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May 9, 2008

VIA MESSENGER

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20036

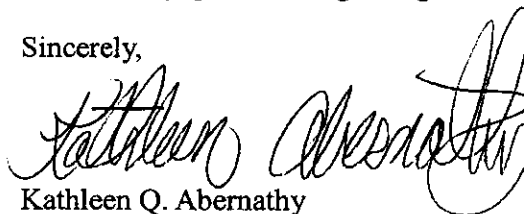
Re: Motion Picture Association of America, Inc.
Petition for Expedited Special Relief: Petition for Waiver of 47 C.F.R. § 76.1903

Dear Ms. Dortch:

On behalf of the Motion Picture Association of America, Inc. and its member companies, please find enclosed an original and four (4) copies of a Petition for Expedited Special Relief, seeking waiver of Section 76.1903 of the Commission's rules. Also enclosed is a copy of FCC form 159 (Remittance Advice) confirming payment of the required filing fee.

Please do not hesitate to contact the undersigned with any questions regarding this matter.

Sincerely,



Kathleen Q. Abernathy

Enclosures

- cc: The Honorable Kevin J. Martin
- Elizabeth Andrion
- Rick Chessen
- Rudy Brioche
- Amy Blakenship
- Cristina Chou Pauze
- Monica Desai
- Thomas Horan

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SUMMARY

The Motion Picture Association of America, Inc. is filing this petition ("Petition") on behalf of its member companies Paramount Pictures Corporation, Sony Pictures Entertainment Inc., Twentieth Century Fox Film Corporation, Universal City Studios LLLP, Walt Disney Studios Motion Pictures and Warner Bros. Entertainment, Inc. (collectively, "Petitioners"), which are all producers and distributors of theatrical films. The Petitioners are interested in partnering with multi-channel video programming distributors ("MVPDs") to provide high value, high definition content to consumers prior to the normal release date of prerecorded media (e.g., DVDs) for general in-home viewing. Such a valuable offering necessarily would require a higher level of protection against copyright theft than is currently permissible under the Commission's rules, and therefore requires a waiver of the current rule restricting the exercise of selectable output control ("SOC"). This Petition seeks that waiver for the specific instance described herein so that consumers may benefit from an expanded range of audiovisual entertainment options available within the home, thereby furthering the transition to digital television.

In 2003, the Commission adopted regulations restricting MVPDs from using SOC functionality to direct program content only through authorized, secure outputs. Despite this restriction, the Commission recognized that SOC might have applications that would be advantageous to consumers, and specifically stated that it would consider petitions to waive its SOC rule, set forth in Section 76.1903 of the Commission's rules, in order to facilitate new business models that serve the public interest. Consistent with this Commission policy, the Petitioners seek expedited relief to obtain a permanent waiver of the Commission's rule on SOC in order to facilitate the creation of a discrete and well-defined new distribution window which will enable the introduction of new and exciting services to consumers.

Specifically, the Petitioners are interested in exploring opportunities to provide consumers with the ability to order recently released theatrical, high definition movies directly through their MVPD (the "Services"). These new Services are exactly the type of "new business models" that the Commission contemplated when it adopted the encoding rules. While each studio would have its own independent business model developed through private negotiations with existing and potentially new partners, the purpose of this Petition is to remove a general regulatory impediment that prevents implementation of content protection required in the specific case of the Services.

In order to make this extremely high value content available for general in-home viewing at such an early release window, protections are necessary to ensure it is not exposed to unauthorized copying or redistribution. Enabling SOC in this instance will provide the Petitioners with vital protections by allowing their high value content to flow only over secure and protected digital outputs. Absent sufficient protections, the Petitioners' theatrical movies are simply too valuable in this early distribution window to expose them to uninhibited copying or redistribution. Expedited consideration of this waiver request is necessary in order for the Petitioners to move forward with their independent discussions with MVPDs regarding introduction of the Services.

The new Services can provide significant benefits to a very broad array of consumers without corresponding consumer harm and without altering the current application of the Commissioner's encoding rules. Grant of this waiver request will serve the public interest as the new Services would expand consumer choice by dramatically improving the timeliness and quality of home movie viewing. Furthermore, these compelling Services can help further the digital transition by providing a significant new incentive for consumers to purchase high

definition television (HDTV) sets. The Petitioners and their MVPD partners will also ensure that any potential new Services are deployed in a manner that avoids consumer confusion.

