' ability to receive digital TV signals is essential to a successful completion of the DTV transition). *See also BendBroadband Order*, 20 FCC Rcd at 217, ¶ 24.

<sup>34</sup> 47 U.S.C. § 549(c).

<sup>35</sup> *See BendBroadband Order*, 22 FCC Rcd at 213-214, ¶¶ 13-14 (denying BendBroadband's argument that waiver was necessary to assist the development or introduction of HD and VOD, wireless, business services, and more

(continued....)

While it could be argued that a waiver under Section 629(c) would assist the development or introduction of virtually any service offered by an MVPD, we do not believe that Congress intended for us to interpret this narrowly tailored exception in such a lenient manner. Indeed, as we stated in the *BendBroadband Order*, such an interpretation would effectively negate any rules adopted pursuant to Section 629(a).<sup>36</sup>

**B. The 2005 Deferral Order**

12. Because OneSource characterizes both the DCT-700 and the DCT-3416 as “low-cost” devices, we evaluate the Waiver Request under the waiver policy established in the Commission’s *2005 Deferral Order*, as well.

13. *The DCT-700.* We conclude that the DCT-700 does not meet the limited-capability standard announced in the *2005 Deferral Order*. As we explained in the *January 10 Orders*,<sup>37</sup> the Commission never contemplated that “limited capability integrated digital cable boxes” would include devices with two-way functionality. Rather, this category of boxes is confined to those devices whose functionality is limited to making digital cable signals available on analog sets.<sup>38</sup> In explaining why it would entertain requests for waiver of the integration ban, the Commission emphasized that “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.”<sup>39</sup> In other words, the low-cost, limited-capability waiver standard that the Commission created in the *2005 Deferral Order* is, first and foremost, a narrow one.<sup>40</sup>

14. Moreover, the Commission remained aware of the goal to develop a competitive marketplace for navigation devices. Accordingly, the Commission stated that waiver requests would not be warranted “for boxes that contain personal video recording (‘PVR’), high-definition, broadband Internet access, multiple tuner, or *other similar advanced capabilities*.”<sup>41</sup> This list of capabilities was not intended to be exhaustive, as demonstrated by the inclusion of the phrase “other similar advanced capabilities.” Throughout the navigation device and plug and play negotiations, all parties have understood the term “advanced” to include two-way capability. Indeed, an entire section of the Memorandum of Understanding signed by major cable and consumer electronics manufacturers – which

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robust broadband, and citing Congressional intent for a narrow reading of the waiver provisions of Section 629(c)), *Comcast Order*, 22 FCC Rcd at 235-237, ¶¶ 16-19.

<sup>36</sup> *Id.* at 214, ¶ 14.

<sup>37</sup> See *BendBroadband Order*, 22 FCC Rcd at 214-215, ¶ 17, *Comcast Order*, 22 FCC Rcd at 239, ¶ 26.

<sup>38</sup> In fact, several years ago Pace Micro developed precisely this type of device. The “Digital Cable Adapter” was a unidirectional “set-back” device that would have decoded digital signals for use with analog televisions and VCRs without any advanced features. See Press Release, Pace Micro, *Pace Unveils the World’s First Digital Cable Adapter* (June 9, 2003). This device, which was exhibited at the 2003 NCTA National Show in Chicago, would have cost about \$69 – but ultimately was never mass produced due to a lack of interest from cable operators. See Jeff Baumgartner, *New MSO-backed JV Proposes Sub-\$100 Set-Top with Downloadable Security*, CED BROADBAND DIRECT, Dec. 22, 2003, available at <http://www.cedmagazine.com/toc-bbdirect/2006/20061222.html>.

<sup>39</sup> *2005 Deferral Order*, 20 FCC Rcd at 6813, ¶ 37. Similarly, the Commission discussed how low-cost, limited-capability set-top boxes could facilitate the migration of cable systems to all-digital networks. See *id.* Advanced capabilities are not necessary to accomplish that goal, either; all that is required is a set-top box that can make digital cable programming viewable on an analog television set.

<sup>40</sup> See *BendBroadband Order*, 22 FCC Rcd at 214-215, ¶ 17, *Comcast Order*, 22 FCC Rcd at 239, ¶ 26.

