

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

In the Matter of	)	
	)	
GCI Cable, Inc.	)	CSR-5442-Z
	)	
Petition for Special Relief	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: June 19, 2000**

**Released: June 21, 2000**

By the Chief, Cable Services Bureau:

**I. INTRODUCTION**

1. GCI Cable, Inc. and its affiliate GCI/Fairbanks, Inc. ("GCI") have filed a petition for special relief, pursuant to Section 76.7 of the Commission's rules, seeking a waiver of Section 76.605(a)(6)(ii) of the rules.<sup>1</sup> The rule, which went into effect on December 30, 1999, requires measurement of a cable television system's amplitude characteristic at the subscriber terminal, thereby including the converter box in the measurement. GCI contends that application of the rule will require it to prematurely replace a significant number of set-top converters, at a great cost to the cable operator and its subscribers. The instant petition covers GCI's systems serving Anchorage, Fairbanks, and the communities of Kodiak, Homer, and Seward.<sup>2</sup> GCI also serves the communities of Sitka and Ketchikan, Alaska.<sup>3</sup>

**II. BACKGROUND**

2. The Commission adopted a number of technical requirements for cable television systems in 1992, including the following standard:

The amplitude characteristic shall be within a range of +/- 2 decibels from 0.75 MHz to 5.0 MHz above the lower boundary frequency of the

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<sup>1</sup>47 C.F.R. §76.605(a)(6)(ii).

<sup>2</sup>GCI states that it acquired the systems in 1996 from three separate sellers, and does not provide the Commission with information regarding the purchase dates of the converter boxes in question.

<sup>3</sup>These communities are not subject to the waiver request as the converters used in the Hamlin system are compliant and the Ketchikan system uses traps, so that no converters are necessary. However, GCI states that if a Ketchikan subscriber requests a converter because, e.g., that subscriber does not have a cable-ready television set, GCI will provide a compliant converter.

cable television channel, referenced to the average of the highest and lowest amplitudes within these frequency boundaries.<sup>4</sup>

In *Cable Television Technical and Operational Requirements, Review of the Technical and Operational Requirements of Part 76, Cable Television ("Report and Order")*, the Commission established the requirement that this standard be measured after the cable television signal passes through the converter box provided by the cable operator. The rule was established to provide a picture quality standard that includes measurements taken from the converter box. On reconsideration, the Commission modified the rule "... to permit cable operators to measure this standard prior to a signal passing through a converter box for no more than a seven-year period beginning December 30, 1992...."<sup>5</sup> The seven-year period allowed cable operators to replace existing converter boxes in a cost efficient manner. Accordingly, as of December 30, 1999, the standard is measured at a subscriber's terminal, so that the converter box is taken into account.

### III. ARGUMENTS

3. GCI states that of the 114,000 Zenith converter boxes currently in use in its Anchorage, Alaska system, approximately 35,000 units will fail to meet the specifications established in the revised rule.<sup>6</sup> GCI contends that these converters are demonstrating reliability past their expected lives, and that the cost of replacement would be 4.5 million dollars in equipment costs alone. GCI explains that it is offering both digital and analog video signals in Anchorage, and that those converters used for digital service comply with the revised rule. However, the converters used for those subscribers currently remaining on analog service cannot be upgraded to digital. GCI contends that if these analog converters need to be replaced because of the rule, the units would become useless as subscribers choose higher quality digital service.<sup>7</sup>

4. GCI states that the 20,000 non-compliant Tocom converters used in its Fairbanks system, serving 12,400 subscribers, are also performing reliably beyond their expected service lives, and that replacement of the Tocom units will cost several million dollars. GCI is planning on offering its Fairbanks subscribers an option of digital service in the near future. Once it reconfigures its system for such service, analog customers will only need a converter if they subscribe to a premium service. The non-compliant analog converters will be replaced as customers choose digital service. GCI emphasizes that if the cable operator is required to replace the existing non-compliant analog converters, it will be required to then replace the converters for a second time as customers migrate to digital service, causing unnecessary expense for the operator and its subscribers.

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<sup>4</sup>47 C.F.R. § 605(a)(6). See 7 FCC Rcd 2021, 2027 (1992).

<sup>5</sup>See *Cable Television Technical and Operational Requirements, Review of the Technical and Operational Requirements of Part 76, Cable Television ("Order on Reconsideration")*, 7 FCC RCD 8676 (1992).

<sup>6</sup>GCI states that Zenith is no longer a supplier of converter boxes.

<sup>7</sup>GCI cites *Media General Cable of Fairfax County, Inc.*, 14 FCC Rcd 9668 (Cab. Serv. Bur. 1999), in which the Bureau granted a waiver of the rule based on the durability of the converter boxes in use and the configuration of Media General's system.

