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**VIA COURIER**

Federal Communications Commission  
Media Bureau  
P.O. Box 358205  
Pittsburgh, PA 15251-2505

Re: In the Matter of Mediacom Communications Corporation's  
Request for Expedited Waiver of 47 C.F.R. §76.1204(a)(1)

Dear Sir or Madam:

On behalf of Mediacom Communications Corporation, we hereby submit an original and four copies of the above-referenced Request for Expedited Waiver. Also enclosed is a completed FCC Form 159 authorizing credit card payment in the amount of \$1,250.

A copy of this Request also is being filed electronically in CS Docket 97-80.

Please contact me if you have any questions regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Seth A. Davidson', written over a horizontal line.

Seth A. Davidson

cc: Monica Desai (via email)  
Steve Broeckaert (via email)  
Brendan Murray (via email)  
Thomas Horan (via email)  
Michele Carey (via email)  
Catherine Bohigian (via email)

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

In the Matter of )  
 )  
**Mediacom Communications Corporation's** )  
Request for Expedited Waiver )  
Of 47 C.F.R. § 76.1204(a)(1) ) CSR No. \_\_\_\_\_  
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To: Chief, Media Bureau )

**REQUEST FOR EXPEDITED WAIVER**

Pursuant to Sections 1.2 and 76.7 of the Commission's rules, 47 C.F.R. §§ 1.2, 76.7, Mediacom Communications Corporation ("Mediacom"), by its attorneys, respectfully requests that the Commission grant, on an expedited basis, a conditional waiver of Section 76.1204(a)(1) allowing Mediacom to continue to deploy low-cost, limited function integrated set-top boxes in certain cable systems that Mediacom commits to upgrade to all-digital operations by February 17, 2009.

As described herein, the grant of the requested waiver is consistent with Commission precedent and the public interest. The waiver will enable Mediacom to implement an all-digital service in systems that, due to their technical, competitive and regulatory circumstances, could not otherwise be upgraded in a timely, economically feasible fashion and, indeed, might in some instances have to cease operations. In light of the lead time needed to implement all-digital operations and in light of prior Commission precedent requiring that subscribers be provided timely notice of the

transition of a system to all-digital operations, Mediacom requests that the instant waiver request be considered and granted on an emergency, expedited basis.

## **I. BACKGROUND**

Mediacom is one of the nation's leading cable operators focused on serving the smaller cities and towns in the United States. Founded in 1995, the company currently serves over 1.3 million subscribers in around 1,400 communities in 23 states.

Mediacom's goal from the beginning has been to bridge the "digital divide" by bringing big-market products and services to small markets. And Mediacom has largely achieved that goal, having invested over \$1.7 billion in its infrastructure to offer customers access to a wide array of advanced products and services, including: advanced video services, such as video-on-demand ("VOD"), high-definition television ("HD") and digital video recorder; high-speed data, also known as high-speed Internet access or cable modem service; and phone service.

While most of Mediacom's systems continue to suffer basic subscriber loss despite their upgraded capacity to provide video, voice and data services, certain of its systems face significantly greater challenges due to their isolated location, limited subscribership, and/or bandwidth constraints. These systems generally are characterized by relatively low populations, population densities and basic subscriber penetration rates (percentage of homes passed that subscribe to Mediacom's basic video service). As a result, while the cost of building or upgrading a mile of cable plant for these systems is the same as or more than it is in Mediacom's larger urban markets, the potential cash flow per mile is much lower because both the number of homes per mile and the percentage of those homes that are Mediacom subscribers are lower. Given these market attributes,

Mediacom could not reasonably expect a sufficient return on investment to justify making the capital expenditures necessary to upgrade these systems' infrastructure in order to provide standard definition or high definition digital television or other advanced services.

The challenges faced by these systems are made even more daunting by the implementation of the Commission's ban on integrated set-top boxes, which increases the cost of digital service for operator and subscriber alike and by the Commission's recent digital transition order requiring operators that have not deployed all-digital operations by February 17, 2009 to retransmit in both analog and digital format local broadcast signals that elect must-carry.

## II. GRANT OF THE REQUESTED WAIVER IS IN THE PUBLIC INTEREST

### A. The Requested Waiver Will Allow Mediacom to Convert Certain Systems to All-Digital Operations In Advance of the February 17, 2009 Digital Transition.

