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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054

In the Matter of	)	
	)	
WideOpenWest Finance, LLC's	)	CSR-7139-Z
Request for Waiver of	)	CS Docket No. 97-80
47 C.F.R. § 76.1204(a)(1)	)	
	)	

REQUEST FOR EXTENSION OF GRANT OF WAIVER OF THE SET-TOP BOX INTEGRATION BAN, 47 CFR §76.1204(a)(1)

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SUMMARY

WideOpenWest Finance, LLC d/b/a WOW! Internet, Cable and Phone ("WOW"), on behalf of its operating affiliates, WideOpenWest Cleveland, LLC, WideOpenWest Illinois, LLC, WideOpenWest Michigan, LLC, WideOpenWest Ohio, LLC and Sigecom, LLC, and pursuant to Sections 1.3 and 76.7 of the Commission's rules,[1] respectfully requests that the Commission grant to WOW an extension of its grant of waiver (the "Waiver" or "Waiver Order"[2]) of the integration ban set forth in Section 76.1204(a)(1) of its rules for the Scientific Atlanta 2100, Scientific Atlanta 2200, Scientific Atlanta 3100, and Scientific Atlanta 3200 limited functionality set top boxes for at least one year commencing July 1, 2008, subject to further extension should WOW demonstrate that its financial circumstances continue to warrant a waiver of the rules (the "Waiver Extension").

WOW is a terrestrial facilities-based competitive provider of cable television and other broadband-related services primarily in the Chicago, Detroit, Cleveland, Columbus (OH) and Evansville (IN) markets serving approximately 443,000 cable television subscribers throughout all of its markets. WOW competes directly with Comcast[3] in the Chicago and Detroit markets, Time Warner Cable[4] in the Cleveland and Columbus markets and Insight Communications in the Evansville market. In contrast to the established incumbent presence of Comcast and Time Warner (and their predecessors) and DBS providers, WOW is a relatively new entrant to these

[1] 47 U.S.C. § 549(c); 47 C.F.R. §§76.7, 76.1207.

[2] Memorandum Opinion and Order, DA 07-3316 (released, July 23, 2007).

[3] As of December 31, 2007, Comcast had approximately 24.1 million basic cable customers. *See* Comcast, Investor Relations, Press Release of February 14, 2008 ("Comcast Press Release").

[4] As of March 31, 2008, Time Warner had nearly 14.6 million customers. *See* Time Warner Cable, Investor Relations, Press Release of April 30, 2008 ("Time Warner Press Release").

markets. Moreover, WOW faces the huge incumbent power and financial resources of AT&T in its provision of broadband and telephone services, and is beginning to see AT&T use those resources in the provision of video service in WOW markets.

In granting WOW's initial request for waiver[5] (the "Waiver Request") (and that of three other Petitioners) under the general waiver provision of Section 76.7[6] and for "good cause shown" found in Section 1.3 of the Commission's rules[7], the Commission found that the Petitioners had "***demonstrated dire financial straits***,[8] [and concluded] that good cause exists to grant the Petitioners limited, one-year waivers for the devices for which they seek waiver,[9] and that such waivers would serve the public interest in this specific instance."[10]

The Commission took particular note of the fact that:

> Wide Open West has demonstrated negative free cash flow for the last three consecutive years, a net operating loss in 2006, and increases in necessary capital expenditures for the last three consecutive years.... We find good cause for waiver in these narrow, specific cases."
>
> ...
>
> Accordingly, we conclude that good cause exists for limited one-year waivers of the integration ban, and that Petitioners have met the standard for waivers under Sections 1.3 and 76.7 of the Commission's rules. ***In addition, if Petitioners believe that, as a result of continuing, non-speculative financial difficulties,***

[5] Request for Waiver, CSR-7139-Z (filed Feb. 28, 2007).

[6] *See* 47 C.F.R. § 76.7 ("On petition by any interested party, ... the Commission may waive any provision of this part 76, ...").

