

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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Federal Communications Commission
Office of the Secretary

In the Matter of)
)
Qwest's Petition for Waivers of the) CSR -
Set-Top Box Integration Ban,)
47 C.F.R. § 76.1204(a)(1))

**QWEST'S PETITION FOR WAIVERS
OF THE SET-TOP BOX INTEGRATION BAN, 47 C.F.R. § 76.1204(a)(1)**

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Qwest Communications International Inc. ("Qwest") respectfully requests two waivers of the Federal Communications Commission's ("FCC" or "Commission") rule banning the distribution of integrated set-top boxes starting July 1, 2007.¹ Qwest seeks these waivers pursuant to Sections 1.3 and 76.7 of the Commission's rules as well as Section 629(c) of the Communications Act and Section 76.1207 of the Commission's rules.² Qwest seeks waivers for its continued use of integrated set-top boxes with its current video delivery systems.

I. INTRODUCTION AND SUMMARY

Qwest seeks two waivers: one for the continued use of the set-top boxes for Qwest's very high-speed digital subscriber line ("VDSL")-based delivery system, and one for the continued use of the set-top box with Qwest's fiber-to-the-home broadband passive optical network ("FTTH-BPON")-based delivery system. There is good cause to grant Qwest's petition as special circumstances and the public interest impel the relief requested here. Qwest is a new entrant to the video services delivery market. And, more than just a new entrant, its primary video services delivery system -- VDSL-based switched digital video -- is a very different

¹ See 47 C.F.R. § 76.1204(a)(1).

² See Communications Act of 1934, as amended, 47 U.S.C. § 549(c), 47 C.F.R. §§ 1.3, 76.7, 76.1207.

technology for video services delivery than that used by traditional wire-based cable companies. VDSL is a breakthrough, first-generation delivery system. As a first-generation system, however, it is now being surpassed by movement in the industry to more standardized digital subscriber line ("DSL")-based delivery architectures to support switched digital video. It is also an extremely small segment of the existing video delivery market. Given this, neither the current set-top box vendor for Qwest's VDSL system, nor any other set-top box manufacturer has plans to develop alternate set-top boxes for this system. Consequently, for Qwest's VDSL boxes, there are no set-top boxes available or under development that Qwest could purchase to comply with the ban. And, in line with the industry trend, Qwest anticipates migrating away from use of these boxes in the next few years. In the absence of a waiver, Qwest will effectively have to cease offering its video services to new customers after July 1, 2007.

With respect to Qwest's FTTH-BPON boxes, Qwest understands that there will be compliant boxes available for purchase. Yet, Qwest's compliance costs to move to these boxes will not serve any useful purpose. Qwest has a very small customer base on this architecture and does not anticipate significantly growing this base prior to migrating to a next-generation architecture in the next few years.

In addition to these special circumstances, granting the requested waivers is in the public interest. Such grant will enable Qwest to continue to offer competitive wire-based video services that will benefit all video customers where Qwest competes in the form of lower prices and more choices for their video services. It will also enable Qwest to focus its limited video services resources on development and deployment of a new delivery system that will permit enhanced video services for customers. Given Qwest's limited presence in the video market, granting the requested waivers will have no effect on the market for navigation devices and thus will not

undermine the purpose for which the ban was implemented. Forcing Qwest to abandon offering these boxes after July 1, 2007, however, will significantly inhibit Qwest's ability to offer much-needed competitive services in the wire-based video delivery market.

Qwest's requested relief is also warranted under Section 629(c) of the Act and Commission Rule 76.1207, as these waivers are necessary to assist Qwest in developing and introducing improved multichannel video services via a next-generation delivery system. After Qwest migrates to more standardized, next-generation video delivery architectures, it will be able to offer new services and features that it is not offering with its current delivery systems. In the interim, Qwest needs the requested waivers in order to continue to offer competitive wire-based video services using its current video delivery systems.

II. BACKGROUND

Qwest's core operations are as a Regional Bell Operating Company ("RBOC") and as such Qwest has its roots in the delivery of voice telecommunications services. Qwest is a new entrant, however, in the market for the delivery of video services. Qwest currently provides digital video services through two different delivery architectures. The first is VDSL. The second is FTTH-BPON.³ With the VDSL architecture Qwest uses a switched digital video technology over fiber and copper wires, and thus delivers video services very differently than the quadrature amplitude modulation ("QAM")-based broadcast delivery structure over fiber and coaxial cable of traditional cable companies.⁴ Qwest uses its VDSL delivery structure in areas where it has existing facilities. To support the delivery of video services, Qwest deploys fiber to

³ This is also referred to as FTTP-BPON.

