

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	CSR-7042-Z
Verizon's Petition for Waiver of the Set-Top)	
Box Integration Ban, 47 C.F.R.)	CS Docket No. 97-80
§ 76.1204(a)(1))	

REPLY COMMENTS OF VERIZON

Michael E. Glover
Of Counsel

Edward Shakin
William H. Johnson
1515 North Court House Rd.
Suite 500
Arlington, VA 22201
(703) 351-3060

Helgi C. Walker
Joshua S. Turner
Wiley Rein & Fielding LLP
1776 K Street, NW
Washington, DC 20006
(202) 719-7000

Attorneys for Verizon

September 28, 2006

INTRODUCTION AND SUMMARY	1
I. VERIZON IS ENTITLED TO A WAIVER OF THE SET-TOP BOX INTEGRATION BAN, REGARDLESS OF THE OUTCOME OF DCAS.....	1
A. Verizon’s Status as a New Entrant Providing Cutting-Edge Services Strongly Supports the Grant of a Waiver.	3
B. Verizon’s FTTP Network and QAM/IP System Present Unique Technical Issues Not Applicable to Incumbent Cable Operators.....	8
C. The Commission Can Grant Verizon’s Waiver and Determine Issues Related to DCAS Separately.	11
II. THE COMMISSION CAN GRANT VERIZON’S WAIVER REQUEST WITHOUT APPLYING THAT WAIVER TO ALL OTHER MVPDs.....	12
A. The Statute and the Commission’s Rules Clearly Provide that the Commission Can Limit a Waiver to a Certain “Category” of Providers.	12
B. NCTA’s Proposed Reading of the Act Would Lead to an Absurd Result and Contradicts NCTA’s Own Past Interpretations of the Statute and the Rules.	14
III. NUMEROUS COMMENTERS SUPPORTED VERIZON’S OPEN DCAS PROPOSAL, FURTHER ILLUSTRATING THE DIFFERENCES BETWEEN VERIZON AND THE INCUMBENT CABLE PROVIDERS.	17
IV. CONCLUSION.....	19

INTRODUCTION AND SUMMARY

As shown in its Petition¹ and as reinforced below, Verizon is entitled to a waiver of the Commission's set-top box integration ban,² based on Verizon's status as a new entrant using unique system architecture to introduce new and improved video services. This status renders Verizon fundamentally distinguishable from other entities, such as incumbent providers, that have also sought waivers of the set-top box integration ban. Contrary to the suggestion of some commenters, the Commission can and should grant this waiver regardless of the outcome of the debate over downloadable conditional access ("DCAS") and regardless of whether it grants the waiver petitions of the incumbent providers, and can limit this waiver to the category of providers using a system similar to Verizon's. Although the Commission is not required to decide the DCAS issue in order to grant this waiver, it bears emphasis that Verizon received broad support for its position on the importance of open DCAS, highlighting not only the merit of that approach but the basic difference between video innovators such as Verizon and traditional cable operators in this context.

I. VERIZON IS ENTITLED TO A WAIVER OF THE SET-TOP BOX INTEGRATION BAN, REGARDLESS OF THE OUTCOME OF DCAS.

Verizon is driving the very sort of innovation and competition in the video services market that the waiver provision of Section 629 was intended to promote.³ Congress explicitly required that the Commission "shall waive" these regulations "upon

¹ Verizon's Petition for Waiver of the Set-Top Box Integration Ban, 47 C.F.R. § 76.1204(a)(1), CS Dkt. No. 97-80 (July 10, 2006) ("Verizon Petition").

² 47 C.F.R. § 76.1204(a)(1)(2005).

³ Verizon Petition at 5-11.

an appropriate showing by a provider of multichannel video programming . . . that such waiver is necessary to assist the development of a new or improved multichannel video programming or other service,”⁴ and both the Commission and Congress have emphasized that enforcement of the rules under Section 629 should not have “the effect of freezing or chilling the development of new technologies and service.”⁵ Congress thus recognized that new entrants to the market may need flexibility under existing regulations, and that granting waivers would assist in the development both of new competitive providers and new services. In cases like this, a waiver is affirmatively pro-competitive and affords substantial benefits to consumers.

