

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

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

**MEMORANDUM OPINION AND ORDER**

**Adopted: April 5, 2011**

**Released: April 6, 2011**

By the Deputy Chief, Media Bureau:

**I. INTRODUCTION**

1. In this Order, we grant Guam Cablevision, LLC’s (“GCL”) request for an extension of its waiver of the ban on refurbished integrated set top boxes set forth in Section 76.1204(a)(1) of the Commission’s rules<sup>1</sup> due to Guam’s typhoon-prone nature and the significant retail market differences in Guam. This waiver will enable GCL to supply its subscribers with previously-used, refurbished integrated HD, SD, and DVR devices.<sup>2</sup> The Bureau has already granted GCL a limited waiver of the ban on integrated set top boxes for the Scientific Atlanta Explorer 1850<sup>3</sup> as well as the Scientific Atlanta Explorer 2200 and the Scientific Atlanta Explorer 8300 digital video recorder,<sup>4</sup> 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.<sup>5</sup>

**II. BACKGROUND**

2. Through Section 629 of the Communications Act of 1934, as amended (the “Act”), Congress intended to ensure that consumers have the opportunity to purchase navigation devices such as set top boxes from sources other than their multichannel video programming distributor (“MVPD”).<sup>6</sup> To

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

<sup>2</sup> GCL Extension Request at 1 (filed Jan. 18, 2011).

<sup>3</sup> *Guam Cablevision Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, 22 FCC Rcd 11747 (2007) (“*GCL Order*”).

<sup>4</sup> *Guam Cablevision Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, 23 FCC Rcd 10345 (2008) (“*GCL Modification Order*”).

<sup>5</sup> See 47 C.F.R. §§ 1.3, 76.7; *GCL Order*, 22 FCC Rcd at 11752, ¶¶ 13-14.

<sup>6</sup> See Section 629(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 549(a); see also Telecommunications Act of 1996, Pub. L. No. 104-104, § 304, 110 Stat. 56, 125-126 (1996).

achieve the goals set forth in the Act, the Commission in 1998 adopted the “integration ban,” which established a date after which cable operators no longer may place into service new navigation devices that perform both conditional access and other functions in a single integrated device.<sup>7</sup> The ban was enacted to ensure that both cable operators and consumer electronics manufacturers rely 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>

### III. DISCUSSION

3. GCL requests that the Commission grant an extension of the waiver of the integration ban for some of the same reasons as its original 2007 waiver.<sup>12</sup> Due to its small size, isolated geographical and temporal location, and propensity for natural disasters, Guam has different socioeconomic and market

<sup>7</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). Last year the Commission adopted rules to make the integration ban more lenient by exempting all one-way, non-recording set top boxes from the integration ban. *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, 25 FCC Rcd 14657, 14679-14682, 14701 ¶¶ 45-51 (2010) (“*Third Report and Order and Order on Reconsideration*”) (amending Section 76.1204 of the Commission’s rules).

<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.” *GCL Order*, 22 FCC Rcd at 11748, ¶ 2 (citing H.R. REP. NO. 104-204, at 112 (1995)).

<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> 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, e.g., *GCL Order*, 22 FCC Rcd at 11752, ¶¶ 13-14.

<sup>12</sup> GCL “respectfully requests that its waiver . . . not be limited in time.” GCL Extension Request at 6, n.19. In support of this request, GCL points to the indefinite waiver granted to Baja for refurbished integrated set top boxes. See *Baja Broadband Operating Company, LLC*, 25 FCC Rcd 2200, 2206, ¶ 14 (2010).

conditions that may render the Commission's policy considerations for the enactment of the set top integration ban significantly less important.<sup>13</sup> Guam 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 183,286.<sup>14</sup> GCL asserts that the Guam set top box retail market is unique from other markets in the United States.<sup>15</sup> Guam lacks any large consumer electronics chain; further, the retailers that do sell electronics have little incentive to dedicate inventory to cable set top boxes.<sup>16</sup>

4. In addition to the consumer electronics distribution problem in Guam, GCL has recently suffered an extended shortage of digital set top boxes from its sole supplier, making it difficult for GCL to convert to all-digital technology.<sup>17</sup> GCL believes it can better meet consumer demand if it were currently able to deploy refurbished integrated set top boxes which are in ample supply.<sup>18</sup> Moreover, the availability of refurbished integrated set top boxes will decrease over time and more of the refurbished boxes will be CableCARD compliant.<sup>19</sup> For these reasons, GCL argues that it should be granted an extension of the waiver of the ban on refurbished integrated set top boxes.

5. For the same reasons set forth in our two prior GCL waiver decisions, we find that the company has effectively established the distinct factual situation in its service area.<sup>20</sup> 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,<sup>21</sup> as we have found previously, the extraordinary devastation in Guam over the past decade has created hardship for GCL.<sup>22</sup> Since the original 2007 waiver was granted, another typhoon hit Guam, causing more power outages, flooding, and damage to GCL's infrastructure.<sup>23</sup> This overwhelming typhoon damage, when taken in the context of Guam's unique consumer electronics retail market, leads us to find good cause for a waiver of the integration ban. Indeed, as we have found previously, the situation in Guam presents "unique circumstances stemming from delivering cable service in a typhoon-prone, underdeveloped market far from the contiguous 48 states."<sup>24</sup> We therefore conclude that GCL has met the standard for waiver under Sections 1.3 and 76.7 of

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<sup>13</sup> *Id.* at 3. Guam is 15 hours ahead of the Eastern Time zone; thus, most programming is recorded for playback. *Id.*

<sup>14</sup> THE CIA WORLD FACTBOOK – GUAM (2011), 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>.

<sup>15</sup> GCL Extension Request at 4-5.

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

<sup>17</sup> *Id.* at 2.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 6.

<sup>20</sup> See *GCL Order*, 22 FCC Rcd at 11749-50, ¶¶ 5-7; *GCL Modification Order*, 23 FCC Rcd at 10347.

<sup>21</sup> *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).

<sup>22</sup> *GCL Order*, 22 FCC Rcd at 11752.

<sup>23</sup> GCL Extension Request at 3.

<sup>24</sup> *GCL Order*, 22 FCC Rcd at 11752.

the Commission's rules and grant GCL's waiver request.<sup>25</sup> We will continue to monitor GCL's situation and reserve the right to revoke the waiver at any time if it is in the public interest.<sup>26</sup>

#### IV. ORDERING CLAUSES

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 refurbished integrated set top devices.

7. 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

Michelle M. Carey  
Deputy Chief, Media Bureau

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<sup>25</sup> We believe generally that the rules adopted in the *Third Report and Order and Order on Reconsideration* will reduce the financial burden of integration ban compliance, and that once those rules are in effect the integration ban will no longer impose an unmanageable cost even on operators who demonstrate extraordinary financial hardship. 25 FCC Rcd 14657, 14679-14682, 14701 ¶¶ 45-51 (2010). We are persuaded, however, that the unique consumer electronics market in Guam calls into question the effectiveness of the integration ban. Guam is an island that is thousands of miles from the continental United States, and does not have major electronics retailers. Therefore, we do not believe that the benefit of the integration ban in Guam will outweigh even the new limited costs of the integration ban.

<sup>26</sup> See *Cablevision Systems Corporation's Request for Waiver of Section 76.630(a) of the Commission's Rules*, 25 FCC Rcd 134, 140 (MB 2010) (citing 47 U.S.C. §§ 154(i), 544(a)).