

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

MAY 28 2008

FILE

OFFICE OF
MANAGING DIRECTOR

Nicole E. Paolini-Subramanya, Esq.
Cinnamon Mueller, PLLC
307 North Michigan Ave., Suite 1020
Chicago, Illinois 60601

Re: Tekstar Cablevision, Inc.
Request for Refund of Application Filing Fee
Fee Control No. 0706278205879002

Dear Ms. Paolini-Subramanya,

This letter responds to your request dated February 8, 2008 (*Request*), on behalf of Tekstar Cablevision, Inc. (Tekstar) for a refund of the \$1,250.00 fee associated with a petition for special relief requesting a deferral of the Commission's ban on integrated digital set-top boxes in section 76.1204(a)(1) of the Commission's rules, 47 C.F.R. §76.1204(a)(1) (*Petition*). Our records reflect that you paid the filing fee. For the reasons set forth below, we deny your request.

You recite that "Tekstar's purchase orders for digital set-top boxes compliant with 47 C.F.R. §76.1204(a)(1) had been pushed to the back of the queue by its set-top box manufacturer (Motorola), and Tekstar was unable to obtain digital set-top boxes compliant with the integration ban by the July 1, 2007 deadline."¹ You state that "[a]s soon as possible after the *GCI Order* was released [establishing the procedural steps for applying for deferment of the July 1, 2007 deadline], on June 22, 2007, Tekstar filed [the *Petition* along with the filing fee]."² You assert that although the *Petition* was put on Public Notice on July 6, 2007, "the Commission failed to take any action[.]"³ You say that "[f]inally, in mid-September 2007, Commission staff inquired whether Tekstar still needed the deferral[. . . , which i]t did[. . . , and] Tekstar supplemented the record to reflect a delayed delivery date of September 22, 2007."⁴ You state that "[i]t has been over seven months since Tekstar filed its *Petition*, and the Commission has still failed to

¹ *Request* at 1.

² *Id.* at 2 (citing *GCI Cable, Inc. Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, 22 FCC Rcd 8576 (2007) (*GCI Order*)).

³ *Id.* at 2.

⁴ *Id.*

issue an order in this matter.”⁵ You say that “[i]n the meantime, Tekstar has taken delivery of the compliant set-top boxes, and no longer needs the requested deferral [and, a]ccordingly, has filed a *Motion to Withdraw* its *Petition*[.]”⁶ You request a refund because “the Commission’s failure to act timely on Tekstar’s *Petition* has rendered it moot.”⁷

Our records reflect that on June 25, 2007, Tekstar filed the *Petition* along with a signed affidavit and supporting documentation in accordance with the requirements of the *GCI Order*.⁸ On July 6, 2007, the Media Bureau (Bureau) placed Tekstar’s *Petition* on Public Notice.⁹ On September 14, 2007, Tekstar filed a supplement to the *Petition* requesting “that Tekstar’s deferral remain in effect until Tekstar actually receives the compliant set-top boxes.”¹⁰ On February 14, 2008, Tekstar filed a *Motion to Withdraw* its *Petition*.

Filing fees accompanying requests for the Commission’s regulatory services listed in sections 1.1102 through 1.1107 of the Commission’s rules, including the fee Tekstar submitted in connection with the *Petition*, are only refundable in the limited circumstances set forth in section 1.1113 of the rules. None of those circumstances are applicable here. Tekstar’s decision to file the *Motion to Withdraw* was entirely voluntary reflecting its receipt of the compliant set-top boxes and provides no basis for a grant of your request. Further, the fact that the Commission did not act on the *Petition* before Tekstar received the set-top boxes compliant with section 76.1204(a)(1) of the rules from Motorola fails to establish the extraordinary and compelling circumstances that would justify a waiver of our rules.¹¹ We therefore deny your request for a refund of the \$1,250.00 application fee.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ See *GCI Order*, 22 FCC Rcd at 8582.

⁹ See *Public Notice, Special Relief and Show Cause Petitions*, Report No. 0215 (July 6, 2007).

¹⁰ See Letter from Nicole Paolini-Subramanya, Esq. to Secretary, FCC (Sept. 13 2007).