For just these reasons, Verizon has shown that its status as a new entrant using unique network architecture entitles the company to a waiver of the set-top box integration ban. Although one commenter suggests that Verizon’s Petition is “predicated on the development”⁶ of open DCAS and others focus on Verizon’s request for a waiver until open DCAS can be implemented,⁷ the justification for Verizon’s request is in no way based on the Commission’s decisions regarding DCAS. On the contrary, Verizon is entitled to a waiver, as contemplated by Congress and the Commission, because it is a new entrant bringing new and improved video and other services to customers.

⁴ 47 U.S.C. § 549(c)(2005).

⁵ *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, Report and Order, 13 FCC Rcd 14775, 14816 (¶ 103)(1998) (“First Report and Order”) (quoting S. Rep. No. 104-230, at 181 (1996)).

⁶ Comments of Sony Electronics Inc. to Verizon Petition for Waiver, CS Dkt. No. 97-80, CSR-7042-Z, at 1 (September 18, 2006) (“Sony Comments”).

⁷ Opposition of TiVo Inc. to Verizon Petition for Waiver, CS Dkt. No. 97-80, CSR-7042-Z, at 1 (September 18, 2006) (“TiVo Opposition”).

Moreover, Verizon's unique network architecture leads to technical issues in compliance with the ban not faced by other cable operators. The Commission should grant Verizon's waiver regardless of what action it takes on DCAS, and indeed can grant Verizon's waiver for a specific time certain if it deems such action necessary under the rules.

A. Verizon's Status as a New Entrant Providing Cutting-Edge Services Strongly Supports the Grant of a Waiver.

By any definition, Verizon is a new entrant into the video services market, and this new entrant status strongly supports Verizon's Petition. As Verizon has previously explained, this new innovation and competition in the video services market is precisely the sort of activity that the waiver provision was meant to effectuate. Although some commenters suggest that Verizon is not a genuine new entrant because of its market capitalization or future service plans⁸ and others suggest that Verizon's FiOS TV is merely a "simple substitute" for ordinary cable service,⁹ these statements are misleading at best. The question whether Verizon is a new entrant does not hinge on whether or not Verizon is a large company or whether it is likely to be successful in deploying video services nationwide. Rather, the concern here is whether or not Verizon is introducing competition and innovation into a marketplace that sorely needs it. Indeed, Verizon is doing just that.

Verizon's entry into the video services market is exactly the type of pro-competitive result that Congress intended in passing the Telecommunications Act of 1996 (the "Act"). As Verizon noted in its Petition, in most areas where Verizon has

⁸ Comments of NCTA to Verizon Petition for Waiver, CS Dkt. No. 97-80, CSR-7042-Z, at 9-11 (September 18, 2006) ("NCTA Comments").

⁹ Sony Comments at 3.

initiated service, it is the first wireline competitor to cable.¹⁰ The Commission itself has noted the positive impact of wireline competition on prices,¹¹ and other studies have shown a link between cable competition and the availability of new services and improved customer service.¹²

In addition to introducing competition, Verizon is also introducing new and improved services. Verizon's unique network architecture and all fiber infrastructure allow it to provide services that are truly "new or improved" within the meaning of Section 629.¹³ In particular, by using a combination IP/QAM network, Verizon is able to utilize the best of both traditional digital cable technology and the innovative and developing IP technology. This approach has the twin benefits of allowing Verizon to carry *more* high quality digital video programming than traditional cable providers, and also enabling *brand new* interactive features that rely on IP.

First, by moving features such as the interactive programming guide, video-on-demand, and Internet access services out of the QAM bandwidth, Verizon has increased the amount of space available for video programming, allowing Verizon to carry a greater number and variety of channels, including more high-definition channels and international channels.

¹⁰ Verizon Petition at 7.

¹¹ *Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992: Statistical Report on Average Rates for Basic Service, Cable Programming Service, and Equipment*, Report on Cable Industry Price, 20 FCC Rcd 2718, 2727 (¶ 29) (2006).

¹² U.S. Gen. Accounting Office, Report to the Subcommittee on Antitrust, Competition Policy and Consumer Rights, Committee on the Judiciary, U.S. Senate, *Telecommunications: Wire-Based Competition Benefited Consumers in Selected Markets* 12, Report No. GAO-04-241 (Feb. 2004).

