

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:)	
)	
Waitsfield Cable Company)	
)	CSR 4394-Z
Petition for Waiver of Section 76.630(a))	
Basic Tier Scrambling)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: October 23, 2001

Released: October 25, 2001

By the Chief, Cable Services Bureau:

I. INTRODUCTION

1. In the above-captioned proceeding, Waitsfield Cable Company (“Waitsfield”), filed a petition for special relief requesting waiver of Section 76.630(a) of the Commission’s rules.¹ Section 76.630(a) provides that “[c]able systems shall not scramble or otherwise encrypt signals carried on the basic service tier.”² The instant waiver request is based upon petitioner’s contentions that its computer-controlled system serves a resort area with a large percentage of transient subscribers and that, without scrambling of the basic service tier, subscribers would incur increased costs and inconvenience. Waitsfield’s petition is unopposed. For the reasons discussed below, Waitsfield’s petition is granted.

II. BACKGROUND

2. In the Cable Television Consumer Protection and Competition Act of 1992 (“1992 Cable Act”), Congress recognized that compatibility problems between cable service and consumer electronics equipment were limiting and/or precluding the operation of premium features of consumer equipment and were affecting the ability of consumer equipment to receive cable programming.³ Section 624A of the Communications Act of 1934, as amended (“the Act”), Consumer Electronics Equipment Compatibility, was added by Section 17 of the 1992 Cable Act.⁴ Section 624A required the Commission to issue regulations to assure compatibility between consumer electronics equipment and cable systems.

3. In *Implementation of Section 17 of the Cable Television Consumer Protection and Competition Act of 1992 – Compatibility Between Cable Systems and Consumer Electronics Equipment*, the Commission implemented the requirements of Section 624A.⁵ Section 76.630(a) requires that cable

¹ Waitsfield also filed two supplements to its petition, dated August 21 and 30, 2001.

² 47 C.F.R. § 76.630(a).

³ Pub. L. No. 102-385, 106 Stat. 1460 (1992).

⁴ 47 U.S.C. § 624A.

⁵ 9 FCC Rcd 1981 (1994) (“*Compatibility Report and Order*”).

operators refrain from scrambling signals carried on the basic tier of service.⁶ The Commission determined that this rule would significantly advance compatibility by ensuring that all subscribers are able to receive basic tier signals “in the clear” and that basic-only subscribers with cable-ready televisions will not need set-top devices.⁷ Based upon the Commission’s recognition that there are some instances in which operators may need to scramble signals, the rule provides for waivers of the scrambling prohibition upon a showing of “either a substantial problem with theft of basic tier service or a strong need to scramble basic signals for other reasons.”⁸

III. DISCUSSION

4. Waitsfield states that it operates a computer-controlled addressable cable television system in a two-season resort area in the Green Mountains of Vermont, serving approximately 3,000 subscribers.⁹ The system is configured so that connection, disconnection, changes of tier request and other channel modifications may be accomplished by remote entry to the head-end control computer without requiring a “truck-roll” to the subscriber’s premises by a service technician.¹⁰ Waitsfield further explains that without scrambling of the basic tier, the system would not be able to disconnect and reconnect subscribers without a premises visit. Approximately two-thirds of the “bed space” in the service area is available for rental during either the winter ski season or the summer season in motels, hotels, inns, and condominiums, or in single family homes which may rent out as a single unit or as individual rooms within the home. Waitsfield contends that without scrambling of the basic tier, it will lose the ability to connect or upgrade service to the large numbers of daily, weekend, or weekly subscribers who require immediate connection.¹¹ Waitsfield states that it experiences a disconnection and reconnection rate of more than 40% of its subscriber base in a yearly period,¹² and that encryption allows the operator to change service without billing its subscribers for service visits. Waitsfield asserts that these fees would exceed \$125,000 annually.¹³ In addition, Waitsfield contends that without scrambling of the basic service, the additional truck rolls will require the hiring of additional technicians, thereby further increasing costs to the cable operator and ultimately to subscribers.¹⁴

5. We find that Waitsfield’s contentions regarding the cost and potential inconvenience to a small and transient subscriber base justify the requested waiver. The large percentage of seasonal rental properties in the area, which may be occupied for as little as one night, require the operator to have the flexibility to connect and reconnect subscribers without costly and potentially inconvenient truck rolls.

⁶ 47 C.F.R. § 76.630(a).

⁷ *Compatibility Report and Order*, 9 FCC Rcd at 1991.

⁸ 47 C.F.R. § 76.630(a).

⁹ Petition at 1.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 2.

¹³ August 21, 2001 Supplement at 2.

¹⁴ Petition at 2.

IV. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED** that the petition filed by Waitsfield Cable Company requesting a waiver of the Commission's rules prohibiting scrambling of channels on the basic service tier **IS GRANTED**.

7. This action is taken pursuant to delegated authority by Section 0.321 of the Commission's rules.¹⁵

FEDERAL COMMUNICATIONS COMMISSION

W. Kenneth Ferree
Chief, Cable Services Bureau

¹⁵47 C.F.R. §0.321.