

February 27, 2007

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: *Ex Parte*: In the Matter of Comcast Corporation's Request for Waiver of 47 C.F.R. § 76.1204(a)(1), CSR-7012-Z, CS Docket No. 97-80.

Dear Ms. Dortch:

On February 26, 2007, Jim Casserly, Willkie Farr & Gallagher LLP, and the undersigned met with Heather Dixon, legal advisor to Chairman Martin, and Krista Witanowski, Office of Strategic Planning and Policy Analysis, to discuss Comcast's application for review in the above-captioned proceedings. Both of the attached handouts were distributed at the meeting, and the first summarizes the information and arguments that were presented in the discussion.

Kindly direct any questions regarding this matter to my attention.

Sincerely,

/s/ Jonathan Friedman
Jonathan Friedman
Counsel for Comcast Corporation

Attachments

cc: Heather Dixon
Krista Witanowski

**THE FCC'S MEDIA BUREAU REFUSAL TO GRANT THE COMCAST WAIVER FOR
LOW-COST-SET-TOP BOXES IMPOSES UNNECESSARY COSTS ON CONSUMERS.
IMMEDIATE CORRECTIVE ACTION IS REQUIRED.**

The Bureau flouted the FCC's guidance about preserving a low-cost set-top box option for consumers.

- In a 2005 Order, all five FCC Commissioners agreed that the availability of low-cost set-top box options for consumers “should *not* [be] displace[d].” They recognized that the continued availability of low-cost boxes was “critical” and expressly invited requests for waivers of the integration ban to achieve that. Their counsel assured three federal judges that the FCC had “promised to mitigate” the harms of applying the integration ban to low-cost boxes.
- Relying on what the FCC said, Comcast sought a waiver for three models of low-cost boxes that fit FCC's guidance to a “T.” They are the lowest cost, most limited capability digital set-top boxes that have ever been built. They provide a cost-effective way for consumers to access digital programming and other services, including parental controls, a program guide, and video-on-demand services. They also will help Comcast to accelerate its transition to an all-digital network.
- But the FCC Media Bureau Chief did not follow the guidance in the 2005 Order. Acting on authority purportedly delegated by the Commission, the Bureau issued a decision that eliminates a pro-consumer option that the Commission intended to preserve. *Incredibly, although concern over consumer costs was the touchstone of the Commission's 2005 Order, the Bureau decision did not even discuss it.* The Bureau ignored record evidence that imposing a CableCARD requirement on low-cost boxes will cost consumers an estimated \$200-300 million per year.

The Bureau violated the pro-innovation waiver standard in Section 629(c) of the Communications Act.

- Congress instructed the FCC that any navigation device rule that hinders innovation must be waived. The Bureau arbitrarily decided to construe this Congressional directive “narrowly,” ignored substantial evidence from consumer groups, CE companies, and others that the waiver would promote new and improved services for consumers, and failed to act on the waiver request for 266 days (despite the statutory requirement for action on waiver requests within 90 days).
- The Bureau also arbitrarily decided that waivers under the 2005 Order should be limited to one-way devices. Consumers have no interest in using one-way boxes, manufacturers have no interest in building them, and Comcast and other operators have no interest in deploying them. It is senseless to deprive consumers of a low-cost way to access interactive services, especially when two-way services like VOD are crucial to driving demand for digital.

The Bureau adopted new policies that conflict with law and policy set by Congress and the FCC.

- The Bureau unilaterally determined that the FCC's waiver policy should be premised on cable operators discontinuing their delivery of analog signals by February 2009 (when most analog TV broadcasting will cease). This is not FCC policy, and it would increase consumer disruption and expense. Perversely, the Bureau decision will *slow* Comcast's transition to digital.
- The Bureau made up new policies regarding pricing and packaging of new programming tiers, deciding -- contrary to the Communications Act and the Constitution -- that low-cost boxes can have waivers only if they are used to access certain services that are marketed in certain ways.

Comcast has made a strong pro-consumer case for its waiver request. The FCC should grant the waiver without further delay.

Set-Top Box Waiver Requests: Status Report

	Waiver Applicant	Date of Filing	Date of Public Notice	Dates of Comments/Replies	Date of Bureau Decision	Days Elapsed¹	Description of Bureau Decision
1	Comcast ²	4/19/06	5/17/06	6/15/06; 6/30/06	1/10/07	266	Denial
2	Charter	7/14/06	8/29/06	9/18/06; 9/28/06	No decision yet.	227	No decision yet.
3	Verizon	8/8/06	8/29/06	9/18/06; 9/28/06	No decision yet.	202	No decision yet.
4	NCTA	8/16/06	10/31/06	11/20/06; 12/11/06	No decision yet.	194	No decision yet.
5	BendBroadband	10/4/06	10/31/06	11/20/06; 12/15/06	1/10/07	98	Conditional grant
6	Armstrong Utilities	11/6/06	2/12/07	3/5/07; 3/15/07	No decision yet.	112	No decision yet.
7	Sunflower Broadband	11/20/06	2/12/07	3/5/07; 3/15/07	No decision yet.	98	No decision yet.

¹ Days elapsed are measured from the date of filing to the date of the Bureau decision or, where no decision has been made, from the date of filing to the date this chart was last updated (*i.e.*, 2/26/07). Column entries in bold indicate where the number of days elapsed exceeds the 90-day period for FCC determinations set forth in the Communications Act. *See* 47 U.S.C. 549(c) (“Upon an appropriate showing, the Commission shall grant any such waiver request within 90 days of any application filed under this subsection[.]”).

² Rows that are shaded indicate where the waiver request has been decided by the Media Bureau.

	Waiver Applicant	Date of Filing	Date of Public Notice	Dates of Comments/Replies	Date of Bureau Decision	Days Elapsed ¹	Description of Bureau Decision
8	Cablevision	11/27/06	12/18/06	1/8/07; 1/9/07 ³	1/10/07	44	Grant for two years
9	RCN	12/5/06	2/12/07	3/5/07; 3/15/07	No decision yet.	83	No decision yet.
10	Suddenlink	12/5/06	2/12/07	3/5/07; 3/15/07	No decision yet.	83	No decision yet.
11	City of San Bruno	12/14/06	2/12/07	3/5/07; 3/15/07	No decision yet.	74	No decision yet.
12	Bresnan	12/19/06	2/12/07	3/5/07; 3/15/07	No decision yet.	69	No decision yet.
13	Liberty Cablevision of Puerto Rico	2/14/07	No Public Notice yet.	No filing dates established yet.	No decision yet.	12	No decision yet.
14	GCI Cable	2/16/07	No Public Notice yet.	No filing dates established yet.	No decision yet.	10	No decision yet.
15	JetBroadband	2/22/07	No Public Notice yet.	Not filing dates established yet.	No decision yet.	4	No decision yet.

³ The Media Bureau's Public Notice set 1/18/07 as the reply date, but Cablevision filed its reply on 1/9/07 -- one day before the Bureau issued its order granting the waiver request.