

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

In the Matter of	)	
	)	
Motorola, Inc.	)	CSR-8175-Z
	)	
Cisco Systems, Inc.	)	CSR-8176-Z
	)	
Pace Americas, Inc.	)	CSR-8177-Z
	)	
Thomson, Inc.	)	CSR-8178-Z
	)	
Requests for Waiver of Section 76.1204(a)(1) of the Commission's Rules	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: August 24, 2009**

**Released: August 24, 2009**

By the Chief, Media Bureau:

**I. INTRODUCTION**

1. The above-captioned cable set-top box manufacturers (“Petitioners”) have filed 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 seek waiver pursuant to the Commission’s decision in the *Evolution Order*,<sup>2</sup> in which the Commission adopted a streamlined process for waiver of the integration ban for one-way, low-cost, limited-capability set-top boxes. Pursuant to the *Evolution Order* precedent, we grant the requests for waiver of Section 76.1204(a)(1) of the Commission’s rules.

**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>3</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 host device required by this rule is referred to as the “integration ban.”

<sup>2</sup> *Evolution Broadband, LLC’s Request for Waiver of Section 76.1204(a)(1) of the Commission’s Rules*, Memorandum Opinion and Order, FCC 09-46, ¶ 15 (rel. June 1, 2009) (“*Evolution Order*”).

<sup>3</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>4</sup> Originally, the Commission established January 1, 2005 as the deadline for compliance with the integration ban.<sup>5</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>6</sup> The Commission ultimately fixed July 1, 2007 as the deadline for compliance with the integration ban.<sup>7</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>8</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>9</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 denied those petitions.<sup>10</sup> In limited circumstances, however, operators may be eligible for waiver of the integration ban.<sup>11</sup>

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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>4</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>5</sup> *First Report and Order*, 13 FCC Rcd at 14803, ¶ 69.

<sup>6</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>7</sup> *2005 Deferral Order*, 20 FCC Rcd at 6810, ¶ 31.

<sup>8</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>9</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.”

<sup>10</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>11</sup> 47 U.S.C § 549(c); *2005 Deferral Order*, 20 FCC Rcd at 6813, ¶ 37.

4. In the *Evolution Order*,<sup>12</sup> the Commission granted waiver of its rule that prohibits multichannel video programming distributors from “plac[ing] into service new navigation devices for sale, lease, or use that perform both conditional access and other functions in a single integrated device”<sup>13</sup> with respect to two set-top boxes manufactured by Evolution Broadband, LLC. The Commission granted waiver based in part on the “low-cost, limited capability” standard articulated in the *2005 Deferral Order*.<sup>14</sup> The Commission concluded that such devices will serve the public interest by furthering cable operators’ migrations to all-digital networks (thereby increasing service offerings) and would not jeopardize the development of the competitive marketplace for navigation devices that Section 629 of the Communications Act directed the Commission to promote.<sup>15</sup> In the interest of competitive fairness, the Commission created a streamlined waiver process for manufacturers of similarly low-cost, limited-capability set-top boxes.<sup>16</sup>

## B. The Waiver Requests

5. On June 10, 2009 and June 11, 2009, Petitioners filed requests for waiver of Section 76.1204(a)(1) of the Commission’s rules with respect to certain “low cost, limited capability” set-top boxes (“Subject Boxes”)<sup>17</sup> pursuant to the streamlined waiver process set forth in the Commission’s decision in the *Evolution Order*. Representatives for Petitioners certified under penalty of perjury that their respective devices are no more advanced than the devices for which the Commission granted waiver in the *Evolution Order*.<sup>18</sup> The Bureau released public notices seeking comment on each of the requests on June 16 and 17, 2009.<sup>19</sup> The Consumer Electronics Association (“CEA”), Click! Network and Public Knowledge each filed comments in response to one or more of the Waiver Requests,<sup>20</sup> and Patrick Allen

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<sup>12</sup> *Id.* at ¶¶ 11-14.

<sup>13</sup> 47 C.F.R. § 76.1204(a)(1).

<sup>14</sup> See *2005 Deferral Order*, 20 FCC Rcd at 6813, ¶ 37.

