

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

In the Matter of)	
)	
Liberty Cablevision of Puerto Rico, Ltd.)	CSR-7124-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. Liberty Cablevision of Puerto Rico, Ltd. ("Liberty") seeks waiver of the ban on integrated set-top boxes set forth in Section 76.1204(a)(1) of the Commission's rules¹ to allow it to place into service integrated digital cable set-top boxes. The Bureau has already granted Liberty a limited waiver of the ban on integrated set-top boxes for certain set-top box models,² finding the fact that Liberty transitioned to an all-digital system demonstrated good cause for such a waiver under Sections 1.3 and 76.7 of the Commission's rules.³ As set forth below, we grant Liberty's request for a waiver of Section 76.1204(a)(1) of the Commission's rules.

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 *Consolidated Requests for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, 22 FCC Rcd 11780 (2007) ("Liberty Order").

³ See 47 C.F.R. §§ 1.3, 76.7; *Liberty Order*, 22 FCC Rcd at 11784-11785, ¶¶ 60-61.

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 *Liberty Order*, 22 FCC Rcd at 11781-82, ¶ 3. See also *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.” *Liberty Order*, 22 FCC Rcd at 11781, ¶ 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

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4. For example, on July 1, 2008, the Bureau released two orders granting waiver to Choice Cable of Puerto Rico and Guam Cablevision.¹³ The Bureau found good cause to grant waiver of the integration ban for high-end devices to those operators based on the different retail markets in their service areas.¹⁴ Indeed, the Bureau found that “rural Puerto Rico’s retail market for navigation devices is unlike nearly every other market in the continental United States,” and concluded that “compliance with the integration ban is unlikely to produce the same benefits in rural Puerto Rico as in the rest of the United States.”¹⁵

III. DISCUSSION

5. Liberty asserts that it should be afforded a waiver for all set-top boxes based on the fact that its case “presents the same idiosyncratic factual situation that led the Bureau to expand Choice’s waiver.”¹⁶ Liberty argues that CableCARD devices are not available at retail stores in its service area, which include the most rural portions of Puerto Rico.¹⁷ Moreover, Liberty states that it was only able to locate one CableCARD device model at a large retailer in its service area in 2007 and was not able to find any such models in June 2008.¹⁸ In addition, Liberty notes that Tivo does not support its service and will not ship devices to Puerto Rico, and that Amazon and many other e-retailers will not ship digital televisions to Puerto Rico.¹⁹ Liberty also argues that its customers cannot afford to lease CableCARD-equipped high definition (“HD”) and digital video recorder (“DVR”) set-top boxes, as the median yearly income in Liberty’s service area is less than \$13,000,²⁰ and the price of CableCARD high definition televisions on the mainland generally remains between \$1500 and \$6000.²¹ Unlike Choice, Liberty did initially order some CableCARD HD/DVR devices, but only 2 percent of the company’s customers subscribe to HD service, and the cost of a new CableCARD HD/DVR in the region is twice as high as that of a budget HDTV.²² Furthermore, Liberty argues that its competitors offer little, if any, competitive HD service.²³ Therefore, Liberty asserts that denial of its request for waiver of the integration ban would mean that there would be no MPVD offering a broad range of HD programming to consumers in its

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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, e.g., Liberty Order*, 22 FCC Rcd at 11803-11804, ¶¶ 60-61.

¹³ *Puerto Rico Cable Acquisition Corp. d/b/a Choice Cable T.V. Request for Waiver of Section 76.1204(a)(1) of the Commission’s Rules*, DA 08-1575 (MB rel. Jul. 1, 2008) (“*Choice Order*”); *Puerto Rico Cable Acquisition Corp. d/b/a Choice Cable T.V. Request for Waiver of Section 76.1204(a)(1) of the Commission’s Rules*, DA 08-1573 (MB rel. Jul. 1, 2008) (“*Guam Order*”)

¹⁴ *Choice Order* at ¶ 5; *Guam Order* at ¶ 5.

¹⁵ *Choice Order* at ¶ 5.

¹⁶ Liberty Waiver Request at 2 (filed July 11, 2008).

¹⁷ *Id.* at 3.

¹⁸ *Id.* at 3.

¹⁹ *Id.* at 4.

²⁰ *Id.* at 2.

²¹ Letter from Miguel Reyes Dávila, Esq., President, Puerto Rico Telecommunications Regulatory Board, to Kevin Martin, Chairman, Federal Communications Commission at 1-2 (June 4, 2008).

²² Liberty Waiver Request at 2.

²³ *Id.* at 4.

region.²⁴ This, Liberty claims, distinguishes the Puerto Rican market from other markets in the United States where it asserts that CableCARD devices are freely available from retail outlets, customers are better able to afford them given the higher median household income, and competitive high definition service is available from multichannel video programming service competitors.²⁵ Liberty argues that these differences demonstrate that the wholly different retail market in Puerto Rico justifies a temporary waiver of the integration ban rules.²⁶

6. We are persuaded that Liberty has established that it faces an idiosyncratic factual situation in its service area. In particular, the facts recounted above indicate that rural Puerto Rico's retail market for navigation devices is unlike nearly every other market in the continental United States,²⁷ and Liberty's arguments that the rural Puerto Rico market is wholly different from the United States market are bolstered by compelling evidence and testimony.²⁸ As a result, we conclude that compliance with the integration ban is unlikely to produce the same benefits in rural Puerto Rico as in the rest of the United States and that the balance of equities here therefore tilts in favor of Liberty's request. Accordingly, we find good cause to grant Liberty's request for waiver.

²⁴ *Id.* at 4-5.

²⁵ *Id.* at 5.

²⁶ *Id.*

²⁷ Liberty Waiver Request at 5 (citing *Choice Order* at ¶ 4).

²⁸ *See, e.g.*, Letter from Congressman Luis Fortuño to Kevin Martin, Chairman, Federal Communications Commission (December 11, 2007); Letter from Mercedes Rodríguez Rodríguez, President, Cámara de Comercio del Sur de Puerto Rico to Kevin Martin, Chairman, Federal Communications Commission (April 24, 2008); Letter from Miguel Reyes Dávila, Esq., President, Puerto Rico Telecommunications Regulatory Board, to Kevin Martin, Chairman, Federal Communications Commission at 1-2 (June 4, 2008).

IV. ORDERING CLAUSE

7. 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 Liberty Cablevision of Puerto Rico for a temporary period of three years from the date of this Order.

FEDERAL COMMUNICATIONS COMMISSION

Monica Shah Desai
Chief, Media Bureau