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

In the Matter of:	)
	)
TIME WARNER CABLE,	)
Complainant,	)
	)
v.	)
	)
RCN TELECOM SERVICES	)
OF NEW YORK, INC.,	)
Defendant;	)
	)
	)
TIME WARNER CABLE,	)
Complainant,	)
	)
v.	)
	)
RCN-BECOCOM, L.L.C.,	)
Defendant.	)

ORDER ON RECONSIDERATION
MEMORANDUM OPINION AND ORDER

Adopted: March 29, 2001 **Released: April 3, 2001**

By the Commission:

I. INTRODUCTION

1. Time Warner Cable ("Time Warner") has filed a petition for reconsideration, pursuant to Section 1.106(b)(1) of the Commission's rules, of the Commission's Memorandum Opinion and Order ("*Order*"),[1] granting in part the petition for reconsideration filed by RCN Telecom Services of New York, Inc. ("RCN-NY") of an order released by the Cable Services Bureau in this proceeding.[2] Time Warner seeks reconsideration to the extent that the *Order* determined that Time Warner is a "competing, in-region cable operator" within RCN-NY's open video system service area, thereby rendering Time Warner ineligible for carriage on RCN-NY's open video system and not entitled to obtain system information

[1] *Time Warner Cable v. RCN Telecom Services of New York, Inc., Time Warner Cable v. RCN-BeCoCom, L.L.C.*, 15 FCC Rcd 1124 (2000).

[2] *Time Warner Cable v. RCN Telecom Services of New York, Inc.*, 14 FCC Rcd 50 (1998).

pursuant to Section 76.1503(b)(2) of the Commission's rules.[3] RCN-NY has filed an opposition to which Time Warner has replied.

2. Time Warner has also filed a petition to enforce the Commission's *Order* and impose a forfeiture ("Petition to Enforce") against RCN-NY and RCN-BeCoCom, LLC (collectively "RCN").[4] Although RCN filed supplements to its Boston-area and New York Notices of Intent to Establish an Open Video System ("Notices of Intent"), Time Warner contends that RCN failed to supplement its Notices of Intent as directed by the *Order* and the Commission's rules. Time Warner also contends that RCN continues to violate the Commission's rules regarding information that open video system operators must provide to Time Warner as a prospective video programming provider ("VPP") in Massachusetts. RCN has filed an opposition to which Time Warner has replied. After examining the record, we deny Time Warner's petition for reconsideration filed in this proceeding and defer consideration of Time Warner's Petition to Enforce.

II. BACKGROUND

3. In the Telecommunications Act of 1996 ("1996 Act"), Congress set forth four means by which common carriers may enter the video programming marketplace: (1) radio-based systems; (2) common carriage of video traffic; (3) cable systems; and (4) open video systems.[5] In rulemakings implementing open video system regulations,[6] the Commission concluded that Congress did not intend to restrict open video system service to telephone companies alone, and permitted non-local exchange carriers and cable operators to operate open video systems and to obtain carriage on such systems where "consistent

[3]47 C.F.R. § 76.1503(b)(2).

[4]Emergency Petition to Enforce Commission Order and Impose Forfeiture.

[5]Telecommunications Act of 1996, Pub. L. No. 104-104, § 651, 110 Stat. 118-19 (1996); Communications Act § 651, 47 U.S.C. § 571. An open video system is defined as "[a] facility consisting of a set of transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, provided that the Commission has certified that such system complies with this part." 47 C.F.R. § 76.1500(a).

[6]*Implementation of Section 302 of the Telecommunications Act of 1996: Open Video Systems*, Report and Order and Notice of Proposed Rulemaking, FCC 96-99, 11 FCC Rcd 14639 (1996); *Implementation of Section 302 of the Telecommunications Act of 1996: Open Video Systems*, Second Report and Order, FCC 96-249, 11 FCC Rcd 18223 (1996) ("*Second Report and Order*"); *Implementation of Section 302 of the Telecommunications Act of 1996: Open Video Systems*, Order, FCC 96-256, 11 FCC Rcd 6776 (1996); *Implementation of Section 302 of the Telecommunications Act of 1996: Open Video Systems*, First Order on Reconsideration, FCC 96-312, 11 FCC Rcd 19081 (1996); *Implementation of Section 302 of the Telecommunications Act of 1996: Open Video Systems*, Third Report and Order and Second Order on Reconsideration, FCC 96-334, 11 FCC Rcd 20227 (1996); *Implementation of Section 302 of the Telecommunications Act of 1996: Open Video Systems*, Third Order on Reconsideration, FCC 97-129, 12 FCC Rcd 6258 (1997); *Implementation of Section 302 of the Telecommunications Act of 1996: Open Video Systems*, Fourth Report and Order, FCC 97-130, 12 FCC Rcd 7545 (1997); *Implementation of Section 302 of the Telecommunications Act of 1996: Open Video Systems*, Order on Reconsideration, FCC 98-172, 13 FCC Rcd 14553 (1998).