Finally, grant of this waiver request will not undermine application of the Commission's SOC and other encoding rules as they would otherwise remain in effect for other services. Even for movies released as part of a new Service, this petition seeks a waiver only until the movie is released on prerecorded media for general in-home viewing (*i.e.*, the movie is released on DVD).

For all of these reasons, the Petitioners respectfully request the expeditious grant of this waiver.

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

In the Matter of)
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Motion Picture Association of America, Inc.)
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Petition for Waiver of)
47 C.F.R. § 76.1903)

CSR-_____

To: Monica Desai
Chief, Media Bureau

PETITION FOR EXPEDITED SPECIAL RELIEF

Pursuant to Sections 1.3 and 76.7 of the Commission’s rules, the Motion Picture Association of America, Inc., on behalf of its member companies Paramount Pictures Corporation, Sony Pictures Entertainment Inc., Twentieth Century Fox Film Corporation, Universal City Studios LLLP, Walt Disney Studios Motion Pictures, and Warner Bros. Entertainment Inc. (collectively, “Petitioners”), respectfully requests special relief in the form of a narrow but permanent waiver of Section 76.1903 of the Commission’s rules, 47 C.F.R. § 76.1903, which restricts multichannel video program distributors (“MVPDs”) from using selectable output control (“SOC”). The Petitioners, as providers of content to MVPDs, have a business interest in making such content available to consumers and, therefore, have standing to seek this waiver as “interested part[ies]” under Rule 76.7(a)(1).

The Petitioners are seeking a waiver for a “new business model” involving motion pictures made available by or under the authority of the Petitioners. Specifically, the Petitioners are each interested in individually evaluating opportunities to partner with willing MVPDs to potentially develop versions of an innovative new service: movies in high definition digital format provided to consumers for enjoyment in their homes prior to the date of their release on prerecorded media (e.g., DVDs) for general in-home viewing (the “Services”).¹ In order to facilitate such discussions, the Commission should waive the restriction on the use of SOC in the case of an MVPD’s offering of a high definition movie in digital format prior to the release of such a movie on prerecorded media.² This limited waiver will serve the public interest by benefiting consumers through expanded choice and helping to further the digital television transition, all without undermining the Commission’s encoding rules. On this basis, the Petitioners respectfully request an expedited decision.

INTRODUCTION

The Petitioners would each like to independently explore partnerships with MVPDs – through mutually acceptable business negotiations – to potentially create exciting new Services for MVPD subscribers that will revolutionize home movie viewing and help speed the digital television transition. As described above, the Services would offer high value, high definition digital movies to consumers for enjoyment in their homes sometime prior to release on prerecorded media such as DVD, which currently occurs previous to, or at best simultaneously

¹ In this context, the date that movies are released on prerecorded media for “general in-home viewing” refers to the release of prerecorded media, like DVDs, for viewing by consumers in the home without additional protections, such as limits on the types of outputs, associated with early release content. This would not include media formats comparable to the new Services, such as prerecorded media with restrictions on output to protected digital interfaces, whose release would therefore not impact the applicability of the SOC waiver proposed here.

² As noted in the table on page 5, release on prerecorded media typically occurs approximately 120 days after theatrical release and precedes release on an MVPD platform by 30 to 45 days.

with, any MVPD service offering.

In order to make this extremely high value content available for in-home viewing at such an early window, protections are necessary to deter unauthorized copying or redistribution of the content. Enabling SOC in this instance will provide such protections by ensuring that the Services are permitted to flow over the particular secure digital outputs that each Petitioner and its MVPD partners may independently determine appropriate to the circumstances. The Petitioners' theatrical movies are too valuable in this early distribution window to risk their exposure to unauthorized copying, redistribution or other unauthorized activities. Distribution over insecure outputs would facilitate the illegal copying and redistribution of this high value content, causing untold damage to the DVD and other "downstream" markets.

