

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

In the Matter of)	
)	
Consolidated Requests for Waiver of Section 76.1204(a)(1) of the Commission's Rules)	CSR-7042-Z
)	
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
)	
<u>Commercial Availability of Navigation Devices</u>)	

**VERIZON'S APPLICATION FOR REVIEW AND PETITION FOR
CLARIFICATION OF THE MEDIA BUREAU'S MEMORANDUM OPINION
AND ORDER**

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I. INTRODUCTION AND SUMMARY

Pursuant to Section 1.115 of the Commission's rules, Verizon hereby files this Application for Review and Petition for Clarification of the Media Bureau's partial grant of Verizon's Petition for Waiver¹ of Section 76.1204(a) of the Commission's rules regarding the set-top box integration ban.² Verizon appreciates the Bureau's recognition of the difficult circumstances that many providers face with regard to the integration ban, but requests that the Commission clarify the *Waiver Order* in one respect and review the Bureau's decision in another.

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) ("Waiver Petition").

² See *Consolidated Requests for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, Memorandum Opinion and Order, DA 07-2921 (Media Bur., rel. Jun. 29, 2007) ("*Waiver Order*").

First, in the *Waiver Order*, the Bureau correctly found that providers transitioning to all digital carriage should be provided a waiver to continue to distribute new, integrated, lower-end set top boxes. This decision will allow providers to undertake the important task of transition to all-digital carriage without the added difficulty and expense of providing lower-end, non-integrated boxes to customers. However, some clarification regarding the notice and inventory requirements is necessary in order to give providers clear guidance regarding their transitions and to ensure that the benefits of the transition to all-digital can be achieved expeditiously. Specifically, Verizon requests that the Commission clarify the requirement that providers give subscribers one year's notice of their transition to all digital service where a provider seeks to transition to digital service well before February 17, 2009. The Commission should clarify that, in such circumstances, providers must give reasonable notice of the switch to all digital services.

Second, the Bureau's decision to provide Verizon and certain other video providers a one-year waiver for HD and DVR-equipped boxes rightly recognized that providers utilizing new transmission technologies to deliver video services need additional time to develop methods to comply with the integration ban. That decision should be modified in one respect, however, in order to provide the greatest benefit for consumers and the public interest by promoting competition and the deployment of innovative technologies and services in an efficient manner.

In particular, the *Waiver Order* did not fully address the unique difficulties faced by Verizon, unlike traditional cable operators, in attempting to comply with a one-year waiver of the integration ban. The Bureau's one-year waiver is inconsistent with the Commission's own timetable for development of a common standard for a downloadable

conditional access system (“DCAS”), which the Waiver Order recognizes as the preferred outcome, and thus will not alleviate the harm that the Bureau acknowledged constitutes “good cause” for a waiver. While Verizon agrees that DCAS is a preferable solution, the reality is that common, technologically neutral DCAS standards do not yet exist. The Commission recently initiated a proceeding that could lead to those standards, but it is not realistic that this proceeding would be completed and the standards could be implemented in a single year. Because Verizon’s technology differs from traditional cable service, it does not have the existing, off-the-shelf option for complying with the integration ban that traditional cable companies possess. In order to comply with the one-year waiver, Verizon will have to expend enormous resources developing such an interim solution—only to replace it with common DCAS when that technology becomes available. Forcing Verizon to implement a security solution twice will waste resources, time, and effort, to the company’s detriment and ultimately the detriment of consumers.

Moreover, in making its determination that relief was not appropriate under Section 629(c) of the Communications Act, the Bureau’s decision grouped Verizon’s Waiver Petition in amongst petitions from differently situated incumbent cable providers. The *Waiver Order* does not adequately explain why Verizon is not entitled to relief under Section 629(c); indeed, both the plain language of the statute and the analysis provided by the Bureau suggest that Verizon fits precisely within the class of service providers who should be afforded waivers of Section 629(a)’s requirements. The Commission should revisit this decision and grant Verizon its full requested relief under Section 629(c).

In the alternative, the Commission should, under the Commission's general waiver standard, grant Verizon the full relief requested in the company's waiver petition. The Bureau correctly recognized the harm that Verizon would suffer absent grant of a waiver, and determined that good cause for a waiver existed. This analysis under the general waiver standard is correct, but it falls short of the relief necessary to achieve the waiver's objectives. As explained further below, "good cause" exists for the waiver that Verizon has sought: three years, or until Verizon has implemented a common DCAS standard if that occurs sooner.

