

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

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| In the Matter of |) | |
| |) | |
| FutureWei Technologies d/b/a Huawei Technologies (USA) |) | CSR-8206-Z |
| |) | |
| Evolution Broadband, LLC |) | CSR-8204-Z |
| |) | |
| Requests for Waiver of Section 76.1204(a)(1) of the Commission's Rules |) | |

MEMORANDUM OPINION AND ORDER

Adopted: February 3, 2010

Released: February 3, 2010

By the Chief, Media Bureau:

I. INTRODUCTION

1. The above-captioned cable set-top box manufacturers (“Petitioners”) have filed requests for waiver (the “Waiver Requests”) of the ban on integrated set-top boxes set forth in Section 76.1204(a)(1) of the Commission’s rules.¹ The Petitioners seek waiver pursuant to the Commission’s decision in the *Evolution Order*,² in which the Commission adopted a streamlined process for waiver of the integration ban for one-way, low-cost, limited-capability set-top boxes. Pursuant to the *Evolution Order* precedent, we grant the requests for waiver of Section 76.1204(a)(1) of the Commission’s rules.

II. BACKGROUND

A. Section 629 of the Act

2. Congress directed the Commission to adopt regulations to assure the commercial availability of navigation devices more than ten years ago as part of the Telecommunications Act of 1996.³ The Commission implemented this directive in 1998 through the adoption of the “integration

¹ 47 C.F.R. § 76.1204(a)(1). The separation of the security element from the host device required by this rule is referred to as the “integration ban.”

² *Evolution Broadband, LLC’s Request for Waiver of Section 76.1204(a)(1) of the Commission’s Rules*, 24 FCC Red 7890, 7897, ¶ 15 (2009) (“*Evolution Order*”).

³ See Section 629(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 549(a) (requiring the FCC “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 over multichannel video programming systems, from manufacturers, retailers, and other vendors not affiliated with any multichannel video programming distributor”); see also Telecommunications Act of 1996, Pub. L. No. 104-104, § 304, 110 Stat. 56, 125-126 (1996).

ban,” which established a date after which cable operators no longer may place into service new navigation devices (e.g., set-top boxes) that perform both conditional access and other functions in a single integrated device.⁴ Originally, the Commission established January 1, 2005 as the deadline for compliance with the integration ban.⁵ On two occasions, the National Cable and Telecommunications Association (“NCTA”), on behalf of all cable operators, sought – and obtained – extensions of that deadline.⁶ The Commission ultimately fixed July 1, 2007 as the deadline for compliance with the integration ban.⁷

3. The purpose of the integration ban is to assure reliance by both cable operators and consumer electronics manufacturers on a common separated security solution.⁸ This “common reliance” is necessary to achieve the broader goal of Section 629 – i.e., to allow consumers the option of purchasing navigation devices from sources other than their MVPD.⁹ Although the cable industry has challenged the lawfulness of the integration ban on three separate occasions, in each of those cases the D.C. Circuit denied those petitions.¹⁰ In limited circumstances, however, operators may be eligible for waiver of the integration ban.¹¹

4. In the *Evolution Order*,¹² the Commission granted waiver of its rule that prohibits multichannel video programming distributors from “plac[ing] into service new navigation devices for

⁴ See *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, 13 FCC Rcd 14775, 14803, ¶ 69 (1998) (“*First Report and Order*”) (adopting Section 76.1204 of the Commission’s rule, subsection (a)(1) of which (1) required multichannel video programming distributors (“MVPDs”) to make available by July 1, 2000 a security element separate from the basic navigation device (i.e., the CableCARD), and, in its original form, (2) prohibited MVPDs covered by this subsection from “plac[ing] in service new navigation devices ... that perform both conditional access and other functions in a single integrated device” after January 1, 2005); see also 47 C.F.R. § 76.1204(a)(1) (1998).

⁵ *First Report and Order*, 13 FCC Rcd at 14803, ¶ 69.

⁶ In April 2003, the Commission extended the effective date of the integration ban until July 1, 2006. See *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, 18 FCC Rcd 7924, 7926, ¶ 4 (2003) (“*Extension Order*”). Then, in 2005, the Commission further extended that date until July 1, 2007. See *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, 20 FCC Rcd 6794, 6810, ¶ 31 (“*2005 Deferral Order*”).

⁷ *2005 Deferral Order*, 20 FCC Rcd at 6810, ¶ 31.

⁸ See *Cablevision Systems Corporation’s Request for Waiver of Section 76.1204(a)(1) of the Commission’s Rules*, 22 FCC Rcd 220, 226, ¶ 19 (2007) (citing the *2005 Deferral Order*, 20 FCC Rcd at 6809, ¶ 30) (explaining why the Commission “require[d] MVPDs and consumer electronics manufacturers to rely upon identical separated security with regard to hardware-based conditional access solutions”).