¹³ 47 U.S.C. § 549(c).

Second, the IP platform has also enabled Verizon to introduce innovative interactive applications that have no analogue in conventional, incumbent cable service, such as FiOS Widgets, which currently allow users to see real-time traffic and weather through their set-top box. Unlike cable operators' on-screen traffic and weather, Widgets are interactive and customizable, enabling users to access customized traffic or weather reports, even for areas outside their geographic viewing area. Future Widgets may facilitate instant access to news and sports information of the subscriber's choosing, or allow municipalities, schools, and civic organizations to supply information to a "Community Widget" accessible by subscribers in a particular area. In addition to Widgets, Verizon will be able to use the IP portion of its system to enhance everyday viewing with two-way services. For example, FiOS TV subscribers might be able to vote in real-time in response to questions posed on news programming or for a contestant in a reality show. These services are not offered by traditional cable companies.

The IP platform also provides the basis for Verizon's Home Media DVR, which allows up to three TVs in different rooms to access digitally recorded programs on a single server-DVR using IP as the communications medium to transmit the recorded programming. The IP-based nature of the Home Media DVR allows Verizon to integrate Media Manager with the DVR, which allows customers to access pictures and music on their networked home computers. And Verizon is developing services that would allow the sharing of videos and other data even outside the home through personal broadcasting.

Verizon is also developing other services, applications, and features made possible by the combination of IP technology and Verizon's robust fiber broadband

network. For example, Verizon will be rolling out a Games-on-Demand service that works directly through the set-top box and takes advantage of Verizon's IP network. IP also will enable Verizon to include additional functionality into its video-on-demand offering, such as high-definition video-on-demand, preview clips accessible to customers before ordering a video, or other DVD-like features. The IP aspects of FiOS TV will also allow subscribers to personalize their interactive programming guide and to perform searches for VOD or other available video content, to a much greater extent than is available on traditional cable systems. And Verizon will use the IP side of its video service to continue rolling out additional interactive or enhanced features. Additionally, as IPTV technology matures, Verizon has the flexibility of moving away from QAM toward an all-IP approach.

Although Verizon has announced a goal of serving between 3 and 4 million FiOS TV subscribers by 2010, the current size of Verizon's subscriber base also belies claims that Verizon is not a new entrant and further supports the grant of a waiver. As Motorola noted, FiOS TV is still a nascent service.¹⁴ Verizon currently has approximately 100,000 subscribers and expects to have 175,000 by the end of 2006. Compared to the tens of millions of subscribers held by cable incumbents such as Comcast and Time Warner,¹⁵

¹⁴ Comments of Motorola Inc. to Verizon Petition for Waiver, CS Dkt. No. 97-80, CSR-7042-Z, at 4 (September 18, 2006) ("Motorola Comments").

¹⁵ Comcast has approximately 26.8 million cable subscribers, and Time Warner has approximately 16.6 million subscribers post-transaction. See *Applications for Consent to the Assignment and/or Transfer of Control of Licenses Adelfia Communications Corporation (and Subsidiaries, Debtors-In-Possession), Assignors, to Time Warner Cable Inc. (Subsidiaries), Assignees; Adelfia Communications Corporation (and Subsidiaries, Debtors-In-Possession), Assignors and Transferors, to Comcast Corporation (Subsidiaries), Assignees and Transferees; Comcast Corporation, Transferor, to Time Warner Inc., Transferee; Time Warner Inc., Transferor, to Comcast Corporation, Transferee*, Memorandum Opinion and Order, MB Docket No. 05-192, FCC 06-105, ¶ 2 (rel. July 21, 2006).

Verizon's video subscribership is thus relatively small. Moreover, the more relevant comparison is Verizon's subscriber count to the combined count of all of the cable operators who use a similar technological approach. CableLabs has driven standardization of operational interfaces in the cable industry for many years, presenting manufacturers with a very large combined base for basically interchangeable set-top products. In contrast, Verizon is not only a new entrant but an innovator in the video services industry, and as an innovator it simply does not present the same large, homogenous customer base that the manufacturers find in the cable operators. Because of the size of Verizon's customer base, it is unlikely that set-top box manufacturers would spend the considerable time and resources necessary to create boxes specifically for Verizon's network until its subscriber base is many times larger than it is projected to be in the next few years.¹⁶ Thus, the impact on the availability of competitive navigation devices of providing Verizon this waiver (if any) would be *de minimis*.