At the outset, Mediacom emphasizes that it currently is complying with Section 1204(a)(1) in all of its systems. However, with respect to certain of its systems, Mediacom faces a dilemma. Mediacom continues to operate a number of systems in isolated, smaller, rural communities. In today's highly competitive marketplace, the very survival of these systems is dependent on their ability to provide a wide array of services to their customers. But, somewhat paradoxically, the same factors that make it so important for these systems to improve (*e.g.*, geographic isolation, limited bandwidth, declining subscribership) also make them poor candidates for the allocation of the resources needed for such improvements.

The most efficient and cost-effective approach to improving some of these geographically isolated, limited bandwidth and declining subscriber systems is to

transition them to all-digital operations. However, such a transition will require the deployment of digital set-top boxes to the vast majority of subscribers. As other operators have convincingly demonstrated, deployment of low-cost integrated boxes will facilitate the timely transition of subscribers to all-digital networks that will allow operators to utilize reclaimed bandwidth to offer advanced services such as high definition television and video-on-demand.

Mediacom notes that the Commission's recent digital television "viewability" decision provides an additional incentive for Mediacom to accelerate the transition of the subject systems to all-digital and thus makes a grant of the requested waiver even more imperative. The Commission has ruled that cable operators who do not deploy all-digital networks by February 17, 2009 must provide both analog and digital retransmissions of local must carry broadcast stations.<sup>1</sup> Bandwidth constraints will make compliance with this dual carriage mandate extraordinarily challenging, if not impossible for a number of Mediacom's systems.

The systems that Mediacom would consider converting to all-digital by February 19, 2007 if it receives the requested waiver represent less than nine percent of Mediacom's total subscribership, average about 2,600 subscribers per system and have a

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<sup>1</sup> *In the Matter of Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules*, Third Report and Order and Third Further Notice of Proposed Rulemaking, FCC 07-170 (rel. Nov. 30, 2007). As indicated above, by making it possible for Mediacom to convert certain systems to all-digital by February 17, 2009, a grant of the requested waiver will obviate the need for Mediacom to seek a waiver of the "viewability" rules for those systems. Mediacom notes that it also operates a number of very small, all-analog systems (averaging under 200 subscribers per system) that, even with a waiver of Section 76.1204(a)(1), could not economically be converted to all-digital by the transition deadline. Mediacom is currently weighing its options for these systems, which include seeking a waiver of the viewability requirement or, possibly, terminating operations altogether.

median size of 1,637 subscribers.<sup>2</sup> The average basic penetration rate is only 46%.

These systems have less than 552 MHz in bandwidth.

Typical of the systems that Mediacom would consider converting to all-digital by February 17, 2009 if its waiver request is granted is a Mediacom system serving a community isolated by geographic barriers such as deserts and mountain ranges. This system currently serves approximately 4,000 customers out of almost 17,000 homes passed. However, the system's 450 MHz plant is too limited to provide the kinds of digital services, such as VOD or additional HD channels, needed to provide customers with the range of service choices needed to compete with DBS. As a result, the system faces continued subscriber losses.

A conventional upgrade of this system or of the other systems that Mediacom would consider converting to all-digital by February 17, 2009 if its requested waiver is granted simply is not economically feasible. As is the case generally for such systems, a conventional capacity upgrade would cost Mediacom approximately twice what it would cost to convert the system to all-digital (assuming that Mediacom can deploy low cost integrated set-top boxes in those systems). In short, grant of the requested waiver is necessary in order for Mediacom to have a realistic option for converting certain of its systems to all-digital by February 17, 2009 and thereby reclaim sufficient bandwidth to offer a competitive product while complying with its digital broadcast signal carriage obligations. Moreover, in many instances, absent the waiver, Mediacom will have no

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<sup>2</sup> The majority of the systems that Mediacom is considering converting to all-digital by February 17, 2009 (assuming the requested waiver is granted) have fewer than 2,000 subscribers. In fact, more than a third have fewer than 1,000 subscribers. Only two have more than 10,000 subscribers (of which none have more than 15,000 subscribers).

choice but to consider termination of those systems' operations, thereby reducing competition.

