

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

In the Matter of)	
)	
Development of Nationwide Broadband Data)	
to Evaluate Reasonable and Timely)	
Deployment of Advanced Services to All)	WC Docket No. 07-38
Americans, Improvement of Wireless)	
Broadband Subscribership Data, and)	
Development of Data on Interconnected)	
Voice over Internet Protocol (VoIP))	
Subscribership)	

REQUEST FOR EXTENSION OR IN THE ALTERNATIVE HARDSHIP WAIVER

RCN Corporation (“RCN”) hereby requests that the Federal Communications Commission (“FCC” or “Commission”) grant a 30-day extension of time to allow RCN to complete and file Form 477 for its broadband services. In the alternative, pursuant to the Commission’s Order, RCN requests a hardship waiver of the requirement to provide census tract level data and instead to submit broadband subscriber service addresses or GIS coordinates, together with speed and technology to each address, instead of census tract level data.¹

I. REQUEST FOR THIRTY DAY FILING EXTENSION

RCN has been working diligently to gather the relevant data and broadband subscriber information necessary to complete the new Form 477. At this time, RCN anticipates completing its preparations in time to file the form by the March 2, 2009 deadline. However, several factors outside the control of RCN may negatively impact its ability to complete and file the form on time. First, RCN does not keep its broadband subscriber data in a manner that currently

¹ *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol*, Report and Order and Further Notice of Proposed Rulemaking, FCC 08-89 ¶ 15 (2008) (allowing for a waiver if the entity will suffer hardship in providing the data at the census tract level) (“Order”).

identifies it by census tract and will need to rebuild its databases to readily report it at that level. Therefore, in order to be able to meet the current March 2, 2009 deadline for filing Form 477, RCN is working with Technologies Management, Inc. (“TMI”), an outside vendor, to provide the newly required census tract data of its subscriber information. TMI has recently completed development of software to correlate subscriber address information to the census tract level. RCN has therefore executed a non-disclosure agreement and is working with TMI to provide it with the raw data in the form it needs to correlate it with census data so that RCN can timely file its Form 477 broadband report with information on a census tract level.

TMI has informed RCN that it will require a minimum of one week to process RCN’s subscriber information, which should allow for a timely filing on March 2, 2009. However, RCN is unaware that there are any other third party vendors who are providing this service and due to the looming filing deadline many smaller providers may begin inundating TMI with requests for its services. Therefore, although RCN anticipates providing its data to TMI within the next few days, RCN has no guarantees that TMI will complete the necessary analysis in time for RCN to upload and file the information with the FCC. In addition, the TMI process is newly developed and even minor technical difficulties could cause cascading delays for RCN and other smaller providers who have no alternatives and lack the resource to develop the census tract level data within their own companies.

In addition, as the FCC is aware, the electronic version of the form is still unavailable to filers and the form must now be filed electronically. Due to that delay, RCN will be unable to input any of its data into the actual form online. This mandatory electronic filing is also untested and untried and it is unknown what technical difficulties may arise when RCN attempts to complete the report. In addition, RCN and thousands of other broadband providers will be

accessing the FCC website as soon as the new form becomes available, and such demand may also place a significant strain upon the system and potentially cause technical difficulties with the nearly simultaneous uploading of substantial amounts of data.

Based on these potential delays and unknown technical difficulties, RCN hereby joins the request for extension filed by The Wireless Communications Association International, Inc., the Wireless Internet Providers Association, Inc., COMPTTEL and TEXALTEL (collectively, the “Associations”) on February 13, 2009.² As explained in more detail in that request, a modest 30-day extension of the deadline from the date the Form 477 becomes available online will allow broadband providers, especially smaller service providers such as RCN, to complete their data gathering, work with vendors to provide census tract data, and accurately upload the data to the new form. This *de minimis* extension will help ensure that information provided to the FCC is complete and error free, as well as a reasonable margin of time to compensate for any technical difficulties that may arise.

