

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

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|--|---|------------|
| In the Matter of:                        | ) |            |
|  | ) |            |
| Centennial Puerto Rico Cable TV Corp.    | ) |            |
|  | ) | CSR 5967-Z |
| Petition for Waiver of Section 76.630(a) | ) |            |
| Basic Tier Scrambling                    | ) |            |
|  | ) |            |

**MEMORANDUM OPINION AND ORDER**

**Adopted: April 17, 2003**

**Released: April 24, 2003**

By the Deputy Chief, Media Bureau:

**I. INTRODUCTION**

1. In the above-captioned proceeding, Centennial Puerto Rico Cable TV Corp. (“Centennial”) filed a petition for special relief requesting waiver of Section 76.630(a) of the Commission’s rules. Section 76.630(a) provides that “[c]able systems shall not scramble or otherwise encrypt signals carried on the basic service tier.”<sup>1</sup> The instant waiver request is based on petitioner’s contention of significant theft of cable television service in its service areas.<sup>2</sup> Centennial’s petition is unopposed. For the reasons discussed below, Centennial’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.<sup>3</sup> 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.<sup>4</sup> Section 624A required the Commission to issue regulations to assure compatibility between consumer electronics equipment and cable systems.

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<sup>1</sup> 47 C.F.R. § 76.630(a).

<sup>2</sup> The petition addresses three systems, serving the following communities from three headend locations: (1) Ponce headend – Adjuntas, Arroyo, Coamo, Guayama, Guayanilla, Jayuya, Juana Diaz, Maunabo, Patillas, Penuelas, Ponce, Salinas, Santa Isabel, Villalba, and Yauco; (2) Mayaguez headend – Anasco, Cabo Rojo, Guanica, Hormigueros, Lajas, Las Marias, Maricao, Mayaguez, Rincon, Sabana Grande, and San German; and (3) Aguadilla headend – Aguada, Aguadilla, Isabela, Moca, and Quebradillas.

<sup>3</sup> Pub. L. No. 102-385, 106 Stat. 1460 (1992).

<sup>4</sup> 47 U.S.C. § 624A.

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 adopted rules to implement the requirements of Section 624A.<sup>5</sup> Section 76.630(a) requires that cable operators refrain from scrambling signals carried on the basic tier of service.<sup>6</sup> 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.<sup>7</sup> Based on a recognition that there are some instances where 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.”<sup>8</sup>

4. The procedures adopted by the Commission require a cable operator to notify subscribers by mail that it has filed a request for waiver of the scrambling prohibition with the Commission. The notice to subscribers, which is delineated in Section 76.630(a), must be mailed no later than thirty calendar days from the date the waiver request was filed with the Commission. Subscribers have 30 days from the date of the notice to mail comments to the Commission. The cable operator may file comments in reply no later than 7 days from the date subscriber comments must be filed. Centennial notified subscribers of its petition with the Commission requesting the ability to scramble the basic tier. No subscriber filed an objection to Centennial’s petition.

### III. DISCUSSION

5. Centennial argues in its petition that scrambling of the basic tier is warranted because it is experiencing a substantial problem with cable theft. Centennial estimates a 15.49% rate of cable theft relative to the number of homes passed.<sup>9</sup> Centennial contends that loss of revenue from theft of cable services results in a significant financial burden.<sup>10</sup> In addition, Centennial claims that theft of service may result in serious non-monetary consequences related to signal leakage and technical problems.<sup>11</sup> Centennial contends that it has aggressively pursued several means to combat cable theft aimed at both educating and penalizing offenders.<sup>12</sup> Centennial believes that scrambling the basic service tier would reduce the incentive to steal service and the damages to its system that result from illegal connections.

6. Centennial also contends that disconnections caused by non-payment and subsequent reconnections are substantially higher than in other areas of the country, and that scrambling of the basic

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

<sup>6</sup> 47 C.F.R. § 76.630(a).

<sup>7</sup> *Compatibility Report and Order*, 9 FCC Rcd at 1991.

<sup>8</sup> 47 C.F.R. § 76.630(a).

<sup>9</sup> This estimate is based upon ongoing audits of portions of Centennial’s cable systems representing areas served by all three headends. Petition at Attachment B.

<sup>10</sup> Centennial estimates its annual losses from theft of services in excess of \$11,000,000 per year. See Letter from Robert L. James, Esq., April 7, 2003.

