

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

In the Matter of	)	
	)	
Colo Telephone Company	)	CSR-7218-Z
Griswold Cooperative Telephone Company	)	CSR-7219-Z
Coon Creek Telephone Company and Coon Creek	)	CSR-7220-Z
Telecommunications Corp.	)	
Wellman Cooperative Telephone Association	)	CSR-7221-Z
Interstate Cablevision Company	)	CSR-7222-Z
NTS Communications, Inc.	)	CSR-7227-Z
XIT Telecommunication & Technology LTD	)	CSR-7228-Z
	)	
	)	
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: July 23, 2007**

**Released: July 23, 2007**

By the Chief, Media Bureau:

**I. INTRODUCTION**

1. The above-captioned multichannel video programming distributors (“Petitioners”) have filed with the Chief of the Media Bureau requests for waiver (the “Waiver Requests”) of the ban on integrated set-top boxes set forth in Section 76.1204(a)(1) of the Commission’s rules.<sup>1</sup> The Petitioners have indicated that they operate all-digital systems or will transition to all-digital systems by February 17, 2009. All seek a waiver of the integration ban, which they argue is necessary in order to make the transition or to continue to provide the high-quality video and related digital services over their all-digital distribution networks.<sup>2</sup> For the reasons stated below, we grant the Waiver Requests subject to the conditions specified below pursuant to Sections 1.3 and 76.7 of the Commission’s rules.<sup>3</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:

<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> See, e.g., Radcliffe Telephone Company Waiver Request at 3; Dumont Telephone Company Waiver Request at 3; En-Touch Waiver Request at 2.

<sup>3</sup> 47 C.F.R. §§ 1.3, 76.7.

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.<sup>4</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>5</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>6</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>7</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>8</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>9</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>10</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>11</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>12</sup> Then, in 2005, again at the urging of cable operators,<sup>13</sup> the Commission further extended that date until July 1, 2007.<sup>14</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>15</sup> It further stated that “at the heart of a robust retail market for navigation devices is the

<sup>4</sup> 47 U.S.C. § 549(a).

<sup>5</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>6</sup> H.R. REP. NO. 104-204, at 112 (1995).

<sup>7</sup> *Id.*

<sup>8</sup> S. REP. 104-230, at 181 (1996) (Conf. Rep.).

<sup>9</sup> 47 U.S.C. § 549(c).

<sup>10</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>11</sup> For marketing purposes, PODs are referred to as “CableCARDS.”

<sup>12</sup> *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, 18 FCC Rcd 7924, 7926, ¶ 4 (2003).

<sup>13</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>14</sup> *Id.* at 6814, ¶ 31.

reliance of cable operators on the same security technology and conditional access interface that consumer electronics manufacturers must rely on in developing competitive navigation devices.”<sup>16</sup> The Commission concluded that such common reliance will “align MVPDs’ incentives with those of other industry participants so that MVPDs will plan the development of their services and technical standards to incorporate devices that can be independently manufactured, sold, and improved upon” and make it “far more likely that [MVPDs] will continue to support and take into account the need to support services that will work with independently supplied and purchased equipment.”<sup>17</sup>

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>18</sup> In each case, the Bureau found that waiver was not warranted for any of the parties pursuant to Section 629(c) because none of the parties demonstrated that waiver was necessary to assist in the development or introduction of a new or improved service.<sup>19</sup> The Bureau also found that devices with two-way functionality did not meet the waiver policy established by the Commission in the 2005 *Deferral Order* for low-cost, limited-capability set-top boxes.<sup>20</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, given its commitment to move to an all-digital network by 2008.<sup>21</sup> 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.<sup>22</sup> The Bureau conditionally granted waivers to Millennium Telecom, LLC d/b/a OneSource Communications<sup>23</sup> and GCI Cable, Inc.<sup>24</sup> similar to the waiver granted to BendBroadband.<sup>25</sup>

5. On June 29, 2007, in six separate orders the Media Bureau acted upon 143 requests for waiver of Section 76.1204(a)(1) of the Commission’s rules. First, the Bureau granted 129 waiver

(...continued from previous page)

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 6807, ¶ 27.

<sup>17</sup> *Id.* at 6809, ¶ 30.

