

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

In the Matter of)
)
)
Adams Cable Equipment, Inc.) CSR-8537-Z
)
Request for Waiver of Section 76.1204(a)(1) of) CS Docket No. 97-80
the Commission's Rules)
)
)

MEMORANDUM OPINION AND ORDER

Adopted: July 26, 2013

Released: July 26, 2013

By the Chief, Media Bureau:

I. INTRODUCTION

1. In this Order, we grant cable operators a limited, conditional waiver of the ban on deploying set-top boxes with integrated security as set forth in Section 76.1204(a)(1) of the Commission's rules with respect to set-top boxes refurbished by Adams Cable Equipment, Inc. ("ACE" or "Petitioner"). ACE filed a request for waiver to allow cable operators to purchase and deploy integrated set-top boxes that ACE refurbishes. For the reasons stated below, we grant ACE's request only with respect to its existing inventory of 50,000 set-top boxes and subject to the following conditions: (i) ACE must offer its set-top boxes for sale directly to its cable operator partners' subscribers; (ii) ACE's cable operator partners must publicly agree to provide support for set-top boxes that ACE sells to their subscribers, activate those set-top boxes, and agree to notify their subscribers that they can purchase set-

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

2 ACE "seeks a waiver that would exempt its refurbished set-top boxes for use by any cable operator that commits in a declaration filed with the Commission to support its customers' use of ACE's retail devices," notify its customers about the option to purchase those devices, and affirm its commitment to support CableCARDS in retail devices. Waiver Request at 2-3. See, infra, note 16 (describing "CableCARD"). Throughout this Order, we refer to those cable operators as ACE's "cable operator partners."

3 In other words, a cable operator must deliver its programming in a way that an ACE-provided set-top box can receive, and allow upstream communications from that ACE-provided set-top box so the customer can access services such as pay-per view using the ACE-provided box.

4 A set-top box will not decrypt programming from a cable operator unless the cable system acknowledges the device and the service is provided in a manner that the set-top box can decrypt. To receive the benefit of this waiver, the cable operator must take the necessary steps to ensure that consumer-owned ACE devices are acknowledged by the cable system and that its service is provided in a manner that will allow consumer-owned ACE devices to receive all of the programming to which the consumer subscribes.

top boxes directly from ACE;⁵ and (iii) ACE must report its refurbished set-top box sales data to the Commission as detailed below.

II. BACKGROUND

2. More than fifteen years ago, as part of the Telecommunications Act of 1996, Congress directed the Commission to adopt regulations to assure the commercial availability of navigation devices such as set-top boxes.⁶ The Commission implemented this directive in 1998 through the adoption of the integration ban, which ultimately established July 1, 2007, as the date after which cable operators were prohibited from placing into service any new navigation device that performed both conditional access and other functions.⁷ 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

⁵ As explained below, these conditions are similar to the ones we imposed on Baja Broadband Operating Company when we granted its request to deploy refurbished set-top boxes with integrated security. *See Baja Broadband Operating Company, LLC (f/k/a Orange Broadband Operating Company, LLC and Carolina Broadband, LLC) Request for Waiver of Section 76.1204(a)(1) of the Commission’s Rules*, 25 FCC Rcd 2200 (MB 2010) (“*Baja Waiver Order*”).

⁶ *See* 47 U.S.C. § 549(a) (requiring 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 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).

⁷ *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 rules, 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, 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). In April 2003, in response to a request from cable operators, the Commission extended the effective date of the integration ban until July 1, 2006. *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, 18 FCC Rcd 7924, 7926, ¶ 4 (2003) (“*Second Report and Order*”). Then, in 2005, again at the urging of cable operators, the Commission further extended that date until July 1, 2007. *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, 20 FCC Rcd 6794, 6802-03, 6814 ¶¶ 13, 31 (2005) (“*2005 Deferral Order*”).