**B. Grant of the Requested Waiver is Limited in Scope and Consistent with Commission Precedent.**

In a number of previous orders, the Commission has expressly “recognize[d] that the ability to rapidly migrate to an all-digital network would produce clear, non-speculative public benefits” and, on that basis, has consistently granted conditional waivers of Section 76.1204(a)(1) to cable operators that commit to operate all-digital networks before February 17, 2009.<sup>3</sup> Mediacom’s waiver request is essentially indistinguishable from the requests that the Commission has previously granted. In particular, the instant request for waiver of Section 76.1204(a)(1) only would permit the use of low-cost, limited functionality integrated boxes that are identical or comparable to boxes that the Commission previously has permitted to be deployed by cable operators committing to go “all-digital” by February 17, 2009.<sup>4</sup>

Moreover, just as in the cases where the Commission has granted conditional waivers, the grant of the requested waiver will make it possible for Mediacom to provide more subscribers than would otherwise be the case with access to digital broadcast signals after the end of the DTV transition and will further enable Mediacom to provide subscribers with additional HD content, “which may facilitate the DTV transition by

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<sup>3</sup> See *Consolidated Requests for Waiver of Section 76.1204(a)(1) of the Commission’s Rules*, DA 07-2921 (2007), citing *Bend Cable Communications, LLC d/b/a BendBroadband Request for Waiver of Section 76.1204(a)(1) of the Commission’s Rules*, 22 FCC Rcd 209 (2007). See also *GCI Cable, Inc. Request for Waiver of Section 76.1204(a)(1) of the Commission’s Rules*, DA 07-2010 (2007); *Millennium Telcom, LLC d/b/a OneSource Communications Request for Waiver of Section 76.1204(a)(1) of the Commission’s Rules*, DA 07-2009 (2007).

<sup>4</sup> A list of the boxes for which Mediacom is seeking a waiver is appended hereto as Exhibit A.

creating greater incentives for its subscribers to acquire digital television sets.”<sup>5</sup>

Mediacom’s waiver request also is consistent with previous requests in that it would further important national policy goals by allowing Mediacom to focus its capital on other advanced digital services such as wireless and business services.<sup>6</sup> And, as noted above, grant of Mediacom’s requested waiver allowing it to transition certain systems to all-digital by February 17, 2009 will obviate the need for Mediacom to consider seeking a waiver of the new “viewability” requirements for those systems.

Finally, as the Commission has recognized in granting comparable waiver requests, grant of the requested waiver will not in any way be detrimental to the goals of Section 76.1204(a)(1). The fact that the request applies only to a subset of Mediacom’s systems, representing a limited number of subscribers, ensures that grant of the requested waiver will not have any adverse impact on competition in the market for cable navigation devices or on the principle of “common reliance.”<sup>7</sup> Moreover, the set-top boxes for which Mediacom is hereby requesting a waiver are the same as or comparable to the low-cost, limited-functionality set-top boxes that the Commission has held are appropriate subjects of a waiver.

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<sup>5</sup> *Consolidated Requests for Waiver of Section 76.1204(a)(1) of the Commission’s Rules*, DA 07-2921 (2007), citing *Bend Cable Communications, LLC d/b/a BendBroadband Request for Waiver of Section 76.1204(a)(1) of the Commission’s Rules*, 22 FCC Rcd 209 (2007).

<sup>6</sup> As the Commission has found, Section 706 of the Telecommunications Act of 1996 charges the Commission with encouraging the deployment of advanced telecommunications capabilities and the migration of subscribers to an all-digital system by February 17, 2009 will further the goals of Section 706 by allowing an operator to reclaim a considerable amount of spectrum for use in providing advanced telecommunications capabilities within a clearly defined timeframe.

<sup>7</sup> As indicated above, the universe of limited bandwidth systems that Mediacom is considering transitioning to all-digital by February 17, 2009 if the requested waiver is granted represents about 9 percent of Mediacom’s total subscribership (fewer than 115,000 subscribers). Mediacom acknowledges that it will only be permitted to rely on the waiver for those systems that Mediacom timely fulfills the conditions specified in the waiver, as described in Section II.C *infra*.

**C. Mediacom Commits to Meet the Conditions Imposed on Other Cable Operators Receiving Waivers to Allow Them to Go “All-Digital” By February 17, 2009.**

In granting previous requests for waiver of Section 76.1204(a)(1) submitted by cable operators committing to go “all-digital” by February 17, 2009, the Commission has imposed certain conditions, each of which Mediacom hereby accepts. Specifically, as required by these prior waiver orders, Mediacom has attached hereto a sworn declaration of John Pascarelli, Mediacom’s Executive Vice President of Operations, publicly committing to (a) give the subscribers of any system that Mediacom plans to transition to all-digital by February 17, 2009, advance notice of the planned transition, with the first such notice to be given within 60 days of the grant of the requested waiver and a second notice to be given on or about August 17, 2009; (b) take steps to ensure that, at least six months prior to February 17, 2009, it has inventory or has placed orders for enough set-top boxes to ensure that each of the subscribers to the systems it plans to transition in reliance on the waiver to all-digital by February 17, 2009 can continue to view Mediacom’s video programming on their television sets; and (c) complete the transition of the systems to all-digital video service on or before February 17, 2009.

