Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of Liberty Cablevision of Puerto Rico, Ltd. Request for Waiver of 47 C.F.R. § 76.1204(a)(1)	CSR-7124-Z CS Docket No. 97-80

REPLY COMMENTS OF
LIBERTY CABLEVISION OF PUERTO RICO, LTD.

Liberty Cablevision of Puerto Rico, Ltd. ("LCPR") submits the following reply comments in support of its request for a waiver ("Request") from the integration ban for the low-cost DCT-700 set-top box.

I. NO PARTY DEMONSTRATED ANY REASON WHY THE COMMISSION PRECEDENT FROM THE *BENDBROADBAND ORDER* SHOULD NOT BE APPLIED TO LCPR.

In its Request, LCPR demonstrated that it has met the criterion for waiver established by the Commission in the *BendBroadband Order* to have an all-digital cable network in place prior to the DTV transition in February 2009. The only "opposition" to LCPR's Request was filed by the Consumer Electronics Association (CEA). CEA did not respond substantively to LCPR's arguments, but instead simply noted that LCPR's "request is similar to BendBroadband's request" and that "CEA hereby incorporates its comments on BendBroadband's request by reference."[1] The Commission has already rejected these CEA comments in conditionally granting BendBroadband's request, and it should do so again here.

[1] CEA Comments at 1, fn. 1.

LCPR has requested the same relief that the Commission granted to BendBroadband, and it meets the conditions established by the Commission for that relief. Accordingly, as the Telecommunications Regulatory Board of Puerto Rico concluded, "LCPR's waiver request presents an easy case" whose grant is "especially necessary and compelling for the protection of consumers" in Puerto Rico.[2]

II. THE SUPPORT FOR LCPR's WAIVER BY PUERTO RICO's REGULATORS AND MEMBER OF CONGRESS VERIFIES THE IMPORTANCE OF RELIEF FOR PUERTO RICAN CONSUMERS.

LCPR's Request demonstrated that a waiver for low-cost devices is especially compelling in rural Puerto Rico. Nearly 50% of the households in LCPR's service area have an annual income below the poverty level. These consumers have no ability to purchase the high-end CableCARD DTVs that CEA wants to subsidize through the integration ban;[3] in fact, demand for these products is so low in Puerto Rico that few are even offered at retail.[4] It makes no sense to require low-income Puerto Rican consumers to spend up to $144 more per year[5] for the supposed benefit of high-end retail CableCARD products when those products are barely even available in Puerto Rico for LCPR to support.

CEA wrongly claims that grant of LCPR's Request "will almost certainly decrease availability of low-cost devices" for Puerto Rican consumers.[6] On the contrary,

---

[2] Comments of the Telecommunications Regulatory Board of Puerto Rico at 1.
[3] LCPR Request at 8.
[4] LCPR Request at 9-10; Comments of the Telecommunications Regulatory Board of Puerto Rico at 3.
[5] LCPR Request at 4.
[6] CEA Comments at 2. CEA's overly-simplistic reliance on "Moore's Law" ignores the application of its own arguments (improved cost efficiencies and technological improvements over time) to integrated boxes such as the DCT-700. Consumers seeking the lowest cost device would be better served by further reductions in the price of the $79 DCT-700 – a pro-consumer development that CEA's policy would obliterate. Similarly, CEA is wrong in suggesting that consumers would be better off if the ban had been put into place in 2000; had that occurred, LCPR could not have transitioned to an all-digital network because it would not have had access to the DCT-700 that was essential to that transition.

the real-world fact that awaits Puerto Rican consumers on July 1, 2007 is that the denial of the waiver would eliminate the only low-cost cable device option they now have. The cost of the cheapest CableCARD set-top box option available in Puerto Rico will have tripled, leaving a void that – especially in Puerto Rico – the consumer electronics industry has made no commitment to fill in 2007, or even later.[7]