<sup>15</sup> *Evolution Order* at ¶¶ 12-13.

<sup>16</sup> *Id.* at ¶ 15.

<sup>17</sup> The Subject Boxes are the Motorola DTA-100 and DTA-100u, the Cisco Digital Transport Adaptor 30, Digital Transport Adaptor 50, and Digital Transport Adaptor 70, the Thomson DCI104 and DCI105, and the Pace DC50x and DC50xu.

<sup>18</sup> Motorola Waiver Request, attaching Declaration of Mark DiPietro; Cisco Waiver Request, attaching Declaration of Burchall Cooper; Thomson Waiver Request, attaching Declaration of Frederic Kurkjian; Pace Waiver Request, attaching Declaration of Michael Pulli.

<sup>19</sup> *Media Bureau Seeks Comment on Cisco's Low-Cost, Limited Capability Set-Top Box Certification*, DA 09-1343 (MB rel. June 16, 2009) (Public Notice); *Media Bureau Seeks Comment on Motorola's Low-Cost, Limited Capability Set-Top Box Certification*, DA09-1344 (MB rel. June 16, 2009) (Public Notice); *Media Bureau Seeks Comment on Pace's Low-Cost, Limited Capability Set-Top Box Certification*, DA09-1344 (MB rel. June 17, 2009) (Public Notice); *Media Bureau Seeks Comment on Thomson's Low-Cost, Limited Capability Set-Top Box Certification*, DA09-1344 (MB rel. June 17, 2009) (Public Notice).

<sup>20</sup> See CEA Comments, CSR-8175-Z (filed June 26, 2009); CEA Comments, CSR-8176-Z (filed June 26, 2009); CEA Comments, CSR-8177-Z (filed June 29, 2009); CEA Comments, CSR-8178-Z (filed June 29, 2009); Click Network Comments, CSR-8175-Z (filed June 26, 2009); Public Knowledge Comments, CSR-8175-Z (filed June 26, 2009); Public Knowledge Comments, CSR-8176-Z (filed June 26, 2009); Public Knowledge Comments, CSR-8177-Z (filed June 29, 2009); Public Knowledge Comments, CSR-8178-Z (filed June 29, 2009).

filed an ex parte letter opposing Motorola, Inc.'s Waiver Request.<sup>21</sup> Each Petitioner filed an ex parte letter in response to these comments.<sup>22</sup>

6. In the public notices seeking comment on the Waiver Requests, the Bureau expressly directed commenters to limit their comments to the issue of whether the devices for which Petitioners seek waiver are more advanced than the Evolution Broadband DMS-1002 and DMS-1002-CA, and declared that “[t]he Bureau does not seek comment on the policy implications of issues resolved in the Evolution Order.”<sup>23</sup> In direct conflict with the specifications in the public notices, CEA, Click! Network, and Patrick Allen each filed comments that addressed only the policy implications of issues that were discussed and resolved in the *Evolution Order*.<sup>24</sup>

7. Public Knowledge asserts that Petitioners did not include the “full specifications” of the Subject Boxes, and did not demonstrate that the Subject Boxes are “limited capability” devices.<sup>25</sup> Public Knowledge argues that it is possible that the Subject Boxes “may well have the capability (after a simple software download) to provide more than ‘one-way, non-HD, non-DVR’ services.”<sup>26</sup> Public Knowledge urges the Commission to deny the requests because Petitioners have not demonstrated that the Subject Boxes are only capable of doing what is necessary to make digital cable programming viewable on analog television sets.<sup>27</sup> Petitioners each filed comprehensive responses affirming and further supporting their certification that the Subject Boxes do not and cannot support any of the more advanced capabilities referenced in the *Evolution Order*.<sup>28</sup> Specifically, Petitioners state that it would be impossible for a software upgrade to allow these boxes to provide more than one-way, non-HD, non-DVR services.<sup>29</sup>

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<sup>21</sup> See Patrick Allen ex parte letter, CSR-8176-Z (filed June 29, 2009).

