

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Adams Cable Equipment Inc.)	CSR-8537-Z
)	
Request for Waiver of)	
Section 76.1204(a)(1))	CS Docket No. 97-80
of the Commission’s Rules)	

**Opposition of the Consumer Electronics Association
To Petition For Reconsideration**

CEA opposes Adams Cable Equipment Inc.’s (“Adams”) further request¹ to become a wholesaler of noncompliant set-top boxes. Plainly, Adams’s plan – not evident from its original Petition² – has been to *buy* noncompliant set-tops from major cable operators, and to then sell them wholesale, after purported “reconditioning,” to smaller cable operators.

There is nothing new in this Reconsideration Petition that would justify the Media Bureau in reversing its determination³ that it cannot authorize Adams to sell off more than its *own* existing stock of devices that can no longer lawfully be fielded. Adams’s Reconsideration Petition says that it “may not have been apparent” to the Bureau that 200,000 boxes could be

¹ *In the Matter of Adams Cable Equipment, Inc. Request for Waiver of Section 76.1204(a)(1) of the Commission’s Rules*, CS Dkt. No. 97-80, CSR-8537-Z, Petition For Reconsideration of Adams Cable Equipment, Inc. (Aug. 16, 2013) (“Reconsideration Petition”).

² See *Ex parte* letters from Julie M. Kearney, V. Pres., Regulatory Affairs, CEA to Marlene H. Dortch, Sec., FCC re: Commercial Availability of Navigation Devices, CS Dkt. No. 97-80; Compatibility Between Cable Systems and Consumer Electronics Equipment, PP Dkt. No. 00-67; Adams Cable Request for Waiver, CSR-8537-Z (Jan. 30, 2012) (Feb. 22, 2012).

³ *In the Matter of Adams Cable Equipment, Inc. Request for Waiver of Section 76.1204(a)(1) of the Commission’s Rules*, CS Dkt. No. 97-80, CSR-8537-Z, Memorandum Opinion & Order (July 26, 2013 (“Order”).

wholesaled on this basis,⁴ but does not claim that this figure was unknown to Adams when it filed and lobbied for its Petition. Indeed, the 200,000 figure is both arbitrary and indefinite and is “new” only for purposes of argument – Adams notes that “millions of [non-compliant] set-top boxes” could be wholesaled by Adams this way if the FCC would only allow it.⁵ This obviously is no surprise to Adams and was well known to Adams prior to its Petition and prior to the Bureau’s Order.

Though couched in reconsideration, this Reconsideration Petition is actually a new petition seeking a much broader waiver than Adams initially purported to seek, but it provides no new factual or legal basis and no new arguments. What Adams now asks is something that the Bureau has rightly said it cannot do – effectively reverse a position that “[t]he Commission has consistently taken ... that cable operators’ common reliance on identical security in the leased set-top boxes improves support for consumer-owned devices.”⁶

In asking for reconsideration of a *granted* petition, Adams has not come forward with any new facts or public interest considerations that meet the requirements and burden of 47 C.F.R. 1.106(c).⁷ Adams’s new request for a wholesaling waiver numbering 200,000 units is entirely arbitrary, as would be any determination by the Media Bureau to grant this request.

⁴ Reconsideration Petition at 2.

⁵ *Id.*

⁶ Order ¶ 8. CEA incorporates by reference the points made in its *ex parte* letter of Feb. 22, 2012, at 2 – 4, as to why any such change in policy would require a Commission-level rulemaking.

⁷ “In the case of any order other than an order denying an application for review, a petition for reconsideration which relies on facts or arguments not previously presented to the Commission or to the designated authority may be granted only under the following circumstances: (1) The facts or arguments fall within one or more of the categories set forth in § 1.106(b)(2) or (2) The Commission or the designated authority determines that consideration of the facts or arguments relied on is required in the public interest.” The same factors apply if this Petition is considered under 47 C.F.R. § 1.429, as characterized by Adams. 47 C.F.R. 1.429(b).

The Bureau's Order requires reporting and updates, to provide a basis for the Bureau to decide whether the granted waiver will be continued or revoked.⁸ If Adams, based on the record established in these future updates, believes that the record justifies an expanded waiver, it has the option of filing a new petition setting forth its new factual basis.

Respectfully submitted,

Of counsel:

Julie M. Kearney

Robert S. Schwartz
Constantine Cannon LLP
1301 K Street, N.W.
Washington, D.C. 20005
(202) 204-3508

Julie M. Kearney
Vice President, Regulatory Affairs
CONSUMER ELECTRONICS ASSOCIATION
1919 S. Eads Street
Arlington, VA 22202
(703) 907-7644

Dated: August 26, 2013

⁸ Order ¶ 7.

CERTIFICATE OF SERVICE

I do hereby certify that on August 26, 2013, I caused a true and correct copy of the foregoing to be served by electronic mail on the following:

Paul Hudson
Counsel for Adams Cable Equipment, Inc.
Davis Wright Tremaine LLP
Suite 800
1919 Pennsylvania Avenue NW
Washington, DC 20006

Robert S. Schwartz

Robert S. Schwartz