On the other hand, the burdens placed on Verizon as a new entrant and innovator if the waiver were not granted would be substantial. Requiring Verizon to spend the time and resources necessary to implement the set-top box integration ban, assuming that is even possible, would slow the availability of Verizon's cutting-edge service and siphon off valuable resources (particularly highly-trained employees) that could be used to develop new services and features. Such services and features include additional Verizon's FiOS Widgets, enhanced video-on-demand, gaming, personal broadcasting, and other interactive or enhanced video options. As a new entrant using cutting-edge

¹⁶ See *infra* Section I.B. (detailing the resources necessary to design a QAM/IP device with physically separate security functions).

technology that differs substantially from the traditional cable model, Verizon needs more flexibility, particularly when it comes to rules that were designed solely in the incumbent cable paradigm. Finally, because of its status as a new entrant, Verizon has not had the benefit of nine years and two extensions of the deadline for compliance that have been provided to the incumbent cable providers. A waiver of these legacy regulations would allow Verizon to continue to build-out its network and to implement new services, furthering the essential purpose of the set-top box waiver provision.

B. Verizon's FTTP Network and QAM/IP System Present Unique Technical Issues Not Applicable to Incumbent Cable Operators.

Verizon's Petition specifically noted that Verizon's network architecture, and the unique technical issues that it creates with respect to compliance, also support grant of this waiver.¹⁷ CEA argues, however, that Verizon has provided no evidence to support its arguments and has not demonstrated a need for this waiver.¹⁸ In doing so, CEA ignores large portions of Verizon's filing that explicitly focused on the need for this waiver in light of Verizon's unique network.

In particular, CEA erroneously claims that the obstacles faced by Verizon in implementing the integration ban are no different from other cable operators and that it has not evidenced "a single technical obstacle posed by CableCARD reliance to the introduction of any new or unique cable or IPTV service."¹⁹ In making this assertion,

¹⁷ Verizon Petition at 13, 17-18; Declaration of Brian H. Whitton, at 2-5 (attachment to Verizon Petition).

¹⁸ Comments of the Consumer Electronics Association to Verizon Petition for Waiver, CS Dkt. No. 97-80, CSR-7042-Z (September 18, 2006) ("CEA Comments").

¹⁹ *See id.* at 5.

CEA ignores that Verizon is distinct from incumbent cable providers in that it provides cable and other services over a QAM/IP system that utilizes an FTTP network. As Verizon previously noted, Verizon's set-top box vendor, Motorola, has informed Verizon that, because of Verizon's QAM/IP system, "developing a set-top box for Verizon with physically separate security functions would be significantly more complex, costly, and time-consuming than is typically the case."²⁰ In Motorola's own words, developing a solution for the FiOS network before the deadline would be "difficult if not impossible" and would entail "substantial additional costs, complexities, and time exigencies."²¹

Also, granting a waiver will not undermine Section 629 because Verizon already complies with the requirement to provide CableCARDS to requesting subscribers and thus is providing CableCARDS to any subscribers who request them.²² In fact, over the last two months, the number of unidirectional CableCARDS deployed by Verizon has approximately tripled, thus illustrating Verizon's support of existing CableCARDS.²³ Therefore, manufacturers already have the ability to create consumer electronics equipment that is compatible with the QAM portion of Verizon's FiOS TV service to the same extent that they would if Verizon incorporated physically separate conditional access into its boxes.

At the same time, the small demand for CableCARDS by Verizon's subscribers—

²⁰ Verizon Petition at 18.

²¹ Motorola Comments at 4.

²² Verizon Petition at 22.

²³ In a filing in early August, Verizon noted that it had provided "over 100" CableCARDS to FiOS TV subscribers. *See Ex Parte of Verizon*, CS Dkt. No. 97-80, CSR-7042-Z, at 1 (filed Aug. 14, 2006). That number is now well over 300.

less than one percent of current subscribers—demonstrates how little would be achieved by requiring Verizon to comply with the integration ban by next year by incorporating physically separate conditional access. As Verizon has explained, use of the unidirectional CableCARD standard, which was designed for cable’s QAM standards, does not allow for utilization of the services that Verizon provides over the IP stream of its QAM/IP system, making it less likely that consumers would choose a CableCARD or a generic set-top box over Verizon’s integrated set-top boxes.²⁴ Therefore, unless manufacturers developed set-top boxes that could offer full functionality of Verizon’s services – which, as explained above, they are unlikely to do any time soon – the demand for CableCARDS from Verizon is likely to remain low.