⁴ In fact, the significant differences between these delivery systems raise questions as to what is "conditional access" in the VDSL delivery system that must be removed from the set-top box to enable compliance with the integration ban. Because control of conditional access in the VDSL-based switched digital video system resides in the system outside of the set-top box, it may even be the case that the VDSL set-top boxes are already compliant with the ban.

a node in neighborhoods and then uses copper loops to deliver service from the neighborhood node into the home. Qwest's FTTH-BPON architecture is QAM-based. Qwest only uses this delivery system in greenfield areas.⁵

Qwest began offering its VDSL-based video services in 1998, and its FTTH-BPON services in 2005. Qwest currently has about 48,000 video subscribers that receive their video services over Qwest's VDSL architecture, and fewer than 500 customers that receive their video service over Qwest's FTTH-BPON architecture.⁶ Qwest plans to continue to provide its digital video services to new customers using these delivery architectures in 2007.⁷

With its VDSL architecture, Qwest currently offers two set-top boxes: (1) the NL-Motorola RG-3000 which is a switched digital video based residential gateway that enables a single stream of standard definition ("SD") or high definition ("HD") video service, and (2) the NL-Motorola RG-2200 which is a switched digital video based residential gateway that enables three streams of standard definition video and high speed Internet service.⁸

With its FTTH-BPON architecture, Qwest currently offers three set-top boxes: (1) the SA Explorer 1850 which is a QAM-based set-top box that enables a single stream of SD video service, (2) the SA Explorer 8300HD-DVR which is a QAM-based, dual tuner set-top box that supports SD and HD video service with a 160GB hard disk drive for personal video recording

⁵ Declaration of Steven Sklar, attached to this petition ("Sklar Declaration") ¶¶ 2-4, 11.

⁶ Qwest also provides some wire-based analog video services and partners with DirecTV to provide video services via satellite. *Id.* ¶ 10. Throughout this petition, Qwest is addressing only its wire-based digital video services.

⁷ *Id.* ¶ 5.

⁸ *Id.* ¶ 6.

("PVR"), and (3) the SA Explorer 3250 which is a QAM-based, single tuner set-top box that supports SD and HD video service.⁹

The video services that Qwest offers over its VDSL and FTTH-BPON delivery architectures are marketed as Qwest Choice™ TV. Qwest Choice TV provides customers with access to over 300 digital-quality channels at prices that are consistently lower than the incumbent cable provider's prices. This service includes high-definition options, digital music, pay-per-view and premium movie channels, parental controls and a customizable interactive program guide.¹⁰

III. REQUEST FOR WAIVERS

Section 76.1204 of the Commission's rules states in relevant part that "[c]ommencing 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."¹¹ Qwest seeks waivers of this rule for its continued use of the set-top boxes described in the preceding section after the July 1, 2007 ban date.

In accord with Commission Rule 1.3 the Commission may waive any of its regulations when good cause is demonstrated. To show good cause a carrier must demonstrate that (1) there are special circumstances warranting deviation from the general rule and (2) a waiver will serve

⁹ *Id.* ¶ 7.

¹⁰ *Id.* ¶ 8. Since August 2006, Qwest has also offered an all-digital Hispanic TV programming package with its Qwest® TV Latino service available wherever Qwest Choice™ TV is offered in Phoenix, Arizona and Denver, Colorado. *Id.* ¶ 9.

¹¹ 47 C.F.R. § 76.1204. The Commission implemented this rule to effect Congress' directive in Section 629(a) of the Act that the Commission adopt regulations to assure that consumers can purchase equipment used to access multichannel video programming from vendors not affiliated with any multichannel video programming distributor ("MVPD"). *See* 47 U.S.C. § 549(a).

the public interest.¹² Pursuant to Commission Rule 76.7, the Commission may grant a waiver of any provision of Part 76 of the Commission's rules if the Commission determines that a waiver will serve the public interest.¹³ Additionally, pursuant to the Act and the Commission's rules, the Commission may waive its ban on integrated navigation devices for a limited time upon a showing by the petitioner that the 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."¹⁴

There is good cause to grant Qwest's petition. First, there are special circumstances that warrant the relief requested. With respect to Qwest's VDSL boxes, there are no set-top boxes available or under development that Qwest could purchase to comply with the ban. Nor is there any market incentive for others to develop new set-top boxes compatible with this particular delivery system. And, Qwest intends to migrate away from use of these boxes in the next few years. With respect to Qwest's FTTH-BPON boxes, forcing Qwest to provide alternate boxes creates costs that provide no benefit to customers. And, like with its VDSL boxes, Qwest expects to migrate away from using this delivery architecture, and in turn, these set-top boxes.

