

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of )  
 )  
Petition of Electric Mirror, LLC )  
 ) ET Docket No. 07-62  
For Temporary Waiver of Section 15.117 )  
Of the Commission's Rules )  
 )

To: Chief, Office of Engineering and Technology

**REPLY COMMENTS OF ELECTRIC MIRROR, LLC**

Electric Mirror, LLC (“EMLLC”), by its attorneys, hereby submits these reply comments in response to three pleadings filed by other parties following release of the Commission’s *Public Notice* in the above-captioned proceeding.<sup>1</sup> On February 28, 2007, EMLLC submitted a Petition for Waiver of Section 15.117 of the Commission’s rules mandating inclusion of a DTV tuner in all television receivers by March 1, 2007 (the “Petition”). On April 30, 2007 EMLLC submitted comments in support of the Petition. As detailed in those filings, grant of a brief six-month waiver of the DTV tuner deadline for this extremely small manufacturer of highly specialized equipment would serve the public interest by allowing EMLLC the time necessary to implement DTV tuner technology that can function in the unique and complex environment of hotel video delivery systems and by treating EMLLC similarly to other small manufacturers of highly specialized equipment that have received longer, twelve-month waivers of the tuner deadline.

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<sup>1</sup> FCC Public Notice, “Office of Engineering and Technology Declares a Petition for Waiver of the Part 15 Digital TV Reception Requirement From Electric Mirror, LLC To Be a ‘Permit-but-Disclose’ Proceeding for *Ex Parte* Purposes and Requests Comments,” DA 07-1561 (rel. Mar. 30, 2007).

Philips Electronics North America Corporation (“Philips”), LG Electronics USA, Inc. (“LG”), and the Association for Maximum Service Television, Inc. together with the National Association of Broadcasters (collectively “MSTV”) filed comments opposing EMLLC’s limited request for waiver. These oppositions, which were filed by equipment manufacturers and industry associations with resources, influence, and power that far overshadow EMLLC’s, misread the grounds for EMLLC’s request, raise unconvincing and inapposite arguments against that request, and fail to demonstrate in any way that grant of the Petition would harm the public interest.

**I. EMLLC’s Waiver Request Is Entitled to A “Hard Look”**

Philips’ Opposition appears to suggest that the Commission somehow should apply a higher standard to a waiver request that is filed close to the effective date of the new rule for which the waiver is requested.<sup>2</sup> Philips presents no legal authority for the proposition that the timing of EMLLC’s Petition should have any bearing on the Commission’s consideration of that request, and EMLLC is aware of no such precedent. Indeed, as set forth in the Petition, the only reason EMLLC waited until the eve of the DTV tuner deadline before filing the Petition was that it had hoped until the last minute that it would be able to meet that deadline and had been striving mightily to do so.

When EMLLC finally determined that it would be unable to meet the March 1, 2007 deadline, it immediately sought FCC counsel; it then very promptly prepared and filed its Petition for waiver of that deadline. Under longstanding Commission precedent, EMLLC’s

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<sup>2</sup> Opposition of Philips at 2-3.

clearly stated and well supported request for waiver is entitled to a “hard look”<sup>3</sup> and cannot be disregarded simply because of the timing of that filing, as Phillips contends.

As EMLLC has amply demonstrated in the Petition and its Comments, a “hard look” at EMLLC’s request compels the conclusion that grant of a limited six-month waiver would serve the public interest. Without a waiver, EMLLC, its hotel customers, and those hotels’ guests all will be harmed by EMLLC’s inability to provide new or replacement units to its customers. No matter how the opposition filings describe the standards the FCC must meet in granting waivers, EMLLC, as presented below, has demonstrated its unique *bona fides* for receipt of a very limited and narrow waiver and shown that such a waiver would not defeat the purpose of the rule.

