

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

In the Matter of )
The City of Crosslake, Minnesota d/b/a Crosslake ) CSR-7348-Z
Communications )
Petition for Deferral of Enforcement of July 1, )
2007 Deadline in 47 C.F.R. § 76.1204(a)(1) )
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. The City of Crosslake, Minnesota d/b/a Crosslake Communications ("Crosslake") has filed with the Chief of the Media Bureau the above-captioned request to defer enforcement (the "Deferral Request") of the July 1, 2007 deadline set forth in Section 76.1204(a)(1) of the Commission's rules on which Crosslake may no longer place in service integrated set-top boxes.1 Crosslake seeks to defer enforcement of the July 1, 2007 deadline until it receives delivery of set-top boxes it previously ordered which will comply with the integration ban. For the reasons stated below, we grant Crosslake's deferral request pursuant to Sections 1.3 and 76.7 of the Commission's rules.2

II. BACKGROUND

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 host device required by this rule is referred to as the "integration ban."

2 47 C.F.R. §§ 1.3, 76.7.

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. The Media Bureau has acted upon six requests for waiver of Section 76.1204(a)(1) of the Commission's rules, three on January 10, 2007,<sup>15</sup> and three on May 4, 2007.<sup>16</sup> In the *BendBroadband Order*, we recognized "the difficulties that small cable operators may face in complying with the July 1, 2007 deadline, particularly since manufacturers may prioritize orders from the largest cable operators."<sup>17</sup> We stated that small operators could request deferral of the July 1, 2007 deadline if they could demonstrate that they have placed orders for compliant set-top boxes<sup>18</sup> that will not be fulfilled in time for them to comply with the deadline.<sup>19</sup> In the *GCI Order*, we explained further that a small cable operator requesting such a deferral must submit a signed affidavit that: (1) states that it has placed an order for a sufficient number of compliant boxes that, if filled, would satisfy the operator's equipment needs, specifies the number of boxes ordered, and provides information to support its statement that the number of compliant boxes ordered would be sufficient, if the order could be filled; (2) states that the manufacturer has informed it that the order will not be filled by July 1, 2007; (3) sets forth when the order will be filled; (4) requests deferral of the integration ban until that time; (5) states that it intends to order only enough integrated boxes to meet its needs until compliant boxes can be obtained, indicates how many such boxes it will be ordering and provides information to support those numbers; and (6) attaches all relevant documentation, including order forms and correspondence with its manufacturers.<sup>20</sup>

#### A. The Deferral Request

5. Pursuant to Sections 1.3 and 76.7 of the Commission's rules, Crosslake seeks to defer enforcement of the July 1, 2007 deadline until it receives delivery of set-top boxes it previously ordered which will comply with the integration ban. Crosslake states that it is a small cable operator owned by the City of Crosslake, Minnesota which serves communities that are popular summer recreation areas.<sup>21</sup> Accordingly, its subscriber count varies by season, with its fewest number of subscribers during January through March (1,500 subscribers) and its greatest number of subscribers during mid-summer months (2,350 subscribers).<sup>22</sup> While Crosslake is in the process of upgrading its facilities to fiber-to-the-home, it notes that only ten percent of its subscribers have purchased digital services.<sup>23</sup> Crosslake attributes this

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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*").

<sup>16</sup> See *Charter Communications, Inc. Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, DA 07-2008 (MB rel. May 4, 2007) ("*Charter Order*"); *Millennium Telcom, LLC d/b/a OneSource Communications Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, DA 07-2009 (MB rel. May 4, 2007) ("*OneSource Order*"); *GCI Cable, Inc. Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, DA 07-2010 (MB rel. May 4, 2007) ("*GCI Order*").

<sup>17</sup> *BendBroadband Order*, 22 FCC Rcd 209, 212, ¶ 10.

<sup>18</sup> This includes both low-cost and high-end compliant boxes.

<sup>19</sup> *BendBroadband Order*, 22 FCC Rcd 209, 212-213, ¶ 10.

<sup>20</sup> *GCI Order* at ¶ 18. We explained that we will treat this documentation as confidential upon the operator's request, consistent with our rules and policies regarding confidential information. *Id.* See generally 47 C.F.R. § 0.459; *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, 13 FCC Rcd 24816 (1998).

<sup>21</sup> Deferral Request at 2-3.

<sup>22</sup> *Id.* at 3.

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

lack of demand for digital services to the age of its subscriber base<sup>24</sup> and the fact that seasonal residents are not interested in purchasing digital services.<sup>25</sup>

6. Crosslake currently offers consumers the Motorola DCT-2000 series of integrated set-top boxes.<sup>26</sup> Due to the limited demand for its digital services, Crosslake states that it must offer subscribers only the lowest-cost digital services possible.<sup>27</sup> Thus, it plans to deploy the Motorola DCH200 set-top boxes, which it claims are the lowest-cost compliant boxes that can be used on its system.<sup>28</sup>

