Federal Communications Commission
Washington, D.C. 20554

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Re: Applications for Transfer of Control
WAPA-TV, San Juan, PR, ID No. 52073
File No. BTCCT-20061108AHE[1]

Dear Applicants:

This is in regard to the above-captioned unopposed applications for the transfer of control of three licensee subsidiaries of LIN Television Corporation (LIN) to Intermedia Partners VII, L.P. (Intermedia). The companies being transferred are:

- Televicentro of Puerto Rico, LLC, licensee of WAPA-TV, San Juan, Puerto Rico; WIRS(TV), Yauco, Puerto Rico; and WTIN(TV), Ponce, Puerto Rico;
- S&E Network, Inc., licensee of WJPX(TV), San Juan, Puerto Rico; WKPV(TV), Ponce, Puerto Rico; and WJWN-TV, San Sebastian, Puerto Rico; and
- WNJX-TV, Inc., licensee of WNJX-TV, Mayaguez, Puerto Rico.

As part of this transaction, Intermedia requests continuing satellite authority for stations WTIN(TV), WNJX-TV, WKPV(TV), WIRS(TV), and WJWN-TV, pursuant to the satellite exemption to the duopoly rule. *See* 47 C.F.R. § 73.3555, Note 5. For the reasons stated below, we grant the applications and the requested continuing satellite authority.

The Puerto Rico Market. Nielsen has not developed DMA markets for the island of Puerto Rico. However, in past television duopoly cases involving stations in different parts of Puerto Rico, we have implicitly treated the entire island as a single television market.[2] For example, in *JEM*

[1] A complete list of the stations affected by the application is attached as Exhibit A.

[2] *See Paxson San Juan, Inc.*, 16 FCC Rcd 14139 (2001); *Milton S. Maltz*, 13 FCC Rcd 15527 (1998); and *JEM Communications, Inc.*, 9 FCC Rcd 4874 (1994).

Communications, we found that it was necessary to grant satellite exemptions to permit common ownership of television stations in San Juan, Ponce and San Sebastian, recognizing that, despite the fact that the stations were located on opposite parts of the island, they were part of a single television market.[3] The applicants maintain that advertisers treat the island as a single market and that the financial viability of Puerto Rico television stations is dependent on island-wide coverage.

We conclude that our previous decisions and local economic and market conditions support continued treatment of the island of Puerto Rico as one television market for purposes of our multiple ownership rule. Therefore, a broadcaster may have an attributable interest in up to two television stations in Puerto Rico if eight independent voices would remain in the market following the acquisition and only one of the stations at issue is ranked in the top four.[4] Satellite stations, however, are exempt from our multiple ownership rules.[5] Following the proposed transaction, there would be more than eight independent voices in Puerto Rico. WAPA-TV is ranked in the top four, but WJPX(TV) is not. Therefore, Intermedia may own both of those stations. In order to own the other five stations that are part of the transaction, Intermedia will need renewed satellite exemptions for each of those stations.

The Satellite Exemptions. In *Television Satellite Stations*,[6] the Commission established the requirement that all applicants seeking to transfer or assign satellite stations justify continued satellite status by demonstrating compliance with a three-part "presumptive" satellite exemption standard applicable to new satellite stations. The presumptive satellite exemption is met if the following three public interest criteria are satisfied: (1) there is no City Grade overlap between the parent and the satellite; (2) the proposed satellite would provide service to an underserved area; and (3) no alternative operator is ready and able to construct or to purchase and operate the satellite as a full-service station. *Id.* at 4213-14. If an applicant does not qualify for the presumption, the Commission will evaluate the proposal on an *ad hoc* basis, and grant the application if there are compelling circumstances that warrant approval. *Id.* at 4212.

In granting the past satellite exemptions, the Commission based its decision on Puerto Rico's unique topography and on the economic conditions on the island. As the applicants argue, these conditions continue to exist. Specifically, Puerto Rico is approximately 125 miles long (east to west) and thirty miles wide (north to south), bisected east to west by a central mountain range which effectively blocks television signals directed across its heights. In previous decisions, the Commission has noted that useful television coverage for stations in Puerto Rico is ordinarily limited to the Grade A contour and is sometimes unsatisfactory even within that area.[7] Because no single station can reach the entire island, Puerto Rico television stations have a long-standing

[3] *JEM Communications*, 9 FCC Rcd at 4875.

