

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

In the Matter of)	
)	
)	
Enseo, Inc.)	MB Docket No. 12-188
)	
Request for Waiver of Sections 15.118(b),)	
15.123(b)(1), 15.123(c), and 15.123(d) of the)	
Commission's Rules)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: September 10, 2012

Released: September 10, 2012

By the Chief, Media Bureau:

I. INTRODUCTION

1. In this Order, we grant, to the extent set forth herein, Enseo, Inc.'s ("Enseo" or "Petitioner") unopposed request for waiver of the Commission's digital cable ready ("DCR") certification, marketing, and labeling rules, requiring all-digital set-top boxes to include analog tuning functionality, for its HD4000 CableCARD device. We conclude that the waiver is in the public interest because it will reduce the cost of the HD4000 device by not requiring Enseo to include tuners its customers do not need. In addition, this waiver will not create consumer confusion because it will be marketed and sold only to commercial and governmental customers that use all-digital cable systems or other compatible all-digital video delivery systems.

II. BACKGROUND

2. Congress has twice directed the Commission to adopt regulations to promote the development of a retail market for cable-ready devices. As part of the Cable Television Consumer Protection and Competition Act of 1992, Congress added Section 624A to the Communications Act of 1934, as amended ("Communications Act"),¹ and as part of the Telecommunications Act of 1996, Congress added Section 629 to the Communications Act.² Section 624A directs the Commission to adopt regulations to assure compatibility between consumer electronics devices and cable systems to make consumers more likely to purchase, and electronics equipment manufacturers more likely to offer for sale, innovative cable-ready devices.³ Section 629 requires the Commission to consult with industry standard-

¹ 47 U.S.C. § 544a.

² 47 U.S.C. § 549(a).

³ 47 U.S.C. § 544a.

setting organizations and adopt regulations to assure the commercial availability of set-top boxes and other equipment used to access multichannel video programming services.⁴

3. In May 1994, pursuant to the directive of Section 624A, the Commission adopted rules to assure compatibility between consumer electronics devices and cable service.⁵ As part of those rules, the Commission adopted a requirement that “cable ready” receivers be able to tune analog cable channels up to channel 125.⁶ The Commission explained that this requirement was practical and inexpensive, as cable channel 125 corresponded with the highest UHF broadcast channel that TVs are required to tune.⁷ This rule, codified at Section 15.118(b) of our rules, ensures that devices marketed as “cable ready” are able to tune the overwhelming majority of cable channels transmitted in analog.

4. In October 2003, the Commission adopted rules to implement Section 629, which directs the Commission to adopt regulations to assure the commercial availability of set-top boxes and other equipment used to access multichannel video programming services. Among other things, the rules require devices marketed as “digital cable ready” to meet certain standards to ensure that they are compatible with cable systems nationwide.⁸ The rules focus on ensuring that a “digital cable ready” device can access all cable programming. Therefore, the Commission’s rules require devices labeled as “digital cable ready” to include tuners that can access analog channels on “hybrid” systems that carry both digital and analog service.⁹ Second, the Commission’s rules require manufacturers to test “digital cable ready” devices for compliance with a standard that specifies that the device shall include an analog RF tuner to access analog cable channels.¹⁰ Finally, the Commission’s rules require post-sale material for digital cable ready devices to include language that lists the type of channels that the device can access (including analog channels on “hybrid” systems).¹¹

⁴ 47 U.S.C. § 549(a).

⁵ *Implementation of Section 17 of the Cable Television Consumer Protection and Competition Act of 1992: Compatibility Between Cable Systems and Consumer Electronics Equipment*, 9 FCC Rcd 1981 (1994) (“*Analog Plug and Play Order*”). The term “plug and play” refers to a device’s ability to plug into a cable system and receive cable programming without a cable-operator provided set-top box.

