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March 27, 2009

Via Courier

Ms. Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
For Consideration by the Media Bureau
c/o Natek, Inc.
236 Massachusetts Avenue, S.E.
Suite 110
Washington, D.C. 20002

FILED/ACCEPTED

MAR 27 2009

Federal Communications Commission
Office of the Secretary

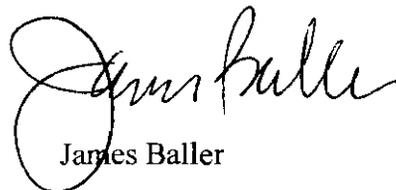
RE: *Lafayette City-Parish Consolidated Government of Lafayette, LA,
d/b/a/ Lafayette Utilities System, Petition for Waiver of the Require-
ments of Section 76.1204(a) of the Commission's Rules*

Dear Ms. Dortch:

Please accept for filing the accompanying original and four copies of Lafayette Utility System's Petition for Waiver of the requirements of Section 76.1204(a) of the Commission's rules. Please also return to the messenger a time-stamped copy of the Petition.

Thanks very much.

Sincerely,


James Baller

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Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

FILED/ACCEPTED

MAR 27 2009

Federal Communications Commission
Office of the Secretary

Matter of)
)
Petition of Lafayette City-Parish) CSR- _____
Consolidated Government of Lafayette,)
Louisiana, d/b/a Lafayette Utilities System,)
for Waiver of Section 76.1204(a) of the)
Commission's Rules) CS Docket No. 97-80
)
Implementation of Section 304 of the)
Telecommunications Act of 1996)
)
Commercial Availability of Navigation)
Devices)

LAFAYETTE UTILITIES SYSTEM'S
PETITION FOR WAIVER

I. INTRODUCTION

Pursuant to Sections 1.3 and 76.7 of the Commission's rules and Section 629(c) of the Communications Act of 1934, as amended, the City-Parish Consolidated Government of Lafayette, Louisiana, acting through its utilities department, the Lafayette Utilities System (LUS), petitions the Commission to grant to it a waiver of Section 76.1204(a) of the Commission's rules, which prohibits multichannel video programming distributors (MVPDs) from requiring the use of navigation devices that integrate navigation functions with security and conditional access functions (the "integration ban"). LUS requests this waiver due to its offering of an Internet Protocol Television (IPTV)-based video service, for which no technology is reasonably available that enables LUS to comply with section 1204(a).

video services available to more than 57,000 homes, schools, businesses and institutions throughout the City. The LUS service will include robust broadband Internet access, voice service, as well as a multichannel video programming distribution service via IPTV.¹

LUS's fiber network was not in operation when various MVPDs using IPTV technology applied for, and received from the Commission, waivers from the Section 1204(a) integration ban.² Like these MVPDs, LUS has tried, without success, to locate any technology commercially available today – whether hardware or downloadable software – that would enable LUS to comply with Section 1204(a). LUS therefore requests a waiver similar to those that the Commission has granted to these other MVPDs.

II. OVERVIEW OF LUS SYSTEM

Lafayette, a city of 115,000 residents in South Louisiana, is located about half way between Baton Rouge and Lake Charles on U.S. Interstate Route 10. In January 2009, Lafayette's utility department, Lafayette Utilities System (LUS), launched a \$110 million fiber-to-the-home system. The system will consist of more than 870 miles of optical fiber and state-of-the-art equipment and facilities, and it will make advanced communications capabilities and video services available to more than 57,000 homes, schools, businesses, and institutions throughout the City. Unique among fiber systems in the United States, the Lafayette system will enable all businesses and residents within the City to communicate with each other at speeds of

¹ As described more fully below, LUS also offers basic and expanded basic service in analog format.

² *In the Matter of National Cable and Telecommunications Association Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, CS 97-80, Memorandum Opinion and Order, 22 FCC Rcd. 11780 (rel. June 29, 2007) ("All-Digital Waiver Order"); *In the Matter of Consolidated Requests for Waiver of Section 76.1204(A)(1) of the Commission's Rules*, Memorandum Opinion and Order, 23 FCC Rcd. 4465 (rel. March 19, 2008) ("Second All-Digital Waiver Order").

at least 100 Megabits/second in both directions without extra charge. The LUS video system is *state-of-the-art, designed from the ground up to operate on LUS's advanced fiber-to-the-home network.*

LUS offers subscribers three main options: (1) basic programming (channels between 2 and 22) provided in analog form using conventional RF transmission; (2) basic and expanded basic programming provided in analog form using conventional RF transmission (channels between 23 and 88); and (3) basic, expanded basic, and premium programming provided in digital form through LUS's IPTV system (digital channels 1 and higher). LUS requires a waiver only for the third option.