<sup>18</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>19</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>20</sup> *BendBroadband Order*, 22 FCC Rcd at 214-215, ¶¶ 16-20; *Comcast Order*, 22 FCC Rcd at 238-241, ¶¶ 24-30.

<sup>21</sup> The Bureau also found good cause to grant Cablevision Systems Corporation’s request for waiver based on the company’s longstanding use of a separated security solution. *Cablevision Order*, 22 FCC Rcd at 225-227, ¶¶ 17-20.

<sup>22</sup> 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 Telcom, 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*”).

<sup>23</sup> *Millennium Order* at ¶ 16.

<sup>24</sup> *GCI Order* at ¶¶ 15, 17, and granted a waiver to Charter Communications, Inc. due to its demonstrated financial hardship.

<sup>25</sup> The Bureau also found good cause to grant Charter Communications, Inc.’s request for waiver due to the company’s demonstrated financial hardship. *Charter Order* at ¶ 12.

requests based on each applicant's current operation, or commitment to operate before February 17, 2009, of an all-digital video distribution network comparable to the all-digital network to which BendBroadband, GCI, and Millennium committed to migrate.<sup>26</sup> Second, consistent with policies established in the *GCI Order*, the Bureau granted the request of the City of Crosslake, MN d/b/a Crosslake Communications to defer the July 1, 2007 deadline based on its affidavit demonstrating that it placed orders for compliant set-top boxes that will not be filled by the July 1<sup>st</sup> deadline.<sup>27</sup> Third, the Bureau granted Guam Cablevision, LLC a limited waiver of the integration ban based on the unique circumstances stemming from typhoon-related damage to Guam Cablevision's system and the system's separation from the fifty states.<sup>28</sup> Fourth, the Bureau denied the request of the National Cable & Telecommunications Association seeking a general waiver of the integration ban until cable operators' deployment of downloadable security or December 31, 2009, whichever is earlier.<sup>29</sup> Fifth, the Bureau declined Massillon's waiver request to allow it to continue to deploy its inventory of non-compliant set-top boxes after the July 1, 2007 deadline, finding that Massillon's decision to purchase thousands of integrated set-top boxes rather than compliant, non-integrated set-top boxes for delivery in the months leading up to the July 1, 2007 deadline did not justify a waiver of the rule.<sup>30</sup> Finally, the Bureau denied ten waiver requests for set-top boxes that it concluded were not the "low-cost, limited-capability" set-top boxes that the Commission committed to exempt from the integration ban in the *2005 Deferral Order*.<sup>31</sup>

## B. The Waiver Requests and Comments

### 1. The Iowa Network Services Providers

6. A subset of Petitioners ("INS Providers") filed requests for waiver of the integration ban to allow them to use the conditional access technology that is or will be incorporated into their cable set-top boxes.<sup>32</sup> The INS Providers are a group of small MVPDs in Iowa who receive their programming through a central distribution network connected to a central headend operated by Iowa Network Services and offer (or intend to offer) video service over all-digital copper and fiber optic based systems. The INS Providers state that, as small rural providers, they do "not have the market power or resources to influence manufacturer timetables to develop conditional access solutions that comply with the FCC's integration ban."<sup>33</sup> They state that they have "diligently made inquiries with [their] middleware provider[s] to determine when an integration-ban compliant solution will be available," but that the "providers have not

<sup>26</sup> See *Consolidated Requests for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, DA 07-2921 (MB rel. June 29, 2007) ("*All-Digital Waiver Order*").

<sup>27</sup> See *The City of Crosslake, Minnesota d/b/a Crosslake Communications Petition for Deferral of Enforcement of July 1, 2007 Deadline in 47 C.F.R. § 76.1204(a)(1)*, DA 07-2918 (MB rel. June 29, 2007).

<sup>28</sup> See *Guam Cablevision, LLC Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, DA 07-2917 (MB rel. June 29, 2007).

<sup>29</sup> See *National Cable & Telecommunications Association Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, DA 07-2920 (MB rel. June 29, 2007).

<sup>30</sup> See *Massillon Cable TV, Inc. Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, DA 07-2919 (MB rel. June 29, 2007).