Second, granting the requested waivers is in the public interest. With the requested relief, Qwest will be able to continue to offer competitive wire-based video services, and move forward on development and deployment of a new delivery system that will permit enhanced video services for customers. Granting the waivers also will not undermine the purpose for which the ban was implemented, but forcing Qwest to abandon offering these boxes after July 1, 2007 will undermine the expansion of competitive services in the wire-based video delivery market.

¹² *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹³ *See* 47 C.F.R. § 76.7.

¹⁴ *See* 47 U.S.C. § 549(c) and 47 C.F.R. § 76.1207.

Qwest's requested relief is also warranted under Section 629(c) of the Act and Commission Rule 76.1207, as these waivers are also necessary to assist Qwest in developing and introducing improved multichannel video services via an improved delivery system.

A. Special Circumstances Warrant A Waiver For Qwest's Use Of Its VDSL-Based Set-Top Boxes

Qwest seeks a waiver for its use of its VDSL-based set-top boxes because there are no set-top boxes in existence or in development that Qwest could purchase to comply with the ban, and Qwest is not intending to use this VDSL delivery architecture and its set-top boxes for much longer.¹⁵

The manner in which traditional cable companies currently provide their video services, and the manner in which Qwest provides its VDSL-based video services are fundamentally different. This difference has significant implications in applying the set-top box integration ban to Qwest's VDSL-based services.

In traditional cable systems all the available channels that can fit on the bandwidth are broadcast via coaxial cable to every customer's set-top box using QAM. At the set-top box, a

¹⁵ Nor is there a downloadable security technology option available at this time. With respect to the downloadable security solution offered by Beyond Broadband Technology, LLC ("BBT"), that the Commission has recently highlighted, *see* FCC Public Notice, Commission Reiterates That Downloadable Security Technology Satisfies the Commission's Rules on Set-top Boxes and Notes Beyond Broadband Technology's Development of Downloadable Security Solution, DA 07-51, CS Docket No. 97-80 (rel. Jan. 10, 2007), it is unclear whether it is a viable solution for a DSL-based switched digital video delivery architecture. And, even if it enables a technically feasible solution, it is not likely to be a real time solution for Qwest's situation. BBT has stated that it "will be prototype testing in the first quarter of 2007" and that "manufactured product, in quantity is scheduled for third quarter." Even if BBT stays on this schedule, which is already problematic for compliance with the ban, Qwest would need additional time for its own testing process before implementing this new element in its network. Sklar Declaration ¶ 16.

QAM tuner in the box, tunes to the specific channel the customer wants to watch. Channel switching occurs at the box.¹⁶

In contrast, for Qwest's VDSL-based services, the video services are delivered over fiber and then a final short distance over a twisted-copper pair to each customer's set-top box using VDSL, not QAM. Instead of the broadcast, send-all-the-channels-to-the-set-top-box approach of a QAM-based system, Qwest's VDSL-based services use switched digital video. In switched digital video, only the specific channel that a customer has requested to watch is sent to the customer's set-top box.¹⁷

These different delivery architectures demand different set-top boxes. Set-top boxes used for QAM-based systems are not currently designed to be compatible with a VDSL delivery architecture. Yet, to date, the focus in the industry on achieving separate conditional access has been with respect to QAM-based delivery systems and set-top boxes that dominate the video services delivery market.¹⁸

For Qwest to comply with the plain language of Section 76.1204, Qwest's current set-top box vendor, or some other set-top box manufacturer would need to develop a set-top box that would be compatible with the VDSL delivery architecture, and have all the conditional access functions removed from it either through physical separation or through downloadable conditional access. The nature of the conditional access functions that must be removed from a

¹⁶ *Id.* ¶ 12.

