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CS Docket No. 97-80



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April 2, 2007

APR - 2 2007

Our File No. 21929-00100-61

Federal Communications Commission  
Office of the Secretary

**VIA HAND DELIVERY**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

CSR-7193-Z

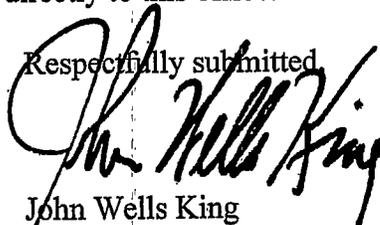
RE: **Guam Cablevision, LLC**  
**Request For Waiver**

Dear Ms. Dortch,

On behalf of Guam Cablevision, LLC, I transmit herewith the original and four copies of its Request For Waiver, in which a waiver is requested of the set-top integration ban set forth in Section 76.1204(a)(1) of the Commissions rules.

Kindly communicate any questions directly to this office.

Respectfully submitted,

  
John Wells King

cc: Michael Lance, Deputy Chief  
Engineering Division  
(by email/pdf)

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

FILED/ACCEPTED  
APR - 2 2007  
Federal Communications Commission  
Office of the Secretary

In The Matter Of )  
Request Of )  
GUAM CABLEVISION, LLC ) CSR- \_\_\_\_\_  
For Waiver of ) CS Docket No. 97-80  
47 C.F.R. § 76.1204(a)(1) )  
TO: Chief, Media Bureau

### Request for Waiver

Guam Cablevision, LLC ("GCL"), by its attorneys and pursuant to Section 629(c) of the Communications Act of 1934, as amended, 47 U.S.C. § 549(c), and Sections 76.7 and 76.1207 of the Commission's rules, hereby respectfully requests that the Commission grant a waiver of the set-top integration ban set forth in Section 76.1204(a)(1), until December 31, 2009. In support of this request, the following is shown:

#### Introduction

Guam Cablevision is a small cable operator in the U.S. Territory of Guam. It serves 25,500 residential and 8,600 commercial subscribers. GCL faces operational challenges unlike any cable system in the fifty States. First, its location on Earth prevents it from the simultaneous retransmission of U.S. television broadcast signals. It is located in the Western Pacific Ocean, 15 hours ahead of the Eastern Time zone. Prime time in New York City is tomorrow morning in Guam. Historically, this has required GCL, at

great expense, to air-freight all of its domestic television programming on videotape, and to delay programming by one week.<sup>1</sup>

Second, Guam is beyond the footprint of all U.S. domestic satellites. It is unable to receive a television program signal by domestic satellite, even if it wished to simultaneously retransmit it.<sup>2</sup>

Third, GCL's typhoon-prone location exposes it to the constant risk of having to rebuild its system. SuperTyphoon Pongsana (December 2002), Typhoon Chata'an (July 2002), and SuperTyphoon Paka (December 1997) caused severe damage to GCL's facilities and plant. It is unlikely any cable system in the fifty States has been as wracked as often with such damage and destruction as has GCL. As a result of its experience, GCL preventively maintains an extraordinarily large equipment inventory in order to restore service as quickly as possible when natural disasters strike.

Despite these unique challenges and burdens, GCL is committed to delivering advanced telecommunications and information technologies so that its subscribers enjoy the same benefits of such improved services as do Americans in the fifty States. At the same time, however, GCL is unable to upgrade its facilities within the timeframe set by the Commission. Accordingly, and as is shown below, a waiver of the set-top integration ban set forth in Section 76.1204(a)(1), until December 31, 2009, is fully warranted and justified.

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1 The practice is specifically provided for in Section 111(e) of the Copyright Act. Only recently has GCL been able to replace air-freighted tapes with delivery by undersea cable.

2 For extraordinary events such as the Super Bowl, GCL has been able to arrange for live carriage via international satellite through other program suppliers, including the Armed Forces Radio and Television Service. Subscribers would see a 6:30 pm ET kickoff live at 9:30 am the next day.

