Communications Advisory Counsel LLC

2154 Wisconsin Avenue N.W.
Washington, D.C. 20007

Tel. 202-333-5273
Fax 202-333-5274

Sylvia Lesse
sylvia@Independent-Tel.com

March 12, 2007

Via messenger

Federal Communications Commission
Media Bureau
PO Box 358205
Pittsburgh, PA 15251-5205

Re: Cable & Communications Corporation and
Mid-Rivers Telephone Cooperative, Inc.
Request for Waiver of 47 CFR § 76.1204(a)(1)

Ladies and Gentlemen:

Cable & Communications Corporation and Mid-Rivers Telephone Cooperative, Inc., by counsel, respectfully submit an original and four (4) copies of the above-referenced Request for Waiver (the "Request"), together with a check made payable to the Federal Communications Commission in the amount of Two Thousand Five Hundred Dollars ($2,500) in payment of the required filing. A copy of the Request also has been filed electronically in CS Docket 97-80.

Please refer and questions regarding this matter to the undersigned.

Respectfully submitted,

Sylvia Lesse

Sylvia Lesse

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
CABLE & COMMUNICATIONS CORPORATION	)	CSR ____
and MID-RIVERS TELEPHONE COOPERATIVE, INC.	)	
	)	
Request for Waiver of 47 C.F.R. § 76.1204(a)(1)	)	
of the Commission's Rules	)	

To: Chief, Media Bureau

REQUEST FOR WAIVER

Pursuant to Sections 629(a) and 629(c) of the Communications Act of 1934, as amended,[1] and Section 1.3, Section 76.7 and Section 76.1207 of the Commission's Rules,[2] Cable & Communications Corporation and its parent, Mid-Rivers Telephone Cooperative, Inc. (collectively, "C&CC") respectfully seek a temporary waiver of Section 76.1204(a)(1) of the Commission's Rules.[3] This rule, the "integration ban," provides that, as of July 1, 2007, multichannel video program distributors such as C&CC may no longer deploy set-top boxes that combine security or conditional access functionality with navigation functions.

Waiver is appropriate and warranted under the specific circumstances described herein because it will facilitate the rapid introduction of state-of-the-art digital cable services to rural and less affluent communities. Accordingly, grant of the requested waiver will serve the public

---

1 47 U.S.C. § 549(a); 47 U.S.C. § 549(c).

2 47 C.F.R. § 1.3; 47 C.F.R. § 76.7; 47 C.F.R. § 76.1207.

3 47 C.F.R. § 76.1204(a)(1).

interest by promoting the deployment of advanced technologies and competition in video service provision.

Under current technical constraints, application of the integration ban as of the current deadline would impose very high costs upon C&CC when it adds subscribers or upgrades service to existing subscribers. For C&CC's system, the cost of utilizing compliant set-top boxes more than doubles the cost of currently-available integrated set-top box equipment for certain models. Moreover, in two headends, the deployment of compliant set top boxes will require extensive headend upgrades. Because of economic conditions within the C&CC service area, it would be difficult, if not impossible, to recover a significant portion of these costs directly from subscribers.[4] Absorption of this cost by C&CC likely will delay the introduction of digital programming services throughout the service area, and undermine C&CC's competitive position with satellite video programming providers.

C&CC's requested relief is, moreover, both brief and limited. Grant of the eighteen month waiver requested herein[5] will speed the deployment of state-of-the-art digital services throughout its service area, and otherwise serve the public interest by ensuring that video services remain economical in C&CC's rural and economically disadvantaged service area.

---

[4] Over the years, C&CC has made every attempt to provide affordable video programming services to its subscribers. Basic rates have remained relatively stable, with only minimal increases over the past ten years.

[5] C&CC's vendor currently quotes 90-100 days lead time for shipping compliant set-top boxes. In the event that the Commission denies the relief requested herein, C&CC respectfully requests, as alternative relief, a sufficient extension of time to accommodate its vendor's delivery schedule.

Accordingly, grant of C&CC's waiver request is warranted.[6] In support of its request for waiver, C&CC submits the following:

I. Background

Cable & Communications Corporation is an affiliate of Mid-Rivers Telephone Cooperative, Inc. ("Mid-Rivers"), a rural telephone cooperative providing local exchange and exchange access service to approximately 30,000 square miles in rural eastern Montana and western North Dakota. The two companies provide video programming services to twenty-two (22) distinct communities spread over fourteen (14) counties in rural eastern Montana and one (1) county in western North Dakota, using ten (10) separate headends.[7] The population of this service area is extremely sparse – the most densely-populated county in the C&CC service area, Richland County, has only approximately 4.6 persons per square mile.[8] Six of these counties have a population density of less than one person per square mile.[9] Low density and long distances between customers greatly increase the cost of distribution plant and make C&CC customers more expensive to serve than their urban or even more densely-populated rural counterparts.