¹¹ See 47 C.F.R. §1.1113(a)(5); 47 U.S.C. §158(d)(2) (the Commission has discretion to waive filing fees upon a showing of good cause and a finding that the public interest will be served thereby); 47 U.S.C. §158(d)(2); 47 C.F.R. §1.1117(a); *Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985*, 5 FCC Rcd 3558, 3572-73 (1990). See *Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985*, 2 FCC Rcd 947, 958 (1987) (“We construe our waiver authority under section 8 of the Communications Act, 47 U.S.C. §158(d)(2), narrowly and will grant waivers on a case-by-case basis to specific applicants upon a

Nicole E. Paolini-Subramanya, Esq.

3.

If you have any questions concerning this matter, please contact the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Stephens", written in a cursive style.

Mark Stephens
Chief Financial Officer

showing of “extraordinary and compelling circumstances.”; *Sirius Satellite Radio, Inc.*, 18 FCC Rcd 12551 (2003). Nor is a refund permissible pursuant to section 1.1113(a)(4) of the rules because the Commission did not adopt a new rule that nullified the *Petition*.

CM CINNAMON MUELLER

~~A Professional Limited Liability Company
307 North Michigan Avenue, Suite 1020
Chicago, Illinois 60601
Telephone: 312-372-3930
Facsimile: 312-372-3939~~

FO WAIVER TRACKING SYSTEM
CONTROL # 10181

February 8, 2008

Regina Dorsey
Office of the Managing Director
Federal Communications Commission
Enforcement Bureau
445 12th Street, S.W.
Washington, D.C. 20554

Re: ~~Tekstar Cablevision, Inc. ("Tekstar") - Request for refund of \$1250.00 filing fee under 47 C.F.R. § 1.1113 for petition for special relief not acted upon by Commission~~

Dear Ms. Dorsey:

We represent Tekstar, a small cable operator in Minnesota. Like all cable operators, Tekstar is subject to the Commission's ban on integrated digital set-top boxes in 47 C.F.R. § 76.1204(a)(1). This ban took effect on July 1, 2007. Unfortunately, like many small operators, Tekstar's purchase orders for digital set-top boxes compliant with 47 C.F.R. § 76.1204(a)(1) had been pushed to the back of the queue by its set-top box manufacturer (Motorola), and Tekstar was unable to obtain digital set-top boxes compliant with the integration ban by the July 1, 2007 deadline. Accordingly, Tekstar was faced with ceasing deployment digital services to new and upgrading subscribers until it received the set-top boxes from Motorola.

But the Commission had recognized that set-top box delivery delays would present a problem for many small operators. In its *GCI Order*,¹ the Commission stated:

[W]e understand the difficulties that small cable operators may face in complying with the July 1, 2007 deadline, particularly since manufacturers may prioritize orders from the largest cable operators. In the *BendBroadband Order*, we indicated that small operators could request deferment of the July 1, 2007, deadline if they could demonstrate that they have placed orders for compliant set-top boxes that will not be fulfilled in time for them to comply with the deadline.²

The *GCI Order* went on to establish the procedural steps for applying for such a deferment.³

¹ *In the Matter of GCI Cable, Inc., Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, Memorandum Opinion and Order, 22 FCC Rcd. 8576 (rel. May 4, 2007).

² *Id.* at ¶ 18.

³ *Id.*

As soon as possible after the *GCI Order* was released, on June 22, 2007, Tekstar filed a *Petition for Deferral of Enforcement of July 1, 2007 Deadline in 47 C.F.R. § 76.1204(a)(1)* ("*Petition*"). Tekstar paid a \$1250 filing fee to file the *Petition*.⁴ Time was of the essence in this matter – the July 1, 2007 integration ban would be going into effect in nine days.

The *Petition* was put on Public Notice on July 6, 2007. But the Commission failed to take any action on the *Petition*. Finally, in mid-September 2007, Commission staff inquired whether Tekstar still needed the deferral. It did. Tekstar supplemented the record to reflect a delayed delivery date of September 22, 2007.

It has been over seven months since Tekstar filed its *Petition*, and the Commission has still failed to issue an order in this matter. In the meantime, Tekstar has taken delivery of the compliant set-top boxes, and no longer needs the requested deferral. Accordingly, Tekstar has filed a *Motion to Withdraw* its *Petition* with the Commission and requests that this Office refund its \$1250.00 filing fee under 47 C.F.R. § 1.1113, since the Commission's failure to act timely on Tekstar's *Petition* has rendered it moot.

Thank you for your assistance with this matter. Please contact me if you have any questions.

Sincerely,



~~Nicole F. Paolini-Subramanya~~

Enclosures

cc: David A. Pratt

⁴ See Exhibit 1, Form 159 and Mellon Bank date-stamped copy of pleading.