¹⁷ *Id.* ¶ 13. The manner in which QAM-based systems and switched digital video-based systems offer video services are sufficiently different that it is not clear how compliance for QAM-based systems can or should apply to non-QAM based systems. Consequently, it would seem that until there is a clear industry-wide compliance standard for non-QAM based systems, enforcement of the ban on the set-top boxes used with non-QAM based delivery architectures is premature.

¹⁸ *Id.* ¶ 14.

VDSL set-top box, if any, is unclear at this time.¹⁹ But, even assuming that it is technically feasible to achieve compliance at some future date, there are several additional reasons why Qwest's compliance should be waived here.

First, there simply are no boxes in existence that Qwest can purchase to comply with the July 1 ban date. And, Qwest's set-top box vendor has told Qwest that it has no plans to develop an alternative CableCARD-ready box that would work with the VDSL delivery system. Nor does any other consumer electronics manufacturer offer such a box. At this time, Qwest has no alternate set-top box option to enable compliance with the ban.²⁰

Second, to Qwest's knowledge, there is not sufficient market incentive for anyone else to develop such a box for at least two reasons: (1) the market segment that delivers video services using this VDSL delivery technology is an extremely small segment of the video delivery market; and (2) this VDSL delivery architecture is being eclipsed by the IPTV delivery platform. The current use of these boxes in the video services market is insignificant compared to the rest of the industry. Qwest's set-top box vendor estimates that there are approximately 225,000 of the VDSL-based boxes out in the field in the United States.²¹ In comparison, as of June 2005,

¹⁹ It is not clear whether the basic function of enabling the viewing of the specific channel the customer has asked to watch in the VDSL-based switched digital video system is "conditional access" that must be removed from the box. Arguably, this functionality is, in essence, that of the QAM tuner in the QAM-based system, which is not a functionality that the FCC has determined must be included in the point-of-deployment ("POD") module for complying with the ban. Instead, the QAM tuner either remains in the set-top boxes or is moved into the TV set.

²⁰ Sklar Declaration ¶ 15.

²¹ *Id.* Many customers have more than one set-top box in a home, but even assuming a one-to-one set-top-box-to-customer correspondence, this translates to a high estimate of 225,000 VDSL customers in the United States.

according to the National Cable Telecommunications Association (“NCTA”), there were 26.3 million digital cable customers.²²

Further, Qwest’s current VDSL delivery architecture is a proprietary system that was one of the first to enable telephone companies to provide digital video services over fiber-optic networks and the copper wires that the telephone companies use to provide wireline voice service. In fact, Qwest, then U S WEST, was the first telephone company to use VDSL to provide digital video services to residential customers.²³ VDSL is a first-generation delivery system for enabling switched digital video services over copper wires that is now being eclipsed by industry efforts to move to a standardized logical layer for delivering switched digital video services.²⁴ Moving to standardized components for the delivery layer that enables switched digital video will enable more players to participate in developing innovative features for switched digital video services. In line with this industry trend, Qwest anticipates migrating to a more standardized, next-generation delivery system for offering switched digital video services in the next few years. Upon migration to the next platform, Qwest will offer different set-top boxes.²⁵

Given the relatively small number of customers receiving their video services through the VDSL architecture, and the shift in industry focus to a more standardized layer for delivery of

²² See *In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Twelfth Annual Report, MB Docket No. 05-255, FCC 06-11, (rel. Mar. 6, 2006) ¶ 51. More recently, NCTA has estimated that at the end of June 2006, there were 30.4 million digital cable customers. See Comments of NCTA, MB Docket No. 06-189, filed Nov. 29, 2006 at 28. It can safely be said that well less than one percent of wire-based video services customers in the United States are receiving their video services via VDSL.

²³ Lorna Collier, VDSL Sets New Standards For Phone Line Speeds, Standards & Protocols, (Jan. 2000); Sklar Declaration ¶ 17.

²⁴ Sklar Declaration ¶ 17.

²⁵ *Id.* ¶¶ 17, 19.

switched digital video services, there is little incentive for any company to design an alternate set-top box for use with the VDSL delivery system that Qwest currently uses. In the absence of such market incentives, a waiver would enable Qwest to continue offering its VDSL-based video services for an additional period of time, while it works to move to a more long-term video delivery architecture.