Already sparse, the population of the C&CC service area is shrinking. During the five-year period between April 1, 2000 and July 1, 2005, twelve of the fourteen counties served by

---

6 47 C.F.R. § 76.7(i) ("The Commission, after consideration of the pleadings, may determine whether the public interest would be served by the grant, in whole or in part, or denial of the request . . . ."); s*ee also WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969) (particular facts result in strict compliance being inconsistent with the public interest); *see also Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990) (special circumstances warrant deviation from a general rule where the public is better served).

7 Cable & Communications Corporation operates nine (9) headends and Mid-Rivers operates one (1) headend.

8 *State and County QuickFacts*, US Bureau of the Census, http://quickfacts.census.gov/qfd/states ("QuickFacts").

9 *Id*. The persons-per square mile ratio for these six counties is as follows: Prairie – 0.7; McCone – 0.7; Golden Valley – 0.9; Carter – 0.4; Treasure – 0.9; and Garfield – 0.3.

C&CC experienced a decline in population, with one county, Treasure, suffering a 20% population decrease.[10]

Population decline in this area is accompanied by relatively low median income. In 2003, the median income in the United States equaled $44,389. For the same period, the state of Montana reported a median income level of $34,449. No county in the C&CC service territory came close to the US median income level, and only one county in the C&CC service area, Fallon County, reached or exceeded the state-wide median income level.[11] In addition, ten of the fourteen counties in the C&CC service area exceeded the 2003 national percentage of persons below the poverty line – 12.5%. Wheatland County suffered more than 20% of its population below the poverty level.[12]

The current service choices of C&CC's subscriber base reflect the economic realities of the region. Only approximately 22% of its subscribers choose the more expensive digital service (where it is available).[13]

Nonetheless, with the advent of digital television and the promise of other technological innovations, C&CC must implement a system-wide digital conversion. Even though the profit motivation is not necessarily the pivotal element in a cooperative's service deployment decisions, the small subscriber base nonetheless mandates strict cost control to ensure that service may be

---

[10] *Id*. Only one county, Golden Valley, enjoyed a population increase; in Musselshell County, there was no change in population recorded during the period. The population loss experienced by the other eleven counties in the service area ranged from 2.9% to 11%.

[11] *Id.* The Census Bureau reported a 2003 median income figure for Fallon County of $35,208.

[12] *Id.* In Musselshell County, 17.6% of the population was below the poverty line, and in Golden Valley, 17.9% of the population had the same status. McKenzie County, North Dakota, has characteristics in common with the Montana counties served by C&CC. With a population density of 2.1 persons per square mile and a shrinking population base, McKenzie County suffered 13.7% of its population below the poverty line and a median income of only $31,118. *Id*.

[13] Currently, six of the ten C&CC headends still require digital conversion or upgrade.

maintained, improved and expanded. With the more economical downloadable security solution being currently unavailable, C&CC's financial capability to move forward with digital conversion is threatened. Accordingly, C&CC seeks a limited extension of the implementation of the integration ban to allow it to conserve the capital necessary to complete the digital conversion of its system, and at the same time position itself to take advantage of the more economical solutions which may arise to effect the separation of set-top box security and navigation functions.

II. Waiver is Warranted

Waiver is appropriate if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest, if the underlying purpose of the rule would be frustrated by application in a specific case, or, in view of unique or unusual factual circumstances, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.[14] C&CC's waiver request meets each of these criteria.

C&CC proposes continued and temporary utilization of Motorola models DSR 470, DCT 6412/6416, DCT 2000 and DCT 2500[15] to expand or upgrade its video programming services. These devices integrate security and navigation functions. While approximately 3500 of these integrated boxes are currently deployed, and thus grandfathered as of the July 1, 2007 integration ban deadline,[16] the deployment of compliant units after the deadline will more than double the customer equipment costs of adding subscribers or upgrading service. In addition, the current

---

[14] *See* *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *appeal after remand*, 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990).

[15] C&CC also seeks confirmation of its understanding that, in any event, its current inventory of set-top boxes, both those previously deployed and those not yet deployed, may be utilized after July 1, 2007.

[16] As required by the Commission's rules, an adequate supply of CableCards will be available for customers requesting modular security components.

equipment in two headends, located in Baker and Roundup, Montana, would require significant upgrades to accommodate compliant navigation devices.[17] To conserve its capital resources to allow more rapid introduction of digital services throughout its service area, C&CC seeks waiver of the integration ban through December 31, 2008.

