

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of
Puerto Rico Cable Acquisition Corp.
Request for Waiver of 47 C.F.R. 76.1204(a)(1)

CSR-7201-Z

REPLY COMMENTS OF CHOICE CABLE

Puerto Rico Cable Acquisition Corp. d/b/a Choice Cable T.V. (hereinafter “Choice”) submits these reply comments in support of its request for waiver from the integration ban. Not a single party filed comments in opposition to Choice’s request for waiver.¹ Choice’s detailed waiver request demonstrated that any imminent application of the integration ban in rural Puerto Rico would not and in fact *cannot* help Puerto Rican consumers, whereas grant of the requested waiver would deliver more advanced services and lower prices to these consumers. Puerto Rico’s regulators and elected representative to Congress agree that imposition of the integration ban would not make any sense in Puerto Rico at this time.² Given such support for relief, and given the lack of any opposition, the Commission should grant the requested waiver promptly.

One commenter, the Consumer Electronics Association (CEA), did not oppose Choice’s request, but asked the Commission to “bear in mind that too many or too liberal exceptions would serve to ratify the nullification of FCC regulations by larger MSOs and

¹ None of the form-letter comments filed by consumers supporting the ban in other waiver proceedings have come from residents of Puerto Rico.

² See CSR-7124-Z, Comments of the Telecommunications Reg. Board of Puerto Rico (Mar. 19, 2007) and CS Docket 97-80, Letter from Hon. Luis Fortuño, Member of Congress from Puerto Rico, to Hon. Kevin J. Martin, Chairman, Federal Communications Commission, March 15, 2007 (explaining that unique circumstances in Puerto Rico justify waiver of the integration ban for Liberty Cablevision of Puerto Rico).

their vendors.”³ But Choice serves only 72,000 customers, 1000 miles from the shore of continental United States. Given that U.S. cable operators deploy millions of new set-top boxes per year, the impact of any waiver for Choice would clearly be *de minimis*.⁴

Although there are no oppositions to which to respond, Choice will comment briefly to explain the context of its own waiver request in relation to the *GCI* and *OneSource Waiver Orders*⁵ that were adopted by the Bureau subsequent to Choice’s request.

First, the *GCI* and *OneSource Waiver Orders* make clear that the Commission should at a minimum grant Choice a waiver for its low-cost devices. Choice, like BendBroadband, GCI, and OneSource, needs a waiver for such devices to maintain an all-digital network through the DTV transition in February 2009. The Commission has found that a waiver for low-cost devices in such circumstances would serve the public interest, and should do so again here.

However, the *OneSource Waiver Order* is not the correct or applicable precedent for consideration of Choice’s request for a temporary waiver for high-definition (HD) and DVR devices. Like Choice, OneSource requested relief for an HD/DVR device (in its case, the Motorola DCT-3416). But OneSource did not offer any independent justification for such a waiver. Instead, OneSource simply suggested that the DCT-3416

³ CEA Comments at 2.

⁴ The impact of a waiver would in any case be dwarfed by the impact of the apparent non-enforcement of the ban on DirecTV and DISH Networks, which collectively serve more than 400 times as many video customers as Choice. *See* BendBroadband Request for Waiver at 13-18.

⁵ *GCI Cable, Inc. Request for Waiver of Section 76.1204(a)(1) of the Commission’s Rules*, CSR-7130-Z, Memorandum Opinion and Order, DA 07-2010 (rel. May 4, 2007); *Millennium Telcom, LLC d/b/a OneSource Communications Request for Waiver Section 76.1204(a)(1) of the Commission’s Rules*, CSR-7129-Z, Memorandum Opinion and Order, DA 07-2009 (rel. May 4, 2007) (“*OneSource Waiver Order*”).

is a “low-cost” device that OneSource needed for its digital transition,⁶ even though the Commission had previously found HD and DVR devices did not fall into the low-cost, limited-function category for which waivers might be needed for the digital transition.

The Commission therefore rejected OneSource’s argument:

The purpose of the conditional waiver granted in the *BendBroadband Order* under Sections 1.3 and 76.7 of the Commission’s rules was not meant to provide BendBroadband with a means to avoid the potentially higher short-term costs associated with deployment of non-integrated boxes to be used for other, high-end functions like DVR and HD capabilities; rather, it was to permit BendBroadband to transition to an all-digital system. . . . We are unconvinced that a waiver for the DCT-3416 is necessary to further OneSource’s migration to an all-digital system.⁷

Unlike OneSource, Choice did not argue that a waiver for HD/DVR devices is necessary to its ability to sustain an all-digital system. Instead, Choice’s request for HD/DVR relief was predicated on an entirely different basis, in a separate section of its request for waiver: that a temporary waiver for all devices is warranted because the unique circumstances that distinguish rural Puerto Rico from the continental United States.⁸ The *OneSource Waiver Order* has no bearing on the analysis of that issue.

