

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

In the Matter of )  
 )  
XIT Telecommunication & ) CSR - \_\_\_\_\_  
Technology LTD )  
 )  
Request for Temporary Limited Waiver of )  
Section 76.1204(a)(1) of the Commission's )  
Rules )

**To: Chief, Media Bureau**

**PETITION FOR WAIVER**

XIT Telecommunication & Technology LTD d/b/a XIT Communications (“XIT”), by its attorneys and pursuant to Sections 1.3 and 76.7 of the Rules and Regulations (“Rules”) of the Federal Communications Commission (“FCC” or “Commission”),<sup>1</sup> hereby requests a temporary limited waiver of the FCC’s ban on integrated set-top boxes as set forth in Section 76.1204(a)(1), which is currently scheduled to be implemented on July 1, 2007.<sup>2</sup> It is in the public interest for the FCC to grant XIT’s limited waiver request because a temporary waiver will allow XIT to complete the upgrade of two small recently acquired rural cable systems to offer digital services. XIT is in the process of transitioning to a digital network, and had planned to complete the transition by July 1, 2007. However due to the need to resolve some unexpected transport and integration issues, it appears that additional time may be needed to complete the upgrades and conversion. Accordingly, XIT seeks a brief and temporary waiver of the FCC’s rules, until December 31, 2007, to allow it to complete its digital upgrade and conversion. Grant of the

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<sup>1</sup> 47 C.F.R. §§ 1.3; 76.7.

<sup>2</sup> 47 C.F.R. § 76.1204(a)(1).

requested waiver would facilitate XIT's rapid transition to a digital network, allow XIT to reclaim a considerable amount of spectrum, and enable XIT to provide its rural customers with advanced telecommunications capabilities, thereby furthering the goals of Section 706 of the Communications Act of 1934, *as amended* (the "Act").<sup>3</sup> Furthermore, the FCC has previously granted similar waivers to Bend Cable Communications, LLC d/b/a BendBroadband ("BendBroadband"), GCI Cable, Inc. ("GCI"), Millennium Telcom, LLC d/b/a OneSource Communications ("OneSource"), and Charter Communications, Inc ("Charter").<sup>4</sup> For the reasons discussed below, a grant of the requested temporary waiver is in the public interest and meets the FCC's waiver standards set out in Sections 1.3 and 76.7 of the Commission's Rules.<sup>5</sup>

## I. BACKGROUND

XIT is a rural telephone company as defined by Section 153(37) of the Act. XIT is located in Dalhart, Texas where it provides telephone, high-speed, broadband, and cable television services. In an effort to expand its services, XIT purchased two small, rural cable systems in 2006. Specifically, XIT purchased a system serving 140 subscribers from Vega

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<sup>3</sup> 47 U.S.C. § 153(37).

<sup>4</sup> *In the Matter of 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, CS Docket No. 97-80, Memorandum Opinion and Order, DA 07-47 (January 10, 2007); In the Matter of GCI Cable, Inc., 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-7130, CS Docket No. 97-80, Memorandum Opinion and Order, DA 07-2010 (May 4, 2007); In the Matter of Millennium Telcom, LLC d/b/a OneSource Communications, 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-7129-Z, CS Docket No. 97-80, Memorandum Opinion and Order, DA 07-2009 (May 4, 2007); In the Matter of Charter Communications, Inc., 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-7049-Z, CS Docket No. 97-80, Memorandum Opinion and Order, DA 07-2008 (May 4, 2007).*

<sup>5</sup> 47 C.F.R. § 1.3; 47 C.F.R. § 76.7.

CableVision on April 28, 2006 and a system serving 3200 subscribers from Hereford CableVision on November 1, 2006. Both of these systems are located outside of XIT's telephone service area.

The Vega system currently provides 30 analog channels of video programming with one single-channel premium service, but no multiplexed or pay-per-view offerings. The Hereford system currently provides 66 analog channels of video programming with three single-channel premium services, but no multiplexed or pay-per-view offerings.<sup>6</sup> XIT acquired these systems with the intent of upgrading them to digital service,<sup>7</sup> thereby allowing XIT to maximize existing bandwidth and increase the quality and quantity of service provided to the public. XIT also plans to provide voice and data services to these same customers, thereby increasing competition in these product markets as well. XIT has commenced work on the upgrade and conversion that will allow it to provide digital programming in Hereford and Vega through a digital feed from its Dalhart head-end.<sup>8</sup> XIT has already purchased a supply of Motorola DCT-700 set top boxes

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<sup>6</sup> Attached as Exhibit A are channel line-up lists for XIT's Hereford and Vega cable systems.

