

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

In the Matter of)	
)	
)	
Allegiance Communications, LLC)	CSR-7351-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 Allegiance Communications, LLC’s (“Allegiance” or “Petitioner”) request for an extension of the waiver (the “Waiver Request”) of the ban on integrated set top boxes set forth in Section 76.1204(a)(1) of the Commission’s rules for one year from the release date of this Order due to Allegiance’s financial hardship.¹

II. BACKGROUND

A. Section 629 of the Act

2. Congress directed the Commission to adopt regulations to assure the commercial availability of navigation devices such as set top boxes 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 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

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).

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

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. 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).

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.”

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

III. DISCUSSION

4. Petitioner makes its request 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 Petitioner's demonstrated financial hardship, we conclude that, consistent with the *Financial Hardship Order*, a grant of its Waiver Request for one year from the release date of this Order is justified under Sections 1.3 and 76.7 of the Commission's rules. We therefore grant Petitioner a time-limited waiver of the integration ban.

5. On June 15, 2007, Allegiance filed a petition requesting a limited waiver of the integration ban for a period of two years.¹³ On March 30, 2009, Allegiance updated its financial record and sought an extension of the waiver until July 1, 2010.¹⁴ We concluded that based on the company's net losses over the preceding three years, liquidity problems, and heavy debt, good cause was shown to extend Allegiance's waiver.¹⁵ On June 1, 2010, Allegiance asked for a further extension of the waiver.¹⁶ Due to the company's continuing financial hardship, we grant a one-year waiver extension. While the company's financial situation improved slightly from 2008 to 2009, Allegiance continues to carry a sizeable debt and a large negative cash flow.¹⁷ Allegiance's cost of compliance with the integration ban would require an already cash-strapped company to take on a considerable amount of additional debt obligations.¹⁸ Based on its financial statements, Allegiance appears to be on the path to stability;¹⁹

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 received waivers of the integration ban pursuant to Sections 1.3 and 76.7 of the Commission's rules. See *Charter Communications, Inc. Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, 22 FCC Rcd 8557, 8564-5, ¶¶ 18-19 (2007) ("*Financial Hardship Order*").

¹¹ *Financial Hardship Order*, 22 FCC Rcd at 8564-5, ¶¶ 18-19.

¹² 47 C.F.R. §§ 1.3, 76.7.

¹³ Waiver Request at 1.

¹⁴ Letter from Stephen R. Ross, Counsel, Allegiance Communications, L.L.C., to Marlene H. Dortch, Secretary, Federal Communications Commission at Attachment (March 30, 2009).

¹⁵ *Allegiance Communications, LLC Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, 24 FCC Rcd 9273 (2009).

¹⁶ Letter from Stephen R. Ross, Counsel, Allegiance Communications, L.L.C., to Marlene H. Dortch, Secretary, Federal Communications Commission (June 1, 2010).

¹⁷ *Id.* at Attachment B.

¹⁸ *Id.* at Attachment A.

¹⁹ *Id.* at Attachment B.

however, a limited extension of the waiver would help the company's financial security and allow it to continue to provide telecommunications services to its otherwise underserved rural coverage area.

6. In 2006, we concluded that speculative claims that the integration ban may impose a financial burden on cable companies were not persuasive²⁰ but in 2007, we found that extraordinary financial hardship, when supported by specific and unambiguous documentation, can present good cause for a limited waiver of the integration ban.²¹ With regard to Petitioner's request for a waiver, we find that Petitioner has effectively documented extraordinary financial hardship. While common reliance is integral to the development of the competitive navigation device market that Congress mandated through Section 629, we believe that in this case the Petitioner has shown good cause for waiver of the integration ban rule based on the costs associated with its imposition. Accordingly, we conclude that an additional waiver of the integration ban for one year would be in the public interest, and that Petitioner has met the standard for waiver under Sections 1.3 and 76.7 of the Commission's rules. We note, however, that when the rules adopted in the *Third Report and Order and Order on Reconsideration* become effective, the integration ban will no longer apply to one-way set top boxes without recording capability,²² and the financial burden of integration ban compliance will decrease significantly. We believe that once the rule becomes effective, the integration ban will no longer impose an unmanageable cost on operators who demonstrate extraordinary financial hardship.

IV. ORDERING CLAUSES

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, the request for waiver of Section 76.1204(a)(1) of the Commission's rules, 47 C.F.R. § 76.1204(a)(1), filed by Allegiance Communications, LLC, **IS GRANTED** for one year from the date this Order is released.

8. 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

²⁰ See 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 the increased costs associated with the integration ban would slow Comcast's transitions to all-digital platforms); *Comcast Corporation Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, 22 FCC Rcd 17113, 17125, ¶ 17 (2007) ("While we recognize concerns raised by some commenters that imposition of the integration ban may lead to higher cable bills in the short term, we reaffirm the conclusion that the Commission reached in the *2005 Deferral Order* that 'the costs that this requirement will impose should be counterbalanced to a significant extent by the benefits likely to flow from a more competitive and open supply market.'") (quoting *2005 Deferral Order*, 20 FCC Rcd at 6809, ¶ 29).

²¹ *Financial Hardship Order*, 22 FCC Rcd at 8564-5, ¶¶ 18-20.

²² *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) (amending Section 76.1204 of the Commission's rules).