

**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.	)	CS Docket No. 97-80
§ 76.1204(a)(1)	)	
	)	
<u>Commercial Availability of Navigation Devices</u>	)	

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

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**I. INTRODUCTION AND SUMMARY**

In its *Waiver Order*, the Media Bureau correctly recognized that providers using advanced technological approaches, rather than traditional cable technology, need additional time to develop methods to comply with the integration ban for their higher-end HD and DVR-equipped set-top boxes.<sup>1</sup> Verizon’s Application for Review and Petition for Clarification<sup>2</sup> explains, however, that the Commission should further its larger goals – including video competition, technological innovation, and the development of common standards approaches to separable security issues – by granting Verizon an extension of the waiver period consistent with

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<sup>1</sup> See *Consolidated Requests for Waiver of Section 76.1204(a)(1) of the Commission’s Rules*, Memorandum Opinion and Order, DA 07-2921 (Jun. 29, 2007) (“*Waiver Order*”).

<sup>2</sup> Verizon’s Application for Review and Petition for Clarification of the Media Bureau’s Memorandum Opinion and Order, CSR 7042-Z, CS Docket No. 97-80 (July 30, 2007) (“*Application*”).

that requested in its original petition for waiver.<sup>3</sup> With this additional time, Verizon will be able to satisfy the integration ban in a manner that is more technologically efficient and that provides more meaningful benefits to consumers. The only two parties who filed oppositions to Verizon's Application – the National Cable and Telecommunications Association (NCTA) and Time Warner Cable – provide no valid basis to deny Verizon's requested relief, and instead continue to ignore the important technological and marketplace differences between Verizon and the cable incumbents.

Verizon's Application also requests clarification concerning certain of the notice requirements set out in the *Waiver Order* for providers that are going "all-digital." In the case of providers transitioning to all-digital in advance of the February 19, 2009 deadline, Verizon sought clarification that, rather than imposing a strict one-year notice requirement, providers should be permitted to provide a shorter, though reasonably timely, notice based on individual companies' transition plans. Application at 18-19. NCTA supports this request, *see* NCTA Opposition at 2, n.3, and the Commission should make this clarification.

**II. ONGOING EFFORTS TO IMPLEMENT SEPARABLE SECURITY IN A TECHNOLOGICALLY EFFICIENT AND CONSUMER FRIENDLY MANNER WILL NOT BE COMPLETE BY JULY OF NEXT YEAR, AND THESE EFFORTS JUSTIFY AN EXTENSION OF THE WAIVER PERIOD.**

As Verizon has explained, given its different technological approach and marketplace position from incumbent cable operators, compliance with the integration ban by July 2008 will be extremely difficult, and the type of interim solution that could be developed by then will yield no significant consumer benefits. Requiring that approach is particularly inappropriate given both the Commission's and industry's current, parallel efforts to develop common standards for

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<sup>3</sup> 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").

two-way compatibility and separable security issues.<sup>4</sup> As Verizon demonstrates in the comments filed today in the Commission's bidirectional compatibility proceeding, Verizon is leading the effort within open industry standards-setting bodies to develop common standards for these issues that could work for video providers of all types.<sup>5</sup> Such standards, some of which are likely to be available shortly after the one-year waiver expires, would allow compliance with the integration ban in a manner that offers tremendous consumer benefits.

Moreover, even aside from these efforts to develop common standards for separable security, an extension beyond the July 2008 deadline would allow Verizon to satisfy the integration ban in a manner that is technologically efficient and consumer friendly. In particular, Verizon continues to work aggressively with its equipment vendors on developing approaches to satisfying the integration ban in a manner that will work with Verizon's unique QAM/IP technology and allow consumer to enjoy the innovative two-way features this technology can provide. Among other things, Verizon is currently engaging in the request for proposal process for its next-generation set-top boxes, and has specified to potential vendors that the high-end

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<sup>4</sup> Third Further Notice of Proposed Rulemaking, *Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices; Compatibility Between Cable Systems and Consumer Electronics Equipment*, CS Docket No. 97-80, Docket No. 00-67 (rel. June 29, 2007) ("*Bidirectional Compatibility Proceeding*"). The Bureau was right to look to the Commission's pending bidirectional compatibility proceeding as a promising source of pro-consumer, common standards that non-traditional video providers may be able to utilize to satisfy the integration ban. *Waiver Order* ¶ 61 n. 250. Unfortunately, given the early stages of that proceeding, it is unlikely that such standards could be developed in time to allow providers to implement them into set-top boxes before next July.