<sup>22</sup> Letter from Jason E. Friedrich, Director, Broadband Policy, Motorola Global Government Affairs, to Marlene H. Dortch, Secretary, Federal Communications Commission (July 1, 2009) (“Motorola Reply”); Letter from Jeffrey A. Campbell, Senior Director, Technology and Trade Policy, Cisco Systems, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission (July 1, 2009) (“Cisco Reply”); Letter from Frederic Kurkjian, Senior Vice President, WW Sales and Customer Programs, Thomson, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission (July 9, 2009) (“Thomson Reply”); Letter from Michael V. Pulli, President, Pace Americas, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission (July 10, 2009) (“Pace Reply”).

<sup>23</sup> *Media Bureau Seeks Comment on Cisco's Low-Cost, Limited Capability Set-Top Box Certification*, DA 09-1343 at 2 (MB rel. June 16, 2009) (Public Notice).

<sup>24</sup> *Evolution Order* at ¶¶ 8-16. We take no position on the policy recommendations presented in those comments and our action here should not be taken to imply otherwise. We note that Public Knowledge has filed a petition for reconsideration of the *Evolution Order*, but neither CEA, Click! Network, nor Patrick Allen filed comments in response to that petition for reconsideration.

<sup>25</sup> Public Knowledge Comments, CSR-8175-Z, at 2-4 (filed June 26, 2009); Public Knowledge Comments, CSR-8176-Z, at 2-4 (filed June 26, 2009); Public Knowledge Comments, CSR-8177-Z, at 2-4 (filed June 29, 2009); Public Knowledge Comments, CSR-8178-Z, at 2-4 (filed June 29, 2009).

<sup>26</sup> Public Knowledge Comments, CSR-8175-Z, at 2 (filed June 26, 2009); Public Knowledge Comments, CSR-8176-Z, at 2 (filed June 26, 2009); Public Knowledge Comments, CSR-8177-Z, at 2 (filed June 29, 2009); Public Knowledge Comments, CSR-8178-Z, at 2 (filed June 29, 2009).

<sup>27</sup> Public Knowledge Comments, CSR-8175-Z, at 3-4 (filed June 26, 2009); Public Knowledge Comments, CSR-8176-Z, at 3-4 (filed June 26, 2009); Public Knowledge Comments, CSR-8177-Z, at 3-4 (filed June 29, 2009); Public Knowledge Comments, CSR-8178-Z, at 3-4 (filed June 29, 2009).

<sup>28</sup> Motorola Reply at 2; Cisco Reply at 2; Thomson Reply at 1-2; Pace Reply at 1-2.

<sup>29</sup> *Id.*

### III. DISCUSSION

8. As explained above, in the *Evolution Order* the Commission adopted a streamlined process for low-cost, limited-capability set-top box waiver requests. Specifically, the Commission stated that

[i]f applicants certify that the capabilities of their navigation devices are low-cost, limited capability devices that are no more advanced than the [Evolution DMS-1002 and DMS-1002-CA] and include the full specifications of any devices for which waiver is sought, the Media Bureau will release a public notice seeking comment on those certifications for a period of ten calendar days, after which the Bureau will expeditiously grant a waiver similar to the one granted herein, deny such a waiver, or take other appropriate action.<sup>30</sup>

The Petitioners have submitted certifications that the Subject Boxes are no more advanced than the Evolution DMS-1002 and DMS-1002-CA devices. We conclude, based on our review of the specifications of the devices<sup>31</sup> and supplemental filings from the Petitioners<sup>32</sup> that the Subject Boxes are no more advanced than the Evolution DMS-1002 and DMS-1002-CA devices. The Petitioners' replies should alleviate Public Knowledge's concerns that the Subject Boxes could possibly "provide more than 'one-way, non-HD, non-DVR' services."<sup>33</sup> As the Petitioners explain in those replies, the Subject Boxes do not have the hardware necessary to support return-path communications, high definition output, hard drive expansion for DVR service, cable modem support, or multiple tuners.<sup>34</sup> Accordingly, we find that the Subject Boxes are no more advanced than the Evolution DMS-1002 and DMS-1002-CA, and good cause for waiver exists for the same reasons provided in the *Evolution Order* and the *2005 Deferral Order*.<sup>35</sup>

9. While Public Knowledge's concern that software upgrades could alter the capabilities of the Subject Boxes does not have merit, it is conceivable that significant hardware modifications could alter the capabilities of the Subject Boxes. We clarify that such a modification would effectively make the Subject Boxes different devices, and this waiver only applies to the devices at issue; namely, the one-way, non-HD, non-DVR devices specified in the Waiver Requests. As Petitioners note, devices with different capabilities would require separate waivers.<sup>36</sup>

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<sup>30</sup> *Evolution Order* at ¶ 15.