[4] 47 C.F.R. § 73.3555.

[5] 47 C.F.R. § 73.3555, Note 5.

[6] 6 FCC Rcd 4212, 4215 (1991) (subsequent citations omitted).

[7] *Canal 48*, 8 FCC Rcd 2193 (1993).

practice of either utilizing satellite stations or entering into rebroadcast arrangements with other stations on the island. According to Jose E. Ramos, general manager of stations WAPA-TV and WJPX(TV), stations outside of San Juan can only survive by working in concert with a San Juan station and the San Juan stations "can only succeed financially by rebroadcasting their programming island-wide."[8]

In addition, cable subscription on Puerto Rico is limited to approximately 25% of TV households and only 20% of TV households subscribe to DBS.[9] This is substantially below the subscription rate of over 80% for multi-channel video providers in the United States.[10] Therefore, the availability of over-the-air television signals is even more important in Puerto Rico than it is in the rest of the United States.

Moreover, Puerto Rico broadcasters must operate in an extremely competitive market. There are approximately 100 radio stations and 30 television stations licensed to the island. However, outside of the capital city of San Juan, the majority of these stations operate in concert with a San Juan station, either as satellites under rebroadcast agreements or under local marketing agreements.

Problems caused by Puerto Rico's topography and market structure are compounded by its weak economic conditions. The gross national income per capita is only 30% of the U.S.' average and the average wage earned by island residents is only 54% of that earned by mainland residents.[11] Outside of San Juan, the income differential is even more dramatic. For example, the median per capita income in San Juan, according to the Census Bureau in its 2000 report, was $12,437 while in Yauco, where WIRS(TV) is licensed, it was only $6,434. Furthermore, according to the Bureau of Labor Statistics, the unemployment rate in Puerto Rico is 9.9%, which represents a significant decline from past years, but is more than double the 4.5% rate for the overall U.S. economy during the same period.[12]

According to Mr. Ramos, the generally weak economy in Puerto Rico historically has had an impact on advertising sales and that impact will worsen. Mr. Ramos predicts that advertising sales in 2006 will have declined by approximately 10% from 2005 levels.

In previous Puerto Rico decisions, the Commission has recognized that "economic conditions indicate that satellite operations or rebroadcast arrangements are a necessity," even in cases where the stations' communities of license and their surrounding areas are not technically unserved or

[8] Declaration of Jose E. Ramos, Exhibit 18 to applications.

[9] *See Television and Cable Factbook*, F-3 (2006); MediaFax Ratings at Attachment E to Exhibit 18.

[10] *2006 Video Competition Report*, 21 FC Rcd 2503 (2006).

[11] Barry P. Bosworth and Susan M. Collins, Economic Growth, *in* The Economy of Puerto Rico 18 (Susan M. Collins, Barry P. Bosworth, and Miguel A. Soto-Class eds., 2006).

[12] *See* www.bls.gov *Statistics at a Glance*.

underserved.[13] In *Hector Nicolau*, the Commission stated that "[W]ithout the use of satellite operation or rebroadcast arrangements, television operations and programming choices beyond San Juan would be limited."[14]

WTIN(TV). In 2001, the Commission authorized WTIN(TV) to operate as a satellite station of WAPA-TV.[15] Although the original proposal to operate WTIN(TV) as a satellite did not satisfy the presumptive criteria regarding city grade contour overlaps and provision of service to an underserved area, the Commission nonetheless found that the unique circumstances of the Puerto Rico market, discussed above, including its topography and economic conditions, supported satellite status for the station. The applicants state that the situation now is essentially the same as it was when the satellite operation was originally approved. They state that, although a minimal amount of advertising time is sold by the licensee to specifically target the residents of Ponce, the revenues generated from those advertising sales are too small to permit operation of WTIN(TV) as a stand-alone commercial station.[16] Based on the conditions of the Puerto Rico market and the past performance of the station, they argue that WTIN(TV) cannot operate as a viable stand-alone station. Based on the record in this case and on our prior precedent, we agree with the applicant's conclusions.