<sup>41</sup> *Id.* (emphasis added).

helped to shape the Commission's understanding of the topic during the unidirectional plug-and-play rulemaking proceeding<sup>42</sup> – deals exclusively with defining two-way products as “advanced.”<sup>43</sup>

15. In addition, in other pleadings before the Commission, the cable industry has advocated that these two-way, interactive features be classified as “advanced” capabilities. Specifically, the cable industry recommended that the Commission include in its regulations a requirement that non-interactive consumer electronics equipment contain a warning that “Certain advanced and interactive digital cable services such as video-on-demand, a cable operator's enhanced program guide and data-enhanced television services may require the use of a set-top box.”<sup>44</sup> The DCT-700 contains precisely these advanced functions, as well as PPV capabilities. Accordingly, we conclude that the DCT-700 does not constitute a “limited capability” device under the 2005 *Deferral Order* waiver policy.

16. *The DCT-3416.* In addition to the two-way functions offered by the DCT-700, the DCT-3416 also provides more sophisticated services such as DVR capabilities, an all-digital dual tuner and HD capability. Accordingly, we conclude that it too does not qualify as a limited capability device. In addition, we note that OneSource has not provided cost estimates for the DCT-3416 and, thus, it is uncertain whether it is in fact a low-cost set-top box. OneSource states only that the integrated DCH-3416 would cost \$50 more than the DCT-3416.<sup>45</sup>

17. Finally, we note that in the 2005 *Deferral Order*, the Commission set forth the circumstances in which it would consider waiving the integration ban for low-cost, limited capability boxes. Specifically, the Commission stated that, “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.”<sup>46</sup> Here, while OneSource indicates that grant of its Waiver Request would allow it to move to an all-digital network by the end of 2007, the boxes for which it seeks waiver are not “limited capability” set-top boxes. Therefore, we cannot grant a waiver of the integration ban under the 2005 *Deferral Order* waiver standard. We wish to emphasize, though, that we continue to believe that “[i]t is critical to the DTV transition that consumers have access to”<sup>47</sup> limited-capability set-top boxes, and therefore will entertain and grant future requests that satisfy the criteria set forth in the 2005 *Deferral Order*.

### C. Sections 1.3 and 76.7 of the Commission's Rules

16. Like in the situation presented by the BendBroadband waiver request, however, we

<sup>42</sup> See generally *Implementation of Section 304 of the Telecommunications Act of 1999: Commercial Availability of Navigation Devices; Compatibility Between Cable Systems and Consumer Electronics Equipment*, 18 FCC Rcd 518 (2003) (seeking comment on the Memorandum of Understanding and the rules proposed therein).

<sup>43</sup> Letter from Carl E. Vogel, President and Chief Executive Officer, Charter Communications, et al. to The Honorable Michael K. Powell, Chairman, Federal Communications Commission, *attaching* Memorandum of Understanding Among Cable MSOs and Consumer Electronics Manufacturers at 10 (Dec. 19, 2002). The section includes a discussion of EPGs: “Cable operators’ EPG will be provided for advanced interactive digital cable products via OCAP or its successor technology.” *Id.*

<sup>44</sup> NCTA Reply Comments, CS Docket No. 97-80, PP Docket No. 00-67 at Appendix 1, page 7 (filed April 28, 2003). See also National Cable & Telecommunications Association's Request for Waiver of 47 C.F.R. § 76.1204(a)(1) at 14 (filed Aug. 16, 2006) (describing VOD and EPGs as “advanced services”).

<sup>45</sup> Waiver Request at 4, n.7.

<sup>46</sup> 2005 *Deferral Order*, 20 FCC Rcd at 6813, ¶ 37.

<sup>47</sup> See 2005 *Deferral Order*, 20 FCC Rcd at 6813, ¶ 37.

conclude that OneSource's sworn commitment to migrate to an all-digital network by December 31, 2007,<sup>48</sup> along with its sworn commitments to notify its customers in advance of that event and ensure inventory sufficient for each of its subscribers to continue to view its programming, is sufficient to show good cause for a waiver under Sections 1.3 and 76.7.<sup>49</sup> OneSource has stated that low-cost set-top boxes such as the DCT-700 are essential since it does not otherwise have the budget to complete its transition to an all-digital system by a date certain. As noted in the *BendBroadband Order*,<sup>50</sup> we believe that a commitment to transition to an all-digital network prior by the end of 2008 – or, with respect to OneSource, even earlier (*i.e.*, by December 31, 2007) – would produce clear, non-speculative public interest benefits. Accordingly, with respect to use of the DCT-700 only, OneSource's Waiver Request is conditionally granted.

