

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

In the Matter of)	
)	
Guam Cablevision, LLC)	CSR-7193-Z
)	
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)	
)	
Commercial Availability of)	
Navigation Devices)	

MEMORANDUM OPINION AND ORDER

Adopted: June 29, 2007

Released: June 29, 2007

By the Chief, Media Bureau:

I. INTRODUCTION

1. Guam Cablevision, LLC ("GCL") has filed with the Chief of the Media Bureau the above-captioned request for waiver (the "Waiver Request"), seeking a waiver of the ban on integrated set-top boxes set forth in Section 76.1204(a)(1) of the Commission's rules¹ for the Scientific Atlanta Explorer 1850 integrated digital set-top box, until December 31, 2009. For the reasons stated below, we grant GCL a limited waiver until December 31, 2009.

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 systems, of converter boxes, interactive communications equipment, and other equipment used by consumers to access multichannel video programming and other services offered

¹ 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."

over multichannel video programming systems, from manufacturers, retailers, and other vendors not affiliated with any multichannel video programming distributor.²

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”).³ 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.”⁴ 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.”⁵ Similarly, Congress also sought to avoid Commission actions “which could have the effect of freezing or chilling the development of new technologies and services.”⁶ 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.⁷

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”).⁸ 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”),⁹ 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, 2006.¹⁰ Then, in 2005, again at the urging of cable operators,¹¹ the Commission further extended that date until July 1, 2007.¹² In that decision, the Commission also stated that it would “entertain certain requests for waiver of the prohibition on integrated devices for limited capability integrated digital cable boxes.”¹³

² 47 U.S.C. § 549(a).

³ See S. REP. 104-230, at 181 (1996) (Conf. Rep.). See also *Bellsouth Interactive Media Services, LLC*, 19 FCC Rcd 15607, 15608, ¶ 2 (2004).

⁴ H.R. REP. NO. 104-204, at 112 (1995).

⁵ *Id.*

⁶ S. REP. 104-230, at 181 (1996) (Conf. Rep.).

⁷ 47 U.S.C. § 549(c).

⁸ *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).

⁹ For marketing purposes, PODs are referred to as “CableCARDS.”

¹⁰ *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, 18 FCC Rcd 7924, 7926, ¶ 4 (2003) (“*Extension Order*”).

¹¹ *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).

¹² *Id.* at 6814, ¶ 31.

¹³ *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.¹⁴ 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.¹⁵ 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.¹⁶ 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, given its commitment to move to an all-digital network by 2008. On May 4, 2007, the Media Bureau acted upon another three requests for waiver of Section 76.1204(a)(1) of the Commission's rules.¹⁷ The Bureau conditionally granted waivers to Millennium Telecom, LLC d/b/a OneSource Communications ("OneSource")¹⁸ and GCI Cable, Inc. ("GCI")¹⁹ similar to the waiver granted to BendBroadband, and granted a waiver to Charter Communications due to its demonstrated financial hardship.²⁰

B. The Waiver Request

5. GCL requests that the Commission grant a waiver of the integration ban as applied to the Scientific Atlanta Explorer 1850 integrated digital set-top box.²¹ At the outset, GCL outlines the unique challenge of providing cable service to the U.S. Territory of Guam, fifteen hours ahead of the Eastern Time zone.²² Guam has been hit by multiple major typhoons in the last several years, requiring GCL to maintain a much larger than normal equipment inventory so that service can be restored quickly after disaster strikes.²³ GCL states that it is committed to delivering to its customers "the same benefits of . . . improved services as do Americans in the fifty States," but it is unable to upgrade its network in the timeframe set by Congress and the Commission.²⁴

6. GCL argues that waiver is warranted under Section 629(c) as "necessary to assist the development or introduction of" GCL's "multimillion-dollar conversion of its system to digital

¹⁴ 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*."

¹⁵ *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.

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

¹⁷ See *Charter Communications, Inc. Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, DA 07-2008 (2007) ("*Charter Order*"); *GCI Cable, Inc. Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, DA 07-2010 (2007) ("*GCI Order*"); *Millennium Telecom, LLC d/b/a OneSource Communications Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, DA 07-2009 (2007) ("*Millennium Order*"). Collectively, these orders are referred to as the "*May 4 Orders*."

¹⁸ *Millennium Order* at ¶ 16.

¹⁹ *GCI Order* at ¶¶ 15, 17.

²⁰ *Charter Order* at ¶ 12.

²¹ Waiver Request at 3.

²² *Id.* at 1.

²³ *Id.* at 2.