<sup>7</sup> After completion of the upgrade and conversion the Vega system will be 100% digital and no analog services will be offered. In the case of Hereford, a very limited analog basic lifeline tier will continue to be made available to bulk accounts and to individual residential customers with limited means until the digital transition occurs on February 19, 2009. XIT expects, however, that almost all customers in Hereford will be receiving all digital service upon completion of the upgrade.

<sup>8</sup> XIT's Dalhart system currently provides ATM-based VDSL services using Motorola Next Level equipment. This equipment is based on a legacy first generation proprietary platform that does not comply with the common interface requirement contained in Section 76.1204(b) of the Commission's rules. XIT is a participant in a separate waiver petition filed on behalf of the Nextel Users Group based on the limits of this technology and equipment. *In the matter of Rural ATM Digital Video Providers Group Petition for Waiver of 47 C.F.R. § 74.1204(b), Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices*, CS Docket No. 97-80, The Rural ATM Rural Digital Provider's Group Petition for Permanent Waiver of the Open Interface Requirement, 47 C.F.R. § 74.1204(b) (April 9, 2007). Although Vega and Hereford will be fed from Dalhart, the Vega and Hereford

for this purpose which it had planned to deploy to customers before the July 31, 2007 deadline. However, unanticipated issues related to digital transport and system integration related to the transcoding of Dalhart's ATM signals to an IP format may delay completion of its scheduled upgrade beyond July 2007.

## II. DISCUSSION

The FCC has established July 1, 2007 as the date by which multichannel video programming distributors ("MVPD") are required to make available navigation devices that have a separate security element.<sup>9</sup> Under Section 629(c) of the Act, the Commission may grant a waiver of its regulations implementing the set top integration ban when doing so is necessary to assist the development or introduction of new or improved services.<sup>10</sup> The Commission has specifically stated that it would "entertain certain requests for waiver of the prohibition on integrated devices for limited capability integrated digital cable boxes."<sup>11</sup>

Although in none of the cases cited above did the Commission grant a waiver pursuant to Section 629(c), it instead found such waivers justified on the basis of Section 76.7 of its rules. Under Section 1.3 of the Rules, the FCC may suspend, revoke, amend or waive any provision for good cause shown, in whole or in part, at any time, subject to the provisions of the Administrative Procedure Act. Section 76.7 provides that any interested party, cable television system operator, or MVPD may petition the Commission to waive any provision of Part 76. Pursuant to Sections 1.3 and 76.7, XIT requests a temporary and limited waiver of the FCC's on set-top integration ban contained in rule section 76.1204(a)(1).

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systems will not be using Next Level equipment and technology. Rather, they will be IP-based and will be able to comply with the FCC's common interface requirement.

<sup>9</sup> *Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices*, 20 FCC Rcd 6794 ¶ 13 (2005) ("2005 Deferral Order").

<sup>10</sup> 47 U.S.C. § 629(c).

<sup>11</sup> *Id.*

XIT requests that the FCC grant it a temporary waiver of the FCC's ban on integrated set-top boxes until December 31, 2007. This temporary and limited waiver will enable completion of XIT's digital upgrade with the equipment already on hand expressly for this purpose. If the FCC does not grant the instant waiver request, XIT's resources devoted to upgrading these small rural systems will have to be diverted to the purchase of replacement set top boxes that are 2 to 3 times the cost of the boxes XIT has already purchased. This wasteful diversion of limited resources will delay and impede the transition to a digital network for these very small rural cable systems. In contrast, XIT's digital upgrade will facilitate the DTV transition, enable expanded service offerings, promote efficient use of the spectrum, deliver broadband services, and spur competition. XIT is requesting only a limited temporary waiver to allow it to complete deployment of the Motorola DCT-700 boxes which it already has in inventory. As discussed in greater detail below, it is in the public interest for the FCC to grant XIT's temporary waiver request.

