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Ex Parte

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Verizon's Petition for Waiver of the Set-Top Box Integration Ban, 47 C.F.R Section 76.1204(a)(1) filed July 10, 2006; CSR-7042-Z; Implementation of Section 304 of the Telecommunications Act of 1996 - Commercial Availability of Navigation Devices, CS Docket No. 97-80

Dear Ms. Dortch:

Today, Susanne Guyer spoke with Michelle Carey, Chairman Martin's legal advisor, to discuss Verizon's petition for a waiver of the Commission's set-top box integration ban. During this call, Verizon discussed the bases for its waiver request and reiterated its commitment to rolling out technologically-advanced, digital video services that offer widespread competition to incumbent cable providers and that permit advanced, interactive features.

As explained in Verizon's waiver petition, FiOS TV is a hybrid QAM/IP service that combines the best features of the advanced digital cable technology (QAM) with the interactive features and evolving capabilities of IPTV. Using this approach, Verizon offers strong wireline competition to the cable incumbents – for the first time, in many places – as well as technologically advanced services to its subscribers, including a growing number of interactive features enabled by the IP portions of its service. Given Verizon's status as a new entrant offering services using this unique, technological approach delivered over a fiber-to-the-premises architecture, the statute's waiver provision strongly supports Verizon's waiver request. Section 629(c) provides for a waiver of the Commission's set-top box rules "to assist the development of a new or improved" video service. 47 U.S.C. § 549(c). FiOS TV is both new and improved, and thus falls squarely within the statute's waiver provision.

Verizon's commitment to digital programming and innovative technology further support Verizon's waiver request. From the beginning, 100% of the programming offered by Verizon as part of its FiOS TV service has been available to customers in digital format. Verizon does not sell a separate analog tier or rent analog set-top boxes (STBs), and even the lowest tier that Verizon sells includes all content in digital. However, Verizon currently simulcasts a small subset

of channels, including local broadcast channels, to customers in analog format. This analog simulcast is intended primarily as a convenience to customers who may want to watch programming on a second or third analog TV, without having a STB or digital adaptor.

As part of its ongoing commitment to extending the benefits of digital technology to its subscribers and encouraging the digital transition and further technological innovation, Verizon informed Ms. Carey that if it is granted a waiver of the integration ban for all of its set-top boxes models,¹ Verizon will commit to transitioning to a strictly digital network and video service by February 17, 2009, the date on which broadcasters must cease broadcasting in analog. Verizon's commitment to take this step will significantly advance the Commission's goals surrounding the broadcast DTV transition. As the Commission has noted in its previous waiver orders for providers committing to go all-digital, "the ability to rapidly migrate to an all-digital network would produce clear, non-speculative public benefits,' particularly in the context of the Commission's of promoting the broadcast television digital transition." *GCI Order* ¶ 14 (quoting *BendBroadband Order* ¶ 24).

This shift to a strictly digital service will provide strong, additional incentives for consumers to make the switch to digital equipment. See *BendBroadband Order* ¶ 24 (noting that increased availability of HD content would "facilitate the DTV transition by creating greater incentives for

¹ As explained above, requiring separate security for Verizon's QAM/IP set-top boxes would be extremely burdensome and of little value to consumers, given that Verizon is a new entrant delivering its FiOS TV service using a hybrid QAM/IP approach transmitted over a fiber-to-the-premises network. The unique, technical attributes of FiOS TV distinguish Verizon from the video providers relying on traditional cable technology, and make the solutions used by traditional cable operators to comply with the integration ban unavailable as a practical matter. Given the lack of standards for Verizon's hybrid QAM/IP approach, Verizon had to work closely with its vendor, Motorola, to develop set-top boxes that work on its FiOS TV system. And given the unique aspects of these boxes, Motorola has informed Verizon that "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." See *Verizon Petition* at 18. In fact, in its own comments in support of Verizon's petition, Motorola confirmed for the Commission that developing such a box in order to meet the Commission's July 1, 2007 deadline would be "difficult if not impossible" and would entail "substantial additional costs, complexities, and time exigencies." Comments of Motorola Inc. to Verizon Petition for Waiver, *CS Dkt. No. 97-80, CSR-7042-Z, at 4 (Sept. 18, 2006)*. Therefore, unlike in the case of providers using traditional cable technologies, no vendors are currently producing hybrid QAM/IP boxes that would comply with the Commission's integration ban. Also, because Verizon is a new entrant with a relatively small base of video subscribers, equipment manufacturers are unlikely in the short term to develop the unique equipment necessary to support both the QAM and IP aspects of Verizon's service. Finally, to the extent that Verizon deploys lower-end set-top boxes in order to facilitate the transition to strictly digital – similar to the DCT-700 boxes for which the Commission has previously granted waivers for providers committing to go all-digital – the Commission's precedent further justifies a waiver for Verizon. See *BendBroadband Order* ¶ 24; *GCI Order* ¶ 14; *OneSource Order* ¶ 16. As the Commission recognized in those orders, the availability of basic, inexpensive digital converters like the DCT-700 is essential for any provider discontinuing analog in order to enable customers to continue to use existing analog television sets.

its subscribers to acquire digital television sets”). By eliminating its analog simulcast, Verizon will free up bandwidth that can be used for additional digital programming, and in particular to increase Verizon’s HD offering. As the technology evolves, Verizon also plans to increasingly transition its service to IPTV, thus enabling additional interactive features for its video services. Verizon’s commitment in this regard, and the substantial public benefits that will result from it, provides an additional basis for its waiver request. The Commission has already recognized in the case of other providers that such a commitment provides “good cause” for the a waiver of the integration ban pursuant to Section 1.3 and 76.7 of the Commission’s rules. *See BendBroadband Order* ¶ 24; *GCI Order* ¶ 15; *OneSource Order* ¶ 16.

As Verizon reduces the transmission of analog and makes the transition to a strictly digital service, and eventually strictly IPTV service, it is essential that Verizon perform this transition in an orderly manner that takes into account the impact of this transition on its customers. A “flash cut” approach would be disruptive to existing customers and would discourage adoption of FiOS TV by new customers – a big concern for a new entrant like Verizon who must compete against entrenched cable incumbents. Therefore, consistent with the Commission’s approach in previous waiver orders, Verizon would commit to (1) moving to a strictly digital network, with no analog simulcast, on or before February 17, 2009; (2) notifying all of its video subscribers of its plans to discontinue analog at least six months in advance of that event; (3) ensuring that, at least six months prior to its cessation of providing analog, Verizon will have in inventory or on order enough set-top boxes or other equipment to ensure that each of its subscribers can continue to view Verizon’s video programming on their television sets; and (4) filing a sworn statement with the Media Bureau publicly committing to this plan.

Granting Verizon a waiver would further the Commission’s goals – including facilitating the DTV transition, encouraging innovation, and fostering video competition. As a new entrant using a different and more advanced technological approach, Section 629’s waiver provision strongly supports Verizon’s waiver petition. Moreover, the public commitment to move to strictly digital services provides additional public benefits and good cause for Verizon’s waiver. Verizon’s transition to strictly digital, and the accompanying increases in HD programming and ever heavier reliance on IPTV, will benefit Verizon’s customers by giving them more reason to make the switch to digital and minimizing the impact of that transition to them.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dee May".

cc: Michelle Carey
Monica Desai
Daniel Gonzalez