Finally, providing Verizon a waiver of this rule will avoid the thorny issue of whether these rules are appropriately applied to Verizon in any case. Section 629(a) requires that the Commission “consult[] with appropriate industry standard-setting organizations” in adopting and applying these regulations.²⁵ As the Commission is aware, Verizon’s unique network architecture was not extant when these rules were initially created and, therefore, there was never any consultation about the application of these rules with respect to QAM/IP systems.²⁶ The legacy rules thus do not appropriately reflect the state of Verizon’s technology.

²⁴ Verizon Petition at 17-18.

²⁵ 47 U.S.C. §549(a).

²⁶ Verizon was required to incur additional costs to make technical modifications to its network in order to accommodate the unidirectional CableCARDS that were designed to fit cable-centric standards. As a new entrant using an innovative technological approach, it should not again be put at a competitive disadvantage by being forced to comply with technical rules designed to fit the incumbent providers’ technology.

C. The Commission Can Grant Verizon's Waiver and Determine Issues Related to DCAS Separately.

Verizon has requested a waiver of the set-top box integration ban until such time as open DCAS can be implemented. Providing a waiver until this time is appropriate given Verizon's recent entry into the video services market, its innovative and different technological approach to providing video services, and the significant costs that would be required to implement physical separation when an open downloadable solution is technologically superior. Some commenters have suggested, however, that Verizon's waiver is "predicated on" the resolution of the DCAS issue²⁷ or that providing Verizon a waiver until the implementation of open DCAS would not be a "limited time" waiver, within the meaning of the statute and regulation, since open DCAS is only in a developmental stage.²⁸ This is not the case.

As an initial matter, Verizon's request is properly "limited" to the time that it takes to harmonize the adoption of an appropriate DCAS system with the Commission's integration ban. In any event, the Verizon Petition does not rest on the relative pluses or minuses of the current DCAS proposals. As described above, and as contemplated by Section 629's waiver provision, Verizon's Petition is justified by the unique circumstances that apply to Verizon's position in the market and the nature of its services, regardless of what happens with the development of DCAS. As such, the Commission can decide issues related to DCAS separately, and can provide Verizon its requested waiver prior to any such decision.

²⁷ Sony Comments at 1.

²⁸ TiVo Comments at 1.

Nevertheless, in the event that the Commission believes that a time certain period of years should be imposed upon Verizon's waiver, the Commission has the power to adopt such a limit in any order granting Verizon's Petition. If the Commission elects to take this step, Verizon believes that three years is a reasonable period to provide for the waiver. This is just a fraction of the time that has already been provided to incumbent cable operators, who have had nine years and two extensions to comply with the set-top box integration ban.

II. THE COMMISSION CAN GRANT VERIZON'S WAIVER REQUEST WITHOUT APPLYING THAT WAIVER TO ALL OTHER MVPDs.

As noted by Verizon and at least one other party, the Commission can and should limit the applicability of any waiver it grants to Verizon by limiting the category of providers to which it applies to those providers that use a hybrid QAM/IP system over FTTP architecture. NCTA's contrary claim that any waiver must be applied to all service providers regardless of category is based on a reading of the statute that leads to absurd results, and indeed is inconsistent with NCTA's own reading of the statute in related contexts.

A. The Statute and the Commission's Rules Clearly Provide that the Commission Can Limit a Waiver to a Certain "Category" of Providers.

Section 629 and the Commission's implementing rule indicate that any waiver of the set-top box rules will apply to service providers and products in a "category."²⁹

Pursuant to these authorities, the Commission provided Direct Broadcast Satellite

²⁹ See 47 U.S.C. § 549(c) (providing that a "waiver shall be effective for all service providers and products in that category..."); 47 C.F.R. § 76.1207 (providing that "a waiver shall be effective for all service providers and products in the category in which the waiver is granted.").