WNJX-TV. In 2001, the Commission authorized WNJX-TV to operate as a satellite of WAPA-TV.[17] Although there is no city grade overlap between the stations, WNJX-TV does not serve an underserved area under our transmission or reception standards and, therefore, does not meet our presumptive criteria. The Commission nonetheless approved its satellite operation under an *ad hoc* analysis. Television service in Mayaguez is heavily dependent on the rebroadcast of programming from stations located in other parts of the island. Of the three stations in Mayaguez, one is commonly owned and operated with another island station and the other two rebroadcast the programming of other island stations. In previous decisions, the Commission has stated that the south-central coast of Puerto Rico, where Mayaguez is located, lacks the economic base to sustain full-service operations.[18] In his declaration attached to the application, Mr. Ramos states that the station does not generate any advertising revenues that would permit the operation of the station as a stand-alone entity. We believe that the conditions that justified the past satellite operation of WNJX-TV continue to exist.

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[13] 5 FCC Rcd 6370 (1990).

[14] *Id.*

[15] *Applications of Paxson Communications of San Juan, Inc. and LIN Television Corporation*, 16 FCC Rcd 14139 (2001) ("*Paxson*") (permitting LIN to continue its attributable rebroadcasting agreement with WTIN(TV), which at the time was not licensed to LIN, and granting continued satellite exceptions for WKPV(TV) and WJWN(TV)).

[16] Declaration of Jose E. Ramos.

[17] *See Application of T. Michael Whitney and LIN Television of San Juan, Inc.*, 16 FCC Rcd 2297 (2001)("*Whitney*") (granting LIN's request to operate WNJX-TV as a satellite of WAPA-TV).

[18] *See, e.g. Paxson*, 16 FCC Rcd at 14143.

WIRS(TV). Satellite operation for WIRS(TV) was originally authorized in 2003.[19] In its 2003 satellite request, LIN stated that WIRS(TV) met the second and third criteria of our satellite waiver policy, but not the first. With respect to the first criterion, LIN submitted an engineering study that shows that there is city grade overlap between WJPX and WIRS. LIN noted that there is a central mountain range between the stations causing significant signal blockage. This unique terrain characteristic has contributed to the Commission giving diminished importance to the presence of City Grade overlap in other satellite cases involving Puerto Rico stations located on either side of the mountain range.[20] In limited circumstances, the Commission has allowed satellite status despite the presence of City Grade overlap. For example, in *Precht Communications, Inc.*, under facts similar to those here, the Commission allowed satellite status despite City Grade overlap because the proposed satellite station was the only one licensed to the community, provided the only Grade B service to a significant portion of the community of license, and was able to demonstrate its difficult operating conditions.[21] As in *Precht*, there is only one station assigned to the community of license at issue. Furthermore, that station has to contend with geographical constraints that make the community of license in many ways arguably more remote than the one in *Precht*. Furthermore, our previous decision found that there was long-standing evidence of the inability of WIRS to operate as a full-service, stand-alone station. According to Mr. Ramos, the situation has not changed and the station does not generate any revenue through the sale of local advertising time. In our previous decision, we found that operation of WIRS(TV) as a stand-alone station was not a viable option and we believe that is still the case.

WKPV(TV) and WJWN-TV. In 1994, the Commission authorized stations WKPV(TV) and WJWN-TV to operate as satellites of WJPX-TV, San Juan. That authority was renewed in 1996 and 2001. The applicants state that there is no city grade overlap between WJPX-TV and either of the two stations. They also state that, although there is predicted city grade overlap between the two stations, the Commission has recognized in its previous decision that no actual overlap existed when terrain is considered. According to the application, that situation has not changed.

In regard to the second criterion, WJWN-TV is the only full-service station licensed to San Sebastián, which qualifies it as "underserved" under our transmission test. Ponce, the community of license for WKPV(TV), does not qualify as "underserved," but the Commission "has not previously considered this to be an obstacle to satellite status"[22] for this station "due to the stringent economic circumstances and the unusually severe economic conditions on the

[19] Letter from Barbara A. Kreisman, Chief, Video Division, Media Bureau, to Margaret L. Tobey, Esq., December 11, 2003.

[20] *See JEM Communications*, 9 FCC Rcd 4874, 4876 (1994); *Paxson*, 16 FCC Rcd at 14145; *Hector Nicolau*, 5 FCC Rcd 6370, 6371 (1990).

[21] *See Precht Communications, Inc.*, 13 FCC Rcd 8659 (1998).