For subscribers who want only basic service in analog form, conditional access is accomplished through a trap inserted into the Optical Network Terminal device on the outside of the subscriber's residence. The trap lets through channels between 2 and 22 and blocks channels between 23 and 88. If a subscriber also wants to receive expanded basic programming in analog form, LUS removes the trap, allowing all channels between 2 and 88 to reach the subscriber. No encryption is necessary for analog basic or expanded basic service, nor is a set-top box required. Subscribers are free to attach whatever devices they wish to record, time-shift, or otherwise address the basic and expanded basic programming to which they have subscribed. As a result, LUS believes that its analog service is fully compliant with CableCARD specifications and other obligations of Section 1204.

Subscribers who wish to receive digital channels 1 and higher must subscribe to LUS's digital video service. This service makes available 300 channels of basic, expanded basic, and premium video programming to subscribers, delivered over LUS's FTTH network via IP multicast. Each channel is assigned an individual IP address. LUS's system does not use QAM.

Subscribers to LUS's digital service must have an IPTV set-top box that handles both security and navigation functions. LUS and its partners, including Motorola, have recently conducted an extensive search for equipment and technology that would enable LUS to separate the security and navigation functions for its IPTV service, but they found none. While there are apparently multiple industry efforts under way to create and implement downloadable access controls, there are no commercially available technologies today that would enable LUS to comply with Section 1204(a).

III. REQUEST FOR WAIVER

A. The Commission's Authority to Grant a Waiver

Consistent with the waivers granted by the Commission in the 2007 and 2008 *All-Digital* orders,³ LUS bases its request on the Commission's general waiver authority, set forth in Sections 1.3 and 76.7 of the Commission's rules. LUS also bases its request on the statutory waiver authority established by Congress in section 629(c),⁴ under which the Commission may grant a waiver of its regulations implementing section 629(a) "when doing so is necessary to assist the development or introduction of new or improved services."⁵

B. Substantive Basis for Waiver

1. LUS is substantially similar to other MVPDs for which the Commission has already issued waivers from section 1204(a)

As indicated above, the Commission issued a consolidated Order on June 29, 2007, granting 130 MVPDs a waiver from section 1204(a). In March 2008, the Commission issued

³ *Supra* n.1.

⁴ 47 U.S.C. § 549.

⁵ See *In the Matter of Bend Cable Communications, LLC, D/B/A BendBroadband. Request for Waiver of Section 76.1204(a)(1) for the Commission's Rules*, DA 07-47, rel. January 10, 2007, at ¶ 2.

another set of waivers for an additional set of MVPDs.⁶ Among these MVPDs are several (such as Verizon⁷ and a group known as the “IPTV Operators Group”⁸) that sought waivers for planned or active IPTV services. Like LUS, these entities were unable to find commercially available technology enabling them to separate navigation and security functions for IPTV systems. In granting them waivers from Section 1204(a), the FCC found: “It is our understanding that set-top box manufacturers have not developed any nonintegrated high definition or digital video recording devices for use with Internet Protocol (“IP”), Asynchronous Transfer Mode (“ATM”) or hybrid QAM/IP systems.”⁹

Had the LUS system been in operation in 2007 or 2008, LUS would have sought a waiver then, and it would presumably have received one. By its present petition, LUS simply requests a waiver similar to those which the Commission has already granted to numerous other similarly-situated IPTV system operators. As LUS’s diligent recent search for new options disclosed, nothing has changed in the market since the Commission issued its waivers in 2007 and 2008.

2. The Commission’s “all-digital” discussion

At the time that the Commission granted the waivers in question, it was trying to encourage MVPDs to transition to delivery of video programming in digital form as rapidly as possible. Against this backdrop, the Commission noted in its waiver orders that the applicants had pledged to transition their systems to “all-digital” format by a date certain (February 17,

⁶ *Id.*

⁷ *All-Digital Waiver Order*, ¶¶ 33-43.

⁸ *All-Digital Waiver Order*, ¶ 53.

⁹ *All-Digital Waiver Order*, ¶ 61.