5. GCI states that in the small communities of Kodiak, Homer, and Seward,<sup>8</sup> replacement of the existing non-compliant Jerrold converters, while modifying the systems' coding, would cost \$336,000 in Kodiak, \$100,000 in Homer, and \$121,000 in Seward. GCI states that the cost of replacing converters in these small communities will deplete the capital needed to deploy digital service in the communities, which the operator plans to do in two years. Subscribers choosing digital service at that time will receive compliant converters. GCI states that it will replace non-compliant converters in these communities, at a subscriber's request or for any other reason, with compliant converter boxes.

6. GCI states that in the future, it will purchase only converters that are compliant with Section 76.605. In addition, the cable operator states that it will replace existing converters with compliant converters in the Anchorage and Fairbanks systems as the need arises, or upon subscribers' requests. This process, along with the migration of subscribers to digital service, will result in compliance with the rule section, according to GCI.

#### IV. ANALYSIS AND DISCUSSION

7. The *Report and Order* adopted an amplitude characteristic (also known as frequency response) standard, which maintains the relative order of the different components in the television waveform, contributing to a higher quality picture.<sup>9</sup> The *Order on Reconsideration* recognized the potential costs for coming into compliance with the standard by December 30, 1992, and modified Section 76.605(a)(6) to permit cable operators to come into compliance no later than December 30, 1999. In doing so, the Commission stated:

The current recovery period for a converter according to the Internal Revenue Service depreciation standards is seven years, and thus even converters put into use today would be depreciated by the end of the period. This seven year phase-in period will allow cable systems to replace converters in a cost-efficient manner.<sup>10</sup> (footnote omitted)

The *Order on Reconsideration* also noted that the legislative history of the *Cable Television Consumer Protection and Competition Act of 1992*<sup>11</sup> (the "Act") stated:

In considering new standards, the Commission shall require cable operators to comply with the standards it establishes within a reasonable period of time. *The Commission should, however, consider permitting reasonable phase-in periods so that operators and ultimately consumers may not unreasonably be required to pay for replacing equipment in place prior to the end of its useful life.*<sup>12</sup> (emphasis added)

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<sup>8</sup> The Kodiak system has 3192 subscribers, with 2289 converters in use; the Homer system has 1203 subscribers, with 442 converters in use; and the Seward system has 2066 subscribers, with 573 converters in use.

<sup>9</sup> 47 C.F.R. §76.605(a)(6).

<sup>10</sup> *Order on Reconsideration* at 8678.

<sup>11</sup> Pub. L. 102-385 Stat. (1992).

<sup>12</sup> H.R. Rep. No. 102-628, 102d Cong., 2d Sess. at 109.

8. The *Order on Reconsideration* makes it clear that the Commission considered the seven-year Internal Revenue Service depreciation standard so that cable operators could replace fully depreciated converter boxes in a cost efficient manner which would benefit both operators and subscribers. It is also clear from the legislative history that cable operators, and ultimately subscribers, were not intended to bear the costs of replacing equipment prior to the end of its useful life. In the instant matter, it appears that because of the durability of the converter boxes in use by GCI, and the configuration of GCI's systems, the cable operator would not be required to replace the converter boxes for analog use absent the rule.

9. Based on the facts and circumstances presented by GCI, we believe that its subscribers will be best served by allowing GCI to replace non-compliant converters as requested above, without requiring the retirement or costly retrofitting of existing equipment. To rule otherwise would contradict the intent of the legislative history of the 1992 Cable Act and the Commission's interpretation of Section 76.605 in its *Order on Reconsideration*. In granting GCI's request for waiver, we do impose the condition that GCI must maintain its current policy of replacing the converter boxes in question with compliant converters, either in the event of a malfunction or upon a subscriber's request. In addition, when GCI replaces any of the boxes in question for any reason, we will require that the replacement converter boxes comply with Section 76.605 of the rules.<sup>13</sup> Accordingly, we believe that the picture quality standards set out in the rule will be minimally effected by allowing GCI to continue to use the converter boxes in question.

## V. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED**, pursuant to Sections 76.7 and 76.605 of the Commission's rules, 47 C.F.R. Sections 76.7 and 76.605, that the request for waiver (CSR-5442-Z) filed on behalf of GCI Cable, Inc., **IS GRANTED**, to the extent indicated above.

11. This action is taken pursuant to authority delegated by Section 0.321 of the Commission's rules, 47 C.F.R. Section 0.321.

FEDERAL COMMUNICATIONS COMMISSION

Deborah A. Lathen  
Chief, Cable Services Bureau

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<sup>13</sup>Our grant of the requested waiver does not relieve GCI of the potential requirement of Note 4 contained in Section 76.605 regarding system-wide problems.