II. BACKGROUND

On July 10, 2006, Verizon filed its Waiver Petition, requesting a waiver of the integration ban under Section 629(c) of the Communications Act and Section 76.1204(c) of the Commission's rules until a common DCAS system can be implemented or, if a time certain is deemed necessary, three years.³ Section 629(c) provides that the Commission "shall waive" regulations adopted to implement Section 629:

upon an appropriate showing by a provider of multichannel video programming and other service offered over multichannel video programming systems, or an equipment provider, 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.⁴

³ As Verizon explained in its reply comments, three years would be an appropriate time for a waiver, as this would likely be sufficient for the relevant stakeholders to work together to design and implement a common DCAS system. *See* Reply Comments of Verizon, CSR-7042-Z, CS Dkt. No. 97-80 (Sept. 28, 2006) ("Verizon Reply Comments").

⁴ 47 U.S.C. § 549(c) (2006).

Verizon showed in its Waiver Petition and Reply Comments that it is a new entrant in the video marketplace, and that while Verizon has plans to rapidly expand its customer base, “FiOS TV is still a nascent service,” unlike incumbent cable television service. Verizon Reply Comments at 6; *see also* Waiver Petition at 23-24. Verizon also demonstrated that it is deploying a unique QAM/IP network architecture that allows it to offer a raft of new, improved, and technologically unique services over its network. Waiver Petition at 6-9; Verizon Reply Comments at 5. Specifically, the use of an IP-stream allows for increased high definition and international programming, interactive applications like FiOS widgets, which provide weather and traffic information, and a host of other IP-enabled features. Verizon’s Waiver Petition and Reply Comments thus demonstrated that Verizon fits within the plain language of Section 629(c).

Verizon also showed that its unique network architecture creates technical issues not faced by other cable operators. Verizon Reply Comments at 8-10. Requiring Verizon to implement the set-top box integration ban would result in especially severe challenges for Verizon as a new entrant in the video marketplace, because it would result in disproportionately high costs and would siphon off resources, including key technical personnel, that could otherwise focus on developing and deploying even more new and improved services and expanding competition by extending the reach of Verizon’s FTTP network. Waiver Petition at 7-8. This competition and the deployment of new technology that allows for new and innovative services not offered by traditional cable companies represent key consumer benefits arising from Verizon’s entry into the video marketplace. Verizon showed that hampering the company’s ability to design and deploy these features would place a substantial burden on Verizon’s video services offering and

could divert resources that could be devoted to expanding the reach of competition. *Id.* On the other hand, Verizon showed that requiring it to comply with the integration ban would not result in any significant consumer benefits, as it is unlikely that third-party manufacturers would create equipment that takes full advantage of Verizon's hybrid architecture. This is because Verizon's current base of customers, when compared to the combined customer base of all providers relying on traditional cable technology, presents nowhere near the same profit potential to third-party manufacturers. Verizon Reply Comments at 7.

Finally, Verizon established that the Commission could grant Verizon's waiver request without applying that waiver to all MVPDs or undermining the Commission's implementation of Section 629(a), as Verizon is situated in a unique "category" of providers because of its use of QAM/IP technology, for which no integration ban solution currently exists. *Id.* at 12-14.

On June 29, 2007, Verizon submitted an *ex parte* letter to the Commission reiterating the reasons why Verizon is entitled to a waiver and indicating that "if [Verizon] is granted a waiver of the integration ban for all of its set-top box[] models, 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."⁵

On June 29, 2007, the Media Bureau issued the *Waiver Order*, which granted several requests for waivers of the integration ban, filed by a number of traditional cable operators. The Bureau included a partial grant of Verizon's waiver request in the *Waiver Order*, grouping its discussion of Verizon's Petition in with those filed by traditional

⁵ Letter from Dee May, Vice President, Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission at 2 (June 29, 2007).

