

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

In the Matter of	)	
	)	
James Cable, LLC	)	CSR-7216-Z
	)	
RCN Corporation	)	CSR-7113-Z
	)	
WideOpenWest Finance, LLC	)	CSR-7139-Z
	)	
Requests for Waiver of Section 76.1204(a)(1) of the Commission's Rules	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: July 09, 2008**

**Released: July 10, 2008**

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 extensions of their waivers (the “Extension 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> Last year the Media Bureau found good cause to grant limited waivers to Petitioners, which allowed them to continue to place into service certain integrated digital cable set-top boxes (the “Subject Boxes”) after July 1, 2008. Due to ongoing financial hardship, Petitioners seek extensions of those limited waivers. The Extension Requests are unopposed. For the reasons stated below, we grant the extensions requested by James Cable, LLC (“James Cable”), RCN Corporation (“RCN”), and WideOpenWest Finance, LLC (“WOW”), until January 31, 2009, conditioned as set forth below.

**II. BACKGROUND**

**A. Section 629 of the Act**

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.<sup>2</sup> The Commission implemented this directive in 1998 through the adoption of the “integration

<sup>1</sup> 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.”

<sup>2</sup> 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

ban,” which established a date after which cable operators no longer may place into service new navigation devices (*e.g.*, set-top boxes) that perform both conditional access and other functions in a single integrated device.<sup>3</sup> Originally, the Commission established January 1, 2005 as the deadline for compliance with the integration ban.<sup>4</sup> On two occasions, the National Cable and Telecommunications Association (“NCTA”), on behalf of all cable operators, sought – and obtained – extensions of that deadline.<sup>5</sup> 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.<sup>6</sup>

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.<sup>7</sup> 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.<sup>8</sup> 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

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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).

<sup>3</sup> *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).

<sup>4</sup> *First Report and Order*, 13 FCC Rcd at 14803, ¶ 69.

<sup>5</sup> 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*”).

<sup>6</sup> *2005 Deferral Order*, 20 FCC Rcd at 6810, ¶ 31.

<sup>7</sup> *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”).

<sup>8</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). 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.”

denied those petitions.<sup>9</sup> In limited circumstances, however, operators may be eligible for waiver of the integration ban.<sup>10</sup>

### III. DISCUSSION

4. Petitioners make their requests for waiver pursuant to the *Financial Hardship Order*<sup>11</sup> and Sections 1.3 and 76.7 of the Commission's rules.<sup>12</sup> In light of Petitioners' demonstrated financial hardships and consistent with the *Financial Hardship Order*, we conclude that a limited grant of their Extension Requests until January 31, 2009 is justified under Sections 1.3 and 76.7 of the Commission's rules. We therefore grant Petitioners limited waivers of the integration ban for the Subject Boxes.<sup>13</sup>

5. On April 25, 2008, James Cable submitted a request that the Commission modify the *Financial Hardship Order* to extend the duration of the waiver for at least one additional year.<sup>14</sup> James Cable has demonstrated that good cause exists to grant its Extension Request<sup>15</sup> and that such an extension would serve the public interest in this specific instance. The company has demonstrated that it continues to lose customers and that its financial condition remains poor.<sup>16</sup> In order to maintain its service quality and customer base, James Cable has \$900,000 in negative cash flow from financing and investing in excess of the positive cash flow it receives from operations.<sup>17</sup> The company expended more cash than it received in 2007<sup>18</sup> and has lost another 4 percent of its basic cable subscribers during 2007 and now has a penetration rate of only 36 percent.<sup>19</sup> As James Cable is in increasingly poor financial condition (which,

<sup>9</sup> *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.'").

<sup>10</sup> 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 received waivers of the integration ban pursuant to Sections 1.3 and 76.7 of the Commission's rules. See *Great Plains Cable Television, Inc. et al Requests for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, 22 FCC Rcd 13414, 13426-7, ¶¶ 39-40 (2007) ("*Financial Hardship Order*").