⁶ *Id.* at 1995-7, ¶¶ 78-90. (“[W]e will require ‘cable ready’ TV receivers and VCRs to tune to cable channels specified by the EIA IS-132 standard up to a minimum frequency range of 806 MHz.”). 806MHz corresponds to channel 125 on cable systems under the EIA IS-132 standard. See Electronic Industry Association’s “Standard Cable Television Channel Identification Plan, IS-132, May 1994 (“EIA IS-132”).

⁷ *Analog Plug and Play Order*, 9 FCC Rcd at 1996, ¶ 89 (“Inasmuch as TV receivers normally incorporate a single tuner for both cable and broadcast channels and the appropriate upper range for cable is essentially the same as the existing broadcast tuning requirement, we believe it would be appropriate to adopt the minimum tuning range for broadcast channels as the upper cable channel tuning requirement for ‘cable ready’ equipment.”). This requirement is not related to the “All Channel Receiver Act,” and this Order does not address issues associated with Section 303(s) of the Communications Act. See 47 U.S.C. § 303(s).

⁸ *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices; Compatibility Between Cable Systems and Consumer Electronics Equipment*, 18 FCC Rcd 20885 (2003) (“*Digital Plug and Play Order*”). See 47 C.F.R. §§ 15.123(b)(1), 15.123(c).

⁹ 47 C.F.R. § 15.123(b)(1).

¹⁰ See 47 C.F.R. § 15.123(c) (referencing Uni-Dir-PICS-I01-030903: “Uni-Directional Receiving Device: Conformance Checklist: PICS Proforma,” September 3, 2003 and M-UDCP-PICS-I04-080225, “Uni-Directional Cable Product Supporting M-Card: Multiple Profiles; Conformance Checklist: PICS,” February 25, 2008).

¹¹ 47 C.F.R. § 15.123(d).

5. On June 19, 2012, Enseo filed a request for waiver of the Commission's analog tuner requirements¹² pursuant to Sections 1.3 and 76.7 of the Commission's rules.¹³ On July 11, 2012, the Bureau released a Public Notice seeking comment on Enseo's request and received no comments in response.¹⁴ Enseo has developed the HD4000 CableCARD set-back device that enables delivery of digital content to multiple receivers in commercial applications.¹⁵ Enseo states that the HD4000 is designed "specifically for hotel and similar commercial and governmental applications," and will be sold only to commercial and governmental entities, rather than the general public.¹⁶ Without a waiver of the Commission's rules, the HD4000 could not be certified and marketed because the HD4000 lacks an analog tuner, which Enseo argues is unnecessary for the intended market for the HD4000.¹⁷ Enseo explains that the HD4000 will only be sold to commercial and governmental purchasers, not to individual consumers at retail.¹⁸ Enseo states that the benefits of the HD4000 serve the public interest by allowing for less expensive and more efficient video services.¹⁹ Enseo argues that strictly enforcing the Commission's rules would increase its costs of producing the HD4000 and hinder the development of digital set-top devices in the commercial market.²⁰ Enseo argues that granting the waiver would support the Commission's policy of transitioning to all-digital cable service, and that requiring an analog functionality would in no way further that same policy.²¹ Enseo promises to ensure that the HD4000 will only be sold for use in all-digital cable systems and other compatible all-digital video delivery systems—systems where analog tuners are superfluous—by educating its clients and sales staff about the HD4000's capabilities.²²

III. DISCUSSION

6. We find that the purpose of the Commission's rules would not be undermined by granting Enseo's requested waiver because of the unique market for the HD4000 device. The Commission adopted Sections 15.118(b), 15.123(b)(1), 15.123(c) and 15.123(d) to achieve two purposes: (1) to establish standards for compatibility between retail electronics equipment and cable services, and (2) to prevent consumer confusion.²³ Enseo has stated that consumer confusion is unlikely because it is not marketing

¹² Enseo's Petition for Waiver, MB Docket No. 12-188 (filed June 19, 2012) ("Waiver Request").

¹³ 47 C.F.R. §§ 1.3, 76.7.

¹⁴ *Media Bureau Seeks Comment on Enseo Inc.'s Petition for Waiver of Certain "Cable Ready" Requirements*, 27 FCC Rcd 7634 (2012).