<sup>11</sup> Petition at 3.

<sup>12</sup> *Id.*

tier will allow the cable operator to avoid costly “truck-rolls” associated with such actions.<sup>13</sup> Centennial recognizes that scrambling of the basic tier will require some subscribers to obtain set-top boxes. However, since 96% of Centennial’s subscribers already rent a set-top box, petitioner contends that the impact on subscribers will be minimal.<sup>14</sup> Centennial also contends that scrambling of the basic tier will enable the cable operator to offer more channels and programming choices, and will create sufficient bandwidth for high-speed internet access and other services in a cost-efficient manner.<sup>15</sup>

7. We find that Centennial’s contentions regarding a substantial problem with theft justify granting the requested waiver. Centennial presents evidence establishing that the percentage of homes in its franchise illegally connected to its systems is substantially greater than the industry average nationwide.<sup>16</sup> The high number of illegal connections creates a potential for signal leakage as well as a diminution in the quality of the video signal received by authorized subscribers. Centennial’s audits show that cable theft is not isolated to certain portions of Centennial’s systems, but is a significant problem in all of Centennial’s service areas in Puerto Rico. The high percentage remains despite the multi-pronged program Centennial has initiated to reduce cable theft. Centennial individually contacts known offenders and invites them to become authorized customers. If this fails, Centennial advises the offender that the violation will be referred to proper law enforcement officials for prosecution under applicable state and federal law.

8. We recognize that allowing Centennial to scramble its basic tier will require some subscribers to obtain set-top boxes. Centennial submits, however, that 96% of its subscribers already have an operator-supplied set-top box. We believe that with such a high percentage of subscribers already using set-top boxes, problems due to incompatibility between cable service and consumer electronics equipment will not be widespread once basic tier scrambling is commenced. Further, with less compromise to the physical integrity of its system, Centennial will be able to offer a better quality signal to all authorized subscribers.

9. Once basic tier scrambling is commenced, a set-top box will be required for each television connected to Centennial’s system. Because nearly all of Centennial’s subscribers already rent a set-top box, most subscribers will not incur additional charges. We believe, consistent with previous decisions relating to the rule,<sup>17</sup> that subscribers who did not need a set-top box prior to basic tier scrambling should not be charged for the initial installation of the box after scrambling begins because the scrambling is for the convenience of Centennial, and not to provide additional services requested by the subscriber. We note that any rate Centennial charges for the basic service tier and for equipment used to receive this tier must conform to the Commission’s rate regulations. Section 623 of the Act sets forth a comprehensive procedural framework for the regulation of rates for the basic service cable tier. The Commission’s rules establish formulas and procedures for determining a cable system’s maximum permissible rate for the basic service tier,<sup>18</sup> and any equipment necessary to access that tier,<sup>19</sup> as well as

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<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 4.

<sup>15</sup> *Id.*

<sup>16</sup> The National Cable Television Association’s Office of Cable Signal Theft estimates the average percentage of basic service tier theft at 11.5 % nationwide. See <<http://www.ncta.com>>.

<sup>17</sup> See, e. g., *Liberty Cablevision of Puerto Rico*, 15 FCC Rcd 15064 (2000).

<sup>18</sup> 47 C.F.R. § 76.922.

procedures for adjudicating rate complaints.<sup>20</sup> Our rules permit cable operators to charge subscribers for set-top boxes and other equipment provided the charges do not exceed actual costs.<sup>21</sup> Authority for the regulation of rates is shared between the Commission and state and local regulatory authorities. Thus, rather than making any determinations in this proceeding regarding the appropriateness of Centennial's rates, we will rely on our existing regulatory procedures to address any rate issues.

#### IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that the petition filed by Centennial Puerto Rico Cable TV Corp. requesting a waiver of the Commission's rules prohibiting scrambling of channels on the basic service tier **IS GRANTED**.

11. This action is taken pursuant to delegated authority by Section 0.321 of the Commission's rules.<sup>22</sup>

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson  
Deputy Chief  
Media Bureau

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<sup>19</sup> 47 C.F.R. § 76.923.

<sup>20</sup> *Id.*

<sup>21</sup> 47 C.F.R. §76.923(a)(2).

<sup>22</sup>47 C.F.R. §0.321.