7. Pursuant to the procedures set forth in the *GCI Order*, Crosslake has submitted an affidavit signed by its General Manager which explains that it has ordered compliant Motorola DCH200 set-top boxes but that it will not receive delivery of these boxes by the July 1, 2007 deadline.<sup>29</sup> The affidavit explains that on May 23, 2007, Crosslake ordered ten Motorola DCH200 set-top boxes from the National Cable Television Cooperative (NCTC).<sup>30</sup> Crosslake estimates that ten set-top boxes will be sufficient to meet the limited demand for its digital services for at least twelve months.<sup>31</sup> Crosslake has provided copies of the purchase order and the confirmation of this purchase order from NCTC.<sup>32</sup> The affidavit states that Motorola has informed NCTC that it will not be able to deliver the set-top boxes to NCTC until October 1, 2007.<sup>33</sup> Crosslake requests a deferral of enforcement of the July 1, 2007 deadline until Crosslake receives the set-top boxes from NCTC.<sup>34</sup> The affidavit states further that Crosslake will deploy only enough integrated set-top boxes to meet its needs until it obtains the compliant set-top boxes from NCTC.<sup>35</sup> Moreover, the affidavit confirms that Crosslake will not order any new integrated set-top boxes during the deferral period because it has a sufficient number of set-top boxes in inventory to meet its needs until it receives delivery of the compliant set-top boxes.<sup>36</sup>

### III. DISCUSSION

8. Crosslake submitted its Waiver Request under the general waiver provisions found in Sections 1.3<sup>37</sup> and 76.7<sup>38</sup> of the Commission's rules. Crosslake seeks relief pursuant to the policies and

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<sup>24</sup> Crosslake states that approximately 75% of its subscribers are over the age of 65. Deferral Request at 3 n.6 and Affidavit of Paul Hoge, General Manager, Crosslake Communications ("Hoge Affidavit") at ¶ 4.

<sup>25</sup> Deferral Request at 3 and Hoge Affidavit at ¶ 4.

<sup>26</sup> Deferral Request at 4 and Hoge Affidavit at ¶ 5.

<sup>27</sup> *Id.*

<sup>28</sup> Deferral Request at 4 and Hoge Affidavit at ¶ 7.

<sup>29</sup> Deferral Request at 4-5 and Hoge Affidavit at ¶ 9.

<sup>30</sup> Deferral Request at 4 and Hoge Affidavit at ¶ 13. The affidavit explains that Crosslake's digital penetration has remained static at 10% for the last year. Deferral Request at 3 and Hoge Affidavit at ¶ 4.

<sup>31</sup> Deferral Request at 4 and Hoge Affidavit at ¶ 13.

<sup>32</sup> Letter from Crosslake to Ms. Marlene H. Dortch, Secretary, FCC (June 22, 2007).

<sup>33</sup> Deferral Request at 4-5 and Hoge Affidavit at ¶ 9.

<sup>34</sup> Deferral Request at 5 and Hoge Affidavit at ¶ 10.

<sup>35</sup> Deferral Request at 4, 6 and Hoge Affidavit at ¶ 12.

<sup>36</sup> *Id.*

<sup>37</sup> See 47 C.F.R. § 1.3 ("Any provision of the rules may be waived by the Commission on its own motion . . . if good cause therefor is shown.").

procedures we established in the *BendBroadband* and *GCI Orders* for small cable operators that may face difficulties in complying with the July 1, 2007 deadline because manufacturers may prioritize orders from the largest cable operators.<sup>39</sup>

9. Consistent with the policies we established in the *BendBroadband* and *GCI Orders*, we find that grant of Crosslake's request to defer enforcement of the July 1, 2007 deadline set forth in Section 76.1204(a)(1) of the Commission's rules will serve the public interest. The affidavit and accompanying documentation submitted by Crosslake confirms that (1) Crosslake has already submitted an order to purchase a sufficient number of compliant set-top boxes to meet the limited demand for its digital services for the next year; (2) NCTC, the supplier of the set-top boxes, has confirmed that the compliant set-top boxes will not be delivered by the July 1, 2007 deadline; (3) NCTC expects to receive and deliver the compliant set-top boxes to Crosslake by October 1, 2007; (4) Crosslake seeks a deferral only until it receives delivery of the compliant set-top boxes; and (5) Crosslake will not order any new integrated set-top boxes during the deferral period because it has a sufficient number of set-top boxes in inventory to meet its needs until it receives delivery of the compliant set-top boxes.

10. As we recognized in previous decisions, small cable operators such as Crosslake will likely face difficulties in complying with the July 1, 2007 deadline because manufacturers may prioritize orders from the largest cable operators.<sup>40</sup> Crosslake has demonstrated that it has ordered a sufficient number of compliant set-top boxes to meet subscriber demand for the next year but the manufacturer of these set-top boxes is either unable or unwilling to deliver these boxes before the July 1, 2007 deadline. Given these facts supported by Crosslake's affidavit, we find that it would serve the public interest to defer enforcement of the July 1, 2007 deadline as applied to Crosslake until it receives delivery of the compliant set-top boxes.

#### IV. ORDERING CLAUSES

11. 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 of The City of Crosslake, Minnesota d/b/a Crosslake Communications for a deferral of enforcement of the July 1, 2007 deadline set forth in 47 C.F.R. § 76.1204(a)(1) of the Commission's rules, 47 C.F.R. § 76.1204(a)(1), **IS GRANTED**, to the extent described above.

12. 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

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<sup>38</sup> See 47 C.F.R. § 76.7 (“On petition by any interested party, ... the Commission may waive any provision of this part 76, ...”).

<sup>39</sup> *BendBroadband Order*, 22 FCC Rcd 209, 212-213, ¶ 10; *GCI Order* at ¶ 18.

<sup>40</sup> *Id.*