B. Special Circumstances Warrant A Waiver For Qwest's Use Of Its FTTH-BPON Set-Top Boxes

Qwest also seeks a waiver for the set-top boxes it uses with its FTTH-BPON architecture to deliver video services. Unlike its VDSL situation, Qwest understands that there will be compliant, non-integrated set-top boxes available that Qwest could purchase for use with its FTTH-BPON architecture.²⁶ Qwest still seeks a waiver, however, for its use of the integrated set-top boxes given the unique circumstances and reasons cited below.

First, as noted earlier, Qwest currently has fewer than 500 video customers on its FTTH-BPON facilities and this architecture is utilized only in greenfield areas where Qwest also has a preferred provider agreement with the developer. Accordingly, Qwest does not anticipate significantly growing this base of customers within the next few years.²⁷

Second, while compliant set-top boxes may be available, there are significant costs associated with adoption of a new set-top box. For example, the boxes without conditional access functions are at least \$60 more expensive per set-top box than the existing equipment. In addition, before Qwest can deploy and begin using these boxes, it must take appropriate steps to test, integrate and certify the boxes for use in the network. Such measures take significant time

²⁶ *Id.* ¶ 20.

²⁷ *Id.* ¶¶ 4, 5.

and effort of the very personnel who are needed to facilitate the migration to the new platform to be used to offer video services.²⁸

Third, Qwest anticipates migrating from FTTH-BPON to the next generation, ethernet-based FTTH architecture.²⁹ As a new entrant in the delivery of video services field, Qwest needs to focus its relatively limited video services capital and personnel on development, testing, certification and implementation of this next generation FTTH architecture rather than utilizing such resources to bring a very limited video services deployment into compliance for a short period of time prior to migration to the next generation network. Upon migration to the next platform, Qwest will offer different set-top boxes.³⁰

C. Granting Qwest's Waiver Requests Is In The Public Interest

Granting the waivers that Qwest seeks is in the public interest. The public interest will be served through the uninterrupted continued growth of wire-based competition in video services delivery, and the unhindered development and deployment of an improved video delivery platform. Additionally, granting Qwest's waivers will not undermine the purposes for which the ban was put in place.

Qwest's relatively small, but growing, video customer base is bringing much needed wire-based video competition to those areas where it is currently deploying these video services. In those communities, Qwest video services have resulted in competitive pricing, improved

²⁸ *Id.* ¶ 21.

²⁹ *Id.* ¶ 22.

³⁰ *Id.* While Qwest is specifically seeking a waiver for its use of the identified set-top boxes that it uses with its FTTH-BPON architecture, Qwest is also supportive of extending the ban for all MVPDs to enable more time for the industry to develop an open and interoperable downloadable conditional access system as described by Verizon in its waiver petition. *See Verizon's Petition for Waiver of the Set-top Box Integration Ban*, 47 C.F.R. § 76.1204(a)(1), CS Docket No. 97-80, CSR-7042-Z, filed July 10, 2006.

customer service, and enhanced service offerings from both Qwest and the incumbent cable operators.³¹ Studies have recognized the benefits to consumers, particularly in the form of reduced prices, in areas where there is competition to provide video services between wire-based providers.³² Qwest provides a competitive and lower-priced option in video services in the areas it serves.³³ Granting these waivers would enable Qwest to continue to offer wire-based video services in existing and new markets, and thus further a key goal of federal communications policy -- achieving greater competition in the video services delivery market.³⁴

Qwest currently uses its VDSL-based architecture to provide most of its wire-based video services.³⁵ Consequently, in the absence of a waiver, because alternative boxes cannot be purchased or developed before the ban's effective date, Qwest will have to effectively cease offering its video service to new customers for some period of time.³⁶ Forcing Qwest's

³¹ Sklar Declaration ¶ 8.

³² The General Accounting Office ("GAO") performed a study in which it concluded that cable rates are 15-41% lower in markets where there is a wire-based competitor offering video services. GAO Subscriber Rates and Competition in the Cable Television Industry, Statement of Mark L. Goldstein, Director Physical Infrastructure Issues at 2 (rel. Mar. 25, 2004). *See also* "In Delay There Is No Plenty": The Consumer Welfare Cost of Franchise Reform Delay," Phoenix Center Policy Bulletin No. 13, 2-3 & nn.4-6, by George S. Ford, PhD & Thomas M. Koutsky, J.D. (rel. Jan. 2006) (identifying other studies demonstrating significant video service price decreases where there is head-to-head wire-based competition).