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) (“*Cablevision Waiver*”) (citing *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”).

navigation devices from sources other than their MVPDs.⁹ In limited circumstances operators may be eligible for waiver of the integration ban.¹⁰

3. In March 2010, the Media Bureau granted Baja Broadband Operating Company, LLC (“Baja”) a waiver of the integration ban for all set-top boxes purchased from third-party vendors of refurbished boxes as long as the refurbishing company committed to offer its refurbished set-top boxes for sale directly to Baja’s subscribers.¹¹ The Bureau based the waiver on Baja’s extraordinary financial hardship and its commitment to support the commercial availability of a retail alternative to leased set-top boxes. The Bureau conditioned the waiver on Baja publicly committing to purchase refurbished devices only from companies that also commit to sell the same devices directly to Baja’s subscribers and on Baja notifying its subscribers of the retail availability of these refurbished devices and how these devices may be purchased.¹²

4. ACE filed its petition requesting waiver of the integration ban¹³ on behalf of any cable operators that purchase refurbished set-top boxes from ACE.¹⁴ In its petition, ACE argues that extending

⁹ See S. REP. 104-230, at 181 (1996) (Conf. Rep.). See also *Bellsouth Interactive Media Services, LLC*, 19 FCC Rcd 15607, 15608, ¶ 2 (MB 2004). As the Bureau has 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.” H.R. REP. NO. 104-204, at 112 (1995).

¹⁰ For example, Section 629(c) provides that the Commission shall grant a waiver of its regulations implementing Section 629(a) upon an appropriate showing that such waiver is necessary to assist the development or introduction of new or improved services. 47 U.S.C § 549(c). Furthermore, petitioners who have shown good cause have received waivers of the integration ban pursuant to Sections 1.3 and 76.7 of the Commission’s rules. See *Charter Communications, Inc. Request for Waiver of Section 76.1204(a)(1) of the Commission’s Rules*, 22 FCC Rcd 8557, 8564-5, ¶¶ 18-19 (2007).

¹¹ *Baja Waiver Order*, 25 FCC Rcd 2200, 2205-6, ¶ 13.

¹² *Id.* at 2205, ¶ 13.

¹³ The integration ban at issue in ACE’s waiver request was adopted in the *First Report and Order*. 13 FCC Rcd 14775 (1998). The D.C. Circuit rejected challenges to the integration ban on three separate occasions. See *General Instrument Corp. v. FCC*, 213 F.3d 724 (D.C. Cir. 2003) (rejecting various statutory challenges to the integration ban); *Charter Communications, Inc. v. FCC*, 460 F.3d 31 (D.C. Cir. 2006) (rejecting challenges to the Commission’s decision to retain the integration ban); *Comcast Corp. v. FCC*, 526 F.3d 763 (D.C. Cir. 2008) (rejecting challenge to the decision denying petitioner’s request to waive the integration ban). In 2013, the D.C. Circuit vacated the Commission’s *Second Report and Order* and *Order on Reconsideration*, which dealt with other navigation device-related rules but not the integration ban. See *EchoStar Satellite L.L.C. v. FCC*, 704 F.3d 992 (D.C. Cir. 2013) (“*EchoStar*”). The integration ban is therefore unaffected by the D.C. Circuit’s decision in *EchoStar*.

¹⁴ The Bureau released a public notice seeking comment on the petition on November 22, 2011. *Adams Cable Equipment Inc. Files Request for Waiver of 47 C.F.R. Section 76.1204(a)(1) with the Commission*, Public Notice, 26 FCC Rcd 16082 (MB 2011). No party filed timely comments in response to the Public Notice, but the Consumer Electronics Association and TiVo, Inc. each filed *ex parte* letters opposing the Waiver Request and Baja Broadband Operating Company, LLC and Sweetwater Cable TV Co. each filed *ex parte* letters in favor of the Waiver Request. Letter from Matthew Zinn, Senior Vice President, General Counsel, Secretary, and Chief Privacy Officer, TiVo, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, CSR-8537-Z, at 2 (filed Feb. 7, 2012) (“*February 7 TiVo Letter*”); Letter from Julie M. Kearney, Vice President, Regulatory Affairs, Consumer Electronics Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, CS Docket No. 97-80, PP Docket No. 00-67, CSR-8537-Z, at 3-4 (filed Feb. 22, 2012); Ex Parte Comments of Sweetwater Cable, CS Docket No. 97-80 (filed March 8, 2012); Letter from Paul B. Hudson, Counsel for Adams Cable Equipment, Inc.

