

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

In the Matter of)
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Pace Micro Technology PLC)
Petition for Special and Interim Relief) CSR-6235-Z
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ORDER

Adopted: October 10, 2003

Released: October 15, 2003

By the Chief, Media Bureau:

I. INTRODUCTION

1. We have before us a petition requesting waiver of Section 76.605(a)(2) of the Commission’s Rules for a class of set top boxes manufactured by Pace Micro Technology PLC (“Pace”) and deployed by Time Warner Cable (“Time Warner”) and Comcast Cable Communications, Inc. (“Comcast”). Pace seeks an interim waiver for Time Warner and Comcast to continue to use the set top boxes that violate the rules until such time as we decide whether the permanent waiver should be granted. We grant the interim waiver.

II. BACKGROUND

2. Pace has notified the Commission that approximately fifty-seven percent of its cable set top boxes with model numbers 510 and 510A have a tendency to drift outside of prescribed tolerances for audio and video carrier separation.¹ Specifically, for the units, based upon testing done by Pace², the audio carrier could be as much 10 kHz closer to the visual carrier, or 5 kHz more than the prescribed tolerance of 5 kHz. Section 76.605(a)(2) prescribes that the audio carrier must be 4.5 MHz ± 5kHz above the video carrier.³ Pace filed a Petition for Special and Interim Relief (“Petition”) on behalf of itself and its cable system operator customers seeking a waiver of Section 76.605(a)(2) to allow continued use of the Model 510 and Model 510A boxes by its cable operator customers. Pace also seeks an interim waiver

¹ Letter dated July 3, 2003.

² We have not verified that the testing procedure was as prescribed by the Commission. See 47 C.F.R. § 76.609.

³ 47 C.F.R. § 76.605(a)(2). This one of two audio factors in our signal quality standards that may affect video signal quality. The other is the power level of the audio carrier relative to the visual carrier. See *Cable Technical and Operational Requirements*, 7 FCC Rcd 2021, 2025 (1992).

of Section 76.605(a)(2) and requests that we grant it *ex parte* pursuant to Section 1.45(e) of the Commission's Rules or that we follow the reduced filing periods prescribed in Section 1.45(d). We have elected to consider the request for interim relief in accordance with Section 1.45(d). The Petition was put on Public Notice on September 10, 2003. Comments on the interim waiver were due on September 17, 2003. No comments have been received. The Petition did not identify the cable operators on behalf of which the relief was requested. Pace supplied that information on September 18, 2003, and we are supplementing the record with that information.

III. DISCUSSION

3. According to Pace, 204,000 of the set top boxes at issue are currently being used by cable subscribers.⁴ To avoid disruption of service, Pace suggests that it is in the public interest to grant the interim waiver. Pace asserts that it is important that cable operators that have deployed these boxes receive assurances that they may continue to use the boxes while the Commission is considering the waiver request.⁵ Pace asserts, both in its request for interim relief and its request for waiver, that the quality of service to subscribers is not affected⁶ by the failure of these boxes to meet the carrier separation tolerances prescribed in the rules as they do and that no complaints have been received from subscribers about degradation of signal quality.⁷ To allay concern, Pace also has instituted a policy of repairing or replacing any of the set top boxes about which it receives a complaint from a cable subscriber, both during the interim period or upon a permanent waiver.⁸

4. The Commission has granted interim waivers to avoid unnecessary disruption for consumers and allow the Commission sufficient time to assess the situation and formulate a decision.⁹ Important considerations in such a grant are the limited duration of the relief and the opportunity for public comment prior to a Commission decision to extend or terminate the waiver.¹⁰ We also recognize that the scope of the interim waiver requested is limited not only in time but to the manufacturer and model of the device. Further, there is a significant possibility that petitioners will prevail in their request. The disruption to the petitioners and their subscribers that would be caused by coming into compliance in the interim would essentially defeat the purpose of the requested waiver.

5. The waiver request itself, however, is deficient in one respect. Pace states that 300,000 units have been sold by Pace to the cable operators, of which 204,000 have been deployed to subscribers.

⁴ Petition at 2.

⁵ *Id.* at 9.

⁶ Pace maintains that, subjectively, the vast majority of subscribers will not notice degradation of their cable signals passing through these boxes. *See Id.* at 3

⁷ *Id.* at 9.

⁸ *Id.*

⁹ *See Bell Operating Companies' Joint Petition for Waiver of Computer II Rules*, 5 FCC Rcd 4714,4715 (1990). *See also BellSouth Plan for Comparably Efficient Interconnection for Gateway Services*, 13 FCC Rcd 10226 (1998).

¹⁰ *See Bell Operating Companies' Joint Petition*, 5 FCC Rcd at 4717 n. 24.

Another 40,000 units have been or are being manufactured.¹¹ The petition is silent about whether Pace and the cable operators intend to deploy the 136,000 units and whether the waiver would apply to them.

IV. CONCLUSION

6. We find that it is in the public interest to grant an interim waiver. The interim waiver will apply to the units that were deployed when the petition was filed. We expect that Pace will place into the record what it intends to do with the undeployed units. If Pace and the cable operators intend to deploy those units without bringing them into compliance, Pace must provide a compelling reason why the waiver should apply to those units. Grant of this interim waiver does not absolve Pace and the cable operators of this violation.

V. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED that, pursuant to Sections 0.61, 0.283, and 1.3 of the Commission's Rules; 47 C.F.R. §§ 0.61, 0.283, & 1.3; the petition of Pace Micro Technology PLC on behalf of itself and Time Warner Cable and Comcast Cable Communications, Inc., for an interim waiver of Section 76.605(a)(2) of the Commission's Rules, 47 C.F.R. § 76.605(a)(2) IS GRANTED for Pace Models 510 and 510A set top boxes deployed in subscribers premises on September 10, 2003.

8. IT IS FURTHER ORDERED Pace Micro Technology PLC SHALL SUPPLEMENT the record as specified herein within seven days of the release of this Order, that the date for filing comments and oppositions is extended until 30 days from the release of this Order, and that the date for replies to oppositions is extended to 50 days from the release of this order.

FEDERAL COMMUNICATIONS COMMISSION

W. Kenneth Ferree
Chief, Media Bureau

¹¹ Petition at 1.