⁹ See S. REP. 104-230, at 181 (1996) (Conf. Rep.). See also *Bellsouth Interactive Media Services, LLC*, 19 FCC Rcd 15607, 15608, ¶ 2 (2004). As the Bureau noted, Congress characterized the transition to competition in navigation devices as an important goal, stating that “[c]ompetition in the manufacturing and distribution of consumer devices has always led to innovation, lower prices and higher quality.”

¹⁰ *Comcast Corp. v. FCC*, 526 F.3d 763 (D.C. Cir. 2008); *Charter Comm., Inc. v. FCC*, 460 F.3d 31 (D.C. Cir. 2006); *General Instrument Corp. v. FCC*, 213 F.3d 724 (D.C. Cir. 2000). The Commission argued, and the D.C. Circuit agreed, that the integration ban was a reasonable means to meet Section 629’s directive. *Charter Comm., Inc. v. FCC*, 460 F.3d 31, 41 (D.C. Cir. 2006) (“this court is bound to defer to the FCC’s predictive judgment that, “[a]bsent common reliance on an identical security function, we do not foresee the market developing in a manner consistent with our statutory obligation.”).

¹¹ 47 U.S.C § 549(c); *2005 Deferral Order*, 20 FCC Rcd at 6813, ¶ 37.

¹² *Evolution Order*, 24 FCC Rcd at 7894-7, ¶¶ 11-14.

sale, lease, or use that perform both conditional access and other functions in a single integrated device”¹³ with respect to two set-top boxes manufactured by Evolution Broadband, LLC. The Commission granted waiver based in part on the “low-cost, limited capability” standard articulated in the *2005 Deferral Order*.¹⁴ The Commission concluded that such devices will serve the public interest by furthering cable operators’ migrations to all-digital networks (thereby increasing service offerings) and would not jeopardize the development of the competitive marketplace for navigation devices that Section 629 of the Communications Act directed the Commission to promote.¹⁵ In the interest of competitive fairness, the Commission created a streamlined waiver process for manufacturers of similarly low-cost, limited-capability set-top boxes.¹⁶ Specifically, the Commission stated that

[i]f applicants certify that the capabilities of their navigation devices are low-cost, limited capability devices that are no more advanced than the [Evolution DMS-1002 and DMS-1002-CA] and include the full specifications of any devices for which waiver is sought, the Media Bureau will release a public notice seeking comment on those certifications for a period of ten calendar days, after which the Bureau will expeditiously grant a waiver similar to the one granted herein, deny such a waiver, or take other appropriate action.¹⁷

B. The Waiver Requests

5. Petitioners filed requests for waiver of Section 76.1204(a)(1) of the Commission’s rules with respect to certain “low cost, limited capability” set-top boxes (“Subject Boxes”)¹⁸ pursuant to the streamlined waiver process set forth in the Commission’s decision in the *Evolution Order*. Representatives for Petitioners certified under penalty of perjury that their respective devices are no more advanced than the devices for which the Commission granted waiver in the *Evolution Order*.¹⁹ The Bureau released public notices seeking comment on each of the requests on September 28, 2009.²⁰ IPCO, LLC filed comments in response to Huawei’s waiver request,²¹ and Huawei filed an ex parte letter in response to IPCO, LLC’s comments.²²

¹³ 47 C.F.R. § 76.1204(a)(1).

¹⁴ See *2005 Deferral Order*, 20 FCC Rcd at 6813, ¶ 37.

¹⁵ *Evolution Order*, 24 FCC Rcd at 7895-6, ¶¶ 12-13.

¹⁶ *Id.* at 7897, ¶ 15.

¹⁷ *Evolution Order*, 24 FCC Rcd at 7897, ¶ 15.

¹⁸ The Subject Boxes are the Huawei DC-730 and DC-732 and Evolution Broadband DMS-2002-CA, DMS-1004-CA and DMS-2002u set-top boxes. See *Evolution Broadband Waiver Request* (filed August 31, 2009); *Huawei Waiver Request* (filed September 9, 2009).

¹⁹ *Evolution Broadband Waiver Request*, attaching Declaration of Chris Egan, Executive Vice President, Evolution Broadband, LLC; *Huawei Waiver Request*, attaching Declaration Carl Liu, Executive Vice President, FutureWei Technologies d/b/a Huawei Technologies (USA).

²⁰ *Media Bureau Seeks Comment on Evolution Broadband's Low-Cost, Limited Capability Set-Top Box Certification*, 24 FCC Rcd 12148 (2009) (Public Notice); *Media Bureau Seeks Comment on Huawei's Low-Cost, Limited Capability Set-Top Box Certification*, 24 FCC Rcd 11559 (2009) (Public Notice).

²¹ See *IPCO LLC Comments*, CSR-8206-Z (filed October 8, 2009).

²² Letter from Carl Liu, Executive Vice President, FutureWei Technologies d/b/a Huawei Technologies (USA), to Marlene H. Dortch, Secretary, Federal Communications Commission (October 19, 2009) (“Huawei Reply”).

