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

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Federal Communications Commission  
Bureau / Office

In the Matter of )  
)  
Western Wisconsin Communications LLC )  
Request for Expedited Waiver )  
of 47 C.F.R. § 76.1204(a)(1) ) CSR No. 8184-Z  
)  
)  
To: Chief, Media Bureau )

**WESTERN WISCONSIN COMMUNICATIONS LLC'S REPLY TO OPPOSITION OF  
THE CONSUMER ELECTRONICS ASSOCIATION**

Western Wisconsin Communications LLC ("WWC"), by its attorneys, hereby submits the following reply to the "Opposition" filed by the Consumer Electronics Association ("CEA") with respect to WWC's expedited request for a conditional waiver ("Waiver Request") of Section 76.1204(a)(1) of the Commission's rules, 47 C.F.R. § 76.1204(a)(1), to allow it to deploy low-cost, limited-function (e.g., non-HD) integrated set-top boxes that will enable WWC, a small cable television cooperative with a very limited subscriber base, to upgrade its 550 MHz cable system to all-digital capability within one year of when the Waiver Request is granted.<sup>1</sup> Because CEA fails to rebut WWC's showing that the public interest benefits associated with grant of the petition substantially outweigh any potential harm to the competitive retail market for navigation devices, the Commission should dismiss the Opposition and grant the Waiver Request without further delay.

<sup>1</sup> As explained in more detail in WWC's Waiver Request, WWC faces intense competition for video subscribers not only from the DBS providers, but also from the local telephone company, which recently began reselling DBS service as part of a bundle. Grant of the Waiver Request will make it affordable for WWC to rapidly and efficiently upgrade its system to all-digital capability and provide its subscribers with the types of advanced services and expanded program offerings they desire, and without which, it risks obsolescence. See *Western Wisconsin Communications LLC Request for Expedited Waiver of 47 C.F.R. § 76.1204(a)(1)*, CSR 8184-Z (filed June 26, 2009) ("*WWC Waiver Request*").

Contrary to CEA's arguments, grant of the Waiver Request would be consistent with previous grants of relief made under the Commission's general waiver standard (Sections 1.3 and 76.7 of the Commission's rules).<sup>2</sup> First, WWC – a customer-owned cable cooperative serving 6,200 subscribers in twenty isolated rural West Central Wisconsin communities – seeks waiver only to deploy two devices (*i.e.*, the Motorola DCT-700 and DCT-2000 set-top boxes) that the Commission has previously approved for deployment by cable operators committing to upgrade their systems to provide subscribers with all-digital service.<sup>3</sup> Second, WWC has committed to comply with certain conditions, including subscriber notifications, set-top box inventory requirements, and most important, transition of its system to all-digital capability within a defined timeframe that the Commission has deemed necessary to fully realize the non-speculative benefits of such waivers.<sup>4</sup>

In its Opposition, CEA claims that grant of WWC's narrow Waiver Request would “erect a roadblock to competition in [the] cable navigation devices” market.<sup>5</sup> Apparently, it is CEA's view that, if only the Commission will deny WWC's 6,200 customers the requested relief, the long moribund retail market for CableCARD-enabled devices will suddenly burst into full flower. CEA offers nothing to support its contentions regarding the impact of WWC's requested waiver on the navigation device market and it offers nothing to rebut WWC's arguments in support of that request.

For example, while CEA is correct that several previous Commission orders have evaluated waiver requests in the context of the digital television (“DTV”) transition, it ignores

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<sup>2</sup> 47 C.F.R. §§ 1.3, 76.7.

<sup>3</sup> *See, e.g., Mediacom Communications Corporation*, Memorandum Opinion and Order, 23 FCC Rcd 6506 (Med. Bur. 2008).

<sup>4</sup> *See, e.g., 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, ¶ 27 (Med. Bur. 2007) (“*BendBroadband Order*”).

<sup>5</sup> *Opposition of the Consumer Electronics Association to Western Wisconsin Communications Request for Waiver*, CSR 8184-Z (filed Aug. 4, 2009), at 1 (“CEA Opp.”).

the fact that those same orders recognized the many benefits resulting from cable operators' transition to all-digital platforms that would have a continuing pro-consumer impact long after broadcasters cease analog operations. These benefits include not only freeing up spectrum for increased HD service offerings that would in turn boost sales of high-definition television ("HDTV") sets, but also facilitating the provision of higher broadband speeds and development of other advanced telecommunications capabilities in furtherance of Section 706 of the Communications Act.<sup>6</sup> Thus, even though the type of integrated set-top boxes that WWC here proposes to deploy may not, in the Commission's view, meet the criteria for waiver as a limited-capability device under the *2005 Deferral Order* standard, the Commission has "nevertheless recognize[d] that a conditioned grant of [such a petition] would facilitate [the] rapid transition to an all-digital network..., which was a *critical* factor in the Commission's decision to consider waiver requests at all."<sup>7</sup>