[7] *See* 47 C.F.R. § 1.3 ("Any provision of the rules may be waived by the Commission on its own motion . . . if good cause therefore is shown.")

[8] *See* Letter from D. Craig Martin, General Counsel, WideOpenWest Finance, LLC, to Brendan P. Murray, Attorney Advisor, Policy Division, Media Bureau, Federal Communications Commission and Attachment thereto, CSR-7139-Z and CS Docket No. 97-80 (filed June 22, 2007).

[9] Those devices included the Scientific Atlanta Explorer 2100, Scientific Atlanta Explorer 2200, Scientific Atlanta Explorer 3100, and Scientific Atlanta Explorer 3200.

[10] Waiver Order at 13, ¶ 39 (footnotes added).

extensions of the waiver beyond this initial one-year period are warranted, they may submit updated financial and other information for our consideration. [11]

WOW remains a small competitive cable operator in competitive markets dominated by entrenched incumbent operators including Comcast, Time Warner, AT&T and DBS providers. These major MVPDs possess resources that dwarf WOW's. For example, Comcast reported in its 2007 annual report free cash flow of $2.34 billion in 2007 with forecasted free cash flow growth of at least 20% for 2008[12] while Time Warner Cable reported for the same period positive free cash flow of $1.06 billion and forecasted free cash flow growth of 40% for 2008[13]. In contrast, as shown in more detail below, WOW's historical and projected negative free cash flow over the several year period beginning with its 2003 fiscal year through 2008 exceeds $119 million (up from over $100 million forecast in WOW's initial Waiver Request). **An extension of the waiver in order for WOW to have the capital necessary to compete has become even more critical in the past year given the continued decline in the debt market coupled with WOW's negative free cash flow position which has also deteriorated since its original Waiver Request with actual 2007 negative free cash flow being $55.4 million (up from a projected $41.3 million) while 2008's negative free cash flow is projected at $31.4 million (up from $27.7 million).**[14]

Over the past nine months, the Waiver has permitted WOW to undertake a number of capital initiatives associated with the migration of its customer base to a digital platform including deployment of digital simulcast, replacement of advanced analog boxes and the

[11] Id. ¶40 (emphasis added).

[12] *See* Comcast Press Release.

[13] *See* Time Warner Press Release.

[14] See pp. 10-11 and Exhibit A infra.

introduction of two-way video services. In the absence of the Waiver Extension, however, these necessary initiatives will be substantially curtailed with the attendant harm to the company's competitive viability and the corresponding loss of consumer benefits pertaining to price, service and programming. Accordingly, grant of the Waiver Extension is essential to WOW's ongoing competitive existence.

I. INTRODUCTION

In its Waiver Order issued in this proceeding on July 23, 2007, the Commission took note of the following assertions by WOW:

- "Enforcement of the integration ban will impede WOW's ability to 'timely transition to a digital solution to effectively compete with Comcast and Time Warner, the established incumbent operators in its markets, and to sustain and expand upon WOW's competitive position within its markets by diverting resources away . . . . WOW also believes that because it is among the few overbuilders left in the country, a waiver is necessary to assist it in the development of new or improved services to its customers."[15]

- "WOW argues that it does not posses the economic resources of incumbent providers Comcast and Time Warner, and therefore a denial of the wavier would result in 'significant price increases for WOW subscribers receiving basic digital services'."[16]

- "WOW is uniquely burdened because of financial difficulties and its status as a competitive terrestrial-based MVPD provider."[17]

Based on the evidence provided by WOW, the Commission concluded: "***In light of Petitioners' demonstrated dire financial straits***, we conclude that good cause exists to grant the Petitioners' limited, one year waivers for the devices for which they seek waiver and that such waivers would serve the public interest in this specific instance . . . ***WideOpenWest has demonstrated negative free cash flow for the last three consecutive years, . . . and increases in necessary capital expenditures for the last three consecutive years.***"[18] Additionally, the Commission concluded that "in light of Petitioners' extraordinary financial difficulties, good

[15] Waiver Order at ¶26.