The Commission's rules currently restrict the exercise of SOC by MVPDs. This regulation was adopted in 2003, as part of a set of encoding rules which govern the types of content protection signaling that may be used by MVPDs in conjunction with their video service offerings.³ Specifically, Section 76.1903 of the Commission's rules restricts MVPDs from:

[A]ttach[ing] or embed[ding] data or information with Commercial Audiovisual Content, or otherwise apply[ing] to, associat[ing] with, or allow[ing] such data to persist in or remain associated with such content, so as to prevent its output through any analog or digital output authorized or permitted under license, law or regulation governing such Covered Product.⁴

When the Commission enacted the rule, it indicated that such a rule was needed to promote the digital transition. At the same time, the Commission recognized that SOC "might have future

³ See 47 C.F.R. Subpart W; see also *In the Matter of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices, Compatibility Between Cable Systems and Consumer Electronics Equipment*, 18 FCC Red 20885, 20910 (2003) ("Unidirectional Plug and Play Order") ("As proposed to the Commission, the draft rules would prohibit MVPDs from encoding or otherwise modifying audiovisual content so as to activate selectable output control, which is the ability to remotely shut off a particular output or connector on a program-by-program basis, thereby funneling content through other authorized outputs.")

⁴ 47 C.F.R. § 76.1903.

applications that could potentially be advantageous to consumers, such as facilitating new business models, and will consider waivers, petitions, or other proposals to use [SOC] in this regard.”⁵ The Services that each of the Petitioners would like to consider developing with MVPDs are exactly the type of “new business model” that the Commission contemplated when it adopted its encoding rules. And, as the Commission indicated, waiver of the restriction in this limited context is necessary to remove a key regulatory impediment to the launch of these Services.

The new Services would without question be in the public interest. They would expand consumer choice by dramatically improving the timeliness and quality of home movie viewing for most MVPD subscribers. Further, by making this compelling content available to MVPD subscribers with newer HDTV receivers, offering of the Services can help further the digital transition by providing a significant incentive for consumers to purchase HDTVs. Therefore, as described in greater detail below, the Commission should promptly grant this petition and waive the restriction on the use of SOC in the case of an MVPD’s offering of a high definition movie in digital format prior to the release of such a movie on prerecorded media.

I. **THE PETITIONERS’ SERVICES WOULD PROVIDE HIGHLY VALUABLE CONTENT NOT CURRENTLY AVAILABLE THROUGH MVPD PLATFORMS AND THUS REQUIRE A GREATER DEGREE OF PROTECTION THAN IS AFFORDED BY THE COMMISSION’S RULES**

The Petitioners are anxious to have the ability to offer these new Services to consumers. The Services would consist of movies in high-definition format that have recently been released in theaters and that are currently not made available to consumers by MVPDs in this early time window. The Petitioners would each individually consider mutually satisfactory business

⁵ *Unidirectional Plug and Play Order* at 20192.

arrangements to make the Services available through any interested MVPD partner, including DBS providers, cable providers, telephone companies, and new broadband video providers.⁶ Although the specifics of each potential Service would be developed through these private business negotiations, the Petitioners fully anticipate that any such Service will be implemented in a consumer friendly manner. For example, one potential implementation could entail a dedicated channel that would be advertised, branded, marked within the program guide, and otherwise messaged to consumers as being available only to those subscribers who have the appropriate equipment (e.g., containing the supported video interfaces), much as high definition channels are now marketed by MVPDs to subscribers who have high definition receivers. Consumers without the necessary equipment will be aware this new Service is not available to them. And consumers who have HD equipment with these protected interfaces, and who purchase programs on this channel, would have a consistent and predictable experience. The exercise of SOC consistent with the requested waiver would not cause any consumer to lose a single linear channel the customer currently receives.

As the Commission is well aware, the movie viewing market consists of a series of release windows. These traditional, varied windows exist for numerous reasons, including avoidance of diluting distinct consumer markets, competitive concerns, and to protect against piracy. The following chart outlines the traditional release windows⁷:

Traditional Release Window	Traditional Timeframe
Theatrical	Initial release
Non-Theatrical	60 days after theatrical release

⁶ A waiver is not required to provide similar services using broadband digital networks. Granting of the requested waiver would place the MVPD platform on a level playing field with such broadband digital networks.

⁷ These release windows are rough estimates of the time table the Petitioners presently follow. These time tables are not absolute deadlines, but estimates that each of the Petitioners determine independently.