<sup>5</sup> See Comments of Verizon, CS Docket No. 97-80, PP Docket No. 00-67 (Aug. 24, 2007) ("*Verizon Bidirectional Compatibility Comments*"). As Verizon explains in these comments, it has been active in industry standards-setting efforts to create standards for a technology- and platform-agnostic, separable-security solution. First, Verizon chairs the IP-based Separable Security Incubator, a group within ATIS whose main focus is the fast-track development of a two-way, separable security standard that would work for all types of providers and would not require the implementation of CableLab's cable-centric standard. Second, Verizon has taken a leading role in the ATIS IPTV Interoperability Forum, which is working to develop other standards for two-way devices, including standards related to channel mapping, network attachment, electronic program guides, and video-on-demand.

boxes must have security elements that are separable from the host device. In addition, manufacturers of these devices will be required to implement appropriate common standards for separable security, such as those currently being developed through ATIS, after those standards are finalized. Although Verizon has every incentive to develop and deploy these next-generation boxes as expeditiously as possible, they cannot as a practical matter be available by the July 1, 2008 deadline set by the Media Bureau's one-year waiver.

Verizon's work, both with industry standards-setting efforts and with its vendors, illustrates Verizon's commitment to implementing separable security and to developing standards for two-way compatibility. Consumers would be better served if Verizon were allowed to continue to focus on these efforts over the next year, instead of being required to divert substantial resources and attention towards trying to develop a unique, interim approach by the current deadline.

### **III. THE CABLE INCUMBENTS' OPPOSITIONS ARE WITHOUT MERIT.**

Nothing in the self-interested oppositions filed by the National Cable & Telecommunications Association (NCTA) or Time Warner Cable provides a basis for denying Verizon's Application.<sup>6</sup> These parties repeat arguments that Verizon – a new entrant offering video services using a unique QAM/IP technology delivered over an advanced fiber-to-the premises (FTTP) network – is similarly situated to incumbent cable operators using traditional cable technology and architecture and that cable incumbents are entitled to share in any waiver that Verizon receives. As previously explained in this docket, neither of these arguments has

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<sup>6</sup> Opposition of the National Cable & Telecommunications Association to Verizon's Application for Review and Petition for Clarification of the Media Bureau's Memorandum Opinion and Order, CSR 7042-Z, CS Docket No. 97-80 (Aug. 14, 2007) ("NCTA Opposition"); Time Warner Cable's Opposition to Verizon's Petition for Review, CSR 7042-Z, CS Docket No. 97-80 (Aug. 14, 2007) ("TWC Opposition").

merit. Verizon is in a significantly different position from incumbent cable providers – both in terms of technology and its position in the video marketplace. Verizon does not have available to it the off-the-shelf solutions to the integration ban that traditional cable operators were able to develop – tailored to their own technological standards – during the nearly nine years that they had to implement the integration ban. Moreover, the statute recognizes that waivers should be granted for new entrants deploying new technology, and that there is no requirement to extend such waivers to incumbents. The Commission should allow Verizon the limited additional time that it has requested so that it can comply with the integration ban for HD and DVR-equipped boxes in a technologically efficient and consumer-friendly way.

**A. Verizon is Fundamentally Distinguishable from Incumbent Cable Providers Because It is a New Entrant Deploying a New Technology to Deliver New and Improved Video Services.**

As Verizon explained in its Application and in its petition for waiver,<sup>7</sup> Verizon is deserving of its full requested relief precisely because of the differences between its technology and marketplace position and those of the incumbent cable operators. These differences support the more extended waiver Verizon requested under either Section 629(c) of the Communications Act and Section 76.1207 of the Commission’s rules or the Commission’s general waiver authority under Section 76.7 and 1.3 of the Commission’s rules.

First, Verizon is entitled to a waiver because it is a new entrant bringing widespread wireline video competition – in many communities, for the first time. Waiver Petition at 7. The Commission and the GAO have both noted the positive effect that wireline competition has on

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<sup>7</sup> See Waiver Petition; see also Reply Comments of Verizon, CSR-7042-Z, CS Dkt. No. 97-80 (Sept. 28, 2006) (“Verizon Reply Comments”).

prices, service availability, and customer service.<sup>8</sup> As the Bureau recognizes in the *Waiver Order*, “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. Verizon’s FiOS TV is just such a service.