<sup>31</sup> See *Armstrong Utilities et al Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, DA 07-2916 (MB rel. June 29, 2007).

<sup>32</sup> These petitioners include: Colo Telephone Company, Griswold Cooperative Telephone Company, Coon Creek Telephone Company and Coon Creek Telecommunications Corp., Wellman Cooperative Telephone Association, and Interstate Cablevision Company.

<sup>33</sup> See, e.g., *Interstate Cablevision Company Waiver Request* at 3, *Wellman Cooperative Telephone Association Waiver Request* at 3.

committed to making compliant devices available before the effective date of the integration ban.”<sup>34</sup> The INS Providers argue that a waiver is justified “because a conditional access solution that provides for common reliance is not available.”<sup>35</sup> They state that, because they already operate all-digital systems, absent a waiver they will need to cease or will be unable to commence video programming until a compliant solution is found.

7. Motorola and the Consumer Electronics Association (“CEA”) each filed comments in response to these requests, and the National Cable and Telecommunications Association (“NCTA”) filed a reply. Motorola states that Bureau should grant waiver to rural video telco providers that already provide all-digital service based on Bureau precedent in the *All-Digital Order*.<sup>36</sup> CEA and NCTA’s comments raise issues that would more appropriately be addressed outside of this narrow order.<sup>37</sup>

## 2. NTS Communications, Inc.

8. NTS Communications, Inc. (“NTS”) seeks waiver of the integration ban to allow it to use the conditional access technology that is or will be incorporated into their cable set-top boxes. NTS is a small telecommunications provider that provides cable television service in Lubbock, Texas and offers video service over its all-digital fiber-to-the-home network. NTS states that, because NTS is a small competitive provider, “grant of a waiver to NTS would have negligible impact as [NTS] does not have any ability whatsoever to influence manufacturers to build devices that comply with the FCC’s integration ban.”<sup>38</sup> NTS also states that no compliant set-top box options are available.<sup>39</sup> Motorola and the Consumer Electronics Association (“CEA”) each filed comments in response to these requests, and the National Cable and Telecommunications Association (“NCTA”) filed a reply. Motorola states that the Bureau should grant waivers to rural video telco providers that already provide all-digital service based on Bureau precedent in the *All-Digital Order*.<sup>40</sup> CEA and NCTA’s comments raise issues that would more appropriately be addressed outside of this narrow order.<sup>41</sup>

---

<sup>34</sup> See, e.g., Interstate Cablevision Company Waiver Request at 3, Wellman Cooperative Telephone Association Waiver Request at 3.

<sup>35</sup> See, e.g., Interstate Cablevision Company Waiver Request at 4, Wellman Cooperative Telephone Association Waiver Request at 4.

<sup>36</sup> Motorola Comments, CSR-7220-Z, at 6.

<sup>37</sup> See CEA Comments, CSR-7218-Z, at 2-6; NCTA Reply Comments, CSR-7218-Z, at 2-9. In its Comments, CEA emphasizes the importance of a national solution for downloadable security. See CEA Comments, CSR-7218-Z, at 3. In its Reply, NCTA responds to CEA’s arguments. NCTA Reply Comments, CSR-7218-Z, at 2-9. We agree with NCTA’s statement that these comments “range far beyond the issues raised by the individual waiver requests of the telephone company Petitioners,” and therefore choose not to address those issues in this narrow order. NCTA Reply Comments, CSR-7218-Z, at 2.

<sup>38</sup> NTS Waiver Request at 5.

<sup>39</sup> *Id.*

<sup>40</sup> Motorola Comments, CSR-7220-Z, at 6.

<sup>41</sup> See CEA Comments, CSR-7227-Z, at 2-6; NCTA Comments, CSR-7227-Z, at 2-9. In its Comments, CEA emphasizes the importance of a national solution for downloadable security. See CEA Comments, CSR-7218-Z, at 3. In its Reply, NCTA responds to CEA’s arguments. NCTA Reply Comments, CSR-7218-Z, at 2-9. We agree with NCTA’s statement that these comments “range far beyond the issues raised by the individual waiver requests of the telephone company Petitioners,” and therefore choose not to address those issues in this narrow order. NCTA Reply Comments, CSR-7218-Z, at 2.