the consumer benefits on which the Bureau based the *Baja Waiver Order* to cable operators and consumers nationwide would serve the public interest, and therefore ACE seeks waiver of the integration ban on behalf of its cable operator partners who commit to the conditions that the Bureau imposed in the *Baja Waiver Order*.¹⁵ ACE asserts that waiver “would not materially affect common reliance” because it has only 50,000 set-top boxes in inventory, which is a relatively small number when compared to the 8 million compliant set-top boxes that the cable industry has deployed every year.¹⁶

III. DISCUSSION

5. We find good cause to grant ACE’s cable operator partners a limited, conditional waiver of the integration ban.¹⁷ We find it persuasive that ACE plans to sell refurbished, integrated set-top boxes to subscribers at a much lower price than consumers could lease from their cable operators over time. ACE offers a standard definition set-top box for less than \$50, and a high definition digital video recorder (“HD DVR”) for \$300.¹⁸ In its most recent cable price survey, the Media Bureau reported that the price for leasing equipment to receive the expanded basic service from a cable operator is, on average, \$7.29 per month, and that the price continues to rise.¹⁹ Therefore, we believe that ACE’s plan, which would give consumers the option to purchase devices without incurring monthly equipment fees, serves the public interest because it will save consumers money over time. We are concerned, however, that the waiver as proposed—which would allow ACE to sell an unlimited number of refurbished integrated boxes—could have the potential to impact unduly the retail market for navigation devices because it could

and Baja Broadband Operating Company, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, CS Docket No. 97-80, PP Docket No. 00-67, CSR-8537-Z (filed March 26, 2012).

¹⁵ See Waiver Request at 2-3, Exhibit 1.

¹⁶ *Id.* at 3. Section 76.1204(b) of the Commission’s rules requires separate conditional access equipment to be “designed to connect to and function with other navigation devices available through the use of a commonly used interface or an interface that conforms to appropriate technical standards promulgated by a national standards organization.” 47 C.F.R. § 76.1204(b). Consistent with prior Commission rules, the cable industry has deployed CableCARD-reliant set-top boxes since July 1, 2007. See Waiver Request at 3; 47 C.F.R. §§ 76.640, 76.1204(a)(1); *2005 Deferral Order*, 20 FCC Rcd at 6809, ¶ 30 (requiring cable operators to rely “on an identical security function”). The CableCARD is a security device provided by a cable operator, which can be installed in a retail navigation device bought by a consumer in the retail market to allow the consumer’s television to display encrypted video programming. *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, 25 FCC Rcd 14657, 14659, ¶ 3 (2010) (“*Third Report and Order and Order on Reconsideration*”). Although the rule requiring reliance on the specific CableCARD standard was vacated by the D.C. Circuit’s recent decision in *EchoStar*, 704 F.3d 992 (D.C. Cir. 2013), given that nearly all cable operators use CableCARDS as their means to comply with the integration ban, we believe that CableCARD use will continue for the foreseeable future.

¹⁷ Section 76.1204(a)(1) of our rules prohibits cable operators from deploying set-top boxes with integrated security—it does not prohibit companies like ACE from selling such boxes to cable operators or consumers. 47 C.F.R. § 76.1204(a)(1). Therefore, with this Order we grant waiver to cable operators that deploy ACE’s refurbished boxes, subject to the Order’s conditions and limitations explained herein.