Second, Verizon is the *only* major service provider that is deploying a state-of-the-art FTTP network and using hybrid QAM/IP technology to deliver video services to subscribers. This new technology allows Verizon to deliver many advanced and interactive services to customers, such as increased HD and international content, FiOS Widgets, an advanced interactive media guide that is now being rolled out, and the Home Media DVR. Moreover, Verizon’s deployment of an all-fiber network will allow it to offer a host of new services in the future without the concerns about shared bandwidth that hinder coaxial or hybrid fiber-coaxial systems. These services include enhanced video-on-demand, personal broadcasting, and gaming. *Waiver Petition* at 6-9. Indeed, Verizon is constantly working to develop and deploy new services to meet customers’ demands. However, if Verizon is required to implement an interim solution for separable security, it will adversely affect many of these efforts by siphoning off the important resources necessary for their development.

Despite these significant marketplace and technological differences, NCTA and Time Warner continue to argue that Verizon is in the same situation as cable incumbents and they

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<sup>8</sup> *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); 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).

suggest that Verizon should already be in compliance with the integration ban.<sup>9</sup> For several reasons, that suggestion lacks merit. First, because Verizon's system is more technologically advanced than incumbent cable systems, Verizon's approach creates technical problems that are not faced by the cable companies when it comes to compliance with the Commission's navigation device rules. Verizon Reply Comments at 8-10. Because Verizon is among the first providers to offer a QAM/IP video service, nearly every piece of the network, including the set-top boxes, had to be developed and designed anew for Verizon's system. Verizon had to spend considerable resources in order to develop its unique set-top boxes that incorporate both QAM and IP technology. Without these specialized boxes, capable of handling both QAM and IP signals, consumers are only able to take advantage of a portion of Verizon's video service. And although Verizon was able to integrate one-way CableCard technology into its system – the cards used by cable incumbents to comply with the integration ban – these cards only permit customers to receive downstream video delivered in QAM, but not to access any of the IP features of Verizon's service.

Second, at the time that Verizon was developing its new video system – and to this day – the standards to implement separable security on two-way QAM/IP set-top boxes did not and do not exist. Therefore, any standard that Verizon developed would have been unique to its technological approach and been of little use to consumers. In light of this, it is not clear what standard NCTA and Time Warner believe Verizon should have implemented, unless they are suggesting that Verizon should have foregone the benefits of its technologically innovative approach and relied instead on traditional cable technology.

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<sup>9</sup> NCTA Opposition at 2, 8-9; TWC Opposition at 2.

Third, the development and implementation of a unique separable security solution for a QAM/IP service would have been disproportionately time-consuming and costly for Verizon, thus taking away resources needed for deployment of Verizon's FTTP network and for development of its innovative and competitive FiOS TV service offerings. Because Verizon is a new entrant, these costs would have been spread over a relatively small customer base – particularly when compared to the tens of millions of customers served by providers using traditional cable technology. These costs would have made it more difficult for Verizon to successfully enter the market and compete against incumbent providers – especially given that most of those incumbents had not implemented the integration ban at the time.<sup>10</sup>

Fourth, even if Verizon had developed a unique approach to separable security that was compatible with its QAM/IP service, that effort would have resulted in little if any consumer benefits because consumer electronics manufacturers understandably would not have manufactured equipment compatible with Verizon's unique approach to separable security. Rather than adding costs to their equipment to make them compliant with a new provider with a small embedded base of customers, manufacturers would have continued to build their equipment to work for the incumbent cable technology used by the majority of consumers.

Finally, by the time Verizon had started offering its FiOS TV service, NCTA's members had already had nearly 7 years to implement the integration ban and yet had not done so, even given the existence of readily available technological standards for coming into compliance.

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<sup>10</sup> In fact, some of Verizon's largest competitors, including Cablevision and Charter have received temporary waivers, and still have not implemented separable security for all of their boxes. See *Cablevision Systems Corporation's Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, Memorandum Opinion and Order, CSR-7078-Z, DA 07-48 (rel. Jan. 10, 2007) (granting two-year waiver for boxes incorporating SmartCard technology); *Charter Communications, Inc. Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, Memorandum Opinion and Order, CSR-7049-Z, DA 07-2008 (rel. May 4, 2007) (granting temporary waiver for high-end set-top boxes based on financial hardship of provider).

