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February 13, 2007

Ms. Monica Desai, Bureau Chief
Media Bureau
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: RCN Corporation's Petition for Waiver
CSR-7113-Z; CS Docket No. 97-80

Dear Ms. Desai:

I am writing to you to supplement RCN's November 17, 2006, request for a limited waiver of the "integration ban" pursuant to §§ 76.7 and 76.1207 of the Commission's Rules ("Petition"). In light of the Media Bureau's recent rulings on other pending waiver requests as of January 10, 2007, RCN is writing to express its very serious concern about the Bureau's denial of those requests, and to reiterate the fact that we believe that RCN's request fully comports with the standards set forth in the Commission's 2005 Extension Order¹ and those discussed in the January 10 orders.²

Before addressing those criteria, however, RCN must emphasize that the importance of a waiver to RCN and its subscribers cannot be overstated. The waiver request was limited in scope to only one set-top box ("STB") – the Motorola DCT-700 – and limited in time to extend only to 2009, by which time RCN believes that a more effective and long term downloadable solution will be available. As stated in its waiver request, that low-end, limited-feature box is essential to a number of RCN's strategic plans, and more importantly, to the successful advancement of a number of the Commission's long-held goals of advancing competition, lowering cable prices, furthering the deployment of digital services, and providing consumers

¹ Second Report and Order, *In re Implementation of Section 304 of the Telecommunications Act of 1996*, CS Docket No. 97080 (Mar. 17, 2005) ("2005 Extension Order").

² *E.g.*, In the Matter of Comcast Corporation, Memorandum Opinion and Order, CSR-7012-Z, CS Docket No. 97080 (Jan. 10, 2007); In the Matter of Bend Cable Communications, LLC d/b/a BendBroadband, CSR-7057-Z, CS Docket No. 97-80 (Jan. 10, 2007).

with specifically targeted and disaggregated choices in programming. Specifically, denial of a waiver would result in

- significant price increases for our subscribers if they want to receive basic digital services including important features like parental controls, interactive channel guides and video-on-demand (“VOD”) programming such as PBS Kids;
- derailment of our concerted effort to migrate all of our customers to fully digital services in order to free up capacity for additional high definition (“HD”), VOD, and other digital programming; and
- elimination of our ability to develop innovative new services similar to the four low cost Hispanic *a la carte* tiers of service that we introduced last fall.

We believe that the standards for a waiver are clearly met. In the 2005 Extension Order, the Commission noted that it would be contrary to the consumer oriented intent of the integration ban if it resulted in elimination of low-cost options for consumers, and stated that “achieving consumer choice by establishing a competitive market should not displace a low-cost set-top box option for MVPD subscribers.”³ A denial of RCN’s waiver request would do just that, and would not have any countervailing public benefit since the DCT-700 box is not the type of box that is available to consumers at retail stores, and a cable card is therefore an expensive but unnecessary feature. That box has only very limited functionality that allows access to certain digital programming features such as VOD, interactive channel guides and parental controls, and does not provide advanced functions such as video recording, broadband Internet access, or multiple tuners.

Denial of the Waiver Will “Displace a Low-End Option” for RCN Subscribers

RCN has filed a waiver request that is limited in scope to a single low-end STB – the Motorola DCT-700. That box forms the backbone of RCN’s effort to convert its analog customers to digital services. Each DCT-700 box costs RCN \$71.00. If that box becomes unavailable as of July 1, 2007 as a result of an FCC denial of RCN’s waiver request, the least expensive replacement box offered by Motorola will be the DCH-100, which will cost RCN \$232.00 (including a \$50 cable card) – more than **triple** the cost (i.e. approximately 325 percent) of the DCT-700. Moreover, no other compatible STBs are expected to be available from other manufacturers by the July 1 deadline or even thereafter that would be materially less costly than the DCH-100.

Customers who want and use the most minimal features and functions will clearly suffer a huge – and disproportionate – increase in their cost of service. Whereas each low-end box will **triple** in price, the impact of the integration ban is proportionately much less than the increase

³ 2005 Extension Order at ¶37.

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for high-end, fully featured STBs, for which the increase will only be in the **15 percent** range.⁴ Yet it is for these full-featured boxes that there is a burgeoning retail market of alternative STBs and TVs available to consumers, and not for the low-end, limited DCT-700 box. And it is therefore these consumers who will have no choice but to pay at least three times today's price or else go without the benefits of digital services.

A Waiver is Essential to the Migration of Subscribers to “All Digital” Throughout Their Homes and to Free Up Capacity for Additional Digital Programming

In addition to offering consumers a low cost way to obtain digital features and services such as parental controls, interactive program guides and VOD programming, a low-cost set top box option is essential to permitting RCN to reducing the number of analog channels it offers in order to free up much-needed capacity for digital services such as HD and VOD programming as well as additional *a la carte* tiers such as our new Hispanic *a la carte* package of four separately-available packages of Hispanic programming.

Virtually all of RCN's subscribers have more than one TV in their homes connected to RCN service. Although a high percentage (roughly 60 percent) subscribe to digital service at their primary TV, RCN believes that many (if not most) subscribers obtain access to RCN's analog services without any STB at secondary or tertiary TV sets in other home locations such as kitchens and bedrooms. In order to be able to significantly reduce the number of analog channels and thereby free up capacity for additional digital channels, RCN must convince these subscribers to deploy STB's at those other locations.