¹⁸ Letter from Paul Hudson, Counsel for Adams Cable Equipment, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission, CS Docket No. 97-80, CSR-8537-Z, at 1-2 (filed Jan. 25, 2012); Waiver Request at 3.

¹⁹ ACE also reports that, in comparison, a TiVo HD DVR would cost a subscriber nearly \$700 with service fees. Letter from Paul Hudson, Counsel for Adams Cable Equipment, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission, CS Docket No. 97-80, CSR-8537-Z, at 1-2 (filed Jan. 25, 2012); Waiver Request at 3.

reduce cable operators' common reliance on separated security.²⁰ Therefore, we limit the relief to ACE's current inventory of 50,000 set-top boxes to ensure that the impact on common reliance is *de minimis*.²¹ In addition, we condition relief on ACE's cable operator partners' compliance with conditions similar to those we imposed in the *Baja Waiver Order*.²² Specifically, to assure that cable subscribers are able to realize the benefits of ACE's retail option, we require any cable operator that wishes to take advantage of this waiver to file a declaration in CS Docket No. 97-80 committing to the activation, support, and consumer notification conditions of this waiver that we detail below. This declaration must be filed 30 days before the cable operator deploys the first integrated set-top box that it purchases from ACE. We also prohibit cable operators from charging any service fee in conjunction with the box, because our analysis is based on the fact that this waiver will save consumers money over time; if a cable operator charges a monthly service fee related to the box (e.g., a service fee for programming guides or for digital service), then the consumer would face an inflated cost that may not result in the savings on which this waiver is premised.²³ Finally, we require ACE to file 6-month and 12-month reports that detail the number of devices sold directly to consumers as opposed to cable operators. We believe that granting a waiver with these conditions and limitations will not undermine the general purpose of our rules requiring common reliance, will permit the Commission to monitor the impact of the waiver, and will offer consumers a new commercial alternative for purchasing set-top boxes at a reduced price. Therefore, as conditioned and limited below, we grant ACE's request for waiver.

6. ACE claims that waiver would benefit consumers because it would "save[] operators and consumers significant amounts of money," and the "savings small operators would receive from the availability of refurbished set-top boxes would enable them to deliver more advanced devices and services to their small and rural markets."²⁴ Moreover, ACE claims that waiver "would not materially affect common reliance or the effectiveness of the integration ban" because there are few integrated set-top boxes available for ACE to refurbish.²⁵ While no commenter disputes ACE's reduced cost claim, CEA argues that granting a waiver would be counter to Commission precedent and the goals of Section 629 because ACE's boxes are not based on the "private sector industry standards" that the Commission

²⁰ See *Cablevision Waiver*, 22 FCC Rcd at 226, ¶ 19 ("the Commission's intent was to require cable operators to rely upon the identical separate-security solution as consumer electronics manufacturers.").

²¹ Waiver Request at 3. As discussed below, CEA has argued that we are prohibited from "eviscerat[ing common reliance] via waiver." Letter from Julie M. Kearney, Vice President, Regulatory Affairs, Consumer Electronics Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, CS Docket No. 97-80, PP Docket No. 00-67, CSR-8537-Z, at 4 (filed Feb. 22, 2012). The cable industry has deployed more than 40 million separated-security set-top boxes, and the overwhelming majority of set-top boxes that cable operators deploy in the future will comply with the integration ban. Letter from Neal M. Goldberg, Vice President and General Counsel, National Cable & Telecommunications Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, CS Docket No. 97-80, at 1 (filed April 30, 2013). Because of the large number of separated-security boxes in the field—and the cable industry's continued reliance on separated-security in the majority of their boxes—waiver of our regulation with respect to 50,000 set-top boxes will have *de minimis* impact on common reliance.

²² See *Baja Waiver Order*, 25 FCC Rcd at 2205, ¶ 13.

²³ In an ex parte filing, ACE explained that other retail set-top box options charge a monthly service fee that inflates the cost of the device for consumers. Letter from Paul Hudson, Counsel for Adams Cable Equipment, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission, CS Docket No. 97-80, CSR-8537-Z, at 2 (filed Feb. 15, 2012).