CEA also seeks to distinguish WWC's Waiver Request from the waiver recently granted to Cable ONE on the grounds that the Cable ONE waiver addressed a one-way device, not a two-way device.<sup>8</sup> However, unlike Cable ONE, WWC is not relying on or seeking to modify the *2005 Deferral Order* standard (which applies to "limited capability" devices).<sup>9</sup> Moreover, the

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<sup>6</sup> *BendBroadband Order* at ¶¶ 24-25. See also 47 U.S.C. § 157.

<sup>7</sup> *Id.* at ¶ 24 (emphasis added). In other words, while the *2005 Deferral Order* reflects the Commission's concern "that consumers have access to inexpensive digital set-top boxes that will permit the viewing of digital programming on analog television sets both during and after the [DTV] transition," it also shows that the Commission has placed an equal, if not greater, amount of importance on the public interest benefits that result from granting waivers to permit cable operators to convert to all-digital networks. See *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, Second Report and Order, 20 FCC Rcd 6794, ¶ 37 (2005) ("*2005 Deferral Order*"). As the Commission stated: "The availability of low-cost boxes will further the cable industry's migration to all-digital networks, thereby freeing up spectrum and increasing service offerings such as high-definition television. Accordingly, as cable systems migrate to all-digital networks, we will also consider whether low-cost, limited capability boxes should be subject to the integration ban or whether cable operators should be permitted to offer such low-cost, limited capability boxes on an integrated basis." *Id.*

<sup>8</sup> *Cable One Inc., Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, FCC 09-45 (Med. Bur. rel. May 28, 2009) ("*Cable ONE Order*").

<sup>9</sup> *2005 Deferral Order* at ¶ 37. While the Commission has held that the specific boxes for which WWC is seeking a waiver are not "limited capability" boxes eligible for a waiver under the *2005 Deferral Order*, those boxes are

Cable ONE waiver itself further reinforces WWC's argument that there are many public interest benefits not specifically linked to the broadcast DTV transition deadline that can and will flow from the grant of the requested waiver. In particular, the Cable ONE waiver, which includes a commitment by Cable ONE to transition to an all-digital network in its Dyersburg, Tennessee system within the same timeframe contemplated by WWC's Waiver Request (one year from grant of the petition), will result in many of the same public interest benefits identified in previous waiver orders, *e.g.*, promoting the commercial sale of HDTV sets and facilitating deployment of affordable set-top boxes that enable access to services customers expect and desire.<sup>10</sup>

The Cable ONE waiver decision sends a clear signal that the Commission will not deny consumers the benefits associated with cable operators' transition to all-digital networks simply because full-power broadcasters no longer transmit analog signals, particularly when completion of the DTV transition by itself does nothing to address consumers' desire for other services, *e.g.*, increased HD offerings, faster Internet speeds, access to digital voice service, all of which become a reality when a cable operator with a limited-capacity cable system, like WWC, is able to reclaim bandwidth to provide all-digital service to subscribers.

CEA's reliance on the Commission's decision in the Comcast set-top box waiver proceeding as a basis for denial of WWC's Waiver Request also is misplaced. Contrary to CEA's claim, the Commission's affirmance of the Media Bureau's denial of Comcast's waiver request did not "supersede" the Bureau's various rulings granting conditional waivers to companies making a compelling showing that allowing them to deploy integrated boxes would

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nonetheless limited in their functionality in that they cannot be used to receive HD service and, in any event, have been the subject of numerous waiver grants by the Commission.

<sup>10</sup> *Cable ONE Order* at ¶¶ 4, 12.

make it possible for subscribers to receive the benefits of all-digital service by a date certain.<sup>11</sup> In fact, the Commission expressly noted that Comcast was not “similarly situated” to the companies whose waiver requests were granted by the Bureau.<sup>12</sup> Even CEA cannot possibly claim that WWC – a cable cooperative offering limited (550 MHz) service to 6,200 customers spread over 20 communities in West Central Wisconsin – is “similarly situated” to Comcast.