with the public interest, convenience, and necessity. . . ."[7] The Commission stated that the open video system model "can provide the competitive benefits that Congress sought to achieve: market entry by new service providers, enhanced competition, streamlined regulation, investment in infrastructure and technology, diversity of programming choices and increased consumer choice."[8] The United States Court of Appeals for the Fifth Circuit considered consolidated appeals of the Commission's open video system rules -- affirming in part, reversing in part, and remanding in part those rules.[9]

4. Although generally enjoying more streamlined regulation than operators of cable systems, open video system operators are subject to clearly defined obligations. At the heart of the open video system concept is the requirement that system operators offer up to two-thirds of their channel capacity to unaffiliated programmers.[10] In doing so, the operators may not unreasonably nor unjustly discriminate against unaffiliated programming providers, and must provide just and reasonable rates, terms, and conditions for carriage to all eligible programming providers that seek carriage.[11] Open video system

[7]Second Report and Order, 11 FCC Rcd at 18232-42, 18257-60.

[8]*Id.* at 18227.

[9]*City of Dallas, Texas v. FCC*, 165 F.3d 341 (5th Cir. 1999) ("*City of Dallas*"). In *City of Dallas*, the Fifth Circuit affirmed the Commission's rules: (i) relating to open video system fees paid to local franchise authorities ("LFAs"); (ii) prohibiting LFAs from requiring institutional networks; and (iii) limiting the ability of non-local exchange carrier cable operators and expired cable franchisees to become open video system operators. 165 F.3d at 360. The Fifth Circuit reversed the Commission's rules: (i) prohibiting LFAs from requiring open video system operators to obtain franchises; (ii) requiring open video system operators to obtain certification prior to constructing new facilities; and (iii) prohibiting local exchange carriers who are also cable operators from providing open video system service in the absence of effective competition. *Id.* The Fifth Circuit remanded to the Commission for further consideration its rules granting discretion to open video system operators to permit competing, in-region cable operators to become open video system programming providers. *Id.* The Commission filed for rehearing before the Fifth Circuit regarding the court's decision on the issue of whether the statute preempted local franchising of open video systems. The Fifth Circuit denied rehearing. The Commission resolved the reversed and remanded issues in a separate proceeding. *See Implementation of Section 302 of the Telecommunications Act of 1996: Open Video Systems*, Order on Remand, 65 FR 375 (2000).

[10]47 U.S.C. § 651; Second Report and Order, 11 FCC Rcd at 18230-31. An open video system operator is defined as "[a]ny person or group of persons who provides cable service over an open video system and directly or through one or more affiliates owns a significant interest in such open video system, or otherwise controls or is responsible for the management and operation of such an open video system." 47 C.F.R. § 76.1500(b); *see* 47 C.F.R. § 76.5 (ff) (definition of "cable service"); 47 C.F.R. § 76.501 notes (parameters for determining affiliation status); 47 C.F.R. § 76.1500(g) (reference to "affiliate").

[11]47 U.S.C. § 573; 47 C.F.R. § 76.1502-04; Second Report and Order, 11 FCC Rcd at 18230, 18285-93. The Commission's rules provide that:

> an operator of an open video system shall not discriminate among video programming providers with regard to carriage on its open video system, and its rates, terms and conditions for carriage shall be just and reasonable and not unjustly or unreasonably discriminatory.