Therefore, NCTA's claims ring hollow when they suggest that a new entrant using new and different technology should have done more.

The technological and marketplace differences between Verizon and the incumbent cable operators continued to justify the waiver that Verizon requested in its petition.

**B. The Commission Can Grant Verizon's Waiver Without Granting a Waiver to NCTA's Members.**

NCTA and Time Warner next argue that if Verizon is given a waiver, that waiver must also be extended to NCTA's members.<sup>11</sup> As Verizon has previously shown, however, the Commission has the discretion to grant a waiver only to the "category" of QAM/IP providers, including Verizon, under Section 629(c).<sup>12</sup> In fact, by recognizing the propriety of granting waivers to encourage new competitive entry and the introduction of new technology, the statute itself belies NCTA's argument.

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."<sup>13</sup> Pursuant to these authorities, the Commission provided Direct Broadcast Satellite ("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,

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<sup>11</sup> NCTA Opposition at 6-10; TWC Opposition at 2.

<sup>12</sup> As Verizon argued in its Application for Review, a waiver is appropriate under Section 629(c). However, if the Commission determines that a waiver will be granted under Sections 76.7 and 1.3 of its rules, there is no requirement that the Commission grant this waiver to other parties in this "category" of providers.

<sup>13</sup> 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' position as new entrants, a grant of a waiver to DBS providers was in the public interest.<sup>14</sup> Of course, the Commission did not apply that exemption to all MVPDs, nor was it required to do so. This decision was upheld by the United States Court of Appeals for the D.C. Circuit.<sup>15</sup> NCTA offers no cogent reason for believing that both the Commission and Court were wrong in finding that a waiver could apply to this narrow category of providers.

Moreover, the Bureau's *Waiver Order* itself states 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. Thus, the Bureau appears to agree that the Commission has the authority to limit waivers based on a party's technology or marketplace position, without extending that waiver to all MVPDs.

Verizon is exactly the type of service provider for whose benefit Congress included the waiver provision in Section 629. Verizon falls into a distinct and objectively defined category and Verizon's eligibility for a waiver is based on factors associated with its still-nascent FiOS TV service. The Commission can 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," as Verizon requested in its Petition for Review. Waiver Petition at n.12. Indeed, it is this category of provider that is poised to create an entirely new source of competition and innovations in the market for video services.

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<sup>14</sup> See *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, Report and Order, 13 FCC Red 14775, 14800-01 (¶¶ 64-65) (1998).

<sup>15</sup> 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).

Though NCTA and Time Warner would have the Commission believe that traditional cable companies are as deserving of a waiver as Verizon, this argument ignores key facts about existing technology. First, as NCTA admits, compliant set-top boxes that are compatible with traditional cable systems are available from vendors today.<sup>16</sup> No non-integrated boxes are available today that are compatible with Verizon's system or that would enable consumers to access all the benefits offered by Verizon's hybrid QAM/IP services. Second, in creating compliant boxes, manufacturers and cable companies can benefit from the economies of scale that are guaranteed by traditional cable's embedded subscriber base of tens of millions of subscribers, as compared with Verizon's less than a million subscribers. This difference also means that Verizon's customers bear disproportionately high costs related to the development of new boxes that include separable security. Additionally, cable's larger subscriber base provides more incentives for consumer electronics manufacturers to develop third-party devices for incumbent cable operators, whereas Verizon's smaller base is unlikely to incent development of boxes that work with Verizon's system. Third, incumbent cable operators were already granted two extensions of the integration ban, giving incumbent providers almost nine years to come into compliance. Verizon has only been providing video services for two years. For these reasons, the Commission could grant Verizon's waiver petition, without extending a waiver to traditional cable operators.

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<sup>16</sup> NCTA Opposition at 5.

**IV. CONCLUSION**

For the above reasons, the Commission should grant Verizon additional time to comply with the Commission's integration ban.

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August 24, 2007

**CERTIFICATE OF SERVICE**

I hereby certify that true and correct copies of the foregoing Reply to Oppositions to Verizon's Application for Review and Petition for Clarification were sent by first-class mail this 24<sup>th</sup> day of August, 2007, to each of the following:

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