cable companies in marketplace and technological situations fundamentally different from Verizon. In the *Waiver Order*, the Bureau first generally rejected arguments that any waivers were warranted under Section 629(c). The Bureau found that that the arguments put forth, if accepted, “would effectively negate any rules adopted pursuant to Section 629(a),” and that “waivers of those regulations are granted when doing so ‘is necessary to assist the development or introduction of a new or improved’ service, such as, for example, a *nascent MVPD offering* from a new competitor.” *Waiver Order*, ¶¶ 56-57 (emphasis added). While the *Waiver Order* used general language to reject all of the Section 629(c) arguments made by the various petitioners, including Verizon, it did not specifically discuss the competitive and technological differences between Verizon’s service and the services offered by other providers, or the specific arguments made by Verizon in support of a waiver under the statute. Moreover, while the Bureau held that a waiver would be appropriate under Section 629(c) in the context of a “nascent MVPD offering from a new competitor,” *id.*, ¶ 56, the *Waiver Order* did not explain why Verizon’s service, which the company showed was “still a nascent service,” should not receive a Section 629(c) waiver for that very reason. Verizon Reply Comments at 6.

Though the Bureau rejected all of the various Section 629(c) waiver requests, including Verizon’s, the *Waiver Order* did provide Verizon with partial, much-needed relief. Because of Verizon’s commitment to transition to an all-digital network by February 17, 2009, and consistent with the Bureau’s decision regarding BendBroadband,⁶ the Bureau granted Verizon a waiver, subject to certain conditions, for lower end devices

⁶ See *Bend Cable Communications LLC d/b/a BendBroadband Request for Waiver of Section 76.1204(1)(1) of the Commission’s Rules*, Memorandum Opinion and Order, 22 FCC Rcd 209 (2007) (“*BendBroadband Order*”).

under Sections 1.3 and 76.7 of the Commission's rules. *Waiver Order*, ¶ 59. This waiver allows Verizon to deploy non-HD, non-DVR set-top boxes with integrated security. In addition, the Bureau found under Sections 1.3 and 76.7 that, because "set-top box manufacturers have not developed any non-integrated HD or DVR devices for use with...hybrid QAM/IP systems," it would grant Verizon and others a one-year waiver for those types of devices. *Id.*, ¶ 61. The Bureau noted that "[o]ver the next year, those operators should work to develop and deploy a separable security solution that will allow for interoperability between their systems and consumer electronics equipment, preferably a downloadable solution based on open standards." *Id.*, ¶ 61. It is these findings that Verizon asks the full Commission to reconsider in this Application for Review.

At the same time, the Commission also launched a separate parallel proceeding to consider the potential standard for downloadable security.⁷ The Commission announced its hope to resolve these issues in time to have devices utilizing this technology available by the fourth quarter of 2008. *Third FNPRM*, ¶ 4.

III. VERIZON NEEDS ADDITIONAL TIME IN ORDER TO AVOID HAVING TO DEVELOP FROM SCRATCH AN INTERIM, NON-DCAS SOLUTION

The *Waiver Order* notes the desirability of pursuing a common DCAS standard that will "allow for interoperability between [Verizon's and other QAM/IP provider's] systems and consumer electronics equipment." *Id.* Verizon agrees with the Bureau's conclusion. Unlike the DCAS proposals advocated by the traditional cable industry, which would work only with traditional cable systems, common DCAS would allow

⁷ See *Implementation of Section 304 of the Telecommunications Act of 1996*, Third Further Notice of Proposed Rulemaking, CS Dkt No. 97-80, FCC 07-120 (Jun. 29, 2007) ("*Third FNPRM*").

navigation devices to download and utilize software-based conditional access without regard to the architecture of the network. As Verizon has explained previously, a common DCAS approach is superior to other proposals because it is technology neutral, pro-competitive, pro-consumer, and has broad industry support. Verizon Reply Comments at 17-19.

Contrary to the goal announced by the Bureau, however, a one year extension will not result in a smooth transition to a common DCAS standard. Because a common DCAS standard cannot be developed and deployed in less than one year, it could force Verizon to expend significant sums developing an interim solution that does not yet exist, only to abandon that interim solution once common DCAS is ultimately deployed. Unlike traditional cable companies, who can take advantage of existing, physically separate navigation devices, Verizon would have to go through the entire process of compliance twice unless it is granted a waiver that allows it to bridge the time between now and the development of common DCAS.