(e.g., hotels and airlines)	
DVD Release/Electronic Sell-Through (e.g., via Internet download)	120 days after theatrical release
Video on Demand/Pay-per-view	150 to 165 days after theatrical release
Premium Subscription (e.g., HBO and Showtime)	270 to 365 days after theatrical release
Basic & Extended Subscription and over-the-air TV	Nearly two to almost three years after theatrical release

Currently, the earliest the Petitioners make their movies generally available to MVPDs is 30-45 days after DVD release, or 150 to 165 days after theatrical release, although this is a matter of individual determination. If the requested relief is granted, the Petitioners would each be able to offer the Services through MVPDs to consumers significantly earlier and prior to DVD release. Once content provided through the Services is released in the home video sale/rental market for general in-home viewing, SOC would not be employed for that content going forward and the Commission's encoding rules would continue to apply as they do today.

In order to make high value, high definition, early release movies available to consumers in this manner, the Petitioners need the Services to flow over secure and protected digital outputs in order to prevent unauthorized copying and redistribution. Each Petitioner and its MVPD partners would determine through commercial negotiations the appropriate outputs and content protection tools for use with their Services. While protected digital interfaces were not as widely utilized when the Commission enacted the SOC ban, in the intervening period there has been a dramatic shift in how MVPD reception equipment is manufactured. Today, virtually all recently-manufactured high-definition receivers or displays and all recently-manufactured HD set top boxes have protected digital interfaces, making them the optimal and most readily available means to protect high value content. The large and growing number of consumers using this equipment would therefore be able to receive the Services and the use of SOC would

be completely transparent to them. It should be noted that these Services would also be available to MVPD consumers with integrated HDTV sets (e.g. “plug and play” equipment with integrated cable or satellite tuners) through the use of robust internal connections within those products.

II. THE PUBLIC INTEREST WILL BE SERVED BY GRANTING THE WAIVER

The public interest will undoubtedly be served if the Commission grants this waiver. Consumers would benefit greatly from the offering of the Services, as they will expand consumer choice in viewing options. Granting a waiver can also help promote a successful digital television transition because more high-definition content will be available to consumers, a fact that will provide increased incentives for consumers to purchase digital high-definition televisions. It is particularly important for the Commission to carefully consider a waiver that would facilitate the implementation of a proposed new service when the waiver does not undermine the underlying rule:

[A] general rule, deemed valid because its overall objectives are in the public interest, may not be in the ‘public interest’ if extended to an applicant who proposes a new service that will not undermine the policy, served by the rule, that has been adjudged in the public interest.⁸

Finally, a limited waiver would not undermine the Commission’s encoding rules and is consistent with Commission precedent.

A. When the SOC Rule Was Adopted, the Commission Specifically Recognized That Granting Waivers For New Services Could Benefit Consumers

In adopting its rule on SOC, the Commission anticipated waivers for offerings, such as that proposed here, which promise potential consumer benefits. The Commission explained that “[SOC] functionality might have future applications that could potentially be advantageous to

⁸ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

consumers, such as facilitating new business models.”⁹

The new Services would without question be in the public interest as they would expand consumer choice by dramatically improving the timeliness and quality of home movie viewing. The Services, with their early release of high-value, high-definition content, would provide consumers with new and exciting entertainment options that do not exist today. Consumers would be able to order from the comfort of their homes movies that are recently released in theaters. At least some segment of nearly every demographic would find this option attractive when unable to go to the movie theater. For example, physically challenged or elderly consumers who have limited mobility would have greater choice in movie viewing options. It would similarly benefit parents who want to see a new movie, but who cannot find or afford a babysitter. In sum, the Services would provide significant benefits to a very broad array of consumers.

B. Granting the Limited Waiver Will Further the Digital Transition

The digital transition is a priority for this Commission, Congress, and the Executive Branch as it will provide significant efficiencies and benefits to consumers and broadcasters respectively.¹⁰ By making more high-value, high definition digital content available to

⁹ *Unidirectional Plug & Play Order*, 18 FCC Rcd at 20912, ¶ 61 (citing letter from Fritz Attaway, MPAA to Marlene Dortch, Secretary, FCC (Aug. 29, 2003)). The Commission’s reference and Mr. Attaway’s letter refer to a then-potential service just like the Service discussed here. See MPAA Plug & Play Comments dated March 28, 2003 at 6 (“In the future, new early-window business models could, for example, conceivably offer recently released films to consumers in their homes, but such new business models can only be developed if content providers can be assured that access to content in such early release windows will not severely harm revenue streams from later distribution in other markets. ... Content owners may wish to make certain early-release content available only through digital connections that enable particular content protection features, rather than allow output of the content over all existing analog and digital outputs and destroy or devalue downstream markets.”).