6. In the public notices seeking comment on the Waiver Requests, the Bureau expressly directed commenters to limit their comments to the issue of whether the devices for which Petitioners seek waiver are more advanced than the Evolution Broadband DMS-1002 and DMS-1002-CA, and declared that “[t]he Bureau does not seek comment on the policy implications of issues resolved in the Evolution Order.”²³ Nonetheless, IPCO, LLC filed comments that addressed only the policy implications of issues that were discussed and resolved in the *Evolution Order*.²⁴ No other comments were filed.

III. DISCUSSION

7. The Petitioners have submitted certifications that the Subject Boxes are no more advanced than the Evolution DMS-1002 and DMS-1002-CA devices. We conclude, based on our review of the specifications of the devices²⁵ that the Subject Boxes are no more advanced than the Evolution DMS-1002 and DMS-1002-CA devices. As the Petitioners explain in their waiver requests, the Subject Boxes do not have the hardware necessary to support return-path communications, high definition output, hard drive expansion for DVR service, cable modem support, or multiple tuners.²⁶ Accordingly, we find that the Subject Boxes are no more advanced than the Evolution DMS-1002 and DMS-1002-CA, and good cause for waiver exists for the same reasons provided in the *Evolution Order* and the *2005 Deferral Order*.²⁷

8. As the Commission declared in the *Evolution Order*, cable operators may deploy the Subject Boxes on any system without need for a further waiver of Section 76.1204(a)(1)’s prohibition on the deployment of navigation devices “that perform both conditional access and other functions in a single integrated device.” The Commission also stated that operators must offer CableCARDS to all subscribers who request them: “operators that choose to deploy the Subject Boxes are not afforded a waiver of the requirement that they ‘make available equipment that incorporates only the conditional access functions of such devices.’”²⁸

IV. CONCLUSION

9. For the reasons stated above, we conclude that the Subject Boxes are eligible for waiver under the “low-cost, limited capability” standard articulated in the *2005 Deferral Order* as applied in the *Evolution Order* because the Subject Boxes are only capable of doing what is necessary to make digital cable programming viewable on analog television sets. For this reason we conclude that, with respect to the Subject Boxes, Petitioners have justified three-year waivers of the integration ban under the standard set forth in the *2005 Deferral Order*, the *Evolution Order*, and Sections 1.3 or 76.7 of the Commission’s rules. Accordingly, we grant the Waiver Requests, and, until three years from the release of this order, any cable operator may choose to deploy the Subject Boxes without requesting a waiver of Section

²³ *Media Bureau Seeks Comment on Huawei’s Low-Cost, Limited Capability Set-Top Box Certification*, 24 FCC Rcd 11559, 11560, n.6 (2009) (Public Notice).

²⁴ *Evolution Order*, 24 FCC Rcd at 7893-7, ¶¶ 8-16. We take no position on the policy recommendations presented in those comments and our action here should not be taken to imply otherwise. We note that Public Knowledge has filed a petition for reconsideration of the *Evolution Order*, but IPCO, LLC did not file comments in response to that petition for reconsideration.

²⁵ Huawei Waiver Request at Exhibit A; Evolution Waiver Request at Exhibits 1-3.

²⁶ Huawei Waiver Request at 2-3; Evolution Waiver Request at 4-5.

²⁷ *Evolution Order* at ¶¶ 11-14; *2005 Deferral Order*, 20 FCC Rcd at 6813, ¶ 37.

²⁸ *Evolution Order* at ¶ 15, n.43 (citing 47 C.F.R. § 76.1204(a)(1)).

76.1204(a)(1)'s prohibition on the deployment of navigation devices "that perform both conditional access and other functions in a single integrated device."²⁹

V. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to Sections 1.3 and 76.7 of the Commission's rules, 47 C.F.R. §§ 1.3, 76.7, the requests for waiver of Section 76.1204(a)(1) of the Commission's rules, 47 C.F.R. § 76.1204(a)(1), filed by FutureWei Technologies d/b/a Huawei Technologies (USA) and Evolution Broadband, LLC **ARE GRANTED** to the extent described above.

11. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules, 47 C.F.R. § 0.283.

FEDERAL COMMUNICATIONS COMMISSION

William T. Lake
Chief, Media Bureau

²⁹ Our plug-and-play rules apply to cable operators, and we remind cable operators who deploy the Subject Boxes that they ultimately are responsible for compliance with our rules (*e.g.*, making available and supporting CableCARDS; using CableCARDS in all devices except for the Subject Boxes; complying with 76.640 of the Commission's rules; etc.). *See, e.g., Pace Micro Technology PLC*, 19 FCC Rcd 1945, 1947 (MB 2004) (reminding cable operators that despite an equipment-related waiver granted to an equipment manufacturer, cable operators are ultimately responsible for compliance with our rules).