### 3. XIT Telecommunication & Technology LTD

9. XIT Telecommunication & Technology LTD (“XIT”) seeks waiver of the integration ban to allow it to use the conditional access technology that is or will be incorporated into their cable set-top boxes. XIT seeks waiver to allow it to upgrade two rural cable systems that it recently acquired.<sup>42</sup> XIT states that it plans to transition to an all-digital network by December 31, 2007, and seeks waiver only until that time.<sup>43</sup> Motorola and CEA each filed comments in response to this request. Motorola states that Bureau should grant waiver to rural video telco providers that already provide all-digital service based on Bureau precedent in the *All-Digital Order*.<sup>44</sup> CEA states that the Bureau should not grant waiver requests that fall outside of the narrowly defined criteria that have been established for waiver.<sup>45</sup>

### III. DISCUSSION

10. The Petitioners submitted their Waiver Requests variously under Section 629(c) of the Act,<sup>46</sup> Section 706 of the Telecommunications Act of 1996,<sup>47</sup> and the general waiver provisions found in Sections 1.3<sup>48</sup> and 76.7<sup>49</sup> of the Commission’s rules. We analyze the Waiver Requests pursuant to the waiver standards set forth in Section 629(c)<sup>50</sup> and the general waiver provisions found in Sections 1.3 and 76.7 of the Commission’s rules.<sup>51</sup> As discussed below, we find that we cannot grant any of the Waiver Requests under Section 629(c). At the same time, given each Petitioner’s demonstration that it has already made such a transition, or stated commitment to move to an all-digital network by February 17, 2009 if it is able to continue to deploy certain low-end integrated set-top boxes after July 1, 2007, we conclude that limited grant of the Waiver Requests under Sections 1.3 and 76.7 of the Commission’s rules is justified in order to enable the Petitioners to continue to provide all-digital services to their subscribers, or to complete their migrations to all-digital networks by February 17, 2009. We therefore conditionally grant the Waiver Requests. The details of that conditional grant 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

---

<sup>42</sup> XIT Waiver Request at 1.

<sup>43</sup> *Id* at 5.

<sup>44</sup> Motorola Comments, CSR-7220-Z, at 4.

<sup>45</sup> See CEA Comments, CSR-7228-Z, at 1-2.

<sup>46</sup> 47 U.S.C. § 549(c).

<sup>47</sup> Section 706 of the Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (1996) (1996 Act), reproduced in the notes under 47 U.S.C. § 157.

<sup>48</sup> 47 C.F.R. § 1.3.

<sup>49</sup> 47 C.F.R. § 76.7.

<sup>50</sup> 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>51</sup> Because we decide below to grant the waiver petitions pursuant to Sections 1.3 and 76.7 of the Commission’s rules, we need not address the Petitioners’ claims that a waiver is justified under Section 706 of the Telecommunications Act of 1996.

or other service offered over multichannel video programming systems, technology, or products.<sup>52</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. Section 629(a) thus charges the Commission with adopting regulations that further that goal. At the same time, however, Congress intended “that the Commission avoid actions which could have the effect of freezing or chilling the development of new technologies and services.”<sup>53</sup> Accordingly, waivers of those regulations are granted when doing so “is necessary to assist the development or introduction of a new or improved” service, such as, for example, a nascent MVPD offering from a new competitor.<sup>54</sup>

12. Certain Petitioners argue that Waiver Request grants are necessary to assist in the development of new and improved digital cable services, such as increased HD and VOD programming, increased broadband speed and capacity, and other digital services, as well as to ease the burdens of the over-the-air transition to all-digital broadcasting. As a general matter, we do not find compelling Petitioners’ arguments that grant of the Waiver Requests is necessary to assist the development or introduction of these services. First, as some Petitioners note, they have already launched digital services in their markets and so it cannot be said that a waiver is necessary to assist in the “introduction” of these services, as they already exist. Second, while it could be argued that waivers 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, Petitioners have failed to show that waivers are “necessary” here to assist in the “development or introduction” of new or improved services.<sup>55</sup> Indeed, as we stated in the *January 10 Orders*, such an interpretation would effectively negate any rules adopted pursuant to Section 629(a).<sup>56</sup>

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

13. 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,” particularly when considered in the context of the Commission’s goal of promoting the broadcast television digital transition.<sup>57</sup> The Bureau conditionally granted BendBroadband’s waiver request pursuant to Sections 1.3

---

<sup>52</sup> 47 U.S.C. § 549(c).