**a. It is in the Public Interest to Grant XIT's Temporary Waiver Request**

XIT's requested temporary waiver satisfies the requirements of Sections 1.3 and 76.7 of the Commission's rules. The FCC must grant a waiver request of a rule where the public interest would be served. XIT is a small, rural cable provider. XIT only recently acquired the technologically outdated Hereford and Vega systems. XIT acquired these systems with a plan to provide bundled CLEC, high-speed data<sup>12</sup> and video services to compete in the rural Texas broadband market. Because it would be economically infeasible to upgrade either or both systems as stand-alone properties due to expensive head-end costs and the extremely small

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<sup>12</sup> XIT only provides high-speed Internet service through its Hereford system, not its Vega system.

number of subscribers, XIT will accomplish the upgrade by feeding the Hereford and Vega systems from XIT's existing digital head-end in Dalhart, Texas.

XIT planned to have its digital upgrade completed prior to the July 1, 2007 deadline. However, unanticipated technical difficulties in transport and system integration stemming from the need to transcode ATM digital streams to IP streams may delay completion beyond July 1. Strict compliance with the July 1 deadline would prevent XIT from continuing to deploy the DCT-700 set top boxes and would require XIT to purchase all new set top boxes that would duplicate at 2-3 times the cost its existing inventory of boxes purchased for this very upgrade. Not only would such a result be extremely wasteful, it would also be cost prohibitive for a small, rural cable provider like XIT and could delay, perhaps indefinitely, the planned upgrade. The Motorola DCT-700 chosen for the upgrade would allow XIT to offer digital service at cost-effective price point for its consumers and the requested temporary waiver is necessary to ensure that every analog device in its subscribers' homes that is connected to cable service is compatible with a digital system. Furthermore, the FCC has allowed the deployment of this very same model of set top, even beyond December 31, 2007 as requested by XIT, in several of the other waivers it has recently granted. The same public interest considerations that supported the grant of a waiver in those cases are equally applicable here.

Continued deployment of its limited inventory of DCT-700 set tops will allow XIT to complete a transition to digital service across all of its systems no later than December 31, 2007. The public interest benefits associated with XIT's commitment to transition to digital service by December 31, 2007 are sufficient to justify a temporary waiver. Completion of XIT's digital transition will deliver predictable public interest benefits, including a clear path to the DTV transition deadline, expanded programming and digital service offerings, efficient use of

spectrum to maximize bandwidth speeds and promote broadband deployment and adoption, and competitive entry for voice service and advancement of universal service in rural Texas. Reclaimed spectrum now used for analog channels will be freed up to even more advanced telecommunications capabilities, thereby furthering the goals of Section 706.

It is important to note the limited scope of the waiver sought by XIT in this case. XIT requests a temporary waiver to allow it to deploy equipment that is currently in inventory. Although the statutory language of Section 629 neither exempts nor limits any category of equipment used to access multichannel video programming or services offered over such systems from its coverage,<sup>13</sup> the FCC has stated that the purpose of the integrated set-top box ban is to make navigation devices commercially available, rather than to create a market for certain specific equipment.<sup>14</sup> While Section 629 requires commercial availability of equipment, the FCC has interpreted the statute to apply to equipment deployed and placed in service in the future and not to the embedded base of equipment.<sup>15</sup> The Commission has never stated with precision at what point equipment in inventory can be considered to be part of the embedded equipment base. To the extent that equipment that has been purchased and placed in inventory for a system upgrade, but not yet deployed into a customers' home is not considered to be "in service," XIT requests a temporary waiver of the "in service" criteria to allow it to deploy the limited number of Motorola DCT-700 boxes that have been purchased for the upgrade that are currently in its inventory. All future replacement equipment will be compliant with the FCC's set-top box requirements.

By allowing XIT to deploy the Motorola DCT-700 boxes already in inventory, the FCC will ensure that every television that receives cable service will be able to receive digital

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<sup>13</sup> 47 U.S.C. § 629.

<sup>14</sup> *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, 13 FCC Rcd 14775 ¶ 26 (1998) ("*First Report and Order*").

<sup>15</sup> *First Report and Order* ¶ 27.

broadcast signals after the digital transition as the FCC recently proposed in its *Digital Must-Carry NPRM*.<sup>16</sup> Accordingly, granting this request will also further the FCC's goals of insuring that cable customers do not lose the ability to receive off-air television stations after analog broadcast operations are discontinued in February 2009.