Unlike OneSource’s market in the continental United States, the consumer electronics industry has not chosen to market any retail HD/DVR CableCARD devices in Puerto Rico, or any CableCARD devices of any kind that are suitably priced for the majority of the rural Puerto Rican market.⁹ Choice cannot discriminate against retail devices that its consumers cannot even buy. This is why the Telecommunications Regulatory Board of Puerto Rico concluded that the integration ban “is a solution for a

⁶ See *Millennium Telcom, LLC d/b/a OneSource Communications Emergency Petition for Waiver of Section 76.1204(a)(1) of the Commission’s Rules*, CSR-7129-Z (Feb. 28, 2007) at 7-8.

⁷ *OneSource Waiver Order* at ¶ 17.

⁸ Choice Request for Waiver at 5-10.

⁹ Choice Request for Waiver at 7-8.

problem that does not clearly exist in Puerto Rico.”¹⁰ In short, the benefits that consumers might receive from the integration ban in OneSource’s service area in the continental United States would not occur in Choice’s service area in rural Puerto Rico.

The consumer cost side of the equation is also different. Even if the integration ban is applied to OneSource’s HD/DVRs, OneSource’s customers will still be able to obtain HD/DVRs from OneSource (at a higher price) or at retail (such as a TiVO Series 3). But Choice’s customers would not have either option, and would not be able to obtain new cable-ready HD/DVRs devices from any source. As explained in its waiver request, Choice has determined that it does make economic sense for it to invest in the new, more expensive CableCARD HD/DVRs at this time, and the Series 3 TiVO is not available in Puerto Rico.¹¹ Thus, while the social cost of applying the integration ban to OneSource’s HD/DVRs is higher prices for consumers, the costs of applying the ban on Choice’s HD/DVRs are the elimination of a navigation device option for consumers and the suppression of new high-definition and advanced service options to rural consumers – a result contrary to the core goals of Section 629 and the Act itself.

Finally, Choice wishes to correct a misstatement by CEA in another waiver proceeding related to previously-used refurbished set-top boxes. CEA stated that if cable operators remain allowed to redeploy refurbished boxes, rather than wastefully be required to throw away such devices, that would allow integrated boxes to “remain deployed on a grand scale for many years to come.”¹² The record shows otherwise. A leading provider of refurbished devices has reported to the Commission that “refurbished

¹⁰ CSR-7124-Z, Comments of the Telecommunications Reg. Board of Puerto Rico (Mar. 19, 2007) at 3.

¹¹ Choice Request for Waiver at 8-10.

¹² Comments of the Consumer Electronics Association on Great Plains Television, Inc. Petition for Waiver of 47 C.F.R. § 76.1204(a)(1), CSR-7212-Z (June 14, 2007) at 2.

devices represent only 5% of the cable set-top boxes deployed each year.”¹³ CEA has not placed any evidence in the record to refute this evidence, or to demonstrate that the public interest would on balance be served by forcing cable operators to throw away refurbished devices before the end of their useful life. By contrast, the availability of refurbished boxes provides an alternative source for smaller operators if delivery of CableCARD devices is delayed beyond July 1, 2007; it provides a cost-effective alternative that saves consumers money; and it enables operators to continue to use discontinued models that because of special circumstances remain suited to their particular business plan.¹⁴ In any event, a prohibition on previously used devices (refurbished or otherwise, obtained from third parties or otherwise) would require public notice of a new rulemaking proceeding to consider an amendment to the existing rule.¹⁵ In the meantime the Commission should explicitly “clarify that the integration ban means what it says – that only ‘new’ integrated devices are prohibited, and that operators may continue to deploy refurbished set-top boxes.”¹⁶

¹³ See CS Docket 97-80, Letter from Christy Adams, CEO, Adams Cable Equipment, to Hon. Kevin J. Martin, Chairman, Federal Communications Commission (Apr. 18, 2007) at 3 (“*ACE Ex Parte*”).

¹⁴ See Choice Request for Waiver at fn. 6.

¹⁵ In such event, Choice would need a waiver for the low-cost Motorola DCT-1000 and DCT-2000 devices as part of any waiver for its more advanced successor device, the DCT-700. See Choice Request for Waiver at fn. 6.

¹⁶ *ACE Ex Parte* at 4. See also 47 C.F.R. § 76.1204(a)(1) (“no [MVPD]... shall place in service *new* navigation devices for sale, lease, or use that perform both conditional access and other functions in a single integrated device”) (emphasis added); see also Motorola Comments at 3, fn. 12 (June 7, 2007) (“Motorola also agrees with Choice Cable that the integration ban does not bar the use of refurbished integrated set-top boxes. See *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, Order on Reconsideration, 14 FCC Rcd 7596 ¶ 35 (1999) (stating that integration ban rule is not ‘intended to render equipment obsolete that has already been manufactured and deployed and still has a useful life’”).

CONCLUSION

For the foregoing reasons, the Commission should grant Choice (1) a permanent waiver from the integration ban for the DCT-700 set top box to enable Choice to sustain its all-digital network through the 2009 DTV transition, and (2) a waiver of at least three years for all other set-top boxes to enable Choice to deliver advanced HD and DVR services to the low-income small and rural communities of Puerto Rico.

Respectfully Submitted,
Choice Cable T.V.

/s/ Jorge L. Bauermeister

By: Jorge L. Bauermeister
Its Attorney

Bauermeister Law Offices
VIG Tower
1225 Ponce de Leon Ave.
Suite 1505
Santurce, PR 00907

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