

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

In the Matter of	)	
	)	
San Juan Cable LLC d/b/a OneLink Communications	)	CSR-8532-Z
	)	
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: February 28, 2012**

**Released: February 28, 2012**

By the Chief, Media Bureau:

**I. INTRODUCTION**

1. In this Order, we conditionally grant San Juan Cable LLC d/b/a OneLink Communication's ("OneLink") and Liberty Cablevision of Puerto Rico, Ltd. ("Liberty") unopposed requests for a three-year extension of the waiver of the ban on integrated set-top boxes.<sup>1</sup> As described below, we believe that a three-year waiver, conditioned on OneLink and Liberty filing annual reports detailing its support and provision of CableCARDS, is consistent with Bureau precedent.

**II. BACKGROUND**

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.<sup>2</sup> The Commission implemented this directive in 1998 through the adoption of the "integration ban," which ultimately established July 1, 2007 as the date after which cable operators were prohibited from placing into service any new navigation device that performed both

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<sup>1</sup> 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."

<sup>2</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 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).

conditional access and other functions.<sup>3</sup> 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>4</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>5</sup> In limited circumstances operators may be eligible for waiver of the integration ban.<sup>6</sup>

3. In 2010, the Commission adopted rules to improve the CableCARD regime and further the goals of Section 629.<sup>7</sup> Specifically, the Commission adopted rules to (1) require cable operators to support the reception of switched digital video services on retail devices;<sup>8</sup> (2) prohibit price discrimination against retail devices;<sup>9</sup> (3) require cable operators to allow self-installation of CableCARDS;<sup>10</sup> (4) require cable operators to provide multi-stream CableCARDS by default;<sup>11</sup> and (5) clarify that CableCARD device certification rules are limited to certain technical features.<sup>12</sup> The Commission also modified its rules to encourage home-networking by simplifying our set-top box output

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<sup>3</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>4</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>5</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>6</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 *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).

<sup>7</sup> *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, 25 FCC Rcd 14657 (2010) (“*Third Report and Order and Order on Reconsideration*”). These new rules went into effect on August 8, 2011.

<sup>8</sup> *Id.* at 14665-7, ¶¶ 13-14.

<sup>9</sup> *Id.* at 14668-9, ¶ 19.

<sup>10</sup> *Id.* at 14671-3, ¶¶ 26-29.

<sup>11</sup> *Id.* at 14674, ¶ 33.

<sup>12</sup> *Id.* at 14675-6, ¶ 37.

requirements<sup>13</sup> and adopted a rule to promote the cable industry's transition to all-digital networks by exempting all one-way set-top boxes without recording functionality from the integration ban.<sup>14</sup>

4. In August 2011, the Media Bureau granted Puerto Rico Cable Acquisition Corp. d/b/a Choice Cable T.V. ("Choice") a three-year, conditional, extension of a waiver of the integration ban for all set-top boxes.<sup>15</sup> The Bureau based the extension on the idiosyncratic nature of the retail market for navigation devices in Choice's service area, the low median income level in Choice's service area, and the increased penetration of digital and high definition services that Choice had experienced from its prior waiver.<sup>16</sup> The Petitioners claim that their service areas have these same traits.<sup>17</sup>

### III. DISCUSSION

5. We find that Petitioners have sufficiently demonstrated good cause for waiver and we conclude, for the same reasons as in the *Choice Waiver Order*, that a waiver for three years from the release date of this Order, pursuant to the condition discussed below, is justified under the Commission's rules.<sup>18</sup> Based on the record, each Petitioner is similarly situated to Choice.<sup>19</sup> Specifically, Petitioners assert that waiver of the rules will lead to more affordable services than would otherwise be possible and will support Petitioners' improvement of their video and broadband services.<sup>20</sup> The factual circumstances that originally led us to grant Choice's waiver are true in the Petitioners' markets as well. That is, the median household incomes in their service areas are exceptionally low, and unemployment rates in their services areas are exceptionally high.<sup>21</sup> The record reflects that retail DVRs are not prevalent in their service areas.<sup>22</sup> For example, TiVo does not ship its devices to Puerto Rico.<sup>23</sup> Given these circumstances, we find good cause to grant Petitioners' requests.