<sup>11</sup> *Financial Hardship Order*, 22 FCC Rcd at 13427, ¶ 40 ("[I]f Petitioners believe that, as a result of continuing, non-speculative financial difficulties, extensions of the waiver beyond this initial one-year period are warranted, they may submit updated financial and other information for our consideration.").

<sup>12</sup> 47 C.F.R. §§ 1.3, 76.7. RCN also submitted its Extension Request pursuant to Section 629(c) of the Communications Act of 1934, 47 U.S.C. § 549(c), and Section 76.1207 of the Commission's rules. For the reasons elucidated in the *Financial Hardship Order*, we conclude that RCN's Extension Request, as submitted, does not justify a waiver under Section 629(c). *Financial Hardship Order*, 22 FCC Rcd at 13423-4, ¶¶ 32-33.

<sup>13</sup> Those devices are the Motorola DCT-700, Motorola DCT-1000, Motorola DCT-2500, Motorola DCT-2000, Motorola DSR-410, Motorola DSR-470, Scientific Atlanta Explorer 2100, Scientific Atlanta Explorer 2200, Scientific Atlanta Explorer 3100, and Scientific Atlanta Explorer 3200.

<sup>14</sup> James Cable Extension Request at 1

<sup>15</sup> *Id.* at Exhibit 1.

<sup>16</sup> *Id.* at 1.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at Exhibit 1.

<sup>19</sup> *Id.* at 2.

as the Bureau explained in the *Financial Hardship Order*, was already dire) and continues to lose its customer base, good cause exists to grant James Cable's extension request.

6. On April 30, 2008, RCN submitted a request that the Commission extend its waiver of the integration ban for at least one year, subject to further extension should RCN's financial circumstances continue to warrant extension of such waiver.<sup>20</sup> In light of RCN's demonstrated dire financial circumstances,<sup>21</sup> we conclude that good cause also exists to grant RCN's Extension Request and that such an extension would serve the public interest in this specific instance. RCN submitted updated financial data to demonstrate that its financial condition is worse than it was last year. Specifically, we note that during the first quarter of 2008, RCN has already suffered net losses exceeding those of the three previous years. Although RCN's operating cash flow is positive, cash flow from investments has deteriorated over the past three years and is at a low point, while the net decrease in cash is greater than that of any of the three previous years. While RCN's cash flow from financing has improved, free cash flow is already at a negative \$45 million in 2008. Of the past three years, only 2006 yielded a return on investment for RCN; the company's total debt has continually escalated, as has the amount of interest paid on that debt. RCN asserts that, due to its financial condition, continued waiver is essential to its ability to remain a viable competitor in the cable markets it serves<sup>22</sup> and to its plans to transition to all-digital cable systems by June 2009.<sup>23</sup> Based on RCN's continuing financial hardship, good cause exists to grant RCN's Extension Request.

7. On April 30, 2008, WOW submitted a request that the Commission extend its waiver of the integration ban for at least one year, commencing July 1, 2008.<sup>24</sup> We conclude that WOW has also demonstrated good cause to grant its Extension Request<sup>25</sup> and that such an extension would serve the public interest in this specific instance. WOW's financial circumstances continue to warrant a waiver of the rules.<sup>26</sup> At the end of each reporting period, WOW's operating expenses exceeded operating revenue. In 2007 its operating losses and net losses more than tripled those of 2006. The company's free cash flow is negative, and WOW projects that it will suffer a negative free cash flow in 2008. WOW also faced a decrease in cash in 2007, and WOW's total debt and interest paid has escalated. WOW does not have enough current assets to cover its current liabilities, which means that it does not have enough money to repay current debt. There has been no return on investment during 2007 or 2006. WOW's cash flow projection for 2008 indicates that it will once again yield no return on investment. Furthermore, WOW's penetration rates are much lower than traditional incumbent operators while its programming and equipment costs far exceed other operators'.<sup>27</sup> This puts the company in an unenviable position, as WOW does not have the access to capital its competitors can secure for system upgrades.<sup>28</sup> Accordingly, WOW

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<sup>20</sup> RCN Extension Request at 1. On June 30, RCN also filed a request for limited deferral of enforcement of the integration ban. See Letter from Jean Kiddoo, Counsel, RCN Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission. As this order addresses RCN's concern about enforcement of the integration ban, RCN's deferral request is dismissed as moot.