²⁴ *Id.*

technology,” which was launched in August 2006.²⁵ GCL asserts that approximately ten percent of its customers have adopted the digital service in the time it has been available, but “virtually all . . . are receiving the service on analog television receivers, since digital television receivers were not even available in Guam until late last year.”²⁶ GCL argues that Guam’s position – both geographically and in the consumer electronics market – makes uptake of digital service lag behind digital conversion in the fifty states, requiring customers to continue using analog technology and forcing GCL to provide set-top boxes on virtually every television in Guam, “to enable delivery and conversion of digital signals.”²⁷ GCL argues that the goal of the integration ban – increased competition in the market for set-top boxes – will not be advanced by implementing the ban in Guam. According to GCL, the small market Guam represents, the island’s immature consumer electronic retail environment and its location halfway around the world from the contiguous 48 states mean that no competitive set-top boxes will be available to consumers, even if waiver is denied, meaning higher costs for customers.²⁸

7. GCL also requests waiver pursuant to Section 76.7 of the Commission’s rules, arguing that compliant equipment will not be available from Scientific Atlanta in time for the onset of the integration ban.²⁹ Finally, GCL cites congressionally recognized “vast social and economical differences . . . between the contiguous 48 States on the one hand, and the noncontiguous Pacific region on the other,” arguing that the policy objective pursued by the integration ban will not be served by implementing the ban in Guam, due to “the unique circumstances of providing cable television services in Guam.”

C. Comments

8. Only the Consumer Electronics Association (“CEA”) filed comments in response to GCL’s Waiver Request. In opposing grant of a waiver to GCL, CEA points out that continued postponement of common reliance has contributed to the situation of GCL and other small MVPDs vis-à-vis equipment providers such as Scientific Atlanta, and argues that waiver of the integration ban will work against the goals of Congress: “A waiver of the common reliance rule will not give [GCL] any additional influence over monopoly vendors. The delay in implementing [the integration ban], and the ensuing avalanche of waiver requests, has only added to the monopoly power of incumbent providers, the exact scenario that common reliance should have prevented.”³⁰ CEA asserts that GCL has stated no grounds for waiver under Section 629(c).³¹ CEA further argues that grant of a waiver under Sections 1.3 and 76.7 of the Commission’s rules “would serve to ratify the nullification of FCC regulations by larger MSOs and their vendors,”³² but if waiver is granted, it should be done with “forward-looking obligations

²⁵ *Id.* at 3.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *See id.* at 3-5.

²⁹ This argument is two-fold. First, “GCL has been advised that the [Scientific Atlanta] non-integrated set-top conversion box will not be available prior to July 1, 2007.” Second, “[Scientific Atlanta] has also advised GCL that it is likely to have to go to an allocations scheme to satisfy the demand for non-integrated set-top equipment. . . . As a small cable operator, GCL has little leverage in negotiating [a timely] equipment order with [Scientific Atlanta].” *Id.* at 5-6.

³⁰ CEA Comments at 2.

³¹ *Id.*

³² *Id.*

to assure compliance and the achievement of a national competitive market in ‘2-way’ navigation devices rather than perpetual future renewal.”³³

III. DISCUSSION

9. GCL makes its request for waiver pursuant to Section 629(c) of the Act and Sections 76.7 and 76.1207 of the Commission’s rules.³⁴ Accordingly, we analyze its request pursuant to the waiver standards set forth in Section 629(c)³⁵ as well as under the general waiver provisions found in Sections 1.3 and 76.7 of the Commission’s rules. As discussed below, and consistent with the Bureau’s conclusions in the *January 10 Orders* and the *May 4 Orders*, we find that we cannot grant GCL’s request for relief under Section 629(c). In light of GCL’s unique circumstances stemming from its typhoon-prone location and separation from the fifty states, however, we conclude that the grant of a waiver to GCL under Sections 1.3 and 76.7 of the Commission’s rules is justified. We therefore grant GCL a limited waiver of the integration ban with respect to the Scientific Atlanta Explorer 1850, until December 31, 2009.

A. Section 629(c) of the Act

10. 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.³⁶

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.

11. GCL argues that grant of the Waiver Request is necessary to assist in the development of its recently-launched digital system, and that the imposition of the integration ban on July 1 “would seriously and adversely affect GCL’s ability to complete the orderly conversion of its system to all-digital signals, thereby frustrating the statutory mandate to assist the introduction of improved multichannel video services.”³⁷

12. As a general matter, we do not find compelling GCL’s argument that grant of the Waiver Request is necessary to assist the development or introduction of improved, digital service. In the short time since GCL introduced digital service, approximately 10 percent of its customer base has adopted the digital offering. 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. Based on the facts presented, GCL has failed to show that a waiver is “necessary” here to assist in the

³³ *Id.*

³⁴ Waiver Request at 1 (citing 47 U.S.C. § 549(c); 47 C.F.R. §§ 76.7 and 76.1207).