The attached affidavit also provides the required assurance that, at least six months before February 17, 2009, Mediacom will submit a further sworn declaration to the Commission confirming that the required notices to subscribers has been given and that the necessary equipment has been obtained or ordered. Mediacom hereby acknowledges that it will be permitted to rely on the waiver only for those systems for

which it has Mediacom timely fulfilled these conditions.<sup>8</sup> Finally, Mediacom notes that it will otherwise continue to fully comply with the Commission's set-top box regulations.

### **III. REQUEST FOR EXPEDITED CONSIDERATION**

As indicated above, the requested waiver, if granted, will contain certain conditions requiring Mediacom to give advance notice to the subscribers of the systems that Mediacom plans to convert to all-digital operation and to obtain or order the equipment necessary to complete the conversion to all-digital on a timely basis. As indicated above, Mediacom commits to give the first of the required subscriber notices no later than 60 days after the date on which the Commission grants the requested waiver and to give the other notices at least six months in advance of February 17, 2009. In order to ensure that Mediacom is able to meet these conditions, it is imperative that the Commission grant the requested waiver as soon as possible.

Therefore, Mediacom is hereby requesting that the Commission grant the requested waiver on an emergency, expedited basis. Mediacom notes that its waiver request raises no new issues and is fully consistent with other, similar waiver requests granted by the Commission, and that there is precedent for granting such waiver requests without first placing them on public notice.<sup>9</sup> Under the circumstances, expedited action on Mediacom's request is thus both reasonable and appropriate.

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<sup>8</sup> The confirming affidavit that Mediacom will provide to the Commission at least six months before February 17, 2009 will identify by name each of the systems for which Mediacom has fulfilled the specified conditions.

<sup>9</sup> See *Consolidated Requests for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, CS Docket 97-80, Memorandum Opinion and Order, DA 07-2921 (rel. June 29, 2007) (granting waiver to Cablevision of Marion County based on request filed just one week earlier, on June 22, 2007).

#### IV. CONCLUSION

For the reasons stated above, and on the basis of the representations made herein and in the attached affidavit, the Commission should grant Mediacom's requested waiver of Section 76.1204(a)(1) for the systems identified herein. The grant of such a waiver is consistent with the public interest and with Commission precedent. In addition, in order to ensure timely notice and to fully achieve the goals of the requested waiver, the Commission should grant the requested waiver on an expedited basis.

Respectfully submitted,

MEDIACOM COMMUNICATIONS CORPORATION

By   
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197397

**EXHIBIT A**

**SET-TOP BOXES SUBJECT TO WAIVER**

Motorola DCT 700

Motorola DCT 2000

**EXHIBIT B**

**DECLARATION OF JOHN PASCARELLI**

## DECLARATION OF JOHN PASCARELLI

I, John Pascarelli, under penalty of perjury, hereby swear and affirm the following:

1. I am Executive Vice President of Operations for Mediacom Communications Corporation (“Mediacom”). I have been with Mediacom for nearly ten years and have held my current position since November of 2003. I have read the foregoing Request for Waiver and attest that the facts stated therein are true and correct to the best of my knowledge, information and belief and that I am authorized to give this Declaration on behalf of Mediacom.

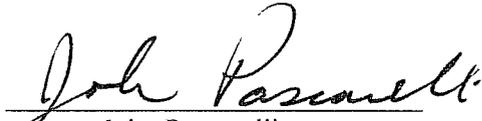
2. If the foregoing Request for Waiver is granted Mediacom will: (a) give the subscribers of any system that Mediacom plans to transition to all-digital by February 17, 2009, advance notice of the planned transition, with the first such notice to be given within 60 days of the grant of the requested waiver and a second notice to be given on or about August 17, 2009; (b) take steps to ensure that, at least six months prior to February 17, 2009, it has inventory or has placed orders for enough set-top boxes to ensure that each of the subscribers to the systems it plans to transition to all-digital by February 17, 2009 can continue to view Mediacom’s video programming on their television sets; and (c) complete the transition of the systems to all-digital video service on or before February 17, 2009.

3. Mediacom will supply sworn declarations to the Commission confirming that it has given the notices and that has obtained inventory or placed orders for set-top boxes as described above.

4. By this sworn Declaration, Mediacom is publicly committing to the plan described herein.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated: January 18, 2008

  
John Pascarelli

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