6. In the *Choice Waiver Order*, the Bureau expressed concern about inadequate customer

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<sup>13</sup> *Id.* at 14678-9, ¶¶ 43-44.

<sup>14</sup> *Id.* at 14681, ¶ 49.

<sup>15</sup> *Puerto Rico Cable Acquisition Corp. d/b/a Choice Cable T.V. Requests for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, 26 FCC Rcd 11479 (MB 2011) ("*Choice Waiver Order*"). In this order, the Bureau conditioned the waiver grant on an annual reporting requirement as described in paragraph 6 below.

<sup>16</sup> *Id.* at 11481-2, ¶¶ 5-6.

<sup>17</sup> See Liberty Request at 1-4; OneLink Request at 2-8.

<sup>18</sup> 47 C.F.R. §§ 1.3, 76.7.

<sup>19</sup> Liberty Request at 2-3; OneLink Request at 2-8.

<sup>20</sup> Liberty Request at 2; OneLink Request at 2-4.

<sup>21</sup> OneLink Request at 4-6; Letter from Paul Hudson, Counsel for Liberty Cablevision of Puerto Rico, to Marlene H. Dortch, Secretary, Federal Communications Commission, CSR-7124-Z (February 21, 2012) (reporting median household incomes of \$21,026 and \$18,862 in their respective service areas).

<sup>22</sup> OneLink Request at 7-8; Liberty Request at 3 (reporting that 165 OneLink subscribers and eight Liberty subscribers have requested and received CableCARDS).

<sup>23</sup> OneLink Request at 7. Although TiVo will not ship its devices from its website, TiVos are available in certain retail stores. See Letter from Matthew Zinn, Senior Vice President, General Counsel, Secretary and Chief Privacy Officer, TiVo, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, CSR-7201-Z (filed July 22, 2011).

support for retail CableCARD devices.<sup>24</sup> To ensure that a continued waiver would serve the public interest, the Bureau conditioned the extension on Choice filing a report “outlining, in detail, any CableCARD requests it receives, the support offered, customer complaints, the cost of installation and any CableCARD-related service calls.”<sup>25</sup> Although the Bureau is not aware of any CableCARD-related complaints from Petitioners’ subscribers, we are concerned about the effect of this waiver on the Petitioners’ subscribers who choose to use retail CableCARD devices.<sup>26</sup> Accordingly, we will require Petitioners to file three annual reports outlining, in detail, any CableCARD requests they receive, the support offered, customer complaints, the cost of installation, and any CableCARD-related service calls over the previous twelve months. Petitioners shall file these reports beginning one year from the release date of this Order. We will use the information from the reports to ensure that grant of this waiver continues to serve the public interest.

#### IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that, pursuant to Sections 1.3 and 76.7 of the Commissions rules, 47 C.F.R. §§ 1.3, 76.7, a waiver of the integration ban portion of Section 76.1204(a)(1) of the Commission’s rules, 47 C.F.R. § 76.1204(a)(1) **IS GRANTED** to San Juan Cable LLC d/b/a OneLink Communications and Liberty Cablevision of Puerto Rico, Ltd. for three years from the date of this Order.

8. **IT IS FURTHER ORDERED** that, as a condition of this waiver, San Juan Cable LLC d/b/a OneLink Communications and Liberty Cablevision of Puerto Rico, Ltd. **SHALL FILE** annual reports as detailed above.

9. 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>24</sup> *Choice Waiver Order*, 26 FCC Rcd at 11482, ¶ 6.

<sup>25</sup> *Id.*

<sup>26</sup> This waiver of Section 76.1204(a)(1) exempts Petitioners from complying with the integration ban outlined in the second sentence of that subsection, specifically, “commencing on July 1, 2007, no multichannel video programming distributor subject to this section shall place in service new navigation devices for sale, lease, or use that perform both conditional access and other functions in a single integrated device.” We remind Petitioners that although they have a waiver of the “integration ban” portion of Section 76.1204(a)(1), they are still required to comply with the first sentence of that subsection, namely that “a multichannel video programming distributor that utilizes navigation devices to perform conditional access functions shall make available equipment that incorporates only the conditional access functions of such devices,” as well as the CableCARD support rules that the Commission adopted in the *Third Report and Order and Order on Reconsideration*.