³³ *See* Qwest *ex parte*, dated April 26, 2006, MB Docket No. 05-311 at 6.

³⁴ *In the Matter of Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, Notice of Proposed Rulemaking, 20 FCC Rcd 18581-82 ¶ 1 (2005) (stating that "greater competition in the market for the delivery of multichannel video programming is one of the primary goals of federal communications policy.").

³⁵ Sklar Declaration ¶ 3.

³⁶ Included in those video services would be Qwest's "Qwest® TV Latino" offering which provides access to more than 40 Spanish-language channels and is available with the Qwest Choice™ TV programming or the Basic Choice TV service. The tier is offered at \$14.99, and is available with the basic tier at a total price of \$24.98. Qwest currently has about 400 customers purchasing this tier which was just launched in August 2006. *Id.* ¶ 9. Recently, the Commission

compliance with this ban with respect to its VDSL-based boxes in essence penalizes Qwest for being an early adopter of a new technology that is bringing much needed wire-based competition to the video delivery industry. Certainly, eliminating wire-based competition in the delivery of video service is not the desired effect of the integration ban.

Granting these waivers will enable Qwest to focus on its continued development and deployment of a new switched digital video platform. Qwest is working with industry participants to develop standards for DSL-based switched digital video delivery networks.³⁷ As these standards are developed and encourage greater participation in the market for these newer video delivery systems, innovation and technological improvements will occur and there will truly be a viable market for alternative wire-based competition. Qwest needs to be able to participate in these industry efforts while still maintaining its existing presence in the wire-based video delivery market.

Further, neither mandating Qwest's compliance with the ban, nor granting Qwest's requested relief will have any impact on the market for commercial navigation devices. The primary purpose of the set-top box integration ban is to carry out Congress' intention to ensure that consumers have the opportunity to purchase navigation devices from sources other than their

suggested that a limited waiver might be available for non-compliant boxes that were only used after the ban to offer family or ethnic tier services. *In the Matter of Comcast Corporation Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, CSR-7012-Z, CS Docket No. 97-80, Memorandum Opinion and Order, rel. Jan. 10, 2007 ¶ 32. Qwest is not seeking such a limited-scope waiver, but seeks a full waiver to use the boxes to offer any of its video service offerings. Qwest simply points out that in the absence of a waiver, Qwest will effectively not be able to offer these popular competitive video services to new customers.

³⁷ Sklar Declaration ¶ 18. For example, Qwest is participating in the Consumer Electronics Association Technology and Standards IPTV Oversight and Coordination Committee which is working to develop standards enabling the interoperability of consumer electronic devices in the home with IPTV networks. *Id.*

MVPD as expressed in Section 629 of the Act.³⁸ Requiring Qwest's compliance here will not serve that purpose. Yet, neither will permitting Qwest's requested relief harm that purpose. And the reason is simply that Qwest's participation in the market for delivery of video services and in turn the market for navigation devices is so small that it has no economic influence in these markets. Qwest's compliance is not necessary to achieve the purposes of Section 629 of the Act. Denying Qwest's requested relief will not serve the purposes of Section 629 of the Act.

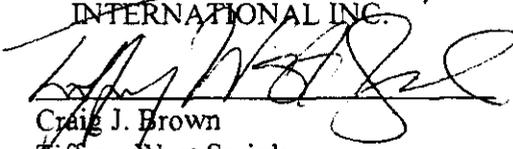
Thus, granting Qwest's requested relief will inure to the public benefit in the forms of competition, lower prices, more choices of video services, innovation in delivery of video services and enhanced services, and will not harm the purposes for which the ban was put in place. The public interest will be well served by granting Qwest's requested relief.

IV. CONCLUSION

For all of the reasons just stated, Qwest respectfully requests that the Commission grant this petition.

Respectfully submitted,

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³⁸ *In the Matter of Cablevisions Systems Corporation's Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, CSR-7078-Z, CS Docket No. 97-80, Memorandum Opinion and Order, rel. Jan. 10, 2007 ¶¶ 1-3.