In any event, the Comcast decision is distinguishable for other reasons. A significant reason why the Media Bureau declined to grant the request under the Commission’s general waiver authority was because Comcast did not commit to going all-digital on an expedited basis.<sup>13</sup> Indeed, as the Bureau pointed out with respect to Comcast’s petition, which was filed in early 2006, the earliest the company could complete the transition would be “sometime after 2010,”<sup>14</sup> and possibly even later, based on public press statements that that the company would be offering analog channels for “another decade.”<sup>15</sup> The Commission’s decisions clearly demonstrate that its primary concern has been with establishing a finite timeline for a waiver recipient’s digital transition because it is “the ability to *rapidly* migrate to an all-digital network [that] produce[s] clear, non-speculative public benefits.”<sup>16</sup>

Indeed, in commenting on the Commission’s set-top box waiver decisions, Commissioners McDowell and Adelstein expressly acknowledged that, in granting waivers to companies committing to go all-digital by a date certain, the Commission intended “to help

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<sup>11</sup> CEA Opp. at 3, citing *Comcast Corporation, Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, Memorandum Opinion and Order, 22 FCC Rcd 17113 (2007) (“*September Comcast Order*”), *pet. for review denied, Comcast Corp. v. FCC*, 526 F.3d 763 (2008).

<sup>12</sup> *September Comcast Order* at n. 99.

<sup>13</sup> *Comcast Corporation, Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, Memorandum Opinion and Order, 22 FCC Rcd 228 (Med. Bur. 2007) (“*January Comcast Order*”).

<sup>14</sup> *Id.* at ¶29.

<sup>15</sup> *Id.* at n. 81.

<sup>16</sup> See *Consolidated Requests for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, 22 FCC Rcd 11780 (2007), citing *BendBroadband Order* at ¶ 27 (emphasis added).

cable's own digital transition, but did not intend to force cable companies to complete their digital transitions by the deadline set for the broadcast DTV transition."<sup>17</sup> Given the limited timeframe contemplated by the Waiver Request, grant of WWC's petition will serve to do much more than "merely facilitate[] the deployment of all-digital television," as claimed by CEA.<sup>18</sup>

Finally, the Commission should give no credence to CEA's argument that it should deny WWC's Waiver Request because a waiver granted on the terms requested by WWC would be available to all similarly-situated cable operators. The consideration of waivers under Sections 1.3 and 76.7 involves a fact-specific inquiry based on the petition at issue. CEA's sweeping generalization that granting WWC's Waiver Request will eventually lead to "a competition-free zone over rural areas covering much of U.S. territory" is not only outrageous, but also is based entirely on speculation, and discounts the careful review conducted by Commission staff to ensure that the benefits of a particular waiver request outweigh any potential harms.<sup>19</sup>

Working from the facts at issue in this case, it is undeniable that allowing deployment of low-cost, integrated set-top boxes in a single cable system serving approximately 6,200 cable subscribers in rural West Central Wisconsin will have no adverse impact on the overall market for navigation devices.<sup>20</sup> Tellingly, CEA does not dispute this fact. Nor does it deny that the Waiver Request, viewed on its own merits, would result in significant, quantifiable benefits to consumers in furtherance of goals outlined in previous waiver orders by enabling deployment of increased digital programming services and advanced telecommunications capabilities that will,

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<sup>17</sup> *September Comcast Order* at 19 (Joint Statement of Commissioners Robert M. McDowell and Jonathan S. Adelstein Concurring). Notably, the first waiver granted to a company committing to go all-digital by a date certain required completion of the transition by 2008, not by the February 17, 2009 broadcast digital transition deadline. Furthermore, the Commission did not, in any of its orders implementing the extension of the broadcast digital transition deadline to June 12, 2009, indicate that it was extending any of its conditional set-top box waiver orders.

<sup>18</sup> CEA Opp. at 2.

<sup>19</sup> *Id.* at 4.

<sup>20</sup> See *WWC Waiver Request* at 4.

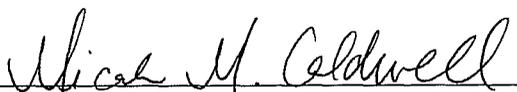
as demonstrated by WWC, allow the company to sustain its business in the face of unique competitive and economic circumstances that threaten its continued viability.<sup>21</sup>

The grant of a waiver of the integration ban under the Commission's general waiver authority requires a "demonstrate[ion] that grant of such a request, on balance, would further the public interest."<sup>22</sup> As WWC has satisfied this requirement, the Commission should grant its Waiver Request without further delay.

Undersigned counsel have read the foregoing Reply, and to the best of such counsels' knowledge, information and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, and is not interposed for any improper purpose.

Respectfully submitted,

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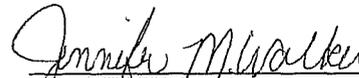
<sup>21</sup> *Id.* at 2-3.

<sup>22</sup> *September Comcast Order* at ¶ 20.

**CERTIFICATE OF SERVICE**

I, Jennifer M. Walker, a secretary at the law firm of Fleischman and Harding LLP, hereby certify on this 19th day of August, 2009, a copy of the foregoing "Reply" was sent via first class mail, postage prepaid, to the following:

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