

December 15, 2009

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
455 12th Street, S.W.
Washington, D.C. 20554

Re: Ex Parte
MB Docket No. 09-68

Dear Ms. Dortch:

On August 19, 2009, Cablevision Systems Corp. (“Cablevision”) filed a petition requesting permission to encrypt its basic service tier in its New York City cable systems, once those systems go all-digital. As demonstrated below, the Media Bureau has authority to act on the petition pursuant to its delegated authority. The Commission’s rules require the Bureau to refer a matter for disposition to the Commission only when the matter presents “novel questions of law, fact or policy that cannot be resolved under existing precedents and guidelines.” 47 C.F.R. § 0.283(c). Cablevision’s petition does not present such questions, but rather is well within the scope of questions on which there is existing Commission precedent to guide the Bureau’s decision.

It is well established that the Media Bureau may act on delegated authority where resolution of the issues would be “rooted in Commission precedent.” *Coronado Communications Company*, 8 FCC Rcd 159, 165 ¶ 4 n.5 (1992). In determining whether it has such authority, the Bureau looks to whether the Commission has previously established a legal standard for the Bureau to apply, *see, e.g., Applications of Nevada Bell*, 5 FCC Rcd 5661, 5662 ¶ 9 (1990) (Bureau has authority to rule upon waiver request because it acted pursuant to Commission’s established standard), as well as whether the Bureau has previously addressed similar requests. *See, e.g., Mediacom Communications Corp. v. Sinclair Broadcast Group, Inc.*, 22 FCC Rcd 35, ¶ 1 n.5 (2007) (in which the Bureau found it could deny Mediacom’s retransmission consent complaint on delegated authority, noting that it has previously addressed such complaints); *R&S Media*, 19 FCC Rcd 6300, 6306 ¶ 18 (2004) (because Bureau staff in the past had granted waivers based on similar requests, the grant was not novel or unprecedented).

Cablevision’s Petition falls well within these guidelines. The Commission’s rules expressly establish a legal standard for the Bureau to apply in evaluating waiver requests, *see* 47 C.F.R. § 76.630(a), and pursuant to this standard, the Bureau has ruled on multiple waiver

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

requests.^{1/} Indeed, the Bureau has previously granted a waiver of the encryption rule to enable a cable operator to initiate and disconnect service remotely because the waiver would avoid “increased costs and inconvenience” – the very arguments raised by Cablevision in support of its Petition.^{2/}

Even if the Bureau finds that Cablevision’s Petition does not present precisely the same facts as those presented in prior waiver requests, this would not affect the Bureau’s ability to decide it on delegated authority. *See Delta Radio, Inc.*, 18 FCC Rcd 16889, 16891 ¶ 6 (2003) (rejecting argument that Bureau lacks authority to decide a waiver request when the Commission has not “previously considered the exact arguments or circumstances” that constitute the justifications for waiver); *Nevada Bell* ¶ 9 (that a request involves slightly different facts “does not suggest that the Bureau’s action was unprecedented or novel within the meaning of Sections 0.291 or 0.283”). Indeed, the Bureau commonly grants waivers based on the petitioner’s individual facts. *See, e.g., James Cable, LLC; WideOpenWest Finance, LLC*, 23 FCC Rcd 10592, 10596 ¶ 8 (2008) (granting extensions of waivers of the ban on integrated set-top boxes based on the financial circumstances of the petitioners); *Liberty Cablevision of Puerto Rico, Ltd.*, 23 FCC Rcd 16651, 16654 ¶ 6 (2008) (granting a waiver based on the “idiosyncratic factual situation” presented in the request).

Moreover, that Cablevision’s Petition arises in the context of its all-digital systems does not create any “new or novel” issue, because the standard under which the request is evaluated remains the same. The Media Bureau has used its delegated authority to waive existing rules when they no longer serve a useful function in the digital context. Just last month, for example, the Bureau relieved RCN of the obligation to comply with certain technical standards for its all-digital cable systems, under a standard similar to that at issue here. Section 76.605(b) of the Commission’s rules allows the FCC to free cable operators of one or more technical requirements if doing so is in the public interest. In granting the requested relief, the Bureau noted that the Commission had not yet established rules addressing all-digital systems, but that relief was appropriate because “[t]he Commission specifically contemplated that compliance . . . may not be possible for all future developments in cable plant technology and provided for relief” and “[t]he transition to digital encoding for cable systems is such a development.” *RCN Corporation Petition for Special Relief*, DA 09-2260, ¶ 3 (rel. Oct. 19, 2009).

^{1/} *See, e.g., Liberty Cablevision of Puerto Rico, Inc. Petition for Waiver of Section 76.630(a) Basic Tier Scrambling*, 15 FCC Rcd 15064 (2000); *Waitsfield Cable Company Petition for Waiver of Section 76.630(a) Basic Tier Scrambling*, 16 FCC Rcd 18859 (2001); *Centennial Puerto Rico Cable TV Corp. Petition for Waiver of Section 76.630(a) Basic Tier Scrambling*, 18 FCC Rcd 7736, 7738, ¶ 8 (2003) (all granted by the Cable Services or Media Bureau).

^{2/} *See Waitsfield* ¶ 1.

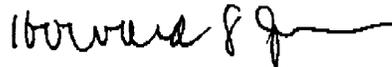
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Similarly in the instant case, while the Commission has considered, but not yet determined, whether Section 76.630's ban on encryption of the basic tier should continue to apply in the digital context,^{3/} the Bureau has full authority to rule on individual waiver requests even in the absence of such a determination. The Commission recognized when it designed the rule that there would be factual situations where, for reasons of theft or for other "strong need," the rule might need to be waived. Cablevision's Petition presents such a situation.

Pursuant to section 1.1206(b) of the Commission's rules, an electronic copy of this letter is being filed electronically with the Office of the Secretary. Any questions concerning this submission should be addressed to the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to read "Howard J. Symons", with a long horizontal flourish extending to the right.

Howard J. Symons

cc: William Lake
Nancy Murphy
Eloise Gore
Mary Beth Murphy
Steve Broeckaert
Brendan Murray
John Gabrysch
Austin Schlick

^{3/} See Petition at 2 n.4.