## **II. EMLLC Made Diligent Efforts To Meet the March 1 DTV Tuner Deadline**

The parties opposed to EMLLC’s request urge the Commission to disregard completely EMLLC’s showing that its difficulty in meeting the March 1 DTV tuner deadline is based mainly on problems it encountered in receiving components from its equipment suppliers.<sup>4</sup> The oppositions imply that EMLLC was somehow negligent in failing to make enforceable arrangements with its suppliers for timely delivery of the components it required.<sup>5</sup> This allegation is simply untrue.

EMLLC, in fact, attempted to ensure timely delivery of the equipment it needed and believed until shortly before the deadline that it would receive it. As a small company with fewer than 50 employees, EMLLC does not have the significant research and development resources of multi-national corporations such as LG and Philips. EMLLC must work very

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<sup>3</sup> *WAIT Radio v. Federal Communications Commission*, 418 F.2d 1153 (D.C. Cir. 1969).

<sup>4</sup> Comments and Consolidated Opposition of MSTV and NAB at 4; Opposition of Philips at 3.

<sup>5</sup> Comments of LG at 4.

closely with its suppliers to design and develop prototypes. These suppliers then provide it with assembled televisions, which EMLLC integrates into its unique, ultra-thin mirror units. EMLLC had met with overseas suppliers in May 2006 to attempt to ensure that they could provide televisions that included DTV tuners and continued to meet the other unique requirements of EMLLC's products. Despite pressure from EMLLC later in 2006 and early 2007, its component suppliers contended that the extraordinary demands placed on them by larger television receiver companies made it difficult, and frankly uneconomical, for them to meet the needs of very small, niche companies such as EMLLC until after the larger companies' needs were met.<sup>6</sup> Although EMLLC received a prototype unit from its supplier in early 2007, it discovered late in the process that the prototype was too large and did not meet the requirements of its units.

### **III. Waiver Is Warranted by the Unique Nature of EMLLC's Product and the Extreme Complexity of the Hotel Systems in Which It Is Installed**

The parties opposing EMLLC's request devote much attention to stating and disputing grounds for a waiver that, while true, are not the main reasons that a waiver grant would serve the public interest.<sup>7</sup> The oppositions fail utterly to disprove that grant of the Petition would serve the public interest due to the fact that EMLLC produces a truly unique product for use in a setting, and as part of a system, that faces unparalleled design problems. EMLLC mirror

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<sup>6</sup> It seems disingenuous, at the least, for such large companies now to use timing issues against smaller companies, particularly those that have taken advantage of the Commission's processes and good offices to try to remain within the bounds of the agency's standards. In granting an earlier waiver request submitted by Sumitomo Canada Limited, the FCC acknowledged that Sumitomo had "state[d] as a consequence of the niche market for [its] products, the companies that design and manufacture the necessary component equipment have given first priority to television manufacturers that sell mainstream products in larger markets." *Petition of Sumitomo Canada Limited for Temporary Waiver of Section 15.117 of the Commission's Rules*, DA 07-24, ¶ 3 (rel. Jan. 5, 2007).

<sup>7</sup> See Opposition of Philips at 6; Comments of LG at 5.

televisions are not for sale in the direct-to-home consumer retail market, and the hotel systems in which EMLLC's units are employed are far more complicated than the oppositions would imply.

Philips' claim that it does not matter whether an integrated mirror television is installed in a hotel system or in an individual's home is simply not the case.<sup>8</sup> The video signal distribution systems used in the hotel industry are far more complex than any found in consumers' homes and require vastly greater investment in time and product development. Most properties in the hotel industry are currently going through extensive changes to their video distribution systems that do not simply involve conversion to the new DTV standard but also require the installation of proprietary hardware and security features unique to the industry to prevent the copying of content. To meet hotel customers' needs, EMLLC must not only install DTV tuners in its units but must ensure that they are compatible with these new content security needs. Unlike the refrigerator television product LG describes in its comments,<sup>9</sup> the units at issue in the waiver request are not designed for or sold to home consumers, nor are they, unlike LG's units, ever likely to be used to receive an over-the-air television signal. Grant of the requested waiver of the March 1 deadline would allow EMLLC to continue to provide new and replacement units to its hotel customers while models incorporating both DTV tuners and the other features required by the unusual demands of hotel installation are finalized.<sup>10</sup>

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<sup>8</sup> Opposition of Philips at 6.