The comments from parties who actually understand the real-world local conditions in Puerto Rico (unlike CEA) support LCPR's Request. The Telecommunications Regulatory Board of Puerto Rico, the government agency responsible for the "protection of consumer rights" in the telecommunications and cable markets in Puerto Rico,[8] wrote that the significant cost increase caused by the integration ban would have a "disproportionate effect on Puerto Rican cable consumers, who on average have lower incomes and who are less likely to purchase a high-end set-top than consumers in the mainland United States."[9] The Board further explained that:

> A price increase of this magnitude is a very serious concern to the Board, which has strived to reduce the costs of telecommunications services to make them more accessible to all Puerto Rican consumers. … It is far from clear that these extraordinary new costs would be worth it for consumers in Puerto Rico, at least at this time. Far fewer consumers in Puerto Rico, especially in the areas outside of San Juan where LCPR

---

[7] The record evidence shows that not a single CE manufacturer has demonstrated that it could build non-integrated devices for the cost of today's integrated devices, even at high volumes. *See* Pace Comments in support of Charter waiver, at 4-5 (Sept. 18, 2006) ("without a waiver, "*no one* will be able to produce 'low cost' set-top boxes – not Pace for cable operators, and not other CE manufacturers for retail sale. Absent a waiver, until the deployment of downloadable security, it will be technically and economically impossible for any manufacturer to build a compliant set-top box that could be priced anywhere close to the amount of today's low-cost devices for which Charter seeks waiver. The unavoidable fact is that the combined cost of a 'dis-integrated' host set-top box … and a separate CableCARD is significantly greater than our integrated low-cost devices. Denial of the waiver request would therefore destroy, not enhance, the market for low-cost set-top boxes"). It is this fact – and not Motorola's supposed "monopoly" – that would leave consumers without any low-cost cable option if low-cost waivers are denied. Where an operator has a waiver, CEA's members are free to develop integrated navigation devices in competition with Motorola, just as Pace has done. *See* Reply Comments of Charter Communications, Inc. at 12 (Sept. 28, 2006).

[8] *See* Comments of the Telecommunications Regulatory Board of Puerto Rico at 1 (citing Commonwealth of Puerto Rico, Act No. 213, § 7(f) (Sept. 12, 1996)).

[9] Comments of the Telecommunications Regulatory Board of Puerto Rico at 2.

> provides service, can afford the expensive CableCARD devices now offered at retail by the consumer electronics industry. As a result, fewer of these devices are even available in Puerto Rico. There are no Circuit City or Best Buy stores anywhere in Puerto Rico, and TiVo does not support its service in Puerto Rico at this time. Because there is comparably little demand for retail CableCARD devices in Puerto Rico, application of the integration ban to all of LCPR's set-top boxes is a solution for a problem that does not clearly exist in Puerto Rico.[10]

Similarly, the Honorable Luis Fortuño, the Member of Congress from Puerto Rico, observed that the integration ban "appears to have been designed primarily with the markets in the continental United States in mind," and is not well suited to the Puerto Rican market. He explained in a letter to Chairman Martin:

> Absent a waiver, Liberty will be forced to increase cost to its customers, [which] would have a disproportionately severe impact on Puerto Rican consumers given the demographics of the Commonwealth, as described by Liberty in its waiver request. … The communications market and the economy in Puerto Rico are very different from the continental United States, and deserve individual consideration with respect to a significant rule such as the integration ban. Once that individual consideration is given by the Commission, I hope that you will agree with me that the Commission should grant the waiver requested by Liberty Cablevision of Puerto Rico, Ltd.[11]

The record shows only unanimous support from within Puerto Rico for the conclusions that application of the ban to LCPR's low-cost devices would hurt Puerto Rican consumers far more than it would help them,[12] that a waiver would have no adverse impact on the success or failure of the integration ban nationwide,[13] and that a waiver would make a very real and significant difference in facilitating the digital

---

[10] *Id*. at 3.

