

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

In the Matter of)
)
Guam Cablevision, LLC) CSR-7193-Z
)
Requests for Waiver of Section 76.1204(a)(1) of)
the Commission’s Rules)
)

MEMORANDUM OPINION AND ORDER

Adopted: July 1, 2008

Released: July 1, 2008

By the Chief, Media Bureau:

I. INTRODUCTION

1. Guam Cablevision, LLC (“GCL”) seeks modification of its waiver of the ban on integrated set-top boxes set forth in Section 76.1204(a)(1) of the Commission’s rules¹ so that it may place into service certain integrated digital cable set-top boxes. The Bureau has already granted GCL a limited waiver of the ban on integrated set-top boxes for the Scientific Atlanta Explorer 1850,² finding that the extraordinary typhoon damage that GCL has endured demonstrated good cause for waiver under Sections 1.3 and 76.7 of the Commission’s rules.³ As set forth below, we modify Guam’s request for waiver to include the Scientific Atlanta Explorer 2200 and the Scientific Atlanta Explorer 8300.

II. BACKGROUND

2. Congress directed the Commission to adopt regulations to assure the commercial availability of navigation devices more than ten years ago as part of the Telecommunications Act of 1996.⁴ The Commission implemented this directive in 1998 through the adoption of the “integration ban,” which established a date after which cable operators no longer may place into service new

¹ 47 C.F.R. § 76.1204(a)(1).

² *Guam Cablevision Request for Waiver of Section 76.1204(a)(1) of the Commission’s Rules, LLC*, 22 FCC Rcd 11747 (2007) (“*GCL Order*”).

³ *See* 47 C.F.R. §§ 1.3, 76.7; *GCL Order*, 22 FCC Rcd at 11752, ¶¶ 13-14.

⁴ *See* Section 629(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 549(a) (requiring the FCC “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 over multichannel video programming systems, from manufacturers, retailers, and other vendors not affiliated with any multichannel video programming distributor”); *see also* Telecommunications Act of 1996, Pub. L. No. 104-104, § 304, 110 Stat. 56, 125-126 (1996).

navigation devices (*e.g.*, set-top boxes) that perform both conditional access and other functions in a single integrated device.⁵ Originally, the Commission established January 1, 2005 as the deadline for compliance with the integration ban.⁶ On two occasions, the National Cable and Telecommunications Association (“NCTA”), on behalf of all cable operators, sought – and obtained – extensions of that deadline.⁷ The Commission ultimately fixed July 1, 2007 as the deadline in order to afford cable operators additional time to determine the feasibility of developing a downloadable security function that would permit compliance with the Commission’s rules without incurring the cable operator and consumer costs associated with the separation of hardware.⁸

3. The purpose of the integration ban is to assure reliance by both cable operators and consumer electronics manufacturers on a common separated security solution.⁹ This “common reliance” is necessary to achieve the broader goal of Section 629 – *i.e.*, to allow consumers the option of purchasing navigation devices from sources other than their MVPD.¹⁰ Although the cable industry has challenged the lawfulness of the integration ban on three separate occasions, in each of those cases the D.C. Circuit denied those petitions.¹¹ In limited circumstances, however, operators may be eligible for waiver of the integration ban.¹²

⁵ See *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, 13 FCC Rcd 14775, 14803, ¶ 69 (1998) (“*First Report and Order*”) (adopting Section 76.1204 of the Commission’s rules, subsection (a)(1) of which (1) required multichannel video programming distributors (“MVPDs”) to make available by July 1, 2000 a security element separate from the basic navigation device (*i.e.*, the CableCARD), and, in its original form, (2) prohibited MVPDs covered by this subsection from “plac[ing] in service new navigation devices ... that perform both conditional access and other functions in a single integrated device” after January 1, 2005); see also 47 C.F.R. § 76.1204(a)(1) (1998).

⁶ *First Report and Order*, 13 FCC Rcd at 14803, ¶ 69.

⁷ In April 2003, the Commission extended the effective date of the integration ban until July 1, 2006. See *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, 18 FCC Rcd 7924, 7926, ¶ 4 (2003) (“*Extension Order*”). Then, in 2005, the Commission further extended that date until July 1, 2007. See *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, 20 FCC Rcd 6794, 6810, ¶ 31 (“*2005 Deferral Order*”).

⁸ *2005 Deferral Order*, 20 FCC Rcd at 6810, ¶ 31.

⁹ See *Cablevision Systems Corporation’s Request for Waiver of Section 76.1204(a)(1) of the Commission’s Rules*, 22 FCC Rcd 220, 226, ¶ 19 (2007) (citing the *2005 Deferral Order*, 20 FCC Rcd at 6809, ¶ 30) (explaining why the Commission “require[d] MVPDs and consumer electronics manufacturers to rely upon identical separated security with regard to hardware-based conditional access solutions”).