[22] *Paxson*, 16 FCC Rcd at 14145.

island."[23] According to Mr. Ramos, neither station generates any revenue through the sale of local advertising. He concludes that neither station would be viable as a stand-alone station and that continued satellite operation is essential for both stations' continued viability. Based on the record here and on the unique factors that we have repeatedly recognized in the Puerto Rico market, we agree.

Based upon the representations and showing set forth in the application, we find that the applicants have demonstrated that continuing satellite operation is justified for all of the stations at issue. Each station has a long-standing history of satellite operation. All of the stations are impacted by the unique topographical and economic constraints that we have repeatedly recognized as justifying satellite operation for stations in Puerto Rico. The stations serve communities that are geographically isolated and economically constrained. We have repeatedly found, and find again today, that these stations would fail without the ability to operate as satellite stations. Therefore, we find that continued operation of these stations as satellites would be in the public interest. We further find that Intermedia is qualified to operate the stations as proposed and that a grant of the above-captioned applications will serve the public interest, convenience and necessity.

ACCORDINGLY, IT IS ORDERED, That the requests of Intermedia Partners VII, L.P. for continued satellite operation of stations WTIN(TV), WNJX-TV, WIRS(TV), WKPV(TV) and WJWN-TV ARE GRANTED. IT IS FURTHER ORDERED, That the applications for consent to transfer of control of stations WAPA-TV, WJPX(TV), WTIN(TV), WNJX-TV, WIRS(TV), WKPV(TV) and WJWN-TV from LIN Television Corporation to Intermedia Partners VII, L.P. ARE GRANTED.

Sincerely,

Barbara A. Kreisman
Chief, Video Division
Media Bureau

[23] *JEM Communications*, 9 FCC Rcd at 4874.

EXHIBIT A

Station	Community	File Number
WAPA-TV	San Juan, Puerto Rico	BTCCT-20061108AHE
WJPX(TV)	San Juan, Puerto Rico	BTCCT-20061108AHA
WIRS(TV)	Yauco, Puerto Rico	BTCCT-20061108AHF
WTIN(TV)	Ponce, Puerto Rico	BTCCT-20061108AHG
WKPV(TV)	Ponce, Puerto Rico	BTCCT-20061108AHB
WJWN-TV	San Sebastian, Puerto Rico	BTCCT-20061108AHC
WNJX-TV	Mayaguez, Puerto Rico	BTCCT-20061108AGU

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-

To: Chief, Media Bureau

REQUEST FOR WAIVER

Pursuant to Section 706 of the Telecommunications Act of 1996 and Sections 1.3 and 76.7 of the Commission's rules, Liberty Cablevision of Puerto Rico, Ltd. ("LCPR") respectfully requests the same limited relief from the integration ban (set forth in the second sentence of 47 C.F.R. § 76.1204(a)(1)) that it previously granted to BendBroadband in *Bend Cable Communications, LLC d/b/a BendBroadband Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, CSR-7057-Z, Memorandum Opinion and Order, DA 07-47 (rel. Jan. 10, 2007) ("*BendBroadband Order*").

LCPR is a small operator that provides cable television, digital telephone and/or high-speed Internet services to approximately 130,000 households in Puerto Rico. LCPR's service areas are not within the Commonwealth's only major metropolitan area of San Juan, but are instead mostly in small and rural communities in Puerto Rico.

Grant of the requested waiver is appropriate for at least two reasons. First, LCPR has recently completed its migration to an all-digital network well in advance of the scheduled termination of analog broadcasting in February 2009. To maintain the competitive viability of such a network, LCPR needs to continue to be able to offer the low-cost DCT-700 to new customers and to existing customers who need additional or replacement set-top boxes. Second, relief from the integration ban is even more critical to LCPR, and especially warranted in rural Puerto Rico, given the demographics of the market and the low demand in Puerto Rico for the high-end retail CableCARD-ready navigation devices currently offered by the consumer electronics industry.

I. THE CONTINUED AVAILABILITY OF THE DCT-700 IS NEEDED TO ENABLE LCPR TO MAINTAIN AN ALL-DIGITAL NETWORK THROUGH AND AFTER THE 2009 DTV TRANSITION.

The Commission has recognized that the continued availability of the low-cost DCT-700 set-top box after the integration ban becomes effective on July 1, 2007 would benefit consumers if used by a cable operator to have in place an all-digital network before the February 17, 2009 termination date for analog broadcasting. In granting a waiver for the DCT-700 to