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

In the Matter of	)	
	)	
Alabama Broadband, LLC	)	CSR-7819-Z
	)	
Great Plains Cable Television, Inc.	)	CSR-7212-Z
	)	
Millennium Digital Media Systems, L.L.C., d/b/a Broadstripe	)	CSR-7625-Z
	)	
	)	
Requests for Waiver of Section 76.1204(a)(1) of the Commission's Rules		

MEMORANDUM OPINION AND ORDER

Adopted: November 14, 2008 **Released: November 14, 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 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.[1] For the reasons stated below, we grant the waivers requested by Alabama Broadband, LLC ("Alabama Broadband"), Great Plains Cable Television, Inc. ("Great Plains"), and Millennium Digital Media Systems, L.L.C. ("Broadstripe"), 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.[2] The Commission implemented this directive in 1998 through the adoption of the "integration

[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."

[2] *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).

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.[3] Originally, the Commission established January 1, 2005 as the deadline for compliance with the integration ban.[4] On two occasions, the National Cable and Telecommunications Association ("NCTA"), on behalf of all cable operators, sought – and obtained – extensions of that deadline.[5] 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.[6]

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.[7] 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.[8] 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.[9] In limited circumstances, however, operators may be eligible for waiver of the integration ban.[10]

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[3] *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).

[4] *First Report and Order,* 13 FCC Rcd at 14803, ¶ 69.

[5] 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*").

[6] *2005 Deferral Order*, 20 FCC Rcd at 6810, ¶ 31.

[7] *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").

[8] *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."

[9] *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.'").

[10] 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

III. DISCUSSION

4. Petitioners make their requests for waiver pursuant to the *Financial Hardship Order*[11] and Sections 1.3 and 76.7 of the Commission's rules.[12] In light of Petitioners' demonstrated financial hardships and consistent with the *Financial Hardship Order*, we conclude that a limited grant of their Waiver 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.[13]

5. On October 10, 2007, Broadstripe filed a petition requesting a waiver of the integration ban until July 1, 2008.[14] On June 25, 2008, Broadstripe updated its financial record, and sought an extension of the waiver until July 1, 2009.[15] Broadstripe has demonstrated that good cause exists to grant its request and that such a waiver would serve the public interest in this specific instance. The company has demonstrated that its financial condition deteriorated materially in 2007 as compared to the previous year.[16] Broadstripe's cash on hand decreased by almost half, its asset holdings declined, its members' equity became nonexistent, it fell into greater debt, it suffered an operating loss in 2007 and the company increased its net loss by a 40-fold amount.[17] Broadstripe does not have enough current assets to cover its current debt.[18] As Broadstripe is in increasingly poor financial condition, good cause exists to grant its waiver request.

6. On March 14, 2008, Alabama Broadband petitioned the Commission for a limited waiver of the integration ban.[19] Alabama Broadband has demonstrated that good cause exists to grant its request and that such a waiver would serve the public interest in this specific instance. The company provided financial information that demonstrates that it does not have enough liquid assets to pay its current bills.[20] Alabama Broadband has a large deficit and its cash flow predictions, although showing some progress, do not bode well for a near term increase in equity.[21] Based on Alabama Broadband's extraordinary financial hardship, good cause exists to grant its waiver request.

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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*").

[11] *Financial Hardship Order*, 22 FCC Rcd 13426-7, ¶¶ 39-40.

[12] 47 C.F.R. §§ 1.3, 76.7.

[13] The Subject Boxes are the Motorola DCT-1000, Motorola DCT-2000, Motorola DCT-2244, Motorola DCT-2500, Motorola DSR-410, Motorola DSR-470, Motorola DCR-4416, Motorola DCT-6200, Motorola DCT-6412, Evolution Broadband DMS-1002, and Evolution Broadband DMS-1002-CA.

[14] Broadstripe Waiver Request at 1.

[15] Broadstripe Extension Request at 1.

[16] *See* Letter from Nicole Paolini-Subramanya, Counsel, Millennium Digital Media Systems, L.L.C., to Marlene H. Dortch, Secretary, Federal Communications Commission at Attachment (July 17, 2008).

[17] *Id*.

[18] *Id*.

[19] Alabama Broadband Waiver Request at 1.

[20] *See* Letter from Nicole Paolini-Subramanya, Counsel, Alabama Broadband, L.L.C., to Marlene H. Dortch, Secretary, Federal Communications Commission at Attachment (July 31, 2008).

[21] *Id*.

7. In the *Financial Hardship Order,* the Bureau granted Great Plains a waiver of the integration ban until July 1, 2008.[22] On July 1, 2008, Great Plains submitted a request that the Commission extend its waiver of the integration ban to July 1, 2009.[23] Great Plains has suffered net losses for the past four consecutive years.[24] Although Great Plains' operating cash flow is positive for each of these years, its cash flow from investing has been negative for four straight years.[25] Great Plains' cash reserves are decreasing, and the company does not have enough current assets to cover its current liabilities, and its total debt is more than five times its equity.[26] Based on Great Plains' continuing financial hardship, good cause for a limited grant of its Extension Request exists.

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,[27] 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, 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.

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 Alabama Broadband, LLC, Great Plains Cable Television, Inc., and Millennium Digital Media Systems, L.L.C., d/b/a Broadstripe **ARE GRANTED** until January 31, 2009 for the Motorola DCT-1000, Motorola DCT-2000, Motorola DCT-2244, Motorola DCT-2500, Motorola DSR-410, Motorola DSR-470, Motorola DCR-4416, Motorola DCT-6200,

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[22] *Financial Hardship Order*, 22 FCC Rcd at 13426-7, ¶¶ 39-40.

[23] *See* Letter from Nicole E. Paolini-Subramanya, Counsel, Great Plains Cable Television, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission at 1 (July 1, 2008).

[24] *Id*. at Attachment; Letter from Nicole E. Paolini-Subramanya, Counsel, Great Plains Cable Television, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission at Attachment (August 8, 2008).

[25] *Id.*

[26] *Id.*

[27] *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).

Motorola DCT-6412, Evolution Broadband DMS-1002, and Evolution Broadband DMS-1002-CA, as conditioned above.

11. **IT IS FURTHER ORDERED** that Alabama Broadband, LLC, Great Plains Cable Television, Inc., and Millennium Digital Media Systems, L.L.C., d/b/a Broadstripe **SHALL FILE** with the Media Bureau specific plans that will allow them to come into compliance with Section 76.1204(a)(1) of the Commission's Rules, 47 C.F.R. § 76.1204(a)(1), including relevant supporting data, within 30 days of the release of this order.

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