<sup>9</sup> Comments of LG at 4.

<sup>10</sup> Philips asserts (Opposition of Philips at 5 and note 19) that statements that television sets that are not consumers' primary ones and that do not typically receive over-the-air signals "are contrary to the Commission's PDI order," citing *Requirements for Digital Television Receiving Capability*, Order, ET Dkt No. 05-24, FCC 06-123, ¶¶ 6, 7 (rel. Aug. 17, 2006) ("*PDI Order*"). A close reading of that portion of the *PDI Order*, however, reveals that the FCC made these statements in the context of ruling on PDI's request for an exemption for its products from the DTV tuner rules and not in the context of granting PDI's actual waiver request.

Strict application of the March 1 deadline to EMLLC would do nothing to further the DTV transition. Contrary to the unfounded claims of MSTV, sale of EMLLC's existing units would not increase the later need for DTV converter boxes nor burden the converter box subsidy program being implemented by the National Telecommunications and Information Administration.<sup>11</sup> As noted above, EMLLC's customers are not individual consumers eligible for the subsidy but rather hotel businesses. These hotels do not use EMLLC units for direct reception of over-the-air television signals of any kind and, therefore, are highly unlikely to need to install converter boxes. The waiver EMLLC seeks is very limited in scope, and grant of such a brief and narrow six-month waiver requested by EMLLC would in no way impede the pace of the DTV transition.<sup>12</sup> Given these facts, grant would not send a signal of lack of FCC commitment to the DTV transition. Rather, grant would simply demonstrate that the FCC has made a thorough review of the unique circumstances enunciated by a party that did its best to comply but hit unexpected last minute difficulties beyond its control and unique to its extremely small market size, difficulties not encountered by parties with more market power and clout in relationships with their suppliers.

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Philips' pleading also suggests that by applying the DTV tuner requirement to all television receivers regardless of size, the FCC "implicitly" rejected the concept that a receiver's status as primary or secondary should not factor into the FCC's equation. Opposition of Philips at 6. In extending the requirement to receivers of all sizes the FCC's action was just as clearly based on emergency conditions and should not, as Philips argues, be seen necessarily as an implicit rejection of the secondary receiver argument. *See Requirements for Digital Television Receiving Capability, Second Report and Order*, 20 FCC Rcd 18607, 18616 (2005).

<sup>11</sup> Comments and Consolidated Opposition of MSTV and NAB at 3.

<sup>12</sup> Philips' statement that EMLLC seeks a "broad waiver for niche equipment manufacturers" is not correct. Opposition of Philips at 8. EMLLC's request is very narrow, pertains only to its own products, and will not provide relief beyond a very limited number of units.

**IV. Conclusion**

EMLLC has more than satisfied the Commission's waiver standards. It has presented a compelling showing based upon the hardship faced by EMLLC, its hotel consumers and their guests, and equitable treatment with other similarly situated parties, while at the same time demonstrating a lack of harm to the Commission's goals for the DTV transition. Accordingly, EMLLC submits that grant of a brief six-month waiver of the DTV tuner requirement would most effectively serve the public interest.

Respectfully submitted,  
**ELECTRIC MIRROR, LLC**

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DECLARATION OF JAMES MISCHEL

I am the founder, president, chief designer, and majority owner of Electric Mirror, LLC ("EMLLC"). I have read the foregoing Reply Comments of EMLLC and I am familiar with the content thereof. I declare under penalty of perjury that the factual matters stated therein are true and correct to the best of my knowledge, information, and belief.

By

  
James Mischel

May 15, 2007