**Before the**
**Federal Communications Commission**
**Washington, D.C. 20554**

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| In the Matter of: | ) | |
| | ) | |
| Cox Communications, Inc. | ) | |
| | ) | |
| Petition for Temporary Waiver of | ) | |
| Requirement to Support Plug and Play | ) | CSR-6332-Z |
| Through Provisioning of Point of | ) | |
| Deployment Modules for Cox Cable | ) | |
| Systems Serving Pauls Valley and | ) | |
| Chickasha, Oklahoma | ) | |
| | ) | |

**MEMORANDUM OPINION AND ORDER**

**Adopted: July 13, 2004** **Released: July 14, 2004**

By the Chief, Media Bureau:

## I. INTRODUCTION

1. Cox Communications, Inc. ("Cox") has filed the above-captioned petition for special relief ("Petition"), seeking a six-month waiver of Section 76.640(b) of the Commission's rules with respect to cable systems serving Pauls Valley, Wynnewood, and Chickasha, Oklahoma.[1] Section 76.640(b) requires that by July 1, 2004, cable operators must support unidirectional digital cable products by providing to subscribers point-of-deployment modules ("PODs")[2] and related services that meet certain technical specifications. No oppositions to the Petition were filed. For the reasons stated below, we grant Cox's Petition.

## II. BACKGROUND

2. Section 629 of the Communications Act, as amended ("Act"), requires the Commission to:

> adopt regulations to assure the commercial availability, to consumers of multichannel video programming and other services offered over multichannel video programming systems, of converter boxes, interactive communications equipment, and other equipment used by consumers to access multichannel video programming and other services offered

[1] 47 C.F.R. § 76.640(b).

[2] PODs are referred to for marketing purposes as CableCARDs. *See, e.g., Petition* at 1. Because the applicable rule refers to these security modules as PODs, we continue to use this term.

> over multichannel video programming systems, from manufacturers, retailers, and other vendors not affiliated with any multichannel video programming distributor.[3]

The purpose of Section 629 is to afford consumers the opportunity to purchase navigation devices from sources other than their multichannel video programming distributor ("MVPD").[4] The Commission has addressed a number of practical issues in order to foster a competitive market for the design, manufacture, and retail of navigation devices as required under Section 629.[5] In 2003, the cable and consumer electronics industries adopted a memorandum of understanding that reflected a compromise agreement to integrate the navigation functionality of set-top boxes into television receivers.[6] In the *Second Report and Order*, the Commission adopted the technical rules proposed as part of the MOU, with certain modifications.[7] The rules adopted by the Commission in the *Second Report and Order* included a requirement that no later than July 1, 2004, all digital cable systems must support unidirectional digital cable products through the provisioning of PODs and conformance with the technical standards governing POD-Host interfaces and the POD copy protection system.[8]

## III. DISCUSSION

3. The relevant standard for consideration of the request for waiver is found in Section 629(c) of the Act and Section 76.1207 of the Commission's rules. Section 629(c) provides that the Commission:

> shall waive a regulation adopted under subsection [629](a) for a limited time upon an appropriate showing by a provider of multichannel video programming and other services 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

[3] 47 U.S.C. § 549(a).

[4] *Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices and Compatibility Between Cable Systems and Consumer Electronics Equipment*, 18 FCC Rcd 20885, 20887 (2003) ("*Second Report and Order*"). Navigation devices are "devices such as converter boxes, interactive communications equipment, and other equipment used by consumers to access multichannel video programming and other services offered over multichannel video programming systems." 47 C.F.R. § 76.1200(c).

[5] *See, e.g., Implementation of Section 304 of the Telecommunications Act of 1996 and Commercial Availability of Navigation Devices*, 13 FCC Rcd 14775 (1998).

[6] *See* Letter from Carl E. Vogel, President and CEO, Charter Communications, *et al.*, to Michael K. Powell, Chairman, FCC (Dec. 19, 2002), *Memorandum of Understanding Among Cable MSOs and Consumer Electronics Manufacturers* (signed by Charter Communications, Inc., Comcast Cable Communications, Inc., Cox Communications, Inc., Time Warner Cable, CSC Holdings, Inc., Insight Communications Company, L.P., Cable One, Inc., Advance/Newhouse Communications, Hitachi America, Ltd., JVC Americas Corp., Mitsubishi Digital Electronics America, Inc., Matsushita Electric Corp. of America (Panasonic), Philips Consumer Electronics North America, Pioneer North America, Inc., Runco International, Inc., Samsung Electronics Corporation, Sharp Electronics Corporation, Sony Electronics, Inc., Thomson, Toshiba America Consumer Electronics, Inc., Yamaha Electronics Corporation, USA, and Zenith Electronics Corporation) ("MOU").

[7] *Second Report and Order*, 18 FCC Rcd at 20891.