²⁴ Waiver Request at 3.

²⁵ *Id.* at 3.

adopted pursuant to Section 629, and upon which separated-security devices must rely.²⁶ We agree with ACE that consumers will benefit if they have the option to purchase at retail low-cost equipment that can receive cable service rather than renting that equipment from their cable operators.²⁷ We disagree with CEA's contention that waiver in this instance will undermine the goals of Section 629. Unfortunately, the retail market for devices based on separated-security standards has not flourished as the Commission envisioned,²⁸ and consumers are not fully realizing the benefits of competition that Congress intended in adopting Section 629.²⁹ A limited waiver, as described herein, will offer subscribers a low-cost retail alternative to leasing equipment from their cable operators. At the same time, given the limited scope of this waiver, we believe that it will have only a negligible impact – if any – on the effectiveness of the integration ban. The overwhelming majority of navigation devices deployed by cable operators are fully compliant with the integration ban. The nine largest incumbent cable operators currently support over 604,000 retail devices (which access the cable operators' video programming and services through the use of a cable operator-supplied CableCARD) and over 40 million separated-security leased devices (*i.e.*, CableCARD reliant devices).³⁰ Even if it turns out to be the case that only “a handful of consumers have or will purchase refurbished set-top boxes,”³¹ we believe that the benefit of providing consumers with a \$40 set-top box option (with “no service or rental fees for the life of the box”)³² will outweigh the

²⁶ Letter from Julie M. Kearney, Vice President, Regulatory Affairs, Consumer Electronics Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, CS Docket No. 97-80, PP Docket No. 00-67, CSR-8537-Z, at 3-4 (filed Feb. 22, 2012).

²⁷ See Letter from Paul Hudson, Counsel for Adams Cable Equipment, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission, CS Docket No. 97-80, PP Docket No. 00-67, CSR-8537-Z, at 1 (filed Feb. 3, 2012).

²⁸ *Third Report and Order and Order on Reconsideration*, 25 FCC Rcd 14660-1, ¶ 5. Subsequent to the release of the *Third Report and Order and Order on Reconsideration*, Arris discontinued retail sale of the Moxi set-top box. Mark Seavy, *Arris Drops Moxi HD DVR, Moxi Mate, But Won't Scrap Service*, CONSUMER ELECTRONICS DAILY, March 5, 2012, available at <http://consumerelectronicdaily.com/Content/Arris-drops-Moxi-products.aspx>. See also Letter from Melissa Marks, General Counsel, Boxee, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission, MB Docket No. 11-169, at Attachment at 14-15 (“CableCARD is not the Answer . . . Start-ups focus on (and invest their limited capital in) the future of technological innovation, and software-based standards provide the most exciting opportunities for integrating MVPD content and services into the living room like never before.”).

²⁹ See *Third Report and Order and Order on Reconsideration*, 25 FCC Rcd at 14660, ¶ 4 (“Unfortunately, the Commission's efforts to date have not developed a vigorous competitive market for retail navigation devices that connect to subscription video services.”).

³⁰ Letter from Neal M. Goldberg, Vice President and General Counsel, National Cable & Telecommunications Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, CS Docket No. 97-80, at 1 (filed April 30, 2013). As explained *supra* in note 16, CableCARD is the *de facto* standard for separated security.

³¹ Letter from Matthew Zinn, Senior Vice President, General Counsel, Secretary, and Chief Privacy Officer, TiVo, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, CSR-8537-Z, at 2 (filed Feb. 7, 2012) (“*February 7 TiVo Letter*”). In its letter, TiVo states that ACE has not disclosed how many consumers have purchased set-top boxes from ACE under the Baja waiver. On January 11, 2011, Baja Broadband reported that it activated 122 consumer purchased set-top boxes, and had added 2000 new digital subscribers in total. See Baja Broadband's Report of Updated Financial Information and Request for Clarification, CSR-7111-Z, at 1-2 (filed Jan. 11, 2011).