2009).¹⁰ It is not clear whether the Commission merely considered the pledges to be evidence of the applicants' sincerity in claiming that they would have complied with Section 1204(a) if a viable solution existed, whether the Commission granted the waivers as a non-binding reward for these pledges, or whether the Commission considered the pledges to be a *condition* of the waivers. Assuming that it was a condition, LUS requests that the Commission either clarify that LUS's practices comply with the condition or declare that LUS need not do so.

LUS's video service was designed from the ground up to use LUS's state-of-the-art FTTH network to offer subscribers maximum flexibility and choice. As a result, any subscriber in Lafayette will be able to receive "all-digital" service. If this is what the Commission meant by "all-digital" service, then LUS's practices would satisfy any such condition.

LUS, however, does not stop there. It also offers its subscribers the choice of receiving less expensive basic and expanded basic programming in analog form. Forcing subscribers to pay more money for digital service may be more profitable for LUS, but LUS believes that offering the public lower cost alternatives is the right thing to do, particularly in these difficult economic times.

If the Commission intended "all-digital" service to mean "only" digital service, then this would create a problem for LUS and its subscribers. In that event, LUS would respectfully request that the Commission waive this requirement as applied to LUS.

¹⁰ *All-Digital Waiver Order*, ¶ 62. The all-digital requirement and language appears to have arisen in a 1204(a) waiver proceeding in which an operator in the process of transitioning to all-digital wished to deploy an inexpensive set-top box that did not satisfy the integration ban. See *In the Matter of Bend Cable Communications, LLC, D/B/A BendBroadband, Request for Waiver of Section 76.1204(a)(1) for the Commission's Rules*, DA 07-47, rel. January 10, 2007. If the inexpensive box could not be used, BendBroadband argued, its transition to all-digital could not proceed. Subsequent waiver proceedings appear to reflect an effort to fit within that logical framework. See *All-Digital Waiver Order*, at ¶ 4.

First, imposing such a condition on LUS would serve no useful purpose and would merely harm LUS and its subscribers. As Congress and the Commission have often stated, the main reason for requiring a transition to all-digital service is to free up valuable broadcast and cable system capacity, thereby enabling broadcasters and cable operators to offer consumers more and better video, broadband, and other services, particularly services requiring high-bandwidth capacity. Here, LUS has already achieved Congress's and the Commission's objectives – it has developed one of the most advanced fiber systems in the world, with far more than enough capacity to meet foreseeable and even unforeseeable demand.

Second, there is no logical connection between the waiver that LUS seeks and the condition in question. The basis for LUS's waiver request is that there is no commercially available technology today that would enable LUS to comply with Section 1204(a). Requiring LUS to discontinue its analog service would not change this reality, nor would it provide consumers any offsetting benefits. To the contrary, it would merely deprive LUS's subscribers of options and increase their rates.

3. Granting the requested waiver to LUS supports the Act's objective of deploying advanced telecommunications and information technologies and services to all Americans

Granting a waiver to LUS would also advance the Communications Act's objective of encouraging deployment of advanced telecommunications and information technologies and services to all Americans as rapidly as possible, as set forth in Section 706 of the Telecommunications Act.¹¹ Having overcome years of vigorous opposition from incumbent providers and at last brought its FTTH system on stream, LUS and the Lafayette community are just beginning to realize the economic development, job-creation, educational opportunities, additional competition, and other benefits that LUS's fiber network can enable. For the LUS

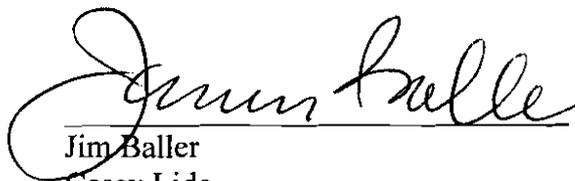
¹¹ See *BendBroadband Order*, *supra* n. 11, at ¶ 25.

project to succeed, however, LUS must be able to use its network to maximum advantage, including offering service to subscribers that only want limited basic or enhanced basic service. Depriving LUS of that opportunity would not only harm LUS but would also establish an unfortunate precedent that could deter other potential public and private entities from developing FTTH networks. At a time when the United States trails the leading Asian and European nations on most widely-accepted indicators of success in broadband deployment and adoption, the Commission should do nothing to discourage entities from deploying systems like Lafayette's.

IV. CONCLUSION

For the foregoing reasons, LUS requests that the Commission grant a waiver from the obligations set forth in section 1204(a) of the Commission's rules, applicable to LUS's IPTV service.

Respectfully submitted,



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Casey Lide

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March 25, 2005

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