C&CC seeks only a minimal extension of the integration ban deadline. During the requested eighteen-month period, during which C&CC anticipates completing its digital upgrade, C&CC anticipates that it may have the opportunity to access and deploy a downloadable security solution, a more efficient and economical method of implementing the integration ban. In addition, more economical models of compliant set-top boxes may well become available within the requested time frame. Furthermore, C&CC will, during this period, also have the opportunity to review and analyze alternative compliance methodologies. C&CC is aware of the Commission's announcement that Beyond Broadband Technology, LLC ("BBT") has developed an "open" downloadable security system, providing a means to compliance.[18] C&CC is concerned, however, that this technology will not be compatible with its Motorola system. Although C&CC commits to further investigation regarding this product's utility and compatibility, it is currently its understanding that even the BBT product will not be available on a retail basis until well after the July 1, 2007 deadline.

The public interest in strict adherence to the integration ban deadline in C&CC's economically-challenged service area also comes into question. The record in the Commission's docketed proceeding, incorporating this and other requests for waiver of the integration ban,

---

[17] C&CC is informed by its vendor, Motorola, that the "Quicktake" headend must be upgraded to accommodate the Motorola compliant set-top boxes.

[18] *See* "Commission Reiterates That Downloadable Security Technology Satisfies the Commission's Rules on Set-Top Boxes and Notes Beyond Broadband Technology's Development of Downloadable Security Solution, Public Notice, CS Docket 97-80, DA-0751 (rel. Jan. 10, 2007).

indicates that current retail prices for mass-marketed consumer navigation devices is quite steep – beginning at approximately $1000.[19] In C&CC's market area, it is unclear that significant demand for these expensive alternative navigation devices will develop at current prices.

With a negative consumer impact of C&CC's immediate compliance being unlikely, the public interest benefits in immediate application of the integration ban to C&CC are themselves unclear. The ability to achieve the very purpose of the integration ban – the promotion of competitive navigation devices – is diminished while the devices themselves remains unaffordable. In both relative and absolute terms, C&CC's subscribers are less able to afford the stand-alone navigation devices that are currently commercially available. Accordingly, the public interest underlying the integration ban is not affected adversely by a short extension of this deadline. Furthermore, enabling C&CC to conserve scarce resources to concentrate on the extension and improvement of digital services throughout its service area is decidedly in the public interest.

The public interest in promoting the prompt and economical deployment of advanced services will be served by grant of the requested waiver.[20] The deployment of system-wide improvements, including the implementation of state of the art digital services including high definition programming, video-on-demand, and advancements in parental control, will be more readily achieved if C&CC's waiver request is granted.

Grant of this limited waiver will enable C&CC to direct the deployment of its limited resources to serve rural eastern Montana and western North Dakota in a manner which

---

19 *See e.g.,* Reply Comments of Charter, at Exhibit A (Sept. 28, 2006) (the only CableCARD-ready devices from major retailers Best Buy and Circuit City in September 2006 were DTVs priced from $1700-7000, and a Tivo Series 3 priced at $800 plus more than $150/year in TiVo subscription fees).

20 47 C.F.R. §76.1207 specifically authorizes the limited waiver of the integration ban where "such a waiver is necessary to assist the development or introduction of a new or improved multichannel video programming or other service offered over multichannel video programming systems, technology, or products."

recognizes the characteristics of regional capability and regional demand. Demanding strict compliance with the integration ban in this instance wrongly presumes nationwide commonality in these two market elements, and disadvantages subscribers by ultimately imposing additional costs without concomitant benefits. Under these circumstances, it is clear that application of the rule would be inequitable, unduly burdensome, and contrary to the public interest.[21]

In view of the foregoing, C&CC respectfully submits its waiver request is justified, and requests prompt grant of the relief requested herein.

Respectfully submitted,

CABLE & COMMUNICATIONS CORPORATION and

MID-RIVERS TELEPHONE COOPERATIVE, INC.

By: Sylvia Lesse

Sylvia Lesse
Their Attorney

Communications Advisory Counsel, LLC
2154 Wisconsin Avenue, NW
Washington, DC 20554
(202) 333-5273

March 12, 2007

---

21 *See WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *appeal after remand*, 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990).

DECLARATION OF GERRY ANDERSON

I, Gerry Anderson, General Manager of Cable & Communications Corporation and Mid-Rivers Telephone Cooperative, Inc., do hereby declare under penalty of perjury that I have read the foregoing Request for Waiver and that the facts stated therein are true and correct, to the best of my knowledge, information and belief.

Gerry Anderson

Gerry Anderson

Dated: March 12, 2007