³² See Letter from Paul Hudson, Counsel for Adams Cable Equipment, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission, CS Docket No. 97-80, PP Docket No. 00-67, CSR-8537-Z, at 1-2 (filed Jan. 25, 2012). TiVo highlights that the Bureau granted Baja a waiver based on “non-speculative, extraordinary financial hardship,” and that ACE's request is not based on financial hardship. *February 7 TiVo Letter* at 2-3; Letter from Matthew Zinn, Senior Vice President, General Counsel, Secretary, and Chief Privacy Officer, TiVo, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, CSR-8537-Z, at 1 (filed Feb. 17, 2012). But as we explain here, we grant this waiver based on a different public interest benefit: providing consumers with the option

negligible effect that 50,000 integrated set-top boxes will have in a market that already boasts more than 40 million separated-security set-top boxes.

7. We share CEA and TiVo's concern that ACE's intent, as described in its waiver request, was to sell most of its refurbished set-top boxes to cable operators rather than to subscribers.³³ To ensure that consumers realize the benefit of also being able to purchase inexpensive set-top boxes, we grant relief subject to certain conditions. First, to verify that consumers will actually have the benefit of a competitive, affordable retail set-top box option, we condition this waiver on ACE's cable operator partners adhering to the same conditions that the Bureau imposed in the *Baja Waiver Order*.³⁴ That is, any operator that intends to purchase ACE equipment must publicly commit to allow ACE to sell the same devices directly to the cable operator's subscribers and commit to activate and support those devices by filing a declaration as set forth in Attachment B to this order with the Commission in CS Docket No. 97-80 before purchasing ACE equipment.³⁵ As set forth in that declaration, and as ACE volunteered in the Waiver Request, the operator shall affirm that it commonly relies on CableCARDS³⁶ in some of its devices and commit to continue to support CableCARDS in consumer-owned retail devices;³⁷ this will help to ensure that CableCARD support remains robust.³⁸ In addition, at least 30 days before it deploys the first integrated set-top that it purchases from ACE, an operator must notify all of its subscribers about the retail availability of refurbished devices as set forth in Attachment A to this Order.³⁹ Second, to allow us to assess whether consumers are purchasing ACE's devices,⁴⁰ we also require ACE to compile certain sales information and share it with the Commission. Specifically, ACE must provide the Commission with a 6-month and 12-month report detailing (i) the number of set-top boxes sold directly to subscribers and (ii) the number of set-top boxes sold to its cable operator partners. These reports shall organize the

to purchase a low-cost converter box which, as noted above, is limited in scope so will have a negligible impact on the overarching goals of the integration ban.

³³ *February 7 TiVo Letter* at 1-2; Letter from Julie M. Kearney, Vice President, Regulatory Affairs, Consumer Electronics Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, CS Docket No. 97-80, PP Docket No. 00-67, CSR-8537-Z, at 2-4 (filed Feb. 22, 2012). *See also* Waiver Request at 3-4; *February 15 ACE Ex Parte* at 2.

³⁴ *See Baja Waiver Order*, 25 FCC Rcd at 2205, ¶ 13; *see also* Waiver Request at 2-3, Exhibit 1.

³⁵ As ACE states in the Waiver Request, it needs "careful coordination and support" from cable companies to make sure that the set-top boxes that ACE sells directly to subscribers are compatible with the cable systems, to market the devices, and to assure that the operator supports ACE's devices. Waiver Request at 4.

³⁶ As explained above, nearly all cable operators use CableCARDS as their means to comply with the integration ban. *See, supra*, note 16. In addition, set-top boxes currently offered at retail access the cable operators' video programming and services through the use of a cable operator-supplied CableCARD. *See, supra*, ¶ 6.

³⁷ Waiver Request at 2-3, Exhibit 1.