<sup>53</sup> S. REP. 104-230, at 181 (1996) (Conf. Rep.).

<sup>54</sup> See *First Report and Order*, 13 FCC Rcd at 14801, ¶ 65 (declining to apply the integration ban to DBS providers and noting that “in many instances, the Commission refrains from imposing regulations on new entrants”) (citation omitted).

<sup>55</sup> 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.

<sup>56</sup> 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.

<sup>57</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.

and 76.7 of the Commission's rules,<sup>58</sup> subject to BendBroadband's submission of a sworn declaration stating that it would take specific steps, as outlined in the *BendBroadband Order*, to demonstrate its commitment to an all-digital network within its stated timeframe. More recently, the Bureau conditionally granted similar waivers to GCI, Millennium, and many other all-digital providers.<sup>59</sup>

14. We find that, as limited below, the Waiver Requests now before us likewise present non-speculative public interest benefits that justify grant. The Petitioners currently operate, or will operate before February 17, 2009, all-digital video distribution networks comparable to the all-digital networks to which BendBroadband, GCI, and Millennium have committed to migrate. As explained in the *BendBroadband Order*, operation of an all-digital network requires every analog device in a cable subscriber's home to have a set-top box or CableCARD.<sup>60</sup> The ability to offer subscribers a low-cost set-top box is critical to ensuring that every analog device in subscribers' homes is compatible with an all-digital system.<sup>61</sup> Thus, as the Bureau noted in the *All-Digital Order*, "[s]trict enforcement of the rule, moreover, would in effect 'punish' [the Petitioners] for transitioning to an all-digital network' and would prohibit Petitioners from 'offer[ing] their subscribers the use of set-top boxes necessary to access even the basic features of the video system due to its all-digital transmissions.'"<sup>62</sup> In addition, we note that many of the Petitioners are providing, or will provide, all-digital service to rural customer bases.<sup>63</sup> As discussed above and in the *BendBroadband Order*, we believe that all-digital networks produce clear, non-speculative public interest benefits that, on balance, warrant a limited grant of the Waiver Requests.<sup>64</sup> Therefore, subject to paragraph 16 below, the captioned Petitioners may deploy set-top boxes with integrated security after July 1, 2007.

15. In the *All-Digital Waiver Order*, we explained that a waiver for certain high-end HD and digital video recorder ("DVR") devices for traditional cable operators would be inconsistent with the narrowly defined goal of the conditional waiver granted to BendBroadband.<sup>65</sup> We explained that 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>66</sup> rather, it was to permit BendBroadband to transition to an all-

<sup>58</sup> *BendBroadband Order*, 20 FCC Rcd at 218, ¶ 27.

<sup>59</sup> See *supra* nn.20-24, 26 and accompanying text.

<sup>60</sup> *BendBroadband Order*, 20 FCC Rcd at 218

<sup>61</sup> *Id.*

<sup>62</sup> *All-Digital Waiver Order* at ¶ 59 (citations omitted).

<sup>63</sup> See, e.g., Colo Telephone Comments at 7-8.

<sup>64</sup> As explained in the *BendBroadband Order*, these public interest benefits include (i) ensuring that cable subscribers will be able to view digital broadcast signals after the end of the DTV transition; and (ii) enabling cable operators to provide additional HD content, which may facilitate the DTV transition by creating greater incentives for cable subscribers to acquire digital television sets. *BendBroadband Order*, 20 FCC Rcd at 218, ¶ 24.

<sup>65</sup> See *All-Digital Waiver Order* at ¶ 17.