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47 C.F.R. § 76.1204(a)(1))

DECLARATION OF STEVEN SKLAR

1. My name is Steven Sklar. My business address is 1801 California Street, Denver, Colorado 80202. I have worked for Qwest Communications International Inc. ("Qwest") as an employee of Qwest Services Corporation since September 2005. I am currently a Director in Product Management and in that role I am responsible for the strategy and performance of Qwest's facilities-based video offerings.

2. Qwest currently provides digital video services through two different delivery architectures. The first is very-high-bit-rate digital subscriber line ("VDSL"). The second is fiber-to-the-home broadband passive optical network ("FTTH-BPON").

3. Qwest uses its VDSL delivery structure in areas where it has existing facilities. To support the delivery of video services, Qwest deploys fiber to a node in neighborhoods and then uses copper loops to deliver service from the neighborhood node into the home. Qwest currently uses its VDSL-based architecture to provide most of its wire-based video services.

4. Qwest's FTTH-BPON architecture is quadrature amplitude modulation ("QAM")-based. Qwest only uses this delivery system in greenfield areas where Qwest also has a

preferred provider agreement with the developer. Qwest does not anticipate significantly growing this base of customers within the next few years.

5. Qwest began offering its VDSL-based video services in 1998, and its FTTH-BPON services in 2005. Qwest currently has about 48,000 video subscribers that receive their video services over Qwest's VDSL architecture, and fewer than 500 customers that receive their video service over Qwest's FTTH-BPON architecture. Qwest plans to continue to provide its digital video services to new customers using these delivery architectures in 2007.

6. With its VDSL architecture, Qwest currently offers two set-top boxes: (1) the NL-Motorola RG-3000 which is a switched digital video based residential gateway that enables a single stream of standard definition ("SD") or high definition ("HD") video service, and (2) the NL-Motorola RG-2200 which is a switched digital video based residential gateway that enables three streams of SD video and high speed Internet service.

7. With its FTTH-BPON architecture, Qwest currently offers three set-top boxes: (1) the SA Explorer 1850 which is a QAM-based set-top box that enables a single stream of SD video service, (2) the SA Explorer 8300HD-DVR which is a QAM-based, dual tuner set-top box that supports SD and HD video service with a 160GB hard disk drive for personal video recording ("PVR"), and (3) the SA Explorer 3250 which is a QAM-based, single tuner set-top box that supports SD and HD video service.

8. The video services that Qwest offers over its VDSL and FTTH-BPON delivery architectures are marketed as Qwest Choice™ TV. Qwest Choice TV provides customers with access to over 300 digital-quality channels at prices that are consistently

lower than the incumbent cable provider's prices. This service includes high-definition options, digital music, pay-per-view and premium movie channels, parental controls and a customizable interactive program guide. In the communities where Qwest digital video services have been deployed, the offering of these services have resulted in competitive pricing, improved customer service, and enhanced service offerings from both Qwest and the incumbent cable operators.

9. Since August 2006, Qwest has also offered an all-digital Hispanic TV programming package with its Qwest® TV Latino service available wherever Qwest Choice™ TV is offered in Phoenix, Arizona and Denver, Colorado. This offering provides access to more than 40 Spanish-language channels and is available with the Qwest Choice™ TV programming or the Basic Choice TV service. The tier is offered at \$14.99, and is available with the basic tier at a total price of \$24.98. Qwest currently has about 400 customers purchasing this tier.

10. Qwest also provides some wire-based analog video services and partners with DirecTV to provide video services via satellite.

11. With the VDSL architecture Qwest uses a switched digital video technology over fiber and copper wires, and thus delivers video services very differently than the QAM-based broadcast delivery structure over fiber and coaxial cable of traditional cable companies.

12. In traditional cable systems all the available channels that can fit on the bandwidth are broadcast via coaxial cable to every customer's set-top box using QAM. At the set-top box, a QAM tuner in the box, tunes to the specific channel the customer wants to watch. Channel switching occurs at the box.

13. For Qwest's VDSL-based services, the video services are delivered over fiber and then a final short distance over a twisted-copper pair to each customer's set-top box using VDSL, not QAM. Instead of the broadcast, send-all-the-channels-to-the-set-top-box approach of a QAM-based system, Qwest's VDSL-based services use switched digital video. In switched digital video, only the specific channel that a customer has requested to watch is sent to the customer's set-top box.