(continued….)

operators also are required to provide certain system information to prospective programmers to assist them in deciding whether to seek carriage.[12] The Commission determined that "by requiring open video system operators to provide carriage opportunities for video programming providers . . . Congress sought to foster competition by encouraging multiple programming sources on open video systems."[13]

5. Section 76.1503(b)(1) of the Commission's rules requires an open video system operator to include in its Notice of Intent to establish an open video system, information describing the system's projected service area and channel capacity as well as other information required by potential programming providers.[14] In addition, the Commission recognized that "a prospective video programming provider can reasonably be expected to need additional information concerning the system to assess whether to seek carriage on the system."[15] Therefore, Section 76.1503(b)(2) directs an open video system operator to provide to a prospective programming provider, within five business days of a written request, information relating to the operator's build-out schedule, estimated carriage rates, programming provider qualification

---

(…continued from previous page)
47 C.F.R. § 76.1503(a).

[12]An open video system operator must provide the following information to a prospective programming provider:

> (i) The projected activation date of the open video system. If a system is to be activated in stages, the operator should describe the respective stages and the projected dates on which each stage will be activated;
>
> (ii) A preliminary carriage rate estimate;
>
> (iii) The information a video programming provider will be required to provide to qualify as a video programming provider, e.g., creditworthiness;
>
> (iv) Technical information that is reasonable necessary for potential video programming providers to assess whether to seek capacity on the open video system, including what type of customer premises equipment subscribers will need to receive service;
>
> (v) Any transmission or reception equipment needed by a video programming provider to interface successfully with the open video system [e.g., scrambling, signal and audio quality, processing or security]; and
>
> (vi) The equipment available to facilitate the carriage of unaffiliated video programming and the electronic form(s) that will be accepted for processing and subsequent transmission through the system.

47 C.F.R. § 76.1503(b)(2); *see* Second Report and Order, 11 FCC Rcd at 18255.

[13]Second Report and Order, 11 FCC Rcd at 18227.

[14]47 C.F.R. § 76.1503(b)(1).

[15]Second Report and Order, 11 FCC Rcd at 18255.

requirements, and technical interface specifications, unless already provided in the operator's Notice of Intent.[16]

6. Only those entities entitled to carriage on an open video system may obtain system information pursuant to Section 76.1503(b)(2). In Section 76.1503(c)(2)(v) of its rules, the Commission specifically addressed the eligibility of cable operators to seek carriage on open video systems. This rule provides that "a competing, in-region cable operator or its affiliate(s) that offers cable service to subscribers located in the *service area* of an open video system shall not be entitled to obtain capacity on such open video system. . . ."[17] In promulgating Section 76.1503(c)(2)(v), the Commission sought to encourage competing, in-region cable operators to develop and upgrade their own systems, rather than occupy capacity on a competing open video system that could be used by another programming provider, and thereby to promote facilities-based competition.[18]

7. In its FCC Form 1275 (Certification for Open Video Systems) filing, RCN-NY sought certification to offer open video system service to New York City, which includes the five boroughs of the Bronx, Brooklyn, Manhattan, Queens, and Staten Island. At present, RCN offers open video system service to subscribers in Manhattan. Time Warner seeks carriage on the prospective Bronx and Brooklyn portions of RCN-NY's open video system. Time Warner does not hold a cable television franchise to provide cable service to these boroughs of New York City.

8. In the *Order*, the Commission determined that the eligibility of cable operators to obtain carriage on an open video system pursuant to Section 76.1503(c)(2)(v) should be based on an open video

---

[16] *See supra* n.12, discussing the information an open video system operator must provide directly to prospective programming providers.

[17] 47 C.F.R. § 76.1503(c)(2)(v) (emphasis added). Section 76.1503(c)(2)(v) provides two exceptions to the general prohibition regarding carriage of a competing, in-region cable operator's programming:

> (A) Where the operator of an open video system determines that granting access to the competing, in-region cable operator is in its interests; or
> (B) Where a showing is made that facilities-based competition will not be significantly impeded.

Id. § 76.1503(c)(2)(v)(A)&(B). As discussed in n. 9 *supra*, the Fifth Circuit invalidated the provision granting open video system operators the discretion to carry the programming of an in-region cable operator and remanded this issue to the Commission for further consideration. *City of Dallas*, 165 F. 3d at 358. The Commission's rules provide that facilities-based competition would not be impeded where:

> (1) The competing, in-region cable operator and affiliated systems offer service to less than 20% of the households passed by the open video system; and
> (2) The competing, in-region cable operator and affiliated systems provide cable service to a total of less than 17,000 subscribers within the open video system's service area.