<sup>31</sup> Motorola Waiver Request at Exhibit A; Cisco Waiver Request at Exhibit A; Thomson Waiver Request at Exhibit A; Pace Waiver Request at Exhibit A.

<sup>32</sup> Motorola Reply at 2; Cisco Reply at 2; Thomson Reply at 1-2; Pace Reply at 1-2.

<sup>33</sup> Public Knowledge Comments, CSR-8175-Z, at 2 (filed June 26, 2009); Public Knowledge Comments, CSR-8176-Z, at 2 (filed June 26, 2009); Public Knowledge Comments, CSR-8177-Z, at 2 (filed June 29, 2009); Public Knowledge Comments, CSR-8178-Z, at 2 (filed June 29, 2009).

<sup>34</sup> Motorola Reply at 2; Cisco Reply at 2; Thomson Reply at 1-2; Pace Reply at 1-2.

<sup>35</sup> *Evolution Order* at ¶¶ 11-14; *2005 Deferral Order*, 20 FCC Rcd at 6813, ¶ 37.

<sup>36</sup> See, e.g., Cisco Reply at 2 ("These more advanced capabilities could only be supported in a very different type of device, which would entail the filing of a different waiver request. The Petition that Cisco filed would not authorize the DTAs to include such capabilities.").

10. As the Commission declared in the *Evolution Order*, cable operators may deploy the Subject Boxes on any system without need for a further waiver of Section 76.1204(a)(1)'s prohibition on the deployment of navigation devices "that perform both conditional access and other functions in a single integrated device," but otherwise, "operators that choose to deploy the Subject Boxes are not afforded a waiver of the requirement that they 'make available equipment that incorporates only the conditional access functions of such devices.'"<sup>37</sup>

#### IV. CONCLUSION

11. For the reasons stated above, we conclude that the Subject Boxes are eligible for waiver under the "low-cost, limited capability" standard articulated in the *2005 Deferral Order* as applied in the *Evolution Order* because the Subject Boxes are only capable of doing what is necessary to make digital cable programming viewable on analog television sets. For this reason we conclude that, with respect to the Subject Boxes, Petitioners have justified three-year waivers of the integration ban under the standard set forth in the *2005 Deferral Order*, the *Evolution Order*, and Sections 1.3 or 76.7 of the Commission's rules. Accordingly, we grant the Waiver Requests, and, until three years from the release of this order, any cable operator may choose to deploy the Subject Boxes without requesting a waiver of Section 76.1204(a)(1)'s prohibition on the deployment of navigation devices "that perform both conditional access and other functions in a single integrated device."<sup>38</sup>

#### V. ORDERING CLAUSES

12. 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 Motorola, Inc., Cisco Systems, Inc., Pace Americas, Inc. and Thomson, Inc. **ARE GRANTED** to the extent described above.

13. 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

William T. Lake  
Chief, Media Bureau

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<sup>37</sup> *Evolution Order* at ¶ 15, n.43 (citing 47 C.F.R. § 76.1204(a)(1)).

<sup>38</sup> Our plug-and-play rules apply to cable operators, and we remind cable operators who deploy the Subject Boxes that they ultimately are responsible for compliance with our rules (*e.g.*, making available and supporting CableCARDS; using CableCARDS in all devices except for the Subject Boxes; complying with 76.640 of the Commission's rules; etc.). *See, e.g., Pace Micro Technology PLC*, 19 FCC Rcd 1945, 1947 (MB 2004) (reminding cable operators that despite an equipment-related waiver granted to an equipment manufacturer, cable operators are ultimately responsible for compliance with our rules).