[16] *Id.*, ¶27.

[17] *Id.*, ¶30.

[18] *Id.*, ¶39 (emphasis added).

cause exists for limited, one year grants of the Waiver Requests pursuant to Section 1.3 and 76.7 of the Commission Rules."[19]

For the reasons set forth herein the financial conditions acknowledged by the Commission as warranting the Waiver not only continue but have been significantly exacerbated due to the (a) substantial disparity in market share, financial performance and availability of resources between WOW and the major MSOs with whom it competes and (b) WOW's increased current and forecasted negative free cash flow coupled with its more limited access to capital in today's financial markets.

II. WOW's "DIRE FINANCIAL STRAITS" HAVE BEEN EXACERBATED IN THE PAST YEAR

A. A Substantial Disparity Persists between WOW and the Major MSOs with Whom It Competes in Market Share, Financial Performance and Availability of Resources

As one of the few remaining terrestrial-based competitive providers in the country (WOW is the third entrant in all of its markets except for Columbus, Ohio where it is the fourth entrant),[20] WOW's average penetration of homes passed is 26.6% with digital penetration of homes passed at 12.5% -- in sharp ***contrast to Time Warner and Comcast, WOW's principal incumbent competitors in its markets, who enjoy average penetration of homes passed of almost twice that of WOW with digital penetration of homes passed of almost two and a half***

[19] *Id.*, ¶41.

[20] We request that the Commission continue to take note of the fact that WOW's two largest markets where it competes with Comcast include the most economically disadvantaged area of Chicago as well as Southeastern Michigan which carries one of the highest unemployment rates in the nation. Additionally, the Cleveland, Ohio, communities where WOW competes with Time Warner has one of the highest home foreclosure rates in the nation. As a competitive terrestrial facilities-based provider, WOW neither possesses market place dominance nor the ability of large, well-established, MSOs to recoup such costs. See also, *In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Twelfth Annual Report, MB Docket No. 05-255 at ¶52 (March 3, 2006) (The Commission reports that, as of June 2005, digital subscriber counts for cable operators averaged 47% whereas WOW's digital penetration among subscribers was 22%.).

times that of WOW. The disparity of penetration rates between large, entrenched, incumbent MSOs and competitive providers like WOW and RCN, one of the few other non-incumbent facilities-based providers remaining in the market,[21] is illustrated in the following table:

Basic Video Penetration

Incumbent MSO	Percentage
Cablevision	66.8%
Time Warner	55.7%
Insight	54.6%
Comcast	49.7%
Mediacom	46.7%
Charter	44.1%
RCN	26.6%
WOW	26.6%

In a similar vein, WOW's rates are lower than rates charged by incumbent MSOs,[22] even though WOW's relative capital and operating cost structure, as measured by almost any metric (e.g., costs of capital, programming and equipment), is much higher. As such, WOW's operating results as measured by margins, IRR, ARPU and other financial metrics are considerably lower than that experienced by incumbent providers who still enjoy monopoly conditions throughout most of their cable markets as illustrated by the following EBITDA percentages:

[21] WOW notes that the marked similarity in the penetration and EBITDA results of WOW and RCN demonstrate that the financial straits in which both companies find themselves is very much a factor of their competitive and financial position in a market dominated by giant cable and telephone incumbents.

[22] Information concerning penetration and EBITDA margins for the listed companies was obtained from their respeotive publicly available 2007 Annual Reports or other company sources.

EBITDA Margin

Operator	Percentage
Insight	40.9%
Cablevision	38,7%
Comcast	38.1%
Time Warner	36.0%
Mediacom	35.8%
Charter	35.2%
WOW	31.3%
RCN	24.5%

These financial constraints mean that in the absence of a Waiver Extension, application of the integration ban will impose a far greater economic and customer service burden on WOW than on large incumbent providers such as Comcast and Time Warner.