47 C.F.R. § 76.1503(c)(2)(v)(note).

[18] Second Report and Order, 11 FCC Rcd at 18258.

system's technically integrated service area:

> Accordingly, the term "service area" as used in Section 76.1503(c)(2)(v) shall mean the area that is or will be served by the open video system's principal headend or other originating point of its signal as well as any technically integrated secondary distribution points such as ancillary headends or microwave receive sites. While an open video system operator may be certified to provide service in multiple communities pursuant to a single certification, the operator may have multiple service areas within the single certificated area depending upon the degree of integration of its operations in that area. If a cable operator does not provide cable service to subscribers located within the service area of a specific open video system, it may seek carriage on that system if it is otherwise qualified. A cable operator is not barred from doing so under Section 76.1503(c)(2)(v) if it provides cable service to subscribers located elsewhere in the open video system operator's greater certificated area.[19]

The Commission ordered RCN to file supplemental Notices of Intent providing information regarding the technically integrated service area or areas within the greater certified areas of certain of RCN's open video systems. In response, RCN filed a Motion for Stay, requesting that the Commission stay the filing requirements pending resolution of its Petition for Review filed in the United States Court of Appeals for the District of Columbia Circuit.[20] RCN's Motion was denied by the Cable Service Bureau.[21] RCN thereafter filed its supplemental Notices of Intent.

III. DISCUSSION

A. Petition for Reconsideration

9. The rather extensive history of this proceeding and the Bureau and Commission's discussion and analysis of the issues raised therein are fully addressed in the *Order* and will be reiterated here only to the extent necessary to resolve the instant proceeding.[22] Time Warner argues that the

[19] *Order*, 15 FCC Rcd at 1134-35. In applying the definition of "service area" as used in Section 76.1503(c)(2)(v), the Commission also stated in the *Order*, at footnote 55: [T]he boundaries of an open video system's service area shall be determined based upon current equipment and transmission capabilities. A secondary distribution point in an open video system such as an ancillary headend or microwave receive site, will be considered to be technically integrated if 75% or more of the video channels are received from the principal headend or other originating point of the system's signal. *See* 47 C.F.R. § 76.5(kk).

[20] *RCN Telecom Services of New York, Inc., and RCN BeCoCom, LLC, v. Federal Communications Commission and United States*, D.C. Cir. Case No. 00-1043, filed February 9, 2000. RCN's petition seeks judicial review of the Commission's *Order* insofar as it adopts an interpretation of § 76.1503(c)(2)(v) of the rules which RCN argues is contrary to law, arbitrary, capricious, and an abuse of discretion by compelling RCN to reveal confidential and proprietary system or corporate data.

[21] *Time Warner Cable v. RCN Telecom Services of New York, Inc., and Time Warner Cable v. RCN-BeCoCom, L.L.C.*, 15 FCC Rcd 5025 (CSB rel. March 10, 2000).

[22] *See Order*, 15 FCC Rcd at 1124-1129.

(continued….)

Commission has materially misread the statute, the Commission's rules, and the legislative history, all of which seek to create access to open video system facilities to unaffiliated programmers. Specifically, Time Warner contends that the plain language of Section 76.1503(c)(2)(v) of the rules demonstrate that the terms "competing" and "in-region" were intended to have meaning and are not superfluous.[23] Time Warner argues that it does not offer cable service to the Bronx or the portions of Brooklyn for which it seeks to be a VPP and obtain system information, and that it therefore cannot be classified as a competing, in-region cable operator in these communities.[24] Time Warner continues that a cable operator should only be considered to be "competing" with an open video system operator in particular communities that are both in the open video system service area and in which the cable operator provides franchised cable service. Time Warner argues that RCN uses the term "in-region cable operator" to refer to Time Warner, and ignores the other two elements that are part of the rule section, i.e., "competing" and an operator "that offers cable service to subscribers located in the service area of an open video system."[25] Time Warner also argues that New York City is made up of five separate boroughs, with distinct governments and cable television franchises, and has not authorized the cable operator to provide service in those areas for which it seeks VPP status on RCN-NY's system.[26] Time Warner contends that the Commission's interpretation would allow an open video system applicant to apply to serve an expansive area encompassing many communities, claim that it has one proposed open video system service area, and then bar cable operators serving even one community from being VPPs in all such communities, even where the cable operator has no franchise and thus is not "competing" with the open video system operator.[27]

