

CTC Video Services, LLC  
1000 Progress Place, NE  
Post Office Box 227  
Concord, NC 28026-0227  
704-722-2500



March 22, 2007

*Via overnight delivery*

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

Re: CTC Video Services, LLC Request for Waiver of 47 CFR § 76.1204(a)(1)

Ladies and Gentlemen:

CTC Video Services, LLC respectfully submits 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 One Thousand Two Hundred Fifty Dollars (\$1,250) in payment of the required filing. A copy of the Request also has been filed electronically in CS Docket 97-80.

Please indicate receipt of this filing on the copy of the Request marked "stamp and return," and returning this copy by mail in the attached postage-prepaid envelope.

Please call with any questions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Aubrey E. Judy III".

Aubrey E. Judy III  
Directory Regulatory Affairs

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of )  
 )  
CTC Video Services, LLC ) Docket No. CSR - \_\_\_\_\_  
 )  
Request for Waiver )  
of 47 C.F.R. § 76.1204(a)(1) )

To: Chief, Media Bureau

**REQUEST FOR WAIVER**

Pursuant to Sections 629(a) and 629(c) of the Communications Act of 1934, as amended,<sup>1</sup> and Section 1.3, Section 76.7 and Section 76.1207 of the Commission's Rules,<sup>2</sup> CTC Video Services, LLC ("CTC"), an affiliate of The Concord Telephone Company (Concord), a 110 year old rural incumbent local exchange carrier, respectfully seeks limited and temporary waiver of Section 76.1204(a)(1) of the Commission's Rules<sup>3</sup> for the purpose of ensuring the rapid and efficient introduction of competitive video programming and advanced broadband service in west-central North Carolina. Grant of the requested waiver would serve the public interest in promoting competition in video and deployment of broadband access services.

The application of the "integration ban" as of the current July 1, 2007 deadline would impose inordinate start-up costs for CTC's nascent fiber-to-the-home video and

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<sup>1</sup> 47 U.S.C. § 549(a); 47 U.S.C. § 549(c).

<sup>2</sup> 47 C.F.R. § 1.3; 47 C.F.R. § 76.7; 47 C.F.R. § 76.1207.

<sup>3</sup> 47 C.F.R. § 76.1204(a)(1).

alternative broadband offerings. This cost increase will delay the introduction of advanced competitive services, including competitive video programming services, as well as significantly faster broadband access than is currently available in the region. The Commission has specifically recognized the promotion of such competitive ventures as furthering the public interest. Compliance with the integration ban, however, will introduce significantly increased costs and possibly a delay in offering services, burdening an already disadvantaged new market entrant with costs that its incumbent competitor<sup>4</sup> does not face because the competitor's existing set-top boxes are grandfathered.

CTC's requested relief will promote the public interest and is, moreover, both brief and limited. Grant of the eighteen month waiver requested herein<sup>5</sup> will speed the deployment of competitive services, and otherwise serve the public interest by enabling the fair and efficient administration of rules of general applicability while ensuring that the purpose of the rule itself is not undermined where waiver of those rules is warranted in a specific situation.<sup>6</sup> In support of its request for waiver, CTC submits the following.

## **I. Introduction**

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<sup>4</sup> CTC believes that Time Warner Cable is the only terrestrial video programming source in Concord's service territory. On January 31, 2007, Time Warner Cable's parent company, Time Warner, Inc. reported 2006 revenues in excess of \$44 billion.

<sup>5</sup> Because CTC's vendor currently quotes a four-month lead time for shipping compliant set-top boxes, in the event that the Commission denies the relief requested herein, CTC respectfully requests, as alternative relief, a sufficient extension of time to accommodate its vendor's delivery schedule if CTC initiates its ordering process upon notification of the Commission's denial of this waiver request.

<sup>6</sup> 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 . . ."); see 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).

CTC is the affiliate of a small rural telephone company – The Concord Telephone Company ("Concord"). Concord serves approximately 106,000 access lines in rural areas and small towns in west-central North Carolina. Within the next month, CTC plans to launch the first phase of its new commercial offering of video programming services and advanced alternative broadband access primarily to Concord subscribers within its incumbent local exchange company ("ILEC") territory through fiber facilities constructed directly to each home and business establishment. As the most recent demonstration of the Concord companies' historic commitment to bringing advanced communications services to non-urban portions of west-central North Carolina,<sup>7</sup> the deployment of fiber-to-the-home will allow CTC's introduction of the first terrestrial video programming competition within the vast majority of this territory,<sup>8</sup> as well as Concord's introduction of the fastest broadband pipeline in the area.<sup>9</sup>

Concord invested more than \$10 million in fiscal year 2006 in video and fiber equipment and has plans for significant expenditures in future years. Because this undertaking involves a substantial investment, carefully phased deployment of

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<sup>7</sup> The Concord companies have served west-central North Carolina for more than a century, consistently delivering state-of-the-art communications and information services to its service area in an economic and efficient manner, thereby overcoming the "rural divide" that plagues so much of the Nation.