**b. XIT Agrees to Comply with Any Conditions the FCC Deems Necessary, But will Likely Transition to a Digital Network in Less than Six Months**

As indicated above, the FCC has granted similar waivers to BendBroadband, GCI, OneSource, and Charter.<sup>17</sup> In those waiver grants, the FCC imposed certain conditions on the companies to ensure future compliance. Specifically, the FCC required each of the companies to: (1) notify all of its analog customers of its plans to go all digital at least six months in advance of that event and to submit a sworn declaration to the Commission confirming that such notice has been provided; and (2) ensure that, at least six months prior to its migration to all-digital service, the company has in its inventory or has placed orders for enough set-top boxes to ensure that each of its customers can continue to view video programming on their analog television sets and to submit a sworn declaration to the Commission confirming that this is the case; and (3) publicly commit to this plan by sworn declaration. In the present case, XIT will complete its digital upgrade in less than six months. Therefore, it would appear that the detailed timelines and the reporting requirements imposed on BendBroadband, GCI, OneSource, and Charter are unnecessary when applied to XIT's case. Attached is an affidavit from Darrell Dennis, XIT's General Manager, committing XIT to complete its digital upgrade in Hereford and Vega by December 31, 2007 and to ensure that customers will be able to receive a DCT-700 set

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<sup>16</sup> *In the Matter of Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules*, CS Docket No. 98-120, Second Further Notice of Proposed Rulemaking, FCC 07-71 (May 4, 2007).

<sup>17</sup> *See Infra*, footnote 4.

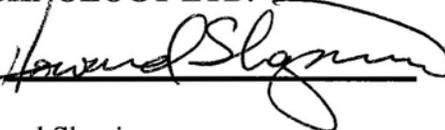
top box for each of their television sets receiving cable service. Further, XIT will comply with any additional conditions the FCC deems necessary in order to grant XIT's requested temporary waiver.

### III. CONCLUSION

For the reasons discussed above, the FCC should grant XIT's requested temporary waiver of the integration ban in Section 76.1204(a)(1) of the FCC's rules pursuant to Sections 1.3 and 76.7 because its temporary waiver request is in the public interest. The FCC should allow XIT to continue to place into service its existing inventory of Motorola DCT-700 set-top boxes until December 31, 2007.

Respectfully submitted,

**XIT TELECOMMUNICATION &  
TECHNOLOGY LTD.**

By: 

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Its Attorneys

Dated: May 30, 2007





# CABLEVISION (Hereford)

806-364-1426  
809 S. 25 Mile Ave.  
Hereford, Texas 79045

## BASIC SERVICE 63 Channels \$34.94

2	PBS (KACV)	37	History Channel
3	ABC Family	38	Cartoon Network
4	NBC (KAMR)	39	Toon Disney
5	Disney Channel	40	Animal Planet
6	Super Station TBS	41	Hallmark Channel
7	ABC (KVII)	42	FoxNews Channel
8	Local Weather	43	CNN
9	C-SPAN	44	HGTV
10	CBS (KFDA)	45	Food Network
11	The CW TV Network	46	Sci-Fi
12	AMC (American Movie Classics)	47	CMT (Country Music Television)
13	FOX (KCIT)	48	MTV Music Television
14	Univision (KEYU)	49	VH-1 Music First
15	CNN Headline News	50	Superstation WGN
16	The Weather Channel	51	C-SPAN2
17	KPTF-Farwell	52	TV Land
19	Local Channel	53	EWTN
22	CNBC	54	T (Telemundo KTMO)
23	TCM (Turner Classic Movies)	55	mun2
24	Spike TV	56	Galavision
25	Discovery	57	TeleFutura (KAMT)
26	A&E (Arts & Entertainment)	58	KZBZ
27	Lifetime - Television for Women	59	CourtTV
28	FSN Southwest	60	fX Network
29	QVC	61	The Travel Channel
30	TNT (Turner Network Television)	62	The Golf Channel
31	Nickelodeon	63	VERSUS
32	USA Network	64	Comedy Central
33	ESPN	65	MSNBC
34	ESPN2	66	NFL Network
35	ESPN Classic	99	TBN (Trinity Broadcasting Network)
36	TLC		

