

ET 07-62

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MAR 29 2007

Federal Communications Commission  
Office of the Secretary

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of )  
 )  
Petition of Electric Mirror, LLC )  
 ) ET \_\_\_\_\_  
For Temporary Waiver of Section 15.117 )  
Of the Commission's Rules )  
 )

To: Chief, Office of Engineering and Technology

**PETITION FOR WAIVER**

Electric Mirror, LLC ("EMLLC"), by its attorneys and pursuant to Section 1.3 of the Commission's rules, respectfully requests a temporary, six-month waiver of Section 15.117 of the Commission's rules mandating inclusion of a DTV tuner in all receivers by March 1, 2007.<sup>1</sup> A temporary waiver of the DTV tuner mandate for EMLLC's highly specialized video systems, which are designed for -- and sold almost exclusively to -- hotels, is in the public interest because it would facilitate the DTV transition for this niche market and also place EMLLC in a similar position to the other small manufacturers of niche DTV receivers that recently received longer, twelve-month waivers.

This waiver request is similar to the waivers recently granted by the Commission to Sumitomo Canada and PDI Communications Systems, Inc.<sup>2</sup> The Commission stated in those cases that a one-year extension of the DTV tuner deadline would "serve the public interest without otherwise compromising our goals for ensuring that consumers are able to view

<sup>1</sup> 47 C.F.R. §§ 1.3 and § 15.117.

<sup>2</sup> *Petition of Sumitomo Canada Limited for Temporary Waiver of Section 15.117 of the Commission's Rules*, DA 07-24, released Jan. 5, 2007 ("*Sumitomo Order*"); *Requirements for Digital Television Receiving Capability*, Order, ET Dkt. No. 05-24, FCC 06-123, released Aug. 17, 2006 ("*PDI Order*").

broadcasters' digital television signals."<sup>3</sup> The circumstances facing EMLLC are very similar to those facing PDI and Sumitomo and justify grant of this even shorter temporary waiver request.

## I. BACKGROUND

The Commission's rules require all new broadcast television receivers with screen sizes less than 25" to have a DTV tuner by March 1, 2007.<sup>4</sup> Section 15.117(i) of the Commission's rules specifically provides:

(i) Digital television reception capability implementation schedule. (1) Responsible parties, as defined in § 2.909 of this chapter, are required to equip new TV broadcast receivers that are shipped in interstate commerce or imported from any foreign country into the United States and for which they are responsible to comply with the provisions of this section in accordance with the following schedule:

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-- Receivers with screen sizes less than 25" -- 100% of all such units must include DTV tuners effective March 1, 2007.

EMLLC manufactures and distributes mirrors with built-in televisions designed specifically for hotels to use with their closed circuit video systems; EMLLC has carried this product line for almost three years, and it now provides almost half of EMLLC's annual revenues. EMLLC's principal products, which are mirrors combined with television sets, are very unique. They contain an ultra-thin LCD-TV, which is no more than one inch thick with a seamless flat edge, integrated into a mirror. EMLLC manufactures its systems by utilizing specialized televisions designed and supplied by third parties.<sup>5</sup> Because of the extreme thinness of the sets, EMLLC has had great difficulties obtaining the components necessary to meet the March 1, 2007 deadline. At this point, the need for a waiver arises from problems with third party suppliers of components that are essential to manufacture of the overall units. On a very

<sup>3</sup> *PDI Order* at ¶ 10.

<sup>4</sup> *Requirements for Digital Television Receiving Capability, Second Report and Order*, 20 FCC Rcd 18,607 (2005) ("Second Report and Order").

<sup>5</sup> Declaration of James Mischel at ¶ 4.

limited basis, EMLLC also offers slightly thicker "Spa TVs" which are intended to be embedded in walls.<sup>6</sup>

The units are connected to a central system by a coaxial cable that provides video programming.<sup>7</sup> The sets have no place to attach an over-the-air antenna. While hotels may select cable, satellite, or broadcast programming as the source of video from the central unit, the hotels with which EMLLC deals use cable or satellite as the source of video programming for the units. The units typically are not used as the primary televisions for a hotel room, but to provide ancillary viewing capability in a vanity mirror. EMLLC is not aware of any hotels utilizing an over-the-air signal to transmit it to the television screens.<sup>8</sup> It is impossible to use off-the-shelf consumer receivers in connection with these mirror products.<sup>9</sup>

## II. A SIX-MONTH EXTENSION WOULD BE IN THE PUBLIC INTEREST.

EMLLC is a "responsible party," under Section 15.117, and thus needs to comply with the DTV tuner mandate absent a Commission waiver. As the Commission has repeatedly recognized, a "rule may be waived where the particular facts make strict compliance inconsistent with the public interest. In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis."<sup>10</sup> Applying the March 1, 2007 deadline to EMLLC would impede the ability of EMLLC to deliver these specialized video units to its customers in the hotel industry. For these reasons, a six-month extension of the DTV tuner mandate is warranted.