<sup>8</sup> Although satellite video programming likely is available to all persons within the Concord service areas of Rowan, Cabarrus and Stanly counties, CTC believes that Time Warner is the only terrestrial video programming source in the overwhelming portion of this area, with landline video/cable alternatives available only in "greenfield" developments (previously unserved areas) where competitive local exchange carriers may be offering bundled telecommunications, information and video services.

<sup>9</sup> The end-to-end fiber transport facilities Concord has installed is designed to provide 80 Mbps high-speed Internet access. In contrast, Concord's existing landline broadband customers currently choose, based upon a mixture of available speeds and pricing considerations, among services beginning at 512 Kbps, and ranging from 1.5-5 Mbps, up to 10 Mbps. Should the Commission require information regarding the percentage of customers currently subscribing to each level of service, Concord and CTC would be pleased to submit this data, together with a request to treat such information be withheld from public inspection as confidential and exempt from disclosure under the provisions of the Freedom of Information Act, 5 U.S.C. 552(b)(4).

strategically-bundled services, including the provision of sophisticated video services demanded by the market, is critical to the commercial viability of the venture.

CTC's initial implementation strategy incorporated an internet protocol, or "IP" delivery system for its video product. Utilization of this technology would have incorporated set-top boxes compliant with the Commission's integration ban. Unfortunately, the commercial availability of IPTV set-top boxes capable of providing services demanded by CTC's customers<sup>10</sup> and certified by middleware vendors has been significantly delayed. CTC wants to offer its customers a product with features that at least match those available from the incumbent cable provider. Accordingly, CTC's timely competitive entry into the market requires the implementation of an alternative technology -- radio frequency (RF) over fiber -- as a temporary delivery system pending the ready availability of IP set-top boxes acceptable to CTC and its subscribers.

CTC's digital headend and set-top box vendor, Scientific Atlanta, was able to accommodate the IP-to-RF technical modification, but the proprietary technology of the integrated Scientific Atlanta headend-to-set-top system is such that no interfaces other than Scientific Atlanta products are usable on this system at this time. CTC 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.<sup>11</sup> CTC has researched the issue and is cautiously optimistic that, in the future, an open standard downloadable security solution may indeed solve a number of long term needs,

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<sup>10</sup> Market research indicates that competitive video products must include the availability of integrated high definition digital video recorders, a service not yet commercially available in the MPEG-4 or MPEG-2 protocol. Competitive video products must also include two-way capability.

<sup>11</sup> 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).

but does not believe it offers a solution that will be compliant with the July 1, 2007 deadline or that fully meets the needs of CTC's customers at this time. CTC's concerns relate to timing, functionality, and testing and integration.

- Timing – It does not appear that any set-top box with separated downloadable security will be available by July 1, 2007, and the earliest projected date of availability appears to be the fourth quarter of 2007.
- Functionality – The first boxes produced will be one-way boxes and will not have DVR capability. In the long term, manufacturers may produce boxes with more robust capabilities, but CTC cannot find a manufacturer that will have them available this year.
- Testing and Integration – CTC's middleware system has been integrated with its billing, customer service, and trouble/repair systems. New boxes may or may not use different middleware systems. Their deployment may require additional work to integrate new software, or create patches that allow different systems to communicate. CTC would like to test the new system as a whole rather than risk service-affecting issues.

In addition, CTC is concerned about its ability to offer its potential customers a full range of features comparable to those in the incumbent cable provider's products. For example, the cable provider in Concord's territory offers high definition (HD) programming, standard definition (SD) programming, digital video recorder (DVR) functionality, video on demand (VOD), and an interactive program guide (IPG). VOD and IPG require a two-way box to function. CTC is not aware of any manufacturer that

will have a set-top box available by July 1, 2007 with separated downloadable security that delivers all of the services its customers demand and its competitors already offer.

Given the promise of this new technology, CTC will continue discussions with potential vendors and manufacturers. The issue remains, however, that in the short term, no set-top box with downloadable security will be available in time to meet the FCC's July 1, 2007 deadline. Absent a waiver, CTC can choose between two unattractive alternatives. CTC can either provide services at lower levels than its customers demand, without DVR, VOD, and IPG, or it can pay significantly higher CPE costs than its competitor.