(“DBS”) providers an exemption from the set-top box integration ban based on certain objective criteria that differentiated DBS providers from other Multichannel Video Programming Distributors (“MVPDs”). The Commission determined that because of these criteria, including, in particular, DBS providers’ position as new entrants, a grant of a waiver to DBS providers was in the public interest.³⁰ Of course, the Commission did not apply that exemption to all MVPDs, nor was it required to do so. This decision was recently upheld by the United States Court of Appeals for the D.C. Circuit.³¹

Just as with DBS providers, then a new entrant, providing service over a unique network, Verizon falls into a distinct and objectively defined category, and Verizon’s eligibility for a waiver is based on factors associated with its unique competitive position and technological platform.

In fact, TiVo, which generally opposes Verizon’s waiver, nevertheless agrees that the Commission can logically and legally limit any waiver of these rules to a certain category of providers.³² TiVo notes that if the Commission grants Verizon’s request it “should make it clear that such [waiver] is being granted to Verizon in its capacity as a new entrant and that such waiver is not available to all MSOs.”³³ Notably, limiting the waiver in this way would completely eliminate TiVo’s concern that a single waiver

³⁰ See First Report and Order, 13 FCC Rcd at 14800-01 (¶¶ 64-65).

³¹ See *Charter Commc’ns Inc. and Advance/Newhouse Commc’ns v. FCC*, No. 05-1237, slip op. at 18-20 (D.C. Cir. Aug. 18, 2006).

³² TiVo Opposition at 8-9.

³³ *Id.* at 9.

granted to Verizon would make the integration ban a “dead letter.”³⁴

The Commission can, therefore, reasonably define the relevant “category” of provider to which the waiver would apply as “service providers who, like Verizon, are providing service using a hybrid QAM/IP system over FTTP architecture.”³⁵ Indeed, it is this category of provider, rather than the incumbent operators, that is poised to create an entirely new source of competition and innovations in the market for video services.

B. NCTA’s Proposed Reading of the Act Would Lead to an Absurd Result and Contradicts NCTA’s Own Past Interpretations of the Statute and the Rules.

The final clause of Section 629(c) provides that a waiver granted under this section “shall be effective for all service providers and products *in that category* and for all providers of services and products.”³⁶ In its comments on Verizon’s Petition, NCTA argues that the phrase “and for all providers of services and products” was meant to indicate that *any* waiver of the rules that the Commission provides must apply to *all* multichannel video programming providers, regardless of the technical and marketplace difference among them.³⁷ NCTA further argues that providing this waiver to Verizon would not be appropriately technologically neutral.³⁸ NCTA’s reading of the statute for the purposes of Verizon’s Petition, however, leads to absurd results and is not consistent with other NCTA statements regarding the required breadth of waivers granted under the

³⁴ *Id.*; *see also id.* at 2.

³⁵ Verizon Petition at n.12.

³⁶ 47 U.S.C. § 549(c) (emphasis added).

³⁷ *See* NCTA Comments at 13.

³⁸ *See id.* at 14-18.

set-top box rules.

NCTA's proposed construction of the language in Section 629(c) is untenable when considered in the context of the entire statute. First, NCTA's interpretation essentially reads out of the statute the words "in that category," and requires that the Commission apply its waivers to all providers regardless of "category." NCTA's reading is therefore in direct contradiction to the long-standing rule of statutory construction that an interpretation of a statute should give effect to all words in the statute.³⁹ The inclusion of the word "category" was intended to give the Commission discretion to provide waivers to a limited subset of providers based on its judgment that doing so would "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."⁴⁰ Thus, despite NCTA's insistence that all waivers provided under this section be technology neutral, Congress' intent was plainly to provide waivers to assist new and improved services, rather than tying these new advances to legacy regulations.

Second, NCTA's reading would invalidate all of Section 629(a), the substantive provision requiring set-top box rules, if the Commission granted a waiver of the set-top box integration ban to even one party. Under NCTA's flawed construction of 629(c), if the Commission grants a waiver to any party for any product, then that waiver must apply to all video providers and products, essentially eviscerating the substance of the rule the

³⁹ See *United States v. Menasche*, 348 U.S. 528, 538-39 (1955)(explaining that statutes must be read "to give effect, if possible, to every clause and word" and that a court may not adopt an interpretation that "emasculate[s] an entire section")(citation omitted); see also *Bennett v. Spear*, 520 U.S. 154, 173 (1997); 2A Norman J. Singer, Sutherland Statutory Construction § 46.06 (6th ed. 2000).