B. WOW's Access to Capital is Significantly Impaired Due to Increasing Negative Free Cash Flow and Deteriorating Financial Markets

The significantly lower penetration rates and EBIDTA margins of WOW (as contrasted with the rates disclosed by its MSO competitors shown above) adversely effect WOW's ratings with financing agencies (which, in turn, directly impact its borrowing capacity which is necessary to fund WOW's digital transition). These factors are compounded by WOW's continued negative free cash flow and the deteriorating debt markets, which severely impair its capital funding capacity. As illustrated in the table below, **WOW's historical and projected negative free cash flow over the period beginning with its 2003 fiscal year exceeds $119 million (up from over $100 million in WOW's initial Waiver Request), while its actual 2007 negative free cash flow was $55.4 million (up from the $41.3 million projected at the time of its Waiver Request), and its current projected 2008 negative free cash flow is $31.4 million (up from the $27.7 million projected at the time of its Waiver Request).**

WOW's Negative Free Cash Flow [23]

Year	Amount (in Millions of Dollars)
2003	($10.1)
2004	(1.0)
2005	(2.7)
2006	(18.5)
2007	(55.4) (up from projected 41.3)
2008 (forecasted)	(31.4) (up from projected 27.7)
Total	**($119.1)**

In contrast, WOW's *negative* free cash flow is dwarfed by the *positive* free cash flow of the larger MSOs with whom it directly competes as illustrated by the following table:

MSO Positive Free Cash Flow[24]

	2007	2008 (Projected)
Comcast	$2.3 billion	$2.76 billion
Time Warner	1.06 billion	$1.484 billion
WOW	($55.4 million)	($31.4 million)

C. Without the Waiver Extension, WOW Will be Compelled to Postpone Capital Initiatives Required to Remain Competitive

Without the Waiver Extension, WOW will be compelled to expend an additional $13.5 million in migrating its analog customer base to digital service. Given WOW's negative free cash flow and the financial constraints discussed above and in detail in WOW's prior filings in

[23] Attached as Exhibit A are WOW's condensed consolidated balance sheets, statements of operations and statements of cash flows for the calendar years ended 2006 and 2007 (the "Financial Statements") derived from the Company's audited consolidated financial statements for the corresponding periods as prepared by its auditors, PriceWaterhouseCoopers that corroborate the negative cash flow information previously provided to the Commission. The statements of cash flows for the periods indicated reflect that capital expenditures necessitated by competition exceed net cash provided by operating activities (see line items highlighted in ***bold italics***) along with the negative free cash flow forecast of $31.4M for 2008.

[24] *See,* Comcast Press Release and Time Warner Press Release.

this proceeding[25], recently initiated capital projects for the remainder of 2008 and 2009– including extending terrestrial-based competitive services into new communities and the ongoing deployment of digital boxes in connection with the migration from an analog to digital platform– will of necessity have to be eliminated, deferred or reduced in scope absent a Waiver Extension. This in turn, this will further exacerbate WOW's competitive position in relationship to its principal terrestrial-based competitors, Comcast and Time Warner Cable.

III. CONCLUSION

Without the Waiver Extension, WOW will be confronted with the Hobson's choice of applying its limited capital resources to the immediate deployment of non-integrated set-top boxes, thereby jeopardizing its financial viability or delaying the rate of its digital transition and, in turn, putting at risk its ongoing competitive viability with the large MSOs. Given the negative free cash flow demonstrated by WOW in this request for Waiver Extension, the continued financial and operational dominance of its principal competitors, Comcast and Time Warner Cable, the entry of incumbent AT&T into the video market and the deteriorating access to funds in the current financial markets, the "dire financial straits" of WOW recognized by the Commission in its Waiver Order not only persist but also are more severe than at the time of that Order.

[25] See, Waiver Order at ¶30, footnote 94.

Accordingly, WOW respectfully requests that the Commission grant the requested Waiver Extension for at least one year commencing July 1, 2008, subject to further extension should WOW demonstrate that its financial circumstances continue to warrant a waiver of the rules.

Respectfully submitted,

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