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<sup>6</sup> *Id.* at ¶ 2

<sup>7</sup> *Id.* at ¶ 5.

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

<sup>9</sup> *Id.*

<sup>10</sup> *Request for Waiver of the Decision of the Universal Service Administrator by Douglas-Omaha Tech. Comm'n, Omaha, Nebraska*, Order, 21 FCC Rcd 9277, 9279 (2006) (concluding that "waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule"). See also *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

**A. Strict Application of the March 1, 2007 Deadline Would Impose Substantial Burdens Without Providing Any Offsetting Benefits.**

As noted above, EMLLC does not generally sell the monitors to individual consumers. Virtually all of EMLLC's customers for these specialized systems have been hotels.<sup>11</sup> As a consequence of the limited niche market for these systems, the companies that design and manufacture the necessary component equipment understandably have given first priority to television manufacturers that sell mainstream products in larger markets.<sup>12</sup> Early in 2006, EMLLC had initiated discussions with its suppliers for the development of the necessary components in connection with the Commission's DTV tuner mandate, and it had hoped it would not need a waiver. Last-minute issues have arisen, however, and EMLLC now believes that the process of bringing its systems into compliance with the requirement of section 15.117 will take six months beyond the currently applicable deadline.<sup>13</sup>

A six-month waiver is in the public interest in these circumstances because strict application of the March 1, 2007 deadline would impose substantial burdens on the public and on EMLLC without providing any offsetting benefits. Without a waiver, EMLLC will not be in a position to supply any new or replacement units to hotels after March 1, 2007. These customers, who are relying on use of EMLLC's unique sets in the design of their facilities, will be harmed, as will their guests who have come to expect state-of-the-art amenities. A short-term waiver would also permit EMLLC to supply replacement units as it concludes the process of working with its suppliers to design and manufacture the necessary equipment.

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<sup>11</sup> Declaration of James Mischel at ¶ 6. Only one percent of the company's customers have been individuals. During the period of the waiver, EMLLC is willing to restrict its sales to hotels. *Id.*

<sup>12</sup> *Id.* at ¶ 4. See also *PDI Order* at ¶ 10 (recognizing delays due to safety concerns and position as smaller manufacturer).

<sup>13</sup> *Id.* at ¶¶ 4 and 7.

A short six-month waiver would not defeat the purpose of the rule. The Commission, in applying the DTV tuner requirement to receivers with small screen sizes, observed that “the portable and typically battery-powered products in this category are more likely to be used to receive off-the-air signals and to not have inputs for connection to a separate DTV receiver.”<sup>14</sup> Relying on this judgment, the Commission concluded that “sets with screen sizes less than 13 inches would generally not be useful to consumers once analog television service ceases.”<sup>15</sup> This is not a significant concern here. As noted above, EMLLC’s viewing units virtually always receive their programming from a central unit in a system that supplies cable or satellite programming. Nor are the viewing units portable or battery powered. They are designed to be embedded in a fixed mirror.

**B. A Waiver Would Be Very Consistent With Commission Precedent.**

As noted above, the Commission has granted one-year extensions of the DTV tuner deadline to two other manufacturers and distributors of specialty equipment.<sup>16</sup> In those cases, the Commission found that the temporary waiver would serve the public interest without “compromising our goals for ensuring that consumers are able to view broadcasters’ digital television signals.”<sup>17</sup>

The development of a very thin television capable of meeting the unique needs of the hotel industry, while also incorporating a digital tuner, has been a difficult challenge, one that EMLLC originally hoped it could meet by the March 1, 2007 deadline. The Commission has already recognized the difficulties of meeting the specialized needs of niche markets as well as

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<sup>14</sup> *Second Report and Order* at ¶ 25.

<sup>15</sup> *Id.*

<sup>16</sup> *Sumitomo Order* and *PDI Order*.

<sup>17</sup> *Id.* at ¶ 10.