## Waiver Is Warranted Under Section 629(c)

Section 629(c) of the Communications Act of 1934, as amended, 47 U.S.C.

§ 549(c), provides in relevant part:

[t]he Commission shall waive a regulation adopted under subsection (a) of this section for a limited time upon an appropriate showing . . . that such waiver is necessary to assist the development or introduction of a new or improved multichannel video programming or other service offered over multichannel video programming systems, technology, or products.

GCL is presently engaged in a multimillion-dollar conversion of its system to digital technology. However, it launched its service only recently, in August 2006. Since that time approximately 2,900 subscribers, or about 10 percent of GCL's subscriber base, have signed up for digital service. Virtually all, however, are receiving the service on analog television receivers, since digital television receivers were not even available in Guam until late last year. The lag time between digital conversion in the fifty States and in Guam, means that GCL's subscribers will continue to utilize existing analog service for a significantly longer period of time. This situation will require GCL to have set-top conversion boxes on virtually every outlet for cable television service in Guam, to enable delivery and conversion of digital signals.<sup>3</sup>

GCL uses the integrated Scientific Atlanta Explorer® 1850™ Digital Interactive Set-Top ("1850"), which costs GCL about \$160. Because of the shortage of this model until this month, GCL had restricted subscribers to one digital outlet per household. GCL charges a rental of \$4.99 per month for the 1850.

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<sup>3</sup> It is relevant to note that none of the Guam television stations has commenced digital broadcasting.

Compliance with the July 1, 2007, deadline for non-integrated set-top boxes will be an expensive undertaking. At the price quoted by Scientific Atlanta ("SA") of \$257 for its new non-integrated set-top equipment, GCL's set-top expense will rise some sixty percent. As a result, GCL will charge a monthly rental of \$7.99 for the new set-top box. To impose the July 1st integrated set-top ban on GCL will have the immediate effect of increasing consumers' rental expense by 62%.

Thus, the consumer will be forced to pay for the privilege, to paraphrase Section 629(a), of assuring the commercial availability of equipment from vendors other than MVPDs. The singular problem with this is that there is not likely to be for the predictable future a competitive market for set-top boxes in Guam. GCL is the only provider of set-top boxes today, and is likely to be the only one for the foreseeable future.

There are two reasons for this. First, the market for consumer electronics in Guam is small. Its estimated 2006 population was about 171,000.<sup>4</sup> One survey puts the ratio of television sets per head of population at 1:1.5.<sup>5</sup> This suggests a television set universe of about 114,000 units.

Second, the retail environment for consumer electronics in Guam has not yet matured to the extent it has in the fifty States. There is no "big box" consumer electronics chain with a Guam outlet such as Circuit City, Best Buy, or Radio Shack.<sup>6</sup> So, consumer

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<sup>4</sup> Source: <https://www.cia.gov/cia/publications/factbook/print/gq.html>

<sup>5</sup> Source: [http://www.pjreview.info/issues/10\\_02\\_04appendices.html](http://www.pjreview.info/issues/10_02_04appendices.html)

<sup>6</sup> The three largest retail stores in Guam are general merchandise retailers: Hawaii-based Cost-U-Less, K-Mart, and Macy's.

electronics retailers in Guam lack the economic leverage or incentive to dedicate inventory to cable set-top boxes.

Additionally, compliance with the July 1, 2007, deadline presumes – quite erroneously – that non-integrated set-top boxes will be available to GCL, about which more is shown below.

The imposition of the July 1st deadline, given the significant time lag in the market for digital television in Guam, halfway around the world from the continental United States, would seriously and adversely affect GCL's ability to complete the orderly conversion of its system to all-digital signals, thereby frustrating the statutory mandate to assist the introduction of improved multichannel video services. To honor the deadline in these circumstances exalts form over substance. Accordingly, waiver is warranted.

### Waiver Is Warranted Under The Commission's Rules

Good cause exists for the Commission to grant a waiver under Sections 76.7 and 76.1207 of the Commission's rules.