³⁸ The Commission has found that cable operators' common reliance on identical security in their leased set-top boxes improves support for consumer-owned devices. *See, infra*, ¶ 8.

³⁹ This notice is this in addition to existing notification rules regarding products offered. *See* 47 C.F.R. § 76.1602(b). This notice is not subject to Office of Management and Budget approval under the Paperwork Reduction Act because the notice is "public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public," and therefore is not a "collection of information." 5 C.F.R. § 1320.3(c)(2).

⁴⁰ This waiver will also provide useful information in assessing whether subscribers generally are interested in purchasing set-top boxes, rather than leasing them through their cable operator. *See* Montgomery County, MD Comments, CS Docket No. 97-80, at 5-10 (filed July 13, 2010).

sales by model type, including the average cost charged for each device.⁴¹ ACE shall file the reports in CS Docket Number 97-80 and compile the information for the 6 and 12-month intervals from the date on which it makes its first sale subject to this Order.⁴² We will use this information to monitor the benefits that consumers realize from this waiver, and evaluate whether the waiver has had any effect on cable operators' support of competitive retail devices.⁴³ We conclude that these conditions will help to ensure that ACE does not focus solely on selling devices to cable operators and that cable subscribers are able to realize the benefits of another retail set-top box option. We reserve the right to revoke this waiver if the reports indicate that consumers do not realize its benefits.

8. As mentioned above, to limit the potential for this waiver to have an adverse effect on common reliance, we extend waiver relief only to ACE's existing inventory.⁴⁴ The Commission has consistently taken the position that cable operators' common reliance on identical security in their leased set-top boxes improves support for consumer-owned devices: "if MVPDs must take steps to support their own compliant equipment, it seems far more likely that they will continue to support and take into account the need to support services that will work with independently supplied and purchased equipment."⁴⁵ Although the Bureau and Commission have granted limited waivers of the integration ban in the past, the fact that the ten largest incumbent cable operators have deployed over 40 million CableCARD set-top boxes demonstrates our commitment to common reliance.⁴⁶ We do not expect that the limited waiver granted here will undermine common reliance because it is limited to ACE's existing inventory of 50,000 set-top boxes, which represents a *de minimis* percentage of the set-top box market.⁴⁷

⁴¹ If ACE charges different amounts to cable operator customers as opposed to subscribers, ACE must report the average cost for a cable operator customer separately from the average cost for a cable subscriber.

⁴² ACE shall file these reports within 10 days after the reporting deadline. For example, if ACE makes its first sale on July 1, 2013, then the 6-month report shall detail the sales for the period from July 1, 2013 through January 1, 2013, and ACE shall file the 6-month report no later than January 11, 2014.

⁴³ See Letter from Neal Goldberg, Vice President and General Counsel, National Cable & Telecommunications Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, CS Docket No. 97-80, at 1 (filed April 30, 2013) ("[S]ince the 'integration ban' went into effect on July 1, 2007, [the nine largest incumbent cable operators] have also deployed more than 40,000,000 operator-supplied set-top boxes with CableCARDs."); 47 C.F.R. § 76.1204(b) (requiring conditional access equipment to connect to devices "through the use of a commonly used interface or an interface that conforms to appropriate technical standards promulgated by a national standards organization.").

⁴⁴ See *supra* ¶ 5.

⁴⁵ 2005 Deferral Order, 20 FCC Rcd at 6809, ¶ 30.

⁴⁶ See Letter from Neal M. Goldberg, Vice President and General Counsel, National Cable & Telecommunications Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, CS Docket No. 97-80, at 1 (filed April 30, 2013).