<sup>66</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

(continued....)

digital system.<sup>67</sup> We also stated, however, our understanding that set-top box manufacturers have not developed any non-integrated HD or DVR devices for use with Internet Protocol (“IP”) or Asynchronous Transfer Mode (“ATM”) systems.<sup>68</sup> To the extent that this understanding is correct, we will allow Petitioners to deploy HD and DVR devices with integrated security elements for use on such systems only until July 1, 2008.<sup>69</sup> Over the next year, those operators should work to develop and deploy a separable security solution that will allow for interoperability between their systems and consumer electronics equipment, preferably a downloadable solution based on open standards.<sup>70</sup>

16. To the extent that the XIT has not yet transitioned to all-digital networks, this relief is also conditioned on the following: (1) XIT must file with the Media Bureau a sworn declaration within 10 days of the release of this order in which it commits to move to an all-digital network on or before February 17, 2009;<sup>71</sup> (2) XIT must notify all of its analog customers of its plans to go all digital within 10 days of the release of this order,<sup>72</sup> and submit a sworn declaration to the Commission confirming that such notice has been provided; (3) XIT must ensure that 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 its video programming on their television sets after the transition and submits a sworn declaration to the Commission confirming that this is the case, and (4) XIT must publicly commit to this plan by sworn declaration. As we explained in the *BendBroadband Order*, such a declaration will “demonstrate [a] commitment to move to an all-digital network.”<sup>73</sup>

---

(...continued from previous page)

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>67</sup> See *All-Digital Waiver Order* at ¶ 17.

<sup>68</sup> See, e.g., Colo Telephone Comments at 5-6; NTS Comments at 5-6.

<sup>69</sup> See *All-Digital Waiver Order* at ¶ 17.

<sup>70</sup> We also encourage these operators to take an active role in the Commission’s efforts to develop a solution for bidirectional compatibility between consumer electronics devices and multichannel video programming systems. See *Implementation of Section 304 of the Telecommunications Act of 1996*, Third Further Notice of Proposed Rulemaking, FCC 07-120 (rel. June 29, 2007).

<sup>71</sup> Although certain Petitioner’s target dates for transitioning to all-digital cable systems are slightly longer than that permitted in the *BendBroadband Order*, we believe the additional periods requested to transition to all-digital systems are of a reasonably short duration such that they are generally consistent with the deadline imposed upon BendBroadband. The key to the public interest analysis is that these transitions will be complete by the February 17, 2009 deadline for the DTV transition. See *GCI Order* at n.54.

<sup>72</sup> XIT seeks to transition by December 31, 2007, and would prefer not to wait an entire year before transitioning those systems, and therefore proposes a shorter notification period. See XIT Waiver Request at 8-9. Given XIT’s ambitious transition plan, that request is granted, with the caveat that XIT must notify its customers within ten days of the release of this order of its plan to transition to an all-digital system.

<sup>73</sup> See *BendBroadband Order*, 22 FCC Rcd at 216, ¶ 21. It is important that these operators notify their analog customers about the impending transitions to an all-digital networks to ensure that the subscribers understand that devices that are not equipped with CableCARDS will not receive cable service without a set-top box, and to provide those subscribers with ample time to order CableCARDS or request set-top boxes from their providers.

#### IV. ORDERING CLAUSES

17. Accordingly, **IT IS ORDERED** that, pursuant to Section 629 of the Communications Act of 1934, as amended, 47 U.S.C. § 549, and Section 76.1207 of the Commission's rules, 47 C.F.R. § 76.1207, the requests for waiver filed by Colo Telephone Company, Griswold Cooperative Telephone Company, Coon Creek Telephone Company and Coon Creek Telecommunications Corp., Wellman Cooperative Telephone Association, Interstate Cablevision Company, NTS Communications, Inc., and XIT Telecommunication & Technology LTD, of Section 76.1204(a)(1) of the Commissions rules, 47 C.F.R. § 76.1204(a)(1), **IS DENIED**.

18. 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 conditional waiver of Section 76.1204(a)(1) of the Commission's rules, 47 C.F.R. § 76.1204(a)(1), **IS GRANTED** to Colo Telephone Company, Griswold Cooperative Telephone Company, Coon Creek Telephone Company and Coon Creek Telecommunications Corp., Wellman Cooperative Telephone Association, Interstate Cablevision Company, NTS Communications, Inc., and XIT Telecommunication & Technology LTD, conditioned as set forth in paragraphs 15 and 16 of this Order.

19. 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