

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

In the Matter of:)
)
Midcontinent Cable Co.) CSR-5462-Z
)
)
Petition for Special Relief)

MEMORANDUM OPINION AND ORDER

Adopted: April 11, 2000

Released: April 13, 2000

By the Chief, Cable Services Bureau:

INTRODUCTION

1. Midcontinent Cable Co., on behalf of its subsidiaries and affiliates ("Midcontinent"),¹ has filed a petition for special relief, pursuant to Section 76.7 of the Commission's rules, requesting an extension to and including September 30, 2000 in which to comply with Section 76.605(a)(6)(ii) of the rules.² 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. Midcontinent seeks a limited extension of the December 30, 1999 deadline in order to account for a "relatively minor but unforeseen delay in implementing digital service" on its cable television systems. Absent grant of the extension, Midcontinent contends that it will be forced to spend substantial sums to comply with the rule, which will adversely effect its subscribers, and will be rendered unnecessary and wasteful by full implementation of its digital cable service shortly thereafter.

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

¹The subsidiaries or affiliates of Midcontinent Cable Co. covered by this petition are: Midcontinent Cable Systems Company of South Dakota, Midcontinent Cable Systems of North Dakota, and Sioux Falls Cable Television. Midcontinent Cable Systems Company of South Dakota serves the following Aberdeen and Huron, South Dakota area community units: SD0003, SD0036, SD0041, SD0051, SD0107, SD0122, SD0125, SD0127, SD0129, SD0159, SD0160, SD0163, SD0197, and SD1280 (Aberdeen area); and SD004, SD0019, SD0039, SD0128, and SD01334 (Huron area). Midcontinent Cable Systems of North Dakota serves the Minot Air Force Base, community unit ND0028. Sioux Falls Cable Television serves the following Bismark, North Dakota area community units: ND0005, ND0006, ND0068, ND0078, ND0103, and ND0104.

²47 C.F.R. §76.605(a)(6)(ii).

from 0.75 MHz to 5.0 MHz above the lower boundary frequency of the cable television channel, referenced to the average of the highest and lowest amplitudes within these frequency boundaries.³

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 which 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...."⁴ 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.

ARGUMENTS

3. Midcontinent states that it uses two different Zenith analog addressable platforms, the ZTAC system and PM system, and has tested random samples of each converter box model currently in use by both systems. Based on its testing, Midcontinent determined that approximately 2000 of the ZTAC converters (8 percent) and 130 of the PM converters (1.7 percent) would likely fail the Commission's amplitude characteristic standard.⁵ Of the 33,000 converters currently deployed in the systems, Midcontinent states that it is unable to identify specific units located in subscriber premises that may not comply with the standard without removing and individually testing each of the converter boxes.⁶ Midcontinent states that it has been planning to replace its existing systems with a digital service for several years, and that it anticipated launch of the service prior to December 30, 1999, which would have eliminated the use of all non-compliant converters prior to the deadline. Midcontinent explains that unexpected delays in construction, problems encountered with a new billing system, and rectification of potential Y2K problems delayed scheduled implementation of the digital service. Midcontinent expects that its conversion to digital service will be completed by June 30, 2000. In order to take into account the contingencies of equipment delivery and the potential delays in obtaining access to subscribers' premises, Midcontinent has requested that the Commission grant an extension until September 30, 2000.

4. Midcontinent explains further that without an extension of the deadline, the cable operator and its subscribers will be forced to incur significant costs and inconvenience. The cable operator estimates that the cost of purchasing new or refurbished compliant converters would be approximately \$75

³47 C.F.R. § 605(a)(6). See 7 FCC Rcd 2021, 2027 (1992).

⁴See *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).

⁵Midcontinent estimates the following non-compliance rates for its systems: Bismark – 2,040 of 25,500 ZTAC converters; Aberdeen – 77 of 4500 PM converters; Huron – 26 of 1500 PM converters; Minot Air Force Base – 26 of 1500 PM converters.

⁶Midcontinent states that it has not performed tests on converter boxes located in subscribers' premises in order to avoid inconvenience to subscribers and excessive costs.

per unit, or \$159,750. In addition, the more substantial cost of collecting and testing all 32,000 converters currently in use, at a conservative estimate of \$25 per unit, would impose an expenditure of approximately \$800,000. The total cost would approach \$1,000,000, or \$31.25 for each of the converters leased by Midcontinent's subscribers. In addition, Midcontinent states that the Zenith converters currently in use have performed and continue to perform reliably, and have generated few, if any, subscriber complaints. Moreover, Midcontinent contends, because the newly purchased compliant converters will become obsolete within a few months upon completion of its digital service, such a requirement would needlessly impose significant inconvenience and cost of Midcontinent's subscribers.⁷

5. Accordingly, Midcontinent requests that the Commission grant an extension until September 30, 2000 from the December 30, 1999 equipment sunset requirements of the rule, on the condition that Midcontinent agrees to maintain its policy of replacing the aforementioned Zenith set-top boxes either in the event of a malfunction or upon a subscriber's request.

ANALYSIS AND DISCUSSION

6. 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.⁸ 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. The *Order on Reconsideration* also noted that the legislative history of the *Cable Television Consumer Protection and Competition Act of 1992*⁹ (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.*¹⁰ (emphasis added)

7. It is 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 the converter boxes in question are functioning reliably, and will be replaced in the near future as Midcontinent converts its systems to digital. It also appears that the cable operator would have no reason, absent the rule, to replace the converter boxes prior to the systems' conversion.

8. Based on the facts and circumstances presented by Midcontinent, we believe that its subscribers will be best served by allowing Midcontinent to convert to digital service in the near future

⁷Midcontinent states that subscribers will be burdened with higher equipment rates, as well as the needless inconvenience of setting aside time for the service calls necessary to identify and replace non-compliant converters.

⁸47 C.F.R. §76.605(a)(6).

⁹Pub. L. 102-385 Stat. (1992).

¹⁰H.R. Rep. No. 102-628, 102d Cong., 2d Sess. at 109.

without requiring the cable operator to replace its analog converter boxes prior to conversion. 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 Midcontinent's request for extension, we do impose the condition that Midcontinent must maintain its current policy of replacing the converter boxes in question either in the event of a malfunction or upon a subscriber's request. In addition, when Midcontinent 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.¹¹

ORDERING CLAUSES

9. 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-5462-Z) filed on behalf of Midcontinent Cable Co., **IS GRANTED**, to the extent indicated above.

10. 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

¹¹Our grant of the requested waiver does not relieve Midcontinent of the potential requirement of Note 4 contained in Section 76.605 regarding system-wide problems.