[8] *Id.* at 20895.

multichannel video programming or other service offered over multichannel video programming systems, technology, or products.[9]

Similarly, Section 76.1207 provides that the Commission "may waive a regulation" adopted under the applicable subpart for a limited time, subject to the showing required under Section 629(c).[10]

4. Cox asserts that a waiver is justified because a planned system consolidation in the Oklahoma City area coincides directly with the July 1 deadline, and delaying compliance with Section 76.640(b) by six months with respect to these two headends would allow Cox to achieve significant cost savings and provide digital network benefits to consumers.[11] Cox states that it has been consolidating the operations of its Oklahoma City-area systems in order to maximize efficiency and that it currently provides digital service in the Oklahoma City area to 89,602 subscribers.[12] The two headends for which waiver is requested serve a total of 2,027 digital subscribers and already have been consolidated with the larger Oklahoma City system for purposes of high-speed Internet service.[13] However, unlike the larger Oklahoma City system, these systems currently utilize low-capacity digital network control servers ("DNCSs") that cannot support PODs that comply with the requirements of Section 76.640(b).[14] Cox intends to fully consolidate these two headends into the larger Oklahoma City system by migrating the DNCS functions from the headends to the Oklahoma City DNCS.[15] This consolidation is estimated to take six months and cost $92,000.[16] The consolidation will not be completed by July 1, 2004; without a waiver, Cox will be required to upgrade these systems in order to comply with Section 76.640(b). Cox estimates that an upgrade of the systems would cost $132,000.[17] Cox asserts that such upgrade would be superfluous, given that within six months, the systems are expected to be integrated into the larger system, which can support PODs, and it thus will be unnecessary for Cox to perform separate upgrades of the small system headends for POD support.[18] Cox seeks a six-month waiver of Section 76.640(b) in order to complete the planned consolidation, after which time the systems for which waiver is requested will not require upgrades in order for Cox to comply with Section 76.640(b).

5. First, Cox contends that grant of a waiver will not undermine the policy underlying Section 76.640(b).[19] Specifically, Cox states that it will provide POD support to 99.85% of its digital subscribers by the July 1 deadline and that unidirectional cable products are not anticipated to be widely available until the end of 2004.[20] Consequently, there will be few Cox customers for whom POD support will not be available and, of those customers, those who do purchase compatible sets will be required to

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[9] 47 U.S.C. § 549(c).

[10] 47 C.F.R. § 76.1207.

[11] *Petition* at 8.

[12] *Id.* at 3.

[13] *Id.* Both the Wynnewood and Chickasha systems are served from the Chickasha headend. *Id.* n.1.

[14] *Id.* at 4.

[15] *Id.* at 3.

[16] *Id.*

[17] *Id.* at 4.

[18] *Id.* at 2.

[19] *Id.* at 5.

[20] *Id.* at 6.

wait a maximum of only a few months to receive PODs.[21] Second, Cox claims that grant of a waiver will allow Cox to perform upgrades and introduce new services more efficiently to the subscribers currently served by these two headends.[22] Cox asserts that the consolidation will facilitate the upgrading of its network and that the required investment of labor, time, and money to perform a redundant upgrade would hinder the consolidation process and the delivery of advanced services.[23] Third, Cox asserts that grant of a waiver will avoid economic waste; without the waiver, Cox will be forced to spend $132,000 upgrading the two headends that it subsequently intends to consolidate.[24] Cox asserts that this cost would be passed on to subscribers.[25] Finally, Cox contends that grant of a waiver will not negatively impact any customers because Cox will provide a free digital set-top box to any customer requesting a POD during the period covered by the waiver.[26] Following the consolidation, the set-top box may be returned and exchanged for a POD.

6. We find that grant of a temporary waiver is in the public interest. Cox has made an appropriate showing under Section 629(c) that waiver is necessary to assist the development or introduction of a new or improved multichannel video programming service. Affording Cox an additional six months to come into compliance with Section 76.640(b) with respect to these headends will allow Cox to focus its labor, time, and money on consolidating these systems' subscribers into the larger Oklahoma City system. The consolidation will facilitate upgrading of the network and will allow Cox to introduce new services more efficiently to these systems' subscribers. Requiring Cox to comply with Section 76.640(b) under these circumstances could disserve the public interest by imposing upon Cox short-term redundant costs. Moreover, very few Cox subscribers will be affected by the waiver, and any affected subscribers will receive free set-top boxes. It is particularly important, in this regard, that purchasers of equipment designed to function with PODs be accommodated to the maximum extent feasible during the waiver period so that the intended benefits of this equipment are realized. We emphasize that this waiver is temporary in nature and specific to the circumstances identified by Cox in its Petition.

[21] *Id.*

[22] *Id.*

[23] *Id.* at 7.

[24] *Id.*

[25] *Id.*

[26] *Id.*

## IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that the petition for special relief filed by Cox Communications, Inc. **IS GRANTED**.

8. **IT IS FURTHER ORDERED** that Cox Communications, Inc. is granted a waiver of Section 76.640(b) for the above-captioned systems until January 1, 2005.

9. These actions are taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.[27]

FEDERAL COMMUNICATIONS COMMISSION

W. Kenneth Ferree
Chief, Media Bureau

[27] 47 C.F.R. § 0.283.