⁴⁷ Waiver Request at 3. ("The company has approximately 50,000 integrated devices stranded in its inventory, while nationally the cable industry deploys more than 8 million set-top boxes a year."). ACE argues that we should not impose any limit on the waiver because limits are not necessary to protect the goals of the integration ban. To support this argument, ACE points to the Commission's decision to exempt one-way, non-recordable set-top boxes ("DTAs") from the integration ban: "The Commission did not limit DTA relief to small or financially struggling cable operators, and should not do so in this case either." *February 15 ACE Ex Parte* at 2-3. This case is distinguishable—the Commission based its decision in *Evolution Broadband* on an avenue for waiver of the integration ban that it established in a rulemaking proceeding and had determined would not impair common reliance. See 2005 Deferral Order, 20 FCC Rcd at 6814-15, ¶ 37; *Evolution Broadband, LLC's Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, 24 FCC Rcd 7890 (2009). In this case, we are presented with a new factual situation—the wholesale and retail sale of refurbished low-cost integrated set-top boxes—and thus believe

In addition, the conditions we place on the waiver will ensure that the public interest benefit on which we grant this waiver – *i.e.*, providing consumers with the option to purchase low-cost equipment – will be realized.⁴⁸

IV. CONCLUSION

9. We conclude that limited, conditional grant of ACE’s request for waiver would serve the public interest, and therefore is granted under Sections 1.3 and 76.7 of the Commission’s rules.⁴⁹

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 request for waiver of the second sentence of Section 76.1204(a)(1) of the Commission’s rules,⁵⁰ 47 C.F.R. § 76.1204(a)(1), filed by Adams Cable Equipment, Inc., **IS GRANTED** with conditions 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

it necessary to limit the waiver so we may fully analyze the claimed benefits to consumers and any effects that it may have on common reliance and the existing retail market.

⁴⁸ See *February 15 ACE Ex Parte* at 2.

⁴⁹ 47 C.F.R. §§ 1.3, 76.7.

⁵⁰ This sentence reads, “Commencing on July 1, 2007, no multichannel video programming distributor subject to this section shall place in service new navigation devices for sale, lease, or use that perform both conditional access and other functions in a single integrated device.” 47 C.F.R. § 76.1204(a)(1).

ATTACHMENT A

We have entered into an agreement with Adams Cable Equipment that gives you the option to purchase a cable set-top box instead of leasing a box from us. If you purchase and use a cable box from Adams Cable Equipment for each of your televisions and return the set-top boxes that we provided to you, you will no longer need to pay us to lease a set-top box. If you wish to purchase a cable box, you may visit <http://www.adamscableequipment.com>. No action is necessary if you do not wish to purchase your own set-top box.

Please note that any set-top box that you purchase from Adams Cable Equipment is not guaranteed to work with other cable providers, and any claims for warranty for the boxes must be made directly to Adams Cable Equipment. The boxes [WILL/WILL NOT] work across our entire footprint.

ATTACHMENT B
DECLARATION OF ACCEPTANCE OF WAIVER CONDITIONS

I [Name], having been duly sworn, do hereby declare as follows:

1. I am [TITLE] of [MVPD Name] (the "Company").
2. I am submitting this Declaration on behalf of the Company, pursuant to paragraph 5 of the Memorandum Opinion and Order issued by the Federal Communications Commission's Media Bureau (DA 13-1658) in CS Docket No. 97-80 on July 26, 2013 (the "Order").
3. On behalf of the Company, I hereby represent that the Company hereby accepts and agrees to comply with the conditions set forth in the Order in connection with the Company's acquisition and deployment to its customers of integrated set-top boxes refurbished by Adams Cable Equipment, Inc.
4. In this regard, the Company commits to activate and support such set-top boxes and to comply with the consumer notification requirements set forth in the Order.
5. I hereby further certify that Company has deployed CableCARDS in certain of its leased set-top boxes, and that it will support its customers' use of CableCARDS in retail devices in accordance with Part 76 of the Commission's rules, including, but not limited to the requirements set forth in the Commission's Third Report and Order and Order on Reconsideration in Docket No. CS 97-80, FCC 10-181, released October 14, 2010.
6. I have direct personal knowledge of the matters asserted herein and have received from the Company the required authority to make the foregoing representations and commitments on its behalf.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on [DATE].

[SIGNATURE]