The one-year waiver granted by the Bureau for the HD and DVR-equipped boxes is not sufficient to implement the integration ban through a common DCAS approach as proposed by the Bureau, *Waiver Order*, ¶ 61, because a standard for a common DCAS simply does not yet exist. While Verizon has been at the forefront of the efforts to establish such a standard, and continues to push for its development, there is little chance that a final standard can be settled on and agreed to within the relatively short period of time necessary in order to allow Verizon to design, test and deploy new compliant boxes by July 2008. *See* Verizon Reply Comments at 17-18.

Further, such a deadline does not mesh with the Commission's own timeline. The Bureau notes that the FCC has just initiated a proceeding dealing with developing a solution for bidirectional compatibility between consumer electronics devices and multichannel video programming systems,⁸ and "encourage[s]" Verizon to take an active role in that proceeding.⁹ This proceeding could likely aid in the development of a common DCAS standard, as the *Waiver Order* suggests. However, finishing the proceeding in time to establish a standard and have manufacturers build and supply devices by year-end 2008 is quite aggressive. Indeed, the comment cycle itself will not be completed until September 2007. Even if the Commission proceeds expeditiously in the new bi-directional compatibility proceeding and produces a standard within a year, that will not provide sufficient time to develop and deploy compliant equipment by the time that the one year waiver expires. The pendency of the bidirectional compatibility proceeding makes it even more burdensome for Verizon to attempt to meet a July 2008 deadline on its own, as any standard adopted by Verizon in advance of the end of that proceeding runs the risk of being overtaken and made obsolete by the standards ultimately adopted by the Commission.

Because Verizon's network architecture creates technical issues not experienced by traditional cable operators, Verizon Reply Comments at 8-10, Verizon does not have off-the-shelf access to cable boxes that could be used as a temporary measure to comply with the integration ban while the standard for common DCAS is being developed. This means that Verizon is uniquely situated, and will suffer harm quite different from any

⁸ *Third FNPRM*.

⁹ *Waiver Order*, ¶ 61 fn. 250.

suffered by incumbent cable operators. In order to meet the new deadline set by the one-year waiver, Verizon and its suppliers would have to design, develop, test and deploy a physically separate box that addresses the “substantial additional costs, complexities, and time exigencies”¹⁰ presented by Verizon’s QAM/IP network, something very difficult to do in less than twelve months.

Finally, as noted above, even if Verizon were to go to the considerable expense of designing an interim solution for its system, it is unlikely that third-party manufacturers would create equipment that takes full advantage of Verizon’s hybrid architecture. This is because the potential market for such devices is smaller than the market for devices that work with traditional cable systems, which means that the costs must be spread over a smaller base. Verizon Reply Comments at 7. As a result, the significant diversion of Verizon’s resources away from designing and deploying new services would have no public interest benefit, as consumers would be given few (if any) new choices in the set top box market.

IV. THE COMMISSION SHOULD GRANT VERIZON A WAIVER UNDER SECTION 629(C) AS A NEW ENTRANT INTRODUCING NEW AND IMPROVED VIDEO SERVICES.

As Verizon demonstrated in the filings below, it is entitled to a waiver of the integration ban under Section 629(c) of the Communications Act. Verizon’s waiver request is predicated on the significant technological and marketplace differences between Verizon and the traditional cable providers.¹¹ The Bureau’s *Waiver Order*,

¹⁰ Comments of Motorola, Inc., CSR-7042-Z, CS Dkt. No. 97-80, at 4 (Sept. 18, 2006) (“Motorola Comments”).

¹¹ See Comments of Verizon, CSR-7056-Z, CS Dkt. No. 97-80 (Nov. 30, 2006) (arguing that Verizon was entitled to a waiver of the integration ban because of its differences from, rather than similarities with, cable operators).

however, does not address these distinctions or discuss why Verizon does not meet the Section 629(c) standard. Instead, it groups Verizon's claims together with those made by traditional cable operators regarding the deployment of traditional cable and broadband services—the very companies that Verizon showed that it is different from. Indeed, the plain language of the *Waiver Order* suggests, as Verizon argued in its Petition and Reply Comments, that companies in Verizon's position are precisely the type of entity that Section 629(c) was intended to reach. Because the *Waiver Order* does not explain this inconsistency, the Commission should revisit its conclusions and find that Verizon is entitled to a waiver under Section 629(c).