10. Time Warner also argues that the Commission's decision relied on outdated technical criteria to disqualify cable operators from becoming VPPs in communities that the operators do not serve, in that a cable operator's service area is no longer limited to its principal headend and other nearby headends connected by microwave links.[28] According to Time Warner, a cable operator's current potential service area is "almost limitless" through the use of fiber. Time Warner concludes that the Commission's previous decision will invite open video system operators to gerrymander their facilities in order to claim that they have one technically integrated "service area" in order to bar cable operators serving as few as one of the numerous authorized open video system communities from VPP status in any other of the communities.[29]

(…continued from previous page)

[23]Time Warner Petition at 4.

[24]*Id.* at 5.

[25]Time Warner Reply at 2-3.

[26]*Id.* at 5-6.

[27]Time Warner Petition at 6.

[28]*Id.* at 7.

[29]*Id.*

11. Time Warner contends that the anticompetitive effect of the *Order* is demonstrated by a comparison to the Commission's effective competition rule, which exempts cable operators from rate regulation in communities where they face direct competition from other multi-channel video programming distributors.[30] The rule requires that the competitor operate within the cable operator's franchise area. Time Warner argues that under this rule, it could be declared subject to effective competition from RCN only in the communities where they offer overlapping service, and that the effective competition rules properly recognize that an open video system and cable operator "compete" only in those communities within the open video system service area where the cable operator holds a franchise. Time Warner concludes that it is "irrational" to apply a different definition of "compete" to determine a cable operator's eligibility to become a provider of programming on an open video system. Time Warner continues that in the case of competition with a local exchange carrier, the service overlap between a cable operator and the competitor must be "substantial."

12. In opposition, RCN-NY argues that Time Warner is merely repeating arguments made in the earlier stages of this proceeding, and that the Commission properly interpreted Section 653 of the Communications Act[31] which enacted the open video system framework and its rules implementing Section 653.[32] RCN-NY states that an in-region cable operator barred from VPP status is not precluded from serving subscribers in the open video system service area, as that operator is free to apply for a franchise and expand its system to serve subscribers in that area. RCN-NY argues that this possibility is one of the reasons that the Commission generally banned competitive in-region cable operators from seeking VPP status on an open video system.[33]

13. In regard to Time Warner's contention that the rules promulgated by the Commission for "effective competition" purposes do not comport with the Commission's conclusion in the *Order*, RCN-NY argues that what is considered competitive in one context need not necessarily be competitive in another. RCN-NY contends that the "effective competition" rules in the rate regulation context require a very strong showing of the presence of competition to justify rate deregulation, while the VPP eligibility rule is designed to encourage cable operators to build out existing facilities rather than relying on those of an open video system operator.[34] RCN-NY argues that assessing the presence of competition by examining its designated certification area is reasonable and should be the controlling factor, rather than the happenstance of where an open video system operator is operating when an issue arises regarding a proposed VPP.

14. We are not convinced by Time Warner that the Commission erred in our interpretation of Section 76.1503(c)(2)(v) of the rules. The Commission has previously addressed the substance of Time

[30]Time Warner Petition at 8-9; *See* 47 C.F.R. § 76.905.

[31]47 U.S.C. § 573.

[32]RCN Opposition at 11-12.

[33]*Id.* at 13

[34]*Id.* at 16-17.

Warner's arguments, and we are not persuaded to alter our conclusion based on the contentions raised in the petition for reconsideration. In analyzing Time Warner's similar arguments in our previous *Order*, the Commission stated that "the technically integrated service area of the open video system is a more appropriate basis for the application of Section 76.1503(c)(2)(v). This approach is consistent with the plain language of Section 76.1503(c)(2)(v) which provides that a competing cable operator may not obtain carriage on an open video system if it provides cable service within the 'service area' of the open video system."[35] Time Warner's arguments about the proper interpretation of Section 76.1503(c)(2)(v) do not persuade us to reevaluate this conclusion.

15. Time Warner also argues that the Commission's interpretation of Section 76.1503(c)(2)(v) is based on an outdated technological perspective. We disagree. This argument is entirely speculative. Time Warner has presented no evidence that RCN's open video systems do not, or will not, employ a technically integrated service area framework that accords with the Commission's analysis set forth in the *Order*.