¹⁰ See S. REP. 104-230, at 181 (1996) (Conf. Rep.). See also *Bellsouth Interactive Media Services, LLC*, 19 FCC Rcd 15607, 15608, ¶ 2 (2004). As the Bureau noted, 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.” *GCL Order*, 22 FCC Rcd at 11748, ¶ 2 (citing H.R. REP. NO. 104-204, at 112 (1995)).

¹¹ *Comcast Corp. v. FCC*, 526 F.3d 763 (D.C. Cir. 2008); *Charter Comm., Inc. v. FCC*, 460 F.3d 31 (D.C. Cir. 2006); *General Instrument Corp. v. FCC*, 213 F.3d 724 (D.C. Cir. 2000). The Commission argued, and the D.C. Circuit agreed, that the integration ban was a reasonable means to meet Section 629’s directive. *Charter Comm., Inc. v. FCC*, 460 F.3d 31, 41 (D.C. Cir. 2006) (“this court is bound to defer to the FCC’s predictive judgment that, “[a]bsent common reliance on an identical security function, we do not foresee the market developing in a manner consistent with our statutory obligation.””).

¹² For example, Section 629(c) provides that the Commission shall grant a waiver of its regulations implementing Section 629(a) upon an appropriate showing that such waiver is necessary to assist the development or introduction of new or improved services. 47 U.S.C § 549(c). Furthermore, petitioners who have shown good cause have

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III. DISCUSSION

4. GCL asserts that its waiver should be modified to include the Scientific Atlanta Explorer 2200 and the Scientific Atlanta Explorer 8300 set-top boxes for the same reasons the Bureau afforded GCL a waiver of the Scientific Atlanta Explorer 1850.¹³ GCL explains that Scientific Atlanta is discontinuing production of the Explorer 1850, and GCL will be required to use the successor device, the Explorer 2200.¹⁴ GCL also asserts that the Guam retail market is unique from other markets in the United States, where CableCARD devices are freely available from retail outlets, and competitive digital video recorder (“DVR”) service is available.¹⁵ Guam, an unincorporated territory of the United States, is situated between Hawaii (3,300 miles west) and the Philippines (1,500 miles east), has a land mass of only 212 square miles, and has a population of approximately 175,000.¹⁶ The market for consumer electronics is small and underdeveloped relative to the market in the continental United States. GCL argues that these unique circumstances justify a temporary waiver of the integration ban rules for the Scientific Atlanta Explorer 2200 and Scientific Atlanta Explorer 8300.¹⁷

5. For the same reasons set forth in our prior GCL waiver decision, the company has established that it faces an idiosyncratic factual situation in its service area.¹⁸ While the Commission has not been persuaded by others who have made speculative claims that the integration ban may impose a financial burden on their companies,¹⁹ as we found previously, GCL faces an exceptional circumstance, particularly given the extraordinary devastation the island has faced over the past ten years.²⁰ Accordingly, we conclude that good cause exists for a limited waiver of the integration ban for the Scientific Atlanta Explorer 2200 and Scientific Atlanta Explorer 8300, 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.

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received waivers of the integration ban pursuant to Sections 1.3 and 76.7 of the Commission's rules. *See, e.g., GCL Order*, 22 FCC Rcd at 11752, ¶¶ 13-14.

¹³ GCL Modification Request at 3 (filed July 12, 2007).

¹⁴ *Id.* at 1-2.

¹⁵ *Id.* at 2-3.

¹⁶ THE CIA WORLD FACTBOOK – GUAM (2008), available at <https://www.cia.gov/library/publications/the-world-factbook/geos/gq.html>; Guam Chamber of Commerce Home Page, <http://www.guamchamber.com.gu>; Guam Online Home Page, <http://Guam-OnLine.com>.

¹⁷ *Id.*

¹⁸ *See GCL Order*, 22 FCC Rcd at 11749-50, ¶¶ 5-7.

¹⁹ *Comcast Corporation Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, 22 FCC Rcd 17113, 17124-25, ¶ 17 (2007), *pet. for review denied*, *Comcast Corp. v. FCC*, 526 F.3d 763 (D.C. Cir. 2008).

²⁰ *GCL Order*, 22 FCC Rcd at 11752.

IV. ORDERING CLAUSE

6. 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 Guam Cablevision, LLC for the Scientific Atlanta Explorer 2200 and the Scientific Atlanta Explorer 8300 digital set-top boxes until December 31, 2009.

FEDERAL COMMUNICATIONS COMMISSION

Monica Shah Desai
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