A. **Verizon's Introduction of New and Competitive Services Would Be Hindered by Application of the Integration Ban**

There can be no dispute that Verizon is a new entrant bringing competition and new and improved video services to the video marketplace. As such, it is a textbook example of the type of provider that is entitled to a waiver under Section 629(c). First, as the only major provider that is deploying a fiber-to-the-premises, hybrid QAM/IP network architecture, Verizon is introducing a completely new type of video service and is bringing the significant benefits of wireline video competition, including competitive pricing and improved customer service, to communities in many parts of the country. Waiver Petition at 5-7. No incumbent cable operator can say the same.

Second, because of its unique network architecture, Verizon has the flexibility to provide a range of new and improved video and other services. Because Verizon can use the IP portion of its system for an interactive programming guide, video-on-demand, or other interactive services, rather than a portion of the 860 MHz of capacity designated for downstream video, it has the capacity for a greater number and variety of channels,

including more HD and international channels. The IP portion of the system also allows Verizon to roll out interactive and customizable services, like Verizon's FiOS Widgets, which provide real-time traffic and weather. Verizon has also introduced the Home Media DVR, which allows users to network their set-top box to access music and pictures stored on a home computer, and recently began deploying a new interactive media guide that brings together television programming, video-on-demand catalogs, and personal music and photos from home networks into one easy-to-use interface. Verizon also has plans to roll out a Games-on-Demand service and many new interactive services. And, of course, Verizon's FTTP network allows Verizon to provide ultra-high speed broadband data services that vastly exceed the offerings of most other broadband providers, again, without subtracting from the capacity designated for video services. Verizon Reply Comments at 4-6. While incumbent operators may be rolling out some new services, none use an innovative all-fiber network like Verizon's, or the unique QAM/IP technology that Verizon is deploying to take full advantage of that network.

Requiring Verizon to comply with the integration ban will siphon off important resources that could be used to develop and deploy more new and improved services that take advantage of Verizon's unique, cutting-edge network architecture. *Id.* at 7. Potentially forcing Verizon to curtail the development and deployment of new services would jeopardize one of the key consumer benefits of Verizon's service—the innovative service offerings that set it apart from the incumbent cable companies with whom it competes. This would not only be harmful to the public interest, it would also run counter to the purposes of Section 629(c), which was designed as a safety valve to ensure that Congress' attempt to encourage competitive set top boxes did not have the

unintended consequence of stifling competition and innovation in the video marketplace generally.

B. The Order Does Not Explain Why Verizon Should Not Receive a Statutory Waiver, Under the Order's Own Logic

In its *Waiver Order*, the Bureau cogently summarized Verizon's showing that it is entitled to a waiver under Section 629(c), including the company's status as a new entrant in the video marketplace and the new and improved technologies and services that Verizon is introducing. *Waiver Order*, ¶ 33-43. Unfortunately, the *Waiver Order* did not go on to analyze these arguments in its discussion of the standard for a waiver under Section 629(c). But the Bureau did, in that discussion, correctly note that "waivers of [the set-top box] regulations are granted when doing so 'is necessary to assist the development or introduction of a new or improved' service, such as, for example, a nascent MVPD offering from a new competitor." *Waiver Order*, ¶ 56.

Applying this standard to Verizon's showing as summarized by the Bureau earlier in the *Waiver Order*, Verizon, as a new competitor deploying a fundamentally different and innovative technology capable of offering new and improved services, as explained above, is exactly the type of petitioner entitled to a waiver under Section 629(c). Unlike the grant of a waiver to traditional cable operators under their purported "new and improved service" rationales, grant of a Section 629(c) waiver to Verizon would not "effectively negate rules adopted pursuant to Section 629(a)." *Id.*, ¶ 57. Rather, granting Verizon a waiver on this basis would, like the earlier grant to the DBS providers, be a discrete, easily justified exception that would further the underlying goal of Section 629 by helping to bring competition and new services to the video market.