¹⁵ Waiver Request at 2.

¹⁶ *Id.*

¹⁷ *Id.* at 3-4.

¹⁸ *Id.* at 5-6. Enseo asserts that commercial and governmental purchasers would be unlikely to purchase mistakenly the all-digital HD4000 when they require an analog functionality. *Id.*

¹⁹ Waiver Request at 6.

²⁰ *Id.* at 7.

²¹ *Id.* at 7-8.

²² *Id.* at 9.

²³ See *TiVo Request for Waiver*, 26 FCC Rcd 12743, 12746, ¶ 7 (2011) ("TiVo Waiver"); *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices; Compatibility Between Cable Systems and Consumer Electronics Equipment*, 18 FCC Rcd 20885 (2003) ("Digital Plug and Play Order").

the HD4000 to individual consumers.²⁴ Instead, Enseo provides equipment platforms for in-room entertainment and signage in hotels, retail locations, healthcare facilities, cruise ships, movie theaters, stadiums, arenas, and government facilities.²⁵ Enseo argues that these commercial purchasers will be made fully aware prior to purchase of the HD4000's lack of analog functionality, and thus will not be affected adversely by the lack of an analog tuner.²⁶ We agree and find that consumer confusion is unlikely to result from granting Enseo's Waiver Request, particularly given that the device will only be marketed and sold to customers who use all-digital video delivery systems.²⁷ Furthermore, Enseo commits that it will ensure that its clients understand the HD4000's limited functionality and provide alternative devices should any of its clients desire analog-compatible functionality.²⁸

7. We find that granting the waiver would better serve the public interest than strictly enforcing the Commission's rules. Enseo argues that, without a waiver, Enseo's commercial clients would have to purchase devices with unnecessary and undesired analog functionality at higher prices.²⁹ Therefore, waiving the rules and allowing Enseo to market the HD4000 would result in lower costs for its clients which should lead to lower prices for consumers.³⁰ Because of the clear public interest benefits attributable to Enseo's waiver request, we find good cause to grant a waiver of the rules with respect to the HD4000 device, on the condition that Enseo honor its commitments to limit its marketing and sale to commercial and governmental customers and to properly educate its customers about the fact that the HD4000 is an all-digital device without the ability to receive analog cable service.³¹

8. This waiver extends only to the HD4000 CableCARD device. Any device manufacturer that seeks to offer at retail a device similar to Enseo's HD4000 must petition for, and receive, a waiver from the Commission based on the specific facts and circumstances surrounding its proposed retail offering.

IV. CONCLUSION

9. We find that Enseo has demonstrated that it will ensure the compatibility of its electronics equipment with cable services for the clients that purchase the HD4000. We also find that waiving the requirement for analog tuners in the HD4000 CableCARD will allow Enseo to avoid unnecessary production costs and will not cause consumer confusion. Accordingly, we find that the public interest is served by granting the Waiver Request.

²⁴ Waiver Request at 5.

²⁵ *Id.* at 1.

²⁶ *See id.* at 6.

²⁷ *Id.* at 9 ("Enseo will market the HD4000 only to customers that purchase it for use with an all-digital cable system or other compatible video delivery system.").

²⁸ *Id.* at 8-9.

²⁹ *Id.* at 6-7.

³⁰ *See id.* Enseo estimates that including an analog tuner in the HD4000 would increase the unit price to its clients by \$40-\$50. *Id.* at 4.

³¹ *Id.* at 4, 8-9.

V. ORDERING CLAUSE

10. Accordingly, **IT IS ORDERED** that, pursuant to Sections 1.3 and 76.7 of the Commission's rules, 47 C.F.R. §§ 1.3 & 76.7, the request for waiver filed by Enseo, Inc., **IS GRANTED** with respect to the HD4000 CableCARD device as set forth above.

11. This action is taken under authority delegated by Section 0.283 of the Commission's rules, 47 C.F.R. § 0.283.

FEDERAL COMMUNICATIONS COMMISSION

William T. Lake
Chief, Media Bureau