The proven and available technology, the Scientific Atlanta conforming boxes, are, in the case of the SD boxes, estimated at more than double the cost to CTC of the security-integrated unit, and more than fifty percent greater for the HD set-top box. CTC estimates that purchase of compliant boxes would increase the costs of service deployment by several million dollars over the next eighteen months, constituting a significant percentage of the Concord companies' 2006 operating income.

As is evident, CTC's difficulty arises from the interplay of the timing of its launch, the necessity to deploy a temporary alternative technology, RF, and the implementation of the Commission's integration ban. Aside from the uncertainty regarding the availability of compliant set-top boxes, and the cost of a compliant low-end set-top box being doubled, CTC would be required to sink an even greater percentage of scarce resources into a temporary technology without a means for cost recovery.<sup>12</sup>

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<sup>12</sup> Although CTC will not disrupt customers served by RF to require conversion to IP technology when implemented, the technology of choice will be IP when reliable consumer equipment becomes available.

Prudent business practices demand that the absorption of increased and unrecoverable costs<sup>13</sup> will result in a commensurate delay in the deployment of competitive and advanced services to consumers. This result is wholly contrary to the Commission's goals<sup>14</sup> and Congressional directives.<sup>15</sup> Accordingly, grant of the limited, temporary waiver is justified.

## **II. Immediate Application of the Integration Ban to CTC Does Not Serve the Public Interest**

CTC proposes temporary utilization of Scientific Atlanta models Explorer 1850, Explorer 3250 HD, Explorer 8300 SD DVR and Explorer 8300 HD DVR to initiate its video programming services. These devices integrate security and navigation functions. Given the timing of CTC's launch, only a minimal number of integrated boxes will have been deployed, and thus grandfathered, by the July 1, 2007 integration ban deadline.<sup>16</sup> After that time, CTC's customer premises equipment costs for subscribers electing lower service tiers will approximately double in order to deploy compliant set-top boxes. The incumbent with which CTC intends to compete will be serving customers using less expensive boxes that CTC will not be allowed to use absent grant of this waiver. Accordingly, CTC seeks waiver of the integration ban through December 31, 2008 to

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<sup>13</sup> Entry into a competitive market constrains CTC's ability to pass along the entire sunk costs to consumers, although, as noted below, some portion of these costs must be absorbed by subscribers.

<sup>14</sup> See generally, *Second Report and Order*. See also *supra* n. 5.

<sup>15</sup> Even as it mandated competition in navigation devices, Congress directed the Commission to waive its commercial availability standards "for a limited time upon an appropriate showing . . . that such 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 . . ." 47 U.S.C. § 629(c). CTC's request for an eighteen-month period within which to initiate new competitive video service offerings and introduce the highest speed broadband service access system in its service area clearly comports with this Congressional directive.

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

allow the prompt initiation of economically viable competitive video and advanced broadband services through temporary deployment of affordable set-top boxes.

CTC, like most market newcomers, will be required to overcome the innate advantage of the incumbent; it is generally more expensive to court a new customer than to keep an existing one. A regulatory mandate that places the new competitor at a cost disadvantage heightens the incumbent's advantage. The near simultaneous timing of the CTC's market entry and the activation of the integration ban adds yet another element of advantage to incumbency – an existing compliment of inexpensive set-top boxes already deployed and eligible for grandfathered treatment. Removing impediments to full and fair competition yields yet another reason for grant of the requested relief, because, in light of the totality of the circumstances, application of the rule would be inequitable, unduly burdensome, and contrary to the public interest.<sup>17</sup>

### **III. Grant of CTC's Limited Waiver Request is Warranted**

CTC seeks only a short respite from the integration ban requirements. During the requested eighteen-month period, IP technology and/or downloadable security solutions meeting CTC's product definition will undoubtedly progress to a more deployable state.

Because of the limited time period, the number of non-compliant set-top boxes deployed by CTC will also be limited. Accordingly, CTC seeks only an eighteen-month waiver, or the time required to deploy 14,000 units, whichever is less.

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<sup>17</sup> 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).

CTC's requested relief is also temporary. CTC pledges to replace non-compliant units after expiration of the waiver period within four weeks of a customer's request. CTC will provide quarterly notice of that offer for one year, in March, June, September and December of 2009.

Furthermore, CTC has every incentive to incorporate the more efficient and economical downloadable security solution into its integration and compliance plans. Downloadable security offers a number of advantages over static systems like cable cards and has the potential of becoming a more economical solution than CTC's current options. It remains to be seen if this promise will come to fruition and if it does, when the products will be tested and produced in quantity. If this technology becomes commercially available during the requested waiver period, CTC would give careful consideration to moving to this technology in advance of the expiration of its granted waiver.