However, the Bureau rejected Verizon’s request for waiver under Section 629(c) without comment, putting Verizon’s specific arguments regarding its system and status as a new entrant together with arguments from more traditional cable operators about their ability to develop and deploy more advanced cable services. *Id.*, ¶ 57. The Bureau did not provide any analysis showing why Verizon should be treated in a manner identical to incumbent cable operators utilizing traditional cable systems, despite the record evidence that the company is differently situated. Though Verizon did argue that its new all-fiber, QAM/IP technology and innovative offerings supported its Petition for Waiver, unlike the petitions filed by incumbent providers Verizon’s waiver is supported by much more than a simple promise of “increased HD and VOD programming, increased broadband speed and capacity, and other digital services,” which the *Waiver Order* described as insufficient to warrant a Section 629(c) waiver. *Id.*, ¶ 57.

The Bureau also did not explain why the Section 629(c) standard, which appears perfectly tailored to a company in Verizon’s position, nevertheless does not apply to Verizon. In not granting a waiver under Section 629(c), the Bureau seems to have effectively raised the standard from the statutorily required “necessary to assist”¹² the

¹² In the past, the Commission has found that a waiver was “necessary to assist the development or introduction of a new or improved multichannel video programming or other service” when Cox sought a waiver of the point-of-deployment (“POD”) modules requirement in order to more efficiently consolidate subscribers into its Oklahoma City system. *See Cox Communications, Inc. Petition for Temporary Waiver of Requirement to Support Plug and Play Through Provisioning of Point of Deployment Modules for Cox Cable Systems Serving Pauls Valley and Chickasha, Oklahoma*, Memorandum Opinion and Order, 19 FCC Rcd 13054, 13055-57 (¶¶ 3-6) (2004). The Commission granted a waiver of the same rules to BellSouth because of the incompatibility of the BellSouth system with the POD technology. *See BellSouth Interactive Media Services, LLC and BellSouth Entertainment, LLC*, Memorandum Opinion and Order, 19 FCC Rcd 15607, 15608-11 (¶ 3-8) (2004). The Commission noted in its Report and Order on the integration ban that it “think[s] it particularly important that the waiver process accommodate the need to provide, particularly to new MVPD entrants, flexibility in differentiating their equipment from competitors’ equipment.” *See Implementation of*

deployment of new and improved services to a standard of “essential to achieve” deployment of those services, a standard that is much more difficult to meet and that exceeds the statutory standard. Thus, in accordance with Verizon’s Waiver Petition and the record below, the Commission should grant Verizon a waiver of the integration ban under Section 629(c) for the earlier of three years or until DCAS standards are developed and implemented.

V. **THE COMMISSION SHOULD GRANT VERIZON ITS FULL REQUESTED RELIEF UNDER SECTIONS 1.3 AND 76.7 OF THE COMMISSION’S RULES.**

Pursuant to Sections 1.3 and 76.7 of the Commission’s Rules,¹³ the Commission may grant a waiver of any of its rules “for good cause shown.”¹⁴ Under the Commission’s “good cause” standard “where particular facts would make strict compliance inconsistent with the public interest,” a waiver is appropriate.¹⁵ In addition, the Commission may “take into account considerations of hardship, equity, or more effective implementation of overall policy” on an individual basis.¹⁶ Regardless of whether the Commission determines that Verizon is entitled to a waiver under Section 629(c), it should still find that the Bureau should have granted Verizon its full requested relief under Sections 1.3 and 76.7 of the Commission’s rules.¹⁷

Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices, Report and Order, 13 FCC Rcd 14775, 14815 (¶ 103) (1998).

¹³ 47 C.F.R. §§ 1.3, 76.7.

¹⁴ *Id.* § 1.3.

¹⁵ *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁶ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969)

¹⁷ 47 C.F.R. §§ 1.3, 76.7.

Due to the technical difficulties in implementing the integration ban presented by Verizon's unique QAM/IP architecture, the burden that Verizon would face in implementing the integration ban, and the significant public interest benefits arising from Verizon's entry into the video services market, Verizon clearly established "good cause" for a three year waiver to give time for a common DCAS standard to be developed and implemented.

The Bureau correctly determined in its *Waiver Order* that Verizon had shown good cause for a waiver of the integration ban for its boxes with HD and DVR capability. However, the Bureau provided no explanation why a one-year waiver was appropriate or why "good cause" existed for a 12-month waiver but not for the three year waiver that Verizon requested in the alternative.

