

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

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

ORDER

Adopted: February 2, 2004

Released: February 3, 2004

By the Chief, Media Bureau:

I. INTRODUCTION

1. On October 10, 2003, the Media Bureau granted an interim waiver of Section 76.605(a)(2) of the Commission's rules for two models 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").

II. BACKGROUND

2. On August 6, 2003, Pace 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 Pace Micro Technology PLC Petition for Special and Interim Relief, DA 03-3184 (Oct. 10, 2003).

2 These set-top boxes contain integrated security and are not "Plug and Play" boxes.

3 Letter dated July 3, 2003.

4 Given the voluntary disclosure of the violation, we have not verified the test results or that the testing procedure complied with the Commission's rules. See 47 C.F.R. § 76.609.

5 47 C.F.R. § 76.605(a)(2). This is 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) ("Technical Requirements Order").

behalf of itself and its cable system customers seeking a waiver of Section 76.605(a)(2) to allow continued use of the Model 510 and Model 510A boxes by its customers. No comments were received on the interim waiver.

3. We found that it was in the public interest to grant an interim waiver to the units that were deployed when the petition was filed and did so on October 10, 2003. Pace had instituted a policy of repairing or replacing any of the set top boxes about which it received a complaint about degradation of signal quality. The grant of the interim waiver was contingent upon the continuance of this policy. Our waiver did not apply to units not yet deployed to subscribers. Pace was required to supplement its petition with an explanation of why the waiver should apply to those units. In response, Pace supplemented its petition on October 22, 2003. Comments on whether to extend or terminate the waiver were due November 14, 2003. We received no comments.

### III. DISCUSSION

4. To avoid disruption of service, Pace suggests that it is in the public interest to grant a waiver for 204,000 Model 510 and Model 510A set-top boxes currently being used by cable subscribers. Pace asserts that the quality of service to subscribers is not affected by the failure of these boxes to meet the carrier separation tolerances prescribed in the rules and that no complaints have been received from subscribers about degradation of signal quality.<sup>6</sup>

5. In the interim waiver, we waived the aural carrier separation requirement for the 204,000 units deployed to subscribers but declined to waive the requirement for the additional 96,000 units sold or 40,000 units not yet delivered to cable operators. In its supplemental filing, Pace explained that of the 96,000 units sold, 64,000 have been brought into compliance.<sup>7</sup> Of the 40,000 units not yet delivered to operators, 24,000 have already been modified to conform and the additional 16,000 units would not be delivered until they had been brought into conformity.<sup>8</sup> This leaves only 32,000 units that could not be easily returned to Pace for modification.

6. The Commission has granted waivers of its technical standards to avoid unnecessary disruption for consumers when the degradation of quality to subscribers is minimal and the burden to consumers is significant.<sup>9</sup> In the *Technical Requirements Order*, the Commission established two standards for audio factors that may affect signal quality: the first related to carrier level and the second related to carrier frequency.<sup>10</sup> A commenter in that proceeding noted that the International Electrotechnical Commission standard was  $4.5 \text{ MHz} \pm 2 \text{ kHz}$ , however, in recognition that most baseband converters were designed around a standard of  $4.5 \text{ MHz} \pm 5 \text{ kHz}$ , the Commission adopted the more lenient standard.<sup>11</sup> This standard was selected based on industry practices for VCRs at the time. In this instance, Pace has manufactured set-top boxes that may deviate by an additional 5 kHz (a total of 10 kHz).

7. Pace had stated that it will repair or replace any out-of-tolerance set-top terminal at the request of a subscriber or cable operator. It has further stated that it does not intend to manufacture any model 510s or 510As beyond those already manufactured. Pace also states that it has notified its cable

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<sup>6</sup> Petition at 9.

<sup>7</sup> *Supplement of Pace Micro Technology PLC* (Oct. 22, 2003).

<sup>8</sup> *Id.* at 2.

<sup>9</sup> *See, e.g., Media General Cable of Fairfax County, Inc. Petition for Special Relief*, 14 FCC Rcd 9568 (1999).

<sup>10</sup> 7 FCC Rcd 2021.

<sup>11</sup> *Id.* at 2025

operator customers and kept those customers fully apprised of the situation.<sup>12</sup> We are nevertheless concerned that customers of Time Warner and Comcast may not be able to identify problems caused by this non-conforming operation. Because the signal quality rules apply to cable operators, we will require Time Warner and Comcast to take action to ensure customer service employees working with these boxes are aware of and can diagnose this problem.

#### IV. CONCLUSION

8. We find that it is in the public interest to make the interim waiver permanent. As the standard in Section 76.605(a)(2) was designed to protect signal quality and Pace has agreed to replace boxes when signal quality is degraded, such a waiver will not conflict with the intent of the rule. A blanket recall, on the other hand, would be burdensome to consumers and inordinately expensive for the manufacturer and its cable operator customers. As such, the public is best served by allowing those 204,000 units to remain deployed.

9. We further find that it is in the public interest to extend this waiver to the additional 32,000 units delivered to cable operators, but not deployed when Pace filed the Petition. The record has shown that Pace has been diligent in modifying its noncompliant terminals. For the 32,000 units that could not be easily retrieved for repair, the cost and burden of locating these devices is incongruous with the potential for harm that leaving them in the field may cause.

10. Pace will take action to ensure that additional units shall conform to Section 76.605(a)(2) of the Commission's rules. With respect to the 236,000 boxes affected by this waiver, we require the cable operators deploying these boxes (Time Warner and Comcast) to educate their customer service staff to respond appropriately to problems resulting from inadequate aural carrier separation. Further, in the event of a signal quality problem caused by these set-top boxes or at the request of a subscriber, the cable operator must replace a noncompliant box with a compliant box.

#### V. ORDERING CLAUSES

11. 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 a 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 to the extent indicated above.

FEDERAL COMMUNICATIONS COMMISSION

W. Kenneth Ferree  
Chief, Media Bureau

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<sup>12</sup> See Petition at 3.