⁴⁰ 47 U.S.C. §549(c).

moment the Commission makes a single exception. Congress cannot have intended for this to be the case. Indeed, in adopting the waiver rule, the Commission recognized the narrow scope of potential waivers by adopting language limiting waivers to the “category” of providers or products.⁴¹ Highlighting the absurdity of NCTA’s proposal, under NCTA’s reading of the statute adoption of the DBS exception should have triggered a universal waiver of Section 629(a) as applied to all MVPDs. Of course, it did not do so.

Finally, NCTA is not even consistent in how it interprets Section 629 and the Commission’s rules implementing the statute. In NCTA’s filing regarding Charter’s waiver, for example, it argues that the Commission can limit that waiver “to the extent [another MVPD] deploys devices that are the same or similar to [the limited capability devices] for which the waiver is granted.”⁴² In a letter to the Commission regarding a similar waiver request by Comcast, NCTA did not even discuss the statutory language, and instead noted that the Commission could apply its waiver to “*all service providers...in that category.*”⁴³ Therefore, while NCTA objects to using Verizon’s status as a new entrant deploying cutting-edge QAM/IP technology to limit a waiver of the set-top box integration ban, it does not object to limiting Comcast’s or Charter’s waivers of the same ban based on their own arguments concerning technology-based criteria regarding the capabilities of certain set-top boxes. NCTA cannot have it both

⁴¹ See 47 C.F.R. § 76.1207.

⁴² See Letter from Neal M. Goldberg, General Counsel, NCTA to Marlene Dortch, Secretary, FCC at 3 (September 18, 2006).

⁴³ See Letter from Neal M. Goldberg, General Counsel, NCTA to Marlene Dortch, Secretary, FCC at 4 (June 15, 2006) (emphasis in original).

ways.

III. NUMEROUS COMMENTERS SUPPORTED VERIZON'S OPEN DCAS PROPOSAL, FURTHER ILLUSTRATING THE DIFFERENCES BETWEEN VERIZON AND THE INCUMBENT CABLE PROVIDERS.

Although Verizon's waiver is not predicated upon the implementation of open DCAS, Verizon continues to support the development of an open, technology-neutral DCAS standard as the most pro-competitive and pro-consumer solution to implementing the integration ban. Based on the comments of parties in this proceeding, it appears that such a standard has broad support, which further evidences that it is Verizon, rather than incumbent cable providers, that is committed to promoting video competition.

Numerous commenters support Verizon's open DCAS solution. The "IT Commenters" – including Hewlett-Packard, Intel, Sony, and Dell – "agree[] with Verizon's analysis of the DCAS regime proposed by Cable," noting that it "has nothing to do with conditional access and everything to do with competitive leverage and establishing control over consumer devices."⁴⁴ The IT Commenters note that "Open DCAS would meet the needs of service providers, device manufacturers and consumers."⁴⁵ TiVo also noted that it "agrees wholeheartedly with Verizon that DCAS should be open and nonproprietary, divorced from the OpenCable Application Platform ("OCAP"), and not designed to benefit or be controlled by individual competitors or a particular class of competitors in the marketplace."⁴⁶ Clearly, there is broad support among equipment manufacturers for an open DCAS standard.

⁴⁴ Comments of Hewlett-Packard Company, Intel Corporation, Sony Electronics Inc., and Dell Inc. to Verizon Petition for Waiver, CS Dkt. No. 97-80, CSR-7042-Z, at 5 (September 18, 2006).

⁴⁵ *Id.*

⁴⁶ TiVo Opposition at 7.

As further evidence of the industry recognizing and pursuing an open and standards-based “conditional access” solution for IP-based video networks, the ATIS IPTV Interoperability Forum (“ATIS IIF”) has undertaken a project to develop an open CAS standard that is agnostic to video transport media. This work is part of the ATIS IIF Digital Rights Management (“DRM”) Task Force, and is being addressed in Phase 1 of the IPTV standards process, scheduled to be completed in early 2007. Ultimately, this standard should allow retail manufacturers to build devices based on an open CAS solution, providing a hardware-based solution that can be implemented in a common and open manner across the industry. Verizon has chaired this standards initiative since its inception and has been a major contributor to the DRM Task Force and the ongoing standardization of access-agnostic CAS. The cable incumbents are free to participate in this standard-setting body as well.