RCN has initiated a deployment plan to undertake this effort, but one critical factor that will determine our success will be our ability to do so without materially raising the consumer's monthly cable bill. If the price of the low-end box triples, the value proposition to subscribers will change dramatically, and it is unlikely that they will choose to spend significant additional monthly amounts in order to extend their digital service, and RCN's effort to “crush” its analog service and thereby expand its digital capacity in the near term is doomed to failure.

As noted in Communications Daily in January 30, 2007, under the headline “HDTV Homes Feel Cheated by Lack of Programming,” it will be critical to the success of HDTV to increase the amount of HD content available and to keep down the cost of additional equipment needed to obtain it. A waiver of the integration ban would achieve both since it will permit RCN to “crush” its analog channels and free up space for additional HD content.

⁴ For example, the DCT-6416 DVR that costs RCN \$460 today will be replaced by the DCH-6416 at a cost of \$526 (including a \$50 cable card) – a **14.3 percent** increase.

A Waiver is Essential to the Development and Deployment of Important New Services

The availability of a basic low cost STB is also essential to the development of new *a la carte* programming packages by RCN.

RCN currently offers 4 “MiVision” Hispanic *a la carte* service packages that are available separately (Kids \$3.95/mo., Sports \$4.95/mo., Country of Origin \$4.95/mo., and Variety \$12.95/mo.), or as a group (\$19.95). In order for a customer to subscribe to that service, all the customer needs is limited basic service and a STB. These inexpensive packages offer Hispanic subscribers the ability to obtain programming that they particularly want and enjoy at very reasonable prices and as separate, *a la carte* “mini tiers” of programs. Demand for the service is clearly price sensitive – of the over 1600 homes that have subscribed since the service was launched late last year, nearly 25% have purchased one or more individual packages rather than the entire MiVision service, and over 50 of those homes have subscribed as an add-on only to limited basic service rather than our expanded basic channel lineup.

Given the reasonable price at which the *a la carte* Mi Vision packages are offered, a tripling of the STB cost for this service would have a huge percentage effect on the overall cost to consumers and therefore on the success of the launch. For example, a subscriber can today purchase the Mi Vision Kids package with Limited Basic and a STB for \$21.90 (Limited Basic \$15, plus \$3.95 Kids Package, plus \$2.95 for the 1st STB – additional STBs are \$5.95 per box). If the price of the STB were to increase roughly 325 percent, then the rate of the package with one STB would go from \$21.90 to \$28.53, with two STBs, the rate would go from \$27.85 to \$47.87, and so on. Therefore, absent a waiver, a family that wants to have this service at two televisions would pay only \$18.95 per month for the limited basic and MiVision Kids programming package, but would need to pay \$28.92 for the two STBs needed to access that programming.

Obviously, the STB price increase would have a disastrous effect on the success of the Hispanic tier, which took months of hard-fought negotiations with reluctant programmers to achieve. But perhaps even more importantly, if a waiver is not granted RCN will of necessity halt its efforts to develop other specially targeted programming and packages that are available on an *a la carte* basis to its subscribers. It is difficult for RCN to understand how the Commission, which has often expressed an interest in seeing cable operators try to develop service offerings that permit consumers to purchase the programming that they particularly want without having to purchase large tiers of programming that they do not want, could deny a waiver request that is essential to the development of such innovative and consumer-oriented offerings.

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Denial of a Waiver Will Not Impede Any Competitive Market for Low-Cost STBs

Clearly, for purposes of moving toward an all digital environment with expanded capacity for HD and other digital programming, a waiver is essential. The replacement STB that will triple the price of the box in use today does not offer any new benefits that would justify the increase in price for the types of subscribers who use these limited-feature boxes. As noted above, the integration ban set forth in Section 304 of the 1996 Act was meant to foster a competitive retail market for access and navigation devices. As noted by the Commission in 2005, achieving such choice “should not displace a low-cost set-top box option for consumers,” yet this is exactly what would result if RCN’s waiver request is denied. The types of boxes for which there is retail competition are those which offer advanced features and functions such as DVR recording, broadband access, and multiple tuners. The DCT-700 box, on the other hand, is not the type of box that is available to consumers at retail stores, and a cable card is therefore an expensive but unnecessary feature. Clearly, to ask consumers to pay triple the amount for features that they neither want nor need, and for which no low-cost retail alternative is available, clearly turns public policy, which has long tried to expand competition and lower cable prices, on its head.

In sum, we believe that RCN fully meets the Commission’s and the Telecommunications Act’s criteria for a limited waiver of the integration ban. Given the fast approaching deadline for implementation, and the need to proceed with business planning, we look forward to the Petition being placed on Public Notice and to working further with you as the Bureau formulates its decision. We would also be happy to meet with you to discuss any questions you may have.

Sincerely,

/s/

Richard Ramlall
Senior Vice President,
Strategic & External Affairs

cc: Mr. Brendan Murray (Media Bureau)