<sup>21</sup> See *id.* at 4-9.

<sup>22</sup> *Id.* at 6-9.

<sup>23</sup> *Id.* at 9-12.

<sup>24</sup> WOW Extension Request at 3, Exhibit A.

<sup>25</sup> *Id.* at Exhibit A.

<sup>26</sup> *Id.* at 5.

<sup>27</sup> *Id.* at 9.

<sup>28</sup> *Id.* at 10-12.

claims that an extension of its integration ban waiver is warranted in this case. Based on WOW's extraordinary financial hardship, good cause exists to grant WOW's Extension Request.

8. 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,<sup>29</sup> we find that Petitioners' situations are still extraordinary, and we are persuaded by Petitioners' specific demonstrations of their continued financial hardships. While common reliance is integral to the development of the competitive navigation device market that Congress mandated through Section 629, we believe that in these specific cases the Petitioners have shown good cause for waiver of the integration ban rule based on the costs associated with its imposition. Accordingly, we conclude that limited waivers of the integration ban until January 31, 2009 would be in the public interest, and that Petitioners have met the standard for waivers under Sections 1.3 and 76.7 of the Commission's rules.

9. We also conclude that Petitioners need to establish a plan to come into compliance with the integration ban. Increased demand due to common reliance should reduce the cost of compliant set-top boxes,<sup>30</sup> and the financial burdens Petitioners face should dissipate. Therefore, as a condition of waiver, within 30 days of the release of this order Petitioners must file with the Media Bureau specific plans that will allow them to come into compliance, including relevant supporting data (for example, data that demonstrates historical set-top box price trends and projected prices for those boxes). We will review those plans to make sure that each Petitioner has a reasonable strategy to come into compliance. We do not expect to grant further waivers unless a Petitioner presents an exceptional reason that it will be unable to comply with the integration ban after January 31, 2009.

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<sup>29</sup> 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 that the increased costs associated with the integration ban would slow Comcast's transitions to all-digital platforms).

<sup>30</sup> Indeed, Comcast reported recently that consumer premises equipment expenditures increased only \$56 per box, as opposed to the National Cable & Telecommunications Association's estimate less than two years ago that common reliance would cost \$72-\$93 dollars per box. Compare Comcast Corporation Q1 2008 Earnings Call Transcript at 3 (May 1, 2008), available at <http://seekingalpha.com/article/75142-comcast-corporation-q1-2008-earnings-call-transcript> with National Cable & Telecommunications Association's Request for Waiver of 47 C.F.R. § 76.1204(a)(1) at 7 (filed Aug. 16, 2006).

**IV. ORDERING CLAUSES**

10. 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 requests for waiver of Section 76.1204(a)(1) of the Commission's rules, 47 C.F.R. § 76.1204(a)(1), filed by James Cable, LLC, RCN Corporation, and WideOpenWest Finance, LLC **ARE GRANTED** until January 31, 2009 for the Motorola DCT-700, Motorola DCT-1000, Motorola DCT-2500, Motorola DCT-2000, Motorola DSR-410, Motorola DSR-470, Scientific Atlanta Explorer 2100, Scientific Atlanta Explorer 2200, Scientific Atlanta Explorer 3100, and Scientific Atlanta Explorer 3200, as conditioned above.

11. **IT IS FURTHER ORDERED** that the request for deferral of enforcement of Section 76.1204(a)(1) of the Commission's rules, 47 C.F.R. § 76.1204(a)(1), filed by RCN Corporation is **DISMISSED AS MOOT**.

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