14. These different delivery architectures require different set-top boxes. Set-top boxes used for QAM-based systems are not currently designed to be compatible with a VDSL delivery architecture. To date, the focus in the industry on achieving separate conditional access has been with respect to QAM-based delivery systems and set-top boxes that dominate the video services delivery market.

15. The set-top box vendor for Qwest's VDSL delivery system estimates that there are approximately 225,000 of the VDSL-based boxes out in the field in the United States. The vendor has told Qwest that it has no plans to develop an alternative CableCARD ready box that would work with the VDSL delivery system. No other consumer electronics manufacturer offers such a box. At this time, Qwest has no alternate set-top boxes option to enable compliance with the ban.

16. Nor is there a downloadable security technology option available at this time. With respect to the downloadable security solution offered by Beyond Broadband Technology, LLC ("BBT"), that the Commission has recently highlighted, it is unclear whether it is a viable solution for a DSL-based switched digital video delivery architecture. Even if it enables a technically feasible solution, it is not likely to be a real time solution for Qwest's situation. BBT has stated that it "will be prototype testing in

the first quarter of 2007” and that “manufactured product, in quantity is scheduled for third quarter.” Even if BBT stays on this schedule, Qwest would need additional time for its own testing process before implementing this new element in its network.

17. Qwest’s current VDSL delivery architecture is a proprietary system that was one of the first to enable telephone companies to provide digital video services over fiber-optic networks and the same copper wires that the telephone companies use to provide wireline voice service. In fact, Qwest, then U S WEST, was the first telephone company to use VDSL to provide digital video services to residential customers. VDSL is a first-generation delivery system for enabling switched digital video services over copper wires that is now being eclipsed by industry efforts to move to a standardized logical layer for delivering switched digital video services. Moving to standardized components for the delivery layer that enables switched digital video will enable more players to participate in developing innovative features for switched digital video services.

18. Qwest is working with industry participants to develop standards for DSL-based switched digital video delivery networks. For example, Qwest is participating in the Consumer Electronics Association Technology and Standards IPTV Oversight and Coordination Committee which is working to develop standards enabling the interoperability of consumer electronic devices in the home with IPTV networks.

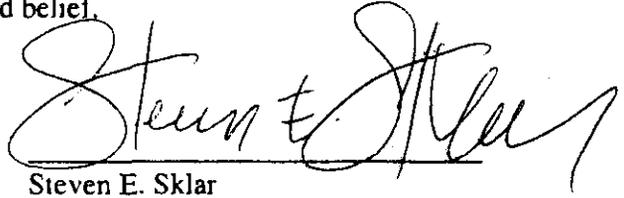
19. Qwest hopes to migrate to a more standardized, next-generation delivery system for offering switched digital video services in the next few years. Upon migration to the next platform, Qwest will offer different set-top boxes.

20. It is my current understanding that there will be compliant, non-integrated set-top boxes available that Qwest could purchase for use with its FTTH-BPON architecture.

21. There are significant costs associated with adoption of a new set-top box. For example, the boxes without conditional access functions are at least \$60 more expensive per box than the existing equipment. In addition, before Qwest can deploy and begin using these boxes, it must take appropriate steps to test, integrate and certify the boxes for use in the network. Such measures take significant time and effort of the very personnel who are needed to facilitate the migration to the new platform to be used to deliver video services.

22. Qwest hopes to migrate from FTTH-BPON to the next generation, ethernet-based FTTH architecture. Upon migration to the next platform, Qwest will offer different set-top boxes.

I hereby declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge, information, and belief.



Steven E. Sklar

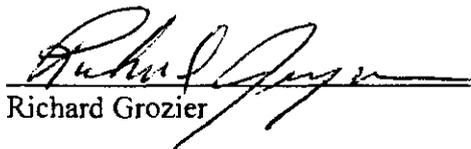
Executed on February 9, 2007

CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused a copy of the foregoing
QWEST'S PETITION FOR WAIVERS OF THE SET-TOP BOX INTEGRATION BAN,
47 C.F.R. § 76.1204(a)(1) to be hand delivered on February 12, 2007 to the parties listed
below.*

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
Room TW B-204
445 12th Street, N.W.
Washington, DC 20554

Best Copy and Printing, Inc.
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Richard Grozier

February 9, 2007

* The original Qwest Petition, and the associated filing fee and Form 159, were transmitted via overnight delivery to the Mellon Bank in Pittsburgh on February 9, 2007 for filing with the FCC.