CTC's waiver request is limited in both time and scope, and the company, cognizant of its regulatory obligations, proposes to remedy any potential consumer disadvantage after the waiver expires, rather than extend the effect of the waiver grant (deployment of grandfathered non-conforming units) in perpetuity. Grant of this limited, temporary and focused waiver request is an appropriate balancing of the varied elements of the public interest.

#### **IV. CONCLUSION**

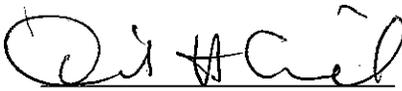
Concord's fiber to the premises deployment is good for the community and consistent with Commission and Congressional goals. CTC has and will continue to investigate solutions that comply with the Commission's rules and meet customer

demand. Currently available solutions either do not meet the product definition CTC believes it must provide, or impose an unreasonable and anti-competitive financial burden on a new entrant.

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

Respectfully submitted,

**CTC Video Services, LLC.**

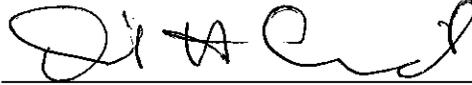
By:   
David H. Armistead  
General Counsel

1000 Progress Place  
Concord, NC 28027  
(704) 722-2500

March 22, 2007

**DECLARATION OF DAVID H. ARMISTEAD**

I, David H. Armistead, General Counsel of CT Communications, 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.



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David H. Armistead

Dated: 3/22/2007

FEDERAL COMMUNICATIONS COMMISSION  
REMITTANCE ADVICE

(1) LOCK BOX # <b>358205</b>	SPECIAL USE ONLY
	FCC USE ONLY

SECTION A - PAYER INFORMATION

(2) PAYER NAME (if paying by credit card enter name exactly as it appears on the card) <b>CT Communications, Inc.</b>	(3) TOTAL AMOUNT PAID (U.S. Dollars and cents) <b>\$1,250.00</b>
(4) STREET ADDRESS LINE NO. 1 <b>1000 Progress PI NE</b>	
(5) STREET ADDRESS LINE NO. 2	
(6) CITY <b>Concord</b>	(7) STATE <b>NC</b>
	(8) ZIP CODE <b>28026-0227</b>
(9) DAYTIME TELEPHONE NUMBER (include area code) <b>704 722 2500</b>	(10) COUNTRY CODE (if not in U.S.A.)

FCC REGISTRATION NUMBER (FRN) REQUIRED

(11) PAYER (FRN) <b>0004-2157-94</b>	(12) FCC USE ONLY
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IF MORE THAN ONE APPLICANT, USE CONTINUATION SHEETS (FORM 159-C)  
COMPLETE SECTION BELOW FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET

(13) APPLICANT NAME <b>CTC Video Services, LLC</b>		
(14) STREET ADDRESS LINE NO. 1 <b>1000 Progress PI NE</b>		
(15) STREET ADDRESS LINE NO. 2		
(16) CITY <b>Concord</b>	(17) STATE <b>NC</b>	(18) ZIP CODE <b>28026-0227</b>
(19) DAYTIME TELEPHONE NUMBER (include area code) <b>704 722 2500</b>	(20) COUNTRY CODE (if not in U.S.A.)	

FCC REGISTRATION NUMBER (FRN) REQUIRED

(21) APPLICANT (FRN) <b>0007-1684-04</b>	(22) FCC USE ONLY
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COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET

(23A) CALL SIGN/OTHER ID	(24A) PAYMENT TYPE CODE <b>TQC</b>	(25A) QUANTITY <b>1</b>
(26A) FEE DUE FOR (PTC) <b>\$1,250.00</b>	(27A) TOTAL FEE <b>\$1,250.00</b>	FCC USE ONLY
(28A) FCC CODE 1	(29A) FCC CODE 2	

(23B) CALL SIGN/OTHER ID	(24B) PAYMENT TYPE CODE	(25B) QUANTITY
(26B) FEE DUE FOR (PTC)	(27B) TOTAL FEE	FCC USE ONLY
(28B) FCC CODE 1	(29B) FCC CODE 2	

SECTION D - CERTIFICATION

CERTIFICATION STATEMENT  
I, Jerry Weible, certify under penalty of perjury that the foregoing and supporting information is true and correct to the best of my knowledge, information and belief.

SIGNATURE Jerry Weible DATE 3-22-07

SECTION E - CREDIT CARD PAYMENT INFORMATION

MASTERCARD \_\_\_\_\_ VISA \_\_\_\_\_ AMEX \_\_\_\_\_ DISCOVER \_\_\_\_\_

ACCOUNT NUMBER \_\_\_\_\_ EXPIRATION DATE \_\_\_\_\_

I hereby authorize the FCC to charge my credit card for the service(s)/authorization herein described.

SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_