[11] *See* Exhibit 1 attached hereto (Letter from Hon. Luis Fortuño, Member of Congress from Puerto Rico, to Hon. Kevin J. Martin, Chairman, Federal Communications Commission, March 15, 2007).

[12] Not a single one of the form-comments filed by consumers in support of the ban in other waiver proceedings in Docket 97-80 have come from Puerto Rico.

[13] *See* LCPR Request at 10 (showing that LCPR serves only 0.12% of the nation's MVPD subscribers); *see also* Comments of the Telecommunications Regulatory Board of Puerto Rico at 3-4 ("A waiver for consumers in Puerto Rico will not undermine the potential success of the integration ban in the mainland any more so than will its non-application in other parts of the Caribbean.").

transition and delivery of advanced services to consumers in rural Puerto Rico. The Commission should accordingly grant LCPR's request for a waiver from the integration ban for the low-cost DCT-700 set-top box.

Respectfully submitted,

John Conrad
In-house Counsel
Liberty Cablevision of Puerto Rico, Ltd.
Road 992, km 0.2
P.O. Box 719
Luquillo, PR 00773

March 26, 2007

Exhibit 1

Letter from Hon. Luis Fortuño, Member of Congress from Puerto Rico, to Hon. Kevin J. Martin, Chairman, Federal Communications Commission, March 15, 2007

LUIS G. FORTUÑO
PUERTO RICO

WASHINGTON OFFICE:
126 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-2615 FAX: (202) 225-2154

SAN JUAN OFFICE:
P.O. BOX 9023958
SAN JUAN, PR 00902-3958
(787) 723-6333 FAX: (787) 729-7738

Congress of the United States
House of Representatives
Washington, DC

COMMITTEES:
FOREIGN AFFAIRS
EDUCATION AND LABOR
NATURAL RESOURCES

RANKING MEMBER OF
SUBCOMMITTEE ON INSULAR AFFAIRS

CHAIRMAN, CONGRESSIONAL
HISPANIC CONFERENCE

REPUBLICAN POLICY COMMITTEE

CO-CHAIRMAN, CONGRESSIONAL
FRIENDS OF SPAIN CAUCUS

March 15, 2007

The Honorable Kevin Martin
Chairman
Federal Communications Commission
Room 8 B-201
445 12th Street SW
Washington, D.C. 20554

Re: Liberty Cablevision of Puerto Rico Request for Waiver of 47 C.F.R. § 1204(a)(1);
FCC Proceeding 97-80, CSR-7124-Z

Dear Chairman Martin:

It is a priority for me to ensure that my constituents receive broadband internet service and other advanced communication services, such as digital cable and competitive phone service. This objective would be undermined in Puerto Rico by the application of the Commission's upcoming ban on low-cost integrated set-top boxes, a rule that appears to have been designed primarily with the markets in the continental United States in mind. The communications market and the economy in Puerto Rico are very different from the continental United States, and deserve individual consideration with respect to a significant rule such as the integration ban. Once that individual consideration is given by the Commission, I hope that you will agree with me that the Commission should grant the waiver requested by Liberty Cablevision of Puerto Rico, Ltd.

Liberty serves more than 130,000 households in my district. This company became one of the first cable operators in the nation to transition to an all-digital network, nearly three years prior to the February 2009 DTV transition. However, the Motorola DCT-700 has been the lynchpin to Liberty's transition to all-digital and to its ability to maintain a low-cost digital service. Absent a waiver, Liberty will be forced to increase cost to its customers, resulting in a slowdown or practical halt to penetration stalling the digital transition in Puerto Rico. Such cost increases would have a disproportionately severe impact on Puerto Rican consumers given the demographics of the Island, as described by Liberty in its waiver request.

PRINTED ON RECYCLED PAPER

I respectfully request that you grant Liberty Cablevision of Puerto Rico, Ltd. and low cost set-top box waiver and to review this matter promptly in a way that is sensitive to my constituents' needs and costs.

Sincerely,

Luis Fortuño
Member of Congress