II. ALTERNATIVE REQUEST FOR HARDSHIP WAIVER

If the FCC does not extend the filing deadline, then RCN requests the grant of a hardship waiver. In its Order, the Commission recognized that some entities, especially smaller entities such as RCN, may have difficulties complying with the new requirement to provide census tract level data on its broadband services.³ As such, entities experiencing such hardship are permitted to provide a list of service address or GIS coordinates of the services, including information on speed and technology to each address, instead of census tract level data.⁴

² See Letter to Ms. Marlene Dortch from The Wireless Communications Association International, Inc., the Wireless Internet Service Providers Association, Inc., COMPTTEL and TEXALTEL, Request for Extension of March 2 2009 Deadline for Submission of FCC Form 477, WT Docket No. 07-38, filed on Feb. 13, 2009.

³ Order, at ¶ 15.

⁴ *Id.*

As the Commission is already aware, RCN is a competitive provider of voice, video and broadband services in a number of markets that has and continues to face severe financial challenges when it competes with the major incumbents in its markets such as Verizon and Comcast.⁵ As outlined in detail in its set-top box waiver requests, RCN continues to experience significant net losses which reached \$57.6 million and a negative free cash flow of \$10 million as of September 30, 2008 for the prior nine months. In addition, RCN is carrying a debt of \$739 million. Based upon this and other financial information submitted by RCN as part of the set-top box waiver proceeding, the FCC has already concluded that RCN is experiencing a continuing financial hardship.⁶

Unlike larger providers, RCN simply does not have the resources or staffing that can be solely devoted to developing a census tract level analysis by the March 2 reporting deadline. While RCN expects it will be able to provide a list of subscriber addresses, speed and technology information by the filing date, without the use of an outside vendor, RCN will not be able to provide census tract level data by the filing deadline.

Even with its financial strain and limited resources, RCN believes it has acted diligently and in good faith in its attempt to comply with the FCC's Form 477 census tract level filing requirements, and is hopeful that it will indeed be in a position to comply by March 2. However, as noted above, compliance is largely out of RCN's hands, and under these circumstances, and in the event it does not grant RCN an extension of the filing date, it urges the FCC to exercise its discretion to grant RCN a hardship waiver so that RCN can submit subscriber address or GIS

⁵ See *Ex Parte* Letter to Ms. Marlene Dortch from Mr. Richard Ramlall, Dockets No. CSR-7113-Z, filed June 12, 2007, and *Ex Parte* Letter to Mr. Brendan Murray from Mr. Richard Ramlall, CSR-7113-Z, filed Feb. 10, 2009.

⁶ *James Cable, LLC, RCN Corporation, WideOpen West Finance, LLC, Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, Memorandum Opinion and Order, DA 08-1632, ¶ 6 (2008) (finding that "good cause exists to grant RCN's Extension Request" based upon its "continuing financial hardship").

coordinate data in its March report should it be unable to submit census tract level data by that time. As noted by the Office of Management and Budget (“OMB”) upon its approval of the new form, the new form has “significant changes and increased burden” and the Commission should remain “flexible” and “assist respondents who may have difficulty in submitting information in the new format.”⁷ Therefore, based upon RCN’s limited resources and financial difficulties, as well as OMB’s directive to the Commission, RCN requests additional flexibility and asks the FCC to grant it a hardship waiver from the census tract reporting requirement.

CONCLUSION

With approximately seven business days until the March 2, 2009 filing deadline, and given that the revised Form 477 is as yet unavailable on the FCC’s website, RCN submits that the Associations’ request for a 30-day filing extension is reasonable and proper and hereby joins in support with that extension request. Should the FCC choose not to grant an extension of the filing deadline, RCN hereby requests a hardship waiver of the census tract level data requirement should it be unable to comply with that requirement by the filing deadline.

Respectfully submitted,

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⁷ *Resources Available to Assist Filers in Connection with Revised FCC Form 477 for the March 2, 2009 Filing Deadline*, Public Notice, DA 09-231, released Feb. 12, 2009.