<b>PREMIUM CHANNELS</b>	<b>HBO</b>	<b>\$10.60</b>	<b>HBO/Showtime</b>	<b>\$19.15</b>
18 Showtime	<b>Cinemax</b>	<b>\$10.05</b>	<b>Cinemax/Showtime</b>	<b>\$15.55</b>
20 HBO	<b>Showtime</b>	<b>\$9.40</b>	<b>HBO/Cinemax/Showtime</b>	<b>\$24.35</b>
21 Cinemax	<b>HBO/Cinemax</b>	<b>\$16.65</b>		

### Channel 19 Advertising Pricing

Business	\$100 a month	\$30 a week
Non-profit (churches, United Way, etc.)	\$60 a month	\$20 a week
Birthdays, Congrats, Anniversaries	\$20 for 2 days	

### Internet Pricing

	w/Cable	w/Out Cable
Lite Service: 128k up/128k down	\$25.00	-
Standard Service: 256k up/1.5meg down	\$40.00	\$45.00
Plus Service: 512k up/3 meg down	\$55.00	\$60.00
Business Package: 1meg up/3meg down	\$65.00	\$65.00
Static IP	\$10.00 each	\$10.00 each
Installation Fee	\$35.00	\$35.00

Pricing structure and channel line-up subject to change.

## CABLEVISION Prices

<b>Activation Fee</b>	<b>\$18.39</b>
price includes tax	
<b>1st outlet free</b>	
<b>Each additional outlet</b>	<b>\$30.65</b>
price includes tax	

Effective Rate Date 4-1-07



**CABLEVISION**  
**(Vega)**

**806-364-1426**  
**809 S. 25 Mile Ave.**  
**Hereford, Texas 79045**

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**BASIC SERVICE 35 Channels    \$31.35**

- |    |                                 |    |                                |
|----|---------------------------------|----|--------------------------------|
| 2  | PBS (KACV)                      | 21 | CMT (Country Music Television) |
| 3  | Disney Channel                  | 22 | Discovery                      |
| 4  | NBC (KAMR)                      | 23 | God's Learning Channel         |
| 5  | Lifetime - Television for Women | 24 | Univision                      |
| 6  | Local Channel                   | 25 | Hallmark Channel               |
| 7  | ABC (KVII)                      | 26 | The Weather Channel            |
| 8  | Super Station TBS               | 27 | TV Land                        |
| 9  | CNN                             | 28 | HGTV                           |
| 10 | CBS (KFDA)                      | 29 | TLC                            |
| 11 | TeleFutura                      | 30 | TCM (Turner Classic Movies)    |
| 12 | ESPN                            | 31 | CNN Headline News              |
| 13 | FOX (KCIT)                      | 32 | History Channel                |
| 14 | ABC Family                      | 33 | A&E (Arts & Entertainment)     |
| 15 | AMC (American Movie Classics)   | 34 | ESPN2                          |
| 17 | QVC                             | 35 | GSN                            |
| 18 | TNT (Turner Network Television) | 36 | FoxNews Channel                |
| 19 | C-SPAN                          | 98 | GAC (Great American Country)   |
| 20 | Superstation WGN                |    |                                |

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**HBO PREMIUM CHANNEL    \$12.00    ACTIVATION FEE    \$25.00**

16 HBO

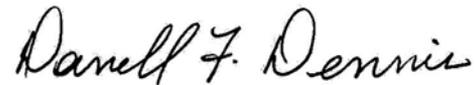
*Pricing structure and channel line-up subject to change.*

*Effective Rate Date 4-1-07*

## DECLARATION OF DARRELL DENNIS

I, Darrell Dennis, do hereby declare under penalty of perjury the following:

1. I am the General Manager of XIT Telecommunication & Technology, Ltd d/b/a XIT Communications ("XIT").
2. XIT:
  - a. will convert Hereford and Vega to digital service by December 31, 2007;
  - b. will ensure that all customers will be able to receive DCT-700 set tops for each of their television sets receiving cable service; and
  - c. after deployment of its existing inventory of DCT-700 set tops, will only utilize compliant set top boxes with Section 76.1204.
3. I have read the foregoing "Petition for Waiver." I have personal knowledge of the facts set forth therein, and believe them to be true and correct.

  
Darrell F. Dennis, General Manager

5/29/07

Date