¹⁰ Title III of the Deficit Reduction Act of 2005, Pub. L. 109-171, 120 Stat. 4, 21 (Feb. 8, 2006) (requiring termination of analog broadcasting by February 18, 2009); *Qualcomm Petition for Declaratory Ruling*, WT Docket No. 05-7, FCC No. 06-155 (rel. Oct. 13, 2006) (granting Qualcomm’s petition to offer new services in the 700 MHz band because it advances the public interest by “effect [ing] forward-looking policy that drives toward the end-point of the DTV transition”); *Requirements for Digital Television Receiving Capability*, Second Report and Order, 20 FCC Rcd 18607 (2005) (taking steps to expedite the digital television transition by providing for all new TV

consumers, the new Services can help promote a successful digital television transition. The Commission has recognized time and again that content is a key driver of the digital television transition.¹¹ By granting the requested waiver, the Commission will enable Petitioners and their MVPD partners to evaluate opportunities to make new, high-value premium content available to consumers in high definition digital form, which will encourage the purchase of HDTV sets by consumers, and thereby ensure that a greater number of citizens have the necessary equipment to receive broadcast digital programming by February 17, 2009.

C. A Limited Waiver Will Not Undermine the Commission's Encoding Rules

Granting the requested waiver will not undermine the Commission's encoding rules because this waiver would not affect the Petitioners' programming in any other release window. Since that is the case, and because the instant petition would promote the development of new Services for consumers, a waiver is particularly appropriate.¹² For content that is released through the new Services, once that same content is released for general in-home viewing, SOC would not be employed going forward and the Commission's encoding rules would continue to apply as they do today. Therefore, for consumers nothing will be different except that movies will be available to those with protected, high definition interfaces for viewing at home - in a

receiver equipment to include digital reception capability as of March 1, 2007); *Unidirectional Plug & Play Order*, 18 FCC Rcd 20885 (2003) (establishing rules to further the availability of digital cable ready televisions).

¹¹ See *Bend Cable Communications, LLC d/b/a Bendbroadband, Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules; Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, CSR-7057-Z, DA 07-47 ¶ 24 (rel. Jan. 10, 2007) (granting a waiver of the set-top box integration ban in part because such waiver would assist a cable operator to transition to an all-digital network and provide additional high-definition content, thereby creating greater incentives for subscribers to acquire high-definition digital sets); *Second Periodic Review of the Commission's Policies and Rules Affecting the Conversion to Digital Television*, 19 FCC Rcd at 18287 (recognizing in the broadcast context, that "reduced availability of high value content" will "slow the DTV transition"); *Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion To Digital Television; Public Interest Obligations of TV Broadcast Licensees; Children's Television Obligations of Digital Television Broadcasters; Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, 18 FCC Rcd. 8166, 8170 (2003) (noting in the broadcast context, the importance of digital programming to the transition "by helping to drive DTV set penetration and encouraging content producers and advertisers to invest in DTV.").

new, early window - before the general in-home release date.¹³

CONCLUSION

For the reasons addressed above, the Motion Picture Association of America, Inc. on behalf of the Petitioners respectfully requests the Commission grant this request for expedited special relief by waiving its rule on SOC for the new Services.

Respectfully submitted,

MOTION PICTURE ASSOCIATION OF
AMERICA, INC.



By:
Michael P. O'Leary
Senior Vice President & Chief Counsel
Federal Affairs & Policy
Motion Picture Association of America, Inc.
1600 Eye Street, NW
Washington, DC 20006
202-293-1966

May 9, 2008

¹² See *WAIT Radio*, *supra* note 19.

¹³ The phrase, "general in-home release" refers to the date of release either on home video (*e.g.*, DVD) or in other forms of distribution available for general in-home viewing (*e.g.*, video-on-demand, pay-per-view, subscription and basic tier television broadcast services, and electronic sell-through files that are not restricted to the most secure digital outputs).