³⁵ 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.

³⁶ 47 U.S.C. § 549(c). Section 76.1207 of the Commission’s rules implements Section 629(c) of the Act and tracks the text of the statute nearly verbatim. 47 C.F.R. § 76.1207.

³⁷ Waiver Request at 5.

“development or introduction” of new or improved services.³⁸ Indeed, as we stated in the *January 10 Orders*, such an interpretation would effectively negate any rules adopted pursuant to Section 629(a).³⁹

B. Sections 1.3 and 76.7 of the Commission’s Rules

13. GCL also submitted its Waiver Request under the general waiver provision found in Section 76.7⁴⁰ of the Commission’s rules.⁴¹ In light of GCL’s unique circumstances stemming from delivering cable service in a typhoon-prone, underdeveloped market far from the contiguous 48 states, we conclude that good cause exists for a limited waiver until December 31, 2009, and that such a waiver will serve the public interest in this specific instance.

14. We acknowledge that GCL’s commitment to upgrade its systems is costly, and that this commitment, paired with the devastation caused by multiple natural disasters in recent years,⁴² has left GCL in an extraordinary situation. While we have not been persuaded by others who have made speculative claims that the integration ban may impose a financial burden on their companies,⁴³ we are persuaded by GCL’s unique circumstances, particularly given the extraordinary devastation the island has faced over the past ten years. Accordingly, we conclude that good cause exists for a limited waiver of the integration ban for the Scientific Atlanta Explorer 1850, until December 31, 2009, and that GCL has met the standard for waiver under Sections 1.3 and 76.7 of the Commission’s rules. In addition, if GCL believes that, as a result of continuing, non-speculative financial difficulties, an extension of the waiver beyond this initial period is warranted, it may submit updated financial and other information for our consideration.

III. CONCLUSION

15. For the reasons stated herein, we conclude that GCL’s Waiver Request, as submitted, does not justify a waiver under either Section 629(c). Nevertheless, we believe that, in light of GCL’s extraordinary difficulties, good cause exists for a limited grant of the Waiver Request pursuant to Sections 1.3 and 76.7 of the Commission’s rules, until December 31, 2009. Further, if, after that date, GCL believes that a further extension is warranted, it may file updated financial and other information for review and request an extension. Upon such a filing, we will review the company’s financial status and situation at that time to determine whether further waiver is warranted.

³⁸ See *BendBroadband Order*, 22 FCC Rcd at 213, ¶ 13; *Cablevision Order*, 22 FCC Rcd at 225, ¶ 14; *Comcast Order*, 22 FCC Rcd at 237, ¶ 19.

³⁹ See *BendBroadband Order*, 22 FCC Rcd at 214, ¶ 14; *Cablevision Order*, 22 FCC Rcd at 225, ¶ 15; *Comcast Order*, 22 FCC Rcd at 236, ¶ 17.

⁴⁰ See 47 C.F.R. § 76.7 (“On petition by any interested party, ... the Commission may waive any provision of this part 76,”).

⁴¹ Waiver Request at 5.

⁴² *Id.* at 2. “Super Typhoon Pongsana (December 2002), Typhoon Chata’an (July 2002), and Super Typhoon Paka (December 1997) caused severe damage to GCL’s facilities and plant. It is unlikely any cable system in the fifty states has been wracked as often with such damage and destruction as has GCL.” *Id.*

⁴³ See, e.g., Comcast Corporation’s Request for Waiver of 47 C.F.R. § 76.1204(a)(1), CSR-7012-Z, CS Docket No. 97-80 at 17-19 (April 19, 2006) (asserting that the increased costs associated with the integration ban would slow Comcast’s transitions to all-digital platforms).

IV. ORDERING CLAUSES

16. Accordingly, **IT IS ORDERED** that, pursuant to Section 629(c) of the Communications Act of 1934, as amended, 47 U.S.C. § 549(c), and Section 76.1207 of the Commission's rules, 47 C.F.R. § 76.1207, the request for waiver filed by Guam Cablevision, LLC of Section 76.1204(a)(1) of the Commission's rules, 47 C.F.R. § 76.1204(a)(1), **IS DENIED**.

17. **IT IS FURTHER 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 filed by Guam Cablevision, LLC of Section 76.1204(a)(1) of the Commission's rules, 47 C.F.R. § 76.1204(a)(1), **IS GRANTED** to allow GCL to deploy the Scientific Atlanta Explorer 1850 integrated set-top boxes until December 31, 2009.

18. 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