First and foremost, it is certain that equipment will not be available to GCL before the July 1, 2007, deadline. In discussions with SA, GCL has been advised that the SA non-integrated set-top conversion box will not be available prior to July 1, 2007. The lack of timely availability of equipment, in and of itself, warrants waiver.

SA also has advised GCL that it is likely to have to go to an allocations scheme to satisfy the demand for non-integrated set-top equipment. Therefore, GCL has no assurance that, if, as, and when equipment becomes available, it will be available in

sufficient quantity. As a small cable operator, GCL has little leverage in negotiating an equipment order with SA.

Regardless of an ordered distribution arrangement, it is fair to assume that GCL's equipment order, which pales in comparison to the equipment requirements of the major MSO's (and most all systems serving the fifty States, for that matter), will not be filled for some time in the distant future.

The Commission has stated that it:

... understand[s] the difficulties that small cable operators may face in complying with the July 1, 2007 deadline, particularly since manufacturers may prioritize orders from the largest cable operators.<sup>7</sup>

GCL faces those same difficulties, and then some. Waiver on this ground alone is warranted.

Second, Congress has recognized that vast social and economic differences exist between the contiguous 48 States on the one hand, and the noncontiguous Pacific regions on the other. It has formally found that:<sup>8</sup>

...  
(2) the Federal Government has often failed to consider the implications for, effects on, and potential of noncontiguous Pacific areas in the formulation and conduct of foreign and domestic policy, to the detriment of both the attainment of the objectives of Federal policy and noncontiguous Pacific areas; [and]

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<sup>7</sup> *Bend Cable Communications, LLC d/b/a BendBroadband*, DA 07-47, released January 10, 2007 (Media Bureau), at ¶ 10. In *BendBroadband*, the Commission invited the petitioner, as an alternative to a conditional waiver on facts dissimilar to GCL's unique circumstances, to request deferred enforcement of the deadline so long as BendBroadband demonstrated that it had placed orders for compliant set-top boxes. We believe GCL's situation, by contrast, warrants full and unconditional waiver of the rule.

<sup>8</sup> Section 301, Title III--Pacific Policy Reports, Compact of Free Association Act of 1985, Pub.L. 99-239, January 14, 1986, 99 Stat.1836, codified at 48 U.S.C. § 2001 (2003).

(3) policies and programs designed for the United States as a whole may impose inappropriate standards on noncontiguous Pacific areas because of their unique circumstances and needs; . . . .

The congressional policy objective that underlies the set-top integration ban of Section 76.1204(a)(1) is to assure competition in the manufacturing and distribution of navigation devices.<sup>9</sup> Although there is no reason to suspect that the Congress did not intend for the citizens of Guam to benefit from this enactment, the July 1, 2007, deadline is clearly the imposition of an inappropriate standard because of the unique circumstances of providing cable television services in Guam. Waiver on this ground is fully warranted.

### Conclusion

For the foregoing reasons, GCL submits that a waiver of the set-top integration ban set forth in Section 76.1204(a)(1), until December 31, 2009, is warranted and justified under Section 629 of the Communications Act of 1934, as amended, and under Sections 76.7 and 76.1207 of the Commission's rules. It is so requested.

Respectfully submitted,

GUAM CABLEVISION, LLC

GARVEY SCHUBERT BARER  
1000 Potomac Street, NW, Fifth Floor  
Washington, DC 20007

  
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John Wells King  
Their Attorney

Dated: March 30, 2007

Filed: April 2, 2007

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<sup>9</sup> *Bendbroadband, supra*, at ¶ 2, citing H.R.REP. NO. 104-204, at 112 (1995).

DECLARATION

I, Craig Thompson, do hereby declare and state as follows:

1. I am President of Guam Cablevision, LLC ("GCL").

2. I have read the Request for Waiver of the set-top integration ban set forth in Section 76.1204(a)(1) of the FCC's rules, to permit GCL until December 31, 2009, in which to come into compliance (the "Request").

3. The facts stated in the Request of which I have personal knowledge are true. The facts stated in the Request of which I have no personal knowledge are true to the best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 31, 2007.

  
Craig Thompson