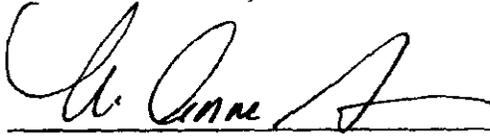
the fact that these markets have not been a principal concern of component suppliers.<sup>18</sup> EMLLC believes that it will need a waiver only half as long as those the FCC has already granted to other manufacturers of specialized televisions.

\* \* \* \* \*

EMLLC is dedicated to providing hotels equipment that can satisfy their unique needs -- and the needs of their guests -- in a safe and cost-effective manner. EMLLC has taken steps to equip its systems with digital tuners, but this process will not conclude by March 1, 2007. EMLLC therefore requests a six-month extension of the deadline for coming into compliance with the DTV tuner requirement and submits that such a waiver of such a short length is in the public interest.

Respectfully submitted,

**ELECTRIC MIRROR, LLC**

By 

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of

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February 28, 2007

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<sup>18</sup> *Id.* at ¶ 10.

## DECLARATION OF JAMES MISCHER

1. I am the founder, president, chief designer, and majority owner of Electric Mirror, LLC ("EMLLC"). The company has been in existence since October 1998 and began adding a unique mirror-embedded television product to its product line in 2004. This product now accounts for approximately 50 percent of our revenues. EMLLC is a small company with only 35 employees and very limited financial resources.

2. EMLLC manufactures and distributes mirrors with built-in televisions. The product is designed specifically for hotels to use as ancillary viewing units in their cable-fed closed circuit video systems. The product contains an ultra-thin LCD-TV, which is no more than one inch thick with a seamless flat edge, integrated into a mirror. Given the very thin nature of the TV, it requires specialized components that take longer to develop than standard TVs. EMLLC also produces a limited line of North Star™ Spa TVs; these units are three inches thick and are embedded in walls rather than mirrors.

3. As shown on EMLLC's website, its mirrors are offered in three categories: framed, polished, and illuminated. All three have the same television integrated into them. The televisions almost always have 15-inch screens; EMLLC occasionally sells a mirror-television combination with a seven-inch screen. Our 2006 sales demonstrate that our business is small; in 2006, we sold approximately 1,400 units with 15-inch screens and five units with seven-inch screens.

4. EMLLC purchases televisions fully assembled from two foreign suppliers, and then EMLLC integrates the televisions into the mirrors. Since May 2006, we have been working with our suppliers to meet EMLLC's need for television units that incorporate digital tuners. EMLLC representatives met with the suppliers in fall 2006 to push the issue more strenuously.

Our suppliers indicated they were having problems obtaining tuners. Because of the limited market for these systems, the companies that design and manufacture the necessary components have given first priority to television manufacturers that sell mainstream products in larger markets. We received a prototype of a television with a digital tuner from one of our suppliers earlier this month. We believed that this television with a tuner would meet EMLLC's needs, but we now find the television's size is too large to allow manufacture of our product. There are other design and component issues not related to the tuner.

5. The hotels to which we sell EMLLC's products have internal distribution systems. They supply cable or satellite content to the mirror televisions over coaxial cable. EMLLC only sells the hotels television sets integrated into the mirrors. The televisions have no place to attach an over-the-air antenna. The hotels use cable or satellite as the source of video programming for the units. The central unit can theoretically receive an over-the-air signal and transmit it to the television screens if the hotel chooses not to utilize cable or satellite, but I am not aware of any hotel relying on over-the-air reception. In connection with the mirror television product line, it is impossible to use off-the-shelf consumer receivers.

6. EMLLC sells almost exclusively to hotels. Some 99 percent of its products are sold to the hotel industry. During the period of a waiver, EMLLC is willing to restrict its sales to only the hotel market. Many of the hotel projects EMLLC participates in require years of development. The TVs for these projects are typically specified many months prior to their purchase.

7. While EMLLC would feel most comfortable with a 12-month waiver of the March 1, 2007 deadline, we believe that, working with great diligence, we will be able to meet a six-month deadline of September 1, 2007. Without a waiver, EMLLC will suffer extreme

financial hardship and will have to lay off employees, and I cannot state with any certainty that we can remain in business.

8. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

  
James Michel

February 28, 2007

**CERTIFICATE OF SERVICE**

I, Tammi Foxwell, a secretary at the law firm of Dow Lohnes PLLC, do hereby certify that on this 28<sup>th</sup> day of February, 2007, I caused a copy of the foregoing "Petition for Waiver" to be sent via electronic mail to the following:

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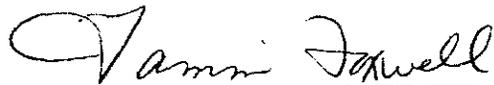
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