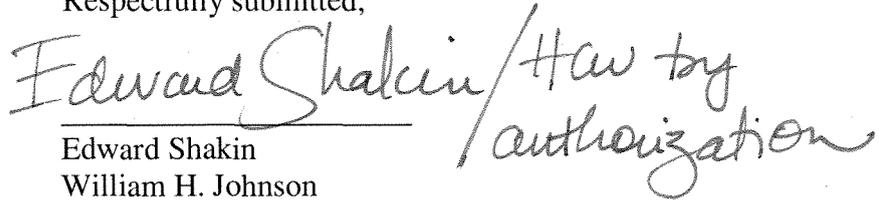
Verizon’s allegiance to an open DCAS standard, with its broad industry support, further highlights the fundamental differences between Verizon and the incumbent cable operators. Once implemented, Open DCAS will provide vast customer choice and competition in the device market. The DCAS solution supported by the cable industry, on the other hand, is aimed at maintaining the status quo and limiting consumer choice in both the device and service market. The waiver is necessary to permit Verizon to continue its efforts to provide customers choice.

IV. CONCLUSION

The Commission should grant Verizon's Petition.

Michael E. Glover
Of Counsel

Respectfully submitted,

Edward Shakin / *How by authorization*

Edward Shakin
William H. Johnson
1515 North Court House Rd.
Suite 500
Arlington, VA 22201
(703) 351-3060

Helgi C. Walker
Joshua S. Turner
Wiley Rein & Fielding LLP
1776 K Street, NW
Washington, DC 20006
(202) 719-7000

Attorneys for Verizon

September 28, 2006

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing Reply Comments was sent by mail, this 28th day of September, 2006, to each of the following:

Daniel L. Brenner
Neal M. Goldberg
Counsel for the National Cable & Telecommunications Association
1724 Massachusetts Avenue, N.W.
Washington, D.C. 20036-1903

Steve B. Sharkey
Director, Spectrum and Standards Strategy
Motorola, Inc.
1350 I Street, NW
Suite 400
Washington, DC 20005-3305

Michael D. Petricone
Senior Vice President
Julie M. Kearney
Senior Director and Regulatory Counsel
CONSUMER ELECTRONICS ASSOCIATION
2500 Wilson Boulevard
Arlington, VA 22201

Robert S. Schwartz
Constantine Cannon, P.C.
1627 Eye Street, N.W.
Washington, DC 20006
Counsel to CEA

Adam Petruska
Director, Strategic Initiatives
Office of Strategy & Technology
Hewlett-Packard Company
20555 State Highway 249
MS-140302
Houston, TX 77070

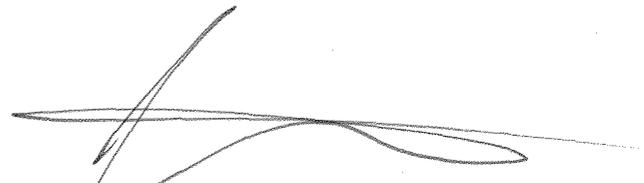
Jeffrey T. Lawrence
Director, Content Policy and Architecture
Intel Corporation
JF3-147
2111 N.E. 25th Avenue
Hillsboro, OR 97124-5961

Jim Morgan
Director & Counsel
Government & Industry Affairs
Sony Electronics Inc.
1667 K Street, NW, Suite 200
Washington, DC 20006

Mike Lazorik
Director, Office of the CTO
Dell, Inc.
Business Development/Public Policy
One Dell Way
Round Rock, TX 78682

Henry Goldberg
Devendra T. Kumar
Goldberg, Godles, Wiener & Wright
1229 19th Street, N.W.
Washington, DC 20036
Counsel to TiVo, Inc.

Matthew P. Zinn
Senior Vice President, General Counsel, Secretary & Chief Privacy Officer
TiVo, Inc.
2160 Gold Street
Alviso, CA 95002



Nicholas M. Holland