Verizon was entitled to its full requested relief under the general waiver standard. As the Commission has found, the expansion of wireline video competition in the United States is clearly in the public interest, and Verizon is among the companies leading the charge.¹⁸ In addition, imposition of the integration ban is more burdensome on Verizon because it is a new entrant,¹⁹ no manufacturer has developed a non-integrated box that is fully compatible with Verizon's system,²⁰ and development of such a box is more difficult than for traditional cable systems.²¹ Moreover, as explained above, a longer

¹⁸ *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).

¹⁹ Verizon Reply Comments at 6.

²⁰ *Waiver Order*, ¶ 61.

²¹ Motorola Comments at 4.

waiver will allow Verizon to continue to focus on innovative new applications and also to more effectively implement a DCAS solution consistent with the results of the Commission's newly-launched proceeding regarding two-way devices.

VI. THE COMMISSION SHOULD CLARIFY THAT THE BUREAU'S ORDER DOES NOT REQUIRE A STRICT ONE-YEAR NOTICE REQUIREMENT FOR PROVIDERS TRANSITIONING BEFORE THE FEBRUARY 17, 2009 DEADLINE.

As part of its *Waiver Order*, the Bureau established that a provider transitioning to all-digital networks must “notif[y] all of its analog customers of its plans to go all digital at least one year in advance of that event and again six months in advance of that event” and “ensure[] that, at least one year prior to its migration to all digital, it has in its inventory or has placed orders for enough set-top boxes to ensure that each of its customers can continue to view its video programming on their television sets.” *Waiver Order*, ¶ 62. However, in addition to announcing this general policy, the *Waiver Order* also recognized the public interest in allowing providers to transition in shorter periods of time, and thus to provide notice less than a year before the transition occurs. Specifically, granted Cablevision of Marion County’s request to provide six-month notice for systems that it will transition in early 2008. *Id.*, n.252. This is consistent with the Bureau’s previous practice of allowing companies to use shorter notice periods when they intend to transition rapidly to all-digital service. For example, the Commission allowed Millennium Telecom to issue notice in the first bill after the order,²² and also approved

²² In the Matter of Millennium Telcom, LLC d/b/a OneSource Communications; Request for Waiver Section 76.1204(a)(1) of the Commission's Rules; Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices, CSR-7129-Z; CS Docket No. 97-80, DA 07-2009, ¶ 18 (May 4, 2007).

BendBroadband's request to provide six-months notice to customers given BendBroadband's plans to transition to all digital by 2008. *BendBroadband Order*, ¶ 26.

The Commission should clarify that the Bureau's general policy of requiring a twelve-month advance notice and inventory does not preclude companies from providing notice on a shorter, though still reasonably timely basis, based on the individual companies' transition plans. As the Bureau explained, "the ability to rapidly migrate to an all-digital network" will produce "clear, non-speculative public benefits, particularly when considered in the context of the Commission's goal of promoting the broadcast television digital transition." *Waiver Order*, ¶ 58 (quotation omitted).

In order to ensure that these "clear, non-speculative public benefits" can accrue without undue procedural delay, the Commission should allow providers that wish to migrate to all-digital service to provide reasonable notice, rather than requiring a full-year's notice. The Commission should clarify that, just as Cablevision of Marion County was able to elect its notice period,²³ providers should be permitted to determine the notice period that is less than one year but reasonable in their particular circumstances. Moreover, the Commission should not mandate the filing of individual waiver requests in such circumstances, as filing and waiting for action upon such a request could delay implementation of a transition plan. The Commission should thus clarify that the Bureau's *Waiver Order* generally allows all providers seeking to transition to all digital prior to February 17, 2009 to do so, as long as the providers give reasonable notice to consumers of their transition plans and confirmation to the Commission at the same time that they have enough inventory to ensure that customers will continue to receive service.

²³ Petition for Waiver of Cablevision of Marion County, CSR-7347-Z, at 4 (Jun. 22, 2007).

VII. CONCLUSION

The Commission should grant Verizon's Petition for Waiver, providing Verizon a waiver of the integration ban under Section 629 until the earlier of implementation of a common DCAS solution or three years. In the alternative it should grant Verizon the same relief under Sections 1.3 and 76.7 of the Commission's rules. The Commission should also clarify that the Bureau's one-year notice and inventory requirements for providers transitioning to all-digital systems do not apply where the provider intends to undertake a quicker transition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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