16. Time Warner further argues that it is irrational for the Commission to apply a different definition of competition in the open video system context than it does in the effective competition context. Again, we disagree with Time Warner. As noted by RCN, Time Warner's argument ignores the divergent nature and goals of these two provisions. The effective competition provisions exclude a cable operator from basic rate regulation by the local franchising authority based upon, *inter alia*, head-to-head competition in a cable operator's franchise area. This requirement is grounded in the language of the Communications Act.[36] Section 76.1503(c)(2)(v) serves an entirely different purpose, to encourage cable operators to build out their own facilities, rather than relying on those of a nearby open video system.[37] Given the differing purposes of the two provisions, we believe the differing standards appropriate. Accordingly, Time Warner's request for reconsideration based on this argument is denied.

B. Emergency Petition To Enforce Commission Order and Impose Forfeiture

17. In its Petition to Enforce, Time Warner argues that RCN failed to supplement its open video system Notices of Intent pursuant to the *Order* and the Commission's rules, and that RCN had no right to file supplements for its New York and Massachusetts open video systems with the Commission only, while seeking confidential treatment, and without serving Time Warner and the appropriate franchising authorities with full versions of the supplements.[38] In addition, Time Warner contends that RCN continues to violate the Commission's rules regarding information that open video system operators

[35] *Time Warner Cable v. RCN Telecom Services of New York, Inc., Time Warner Cable v. RCN-BeCoCom, L.L.C.*, 15 FCC Rcd at 1134.

[36] *See* Communications Act § 623 (l)(1)(A)-(D), 47 U.S.C. § 543(l)(1)(A)-(D) (effective competition determined on a franchise area basis).

[37] Second Report and Order, 11 FCC Rcd at 18258.

[38] Petition to Enforce at 3-7.

must provide Time Warner as a prospective VPP in Massachusetts.[39] Time Warner states that it has informed RCN that it no longer serves cable subscribers in any community in which RCN is authorized for open video system service in Massachusetts. Accordingly, Time Warner contends that RCN is in violation of the Commission's rules for refusing to provide VPP carriage and carriage-related information to Time Warner.

18. For its part, RCN argues that it supplemented its Notices of Intent as directed by the Commission and is in full compliance with all relevant Commission rules and orders. RCN also asserts that the Commission has expressed significantly different interpretations of the open video system rules than the Cable Services Bureau. RCN contends that in this context, it is inappropriate for the Commission to exercise sanctions. RCN states that it declined to provide data to Time Warner because the cable operator had not provided full information on the disposition of its cable interests within RCN's certified area.[40] RCN claims its refusal to share sensitive open video system data with Time Warner is entirely reasonable, based on the cable operator's affiliation with MediaOne, with which RCN competes in a number of Boston suburban communities.[41] RCN argues that it has been forced to seek review in the Court of Appeals to protect what it deems highly sensitive confidential commercial data, and that it has standing to file with the courts.[42] RCN also argues that it was necessary to seek confidential treatment of the documents it provided to the Commission pursuant to the *Order* in order to protect its right to meaningful judicial review. RCN contends that once this sensitive data has been provided to Time Warner, RCN's position will be irreparably compromised.[43]

19. We will refrain from addressing Time Warner's Petition to Enforce at this time. As the parties have noted, RCN has appealed various aspects of the Commission's *Order* to the United States Court of Appeals for the District of Columbia Circuit. The court has stayed consideration of RCN's appeal pending the Commission's resolution of Time Warner's petition. Having done so herein, we believe the most appropriate next step is to await the court's decision. If the court upholds the Commission on appeal, we will at that time take up the matter of Time Warner's Petition to Enforce.

V. ORDERING CLAUSES

20. Accordingly, **IT IS ORDERED** that Time Warner Cable's Petition for Reconsideration of the Commission's *Order* in the above-captioned matter **IS DENIED**.

FEDERAL COMMUNICATIONS COMMISSION

[39] *Id.* at 7-13.

[40] Opposition to Petition to Enforce at 13.

[41] *Id.*

[42] *Id.* at 12. RCN contends that it is an aggrieved party within the meaning of § 402(a) of the Communications Act, 47 U.S.C. § 402(a) and §2342(a) of the Judicial Review Act, 28 U.S.C. § 2342(a).

[43] *Id.* at 9.

Magalie Roman Salas
Secretary