17. On the other hand, we find that a waiver for the DCT-3416 would be inconsistent with the narrowly defined goal of the conditional waiver granted to BendBroadband. The purpose of the conditional waiver granted in the *BendBroadband Order* under Sections 1.3 and 76.7 of the Commission's rules was not meant to provide BendBroadband with a means to avoid the potentially higher short-term costs associated with deployment of non-integrated boxes to be used for other, high-end functions like DVR and HD capabilities;<sup>51</sup> rather, it was to permit BendBroadband to transition to an all-digital system. While the DCT-700 offers two-way functionality, we noted in the *Comcast Order* that, due to a lack of interest from cable operators, a low-cost device whose functionality is limited solely to making digital signals available on analog sets (*i.e.*, a truly "limited-capability" device) has never been mass produced.<sup>52</sup> Accordingly, it is our understanding that the DCT-700 is the most basic set-top box that is being mass-produced at this time. The DCT-3416, by contrast, appears to be one of the highest-end boxes on the market today. We are unconvinced that a waiver for the DCT-3416 is necessary to further OneSource's migration to an all-digital system. Indeed, while OneSource argues that, "[i]f OneSource cannot continue to use the DCT-700 and complete its digital transition, OneSource will continue to have analog subscribers," it does not make a similar argument about the DCT-3416. For the reasons discussed, we deny the Waiver Request with respect to the DCT-3416.

18. As stated in the Waiver Request, OneSource must notify all of its analog customers of its plans to go all-digital on December 31, 2007, in an insert in the first subscriber bill issued after the release of this order and submit a sworn declaration to the Commission confirming that such notice has been provided. It must further ensure that, at least six months prior to its migration to all digital, which shall not be later than December 31, 2007, it has in its inventory or has placed orders for enough DCT-700 set-top boxes to ensure that each of its customers can continue to view OneSource's video programming on

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<sup>48</sup> See Waiver Request, *attaching* Sworn Affidavit of Andy Slote, Vice President and General Manager of Millenium Telcom, LLC, d/b/a OneSource Communications.

<sup>49</sup> 47 C.F.R. §§ 1.3, 76.7.

<sup>50</sup> *BendBroadband Order*, 22 FCC Rcd at 216-218, ¶¶ 21-26.

<sup>51</sup> See generally *Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices*, Second Report and Order, 20 FCC Rcd 7924, ¶ 29 (2005) ("We do not take lightly the imposition of additional costs on consumers, particularly in our efforts to implement a consumer-friendly statutory directive to increase competition. However, we are inclined to agree with the CE parties that the cost of the POD and POD-host interface combination likely will decrease over time as volume increases. In addition, the costs that this requirement will impose should be counterbalanced to a significant extent by the benefits likely to flow from a more competitive and open supply market. In particular, it seems likely that the potential savings to consumers from greater choice among navigation devices will offset some of the costs from separating the security and non-security functions of either MVPD-supplied devices or those that might be otherwise be made available through retail outlets.").

<sup>52</sup> *Comcast Order*, 22 FCC Rcd at 239, ¶ 26 n.97.

their television sets and submit an affidavit to the Commission confirming that this is the case. While OneSource has provided an initial declaration that it will transition to an all-digital network by December 31, 2007, and meet conditions similar to those listed in the *BendBroadband Order*, continued availability of this waiver relief is conditioned upon OneSource submitting affidavits to the Commission confirming it has provided notice to its subscribers, and has placed orders for enough DCT-700 set-top boxes to ensure that each of its customers can continue to view OneSource's video programming on their television sets.

#### IV. ORDERING CLAUSES

19. 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, a waiver of Section 76.1204(a)(1) of the Commission's rules, 47 C.F.R. § 76.1204(a)(1) **IS GRANTED** to Millennium Telcom, LLC d/b/a OneSource Communications conditioned as set forth in this Order.

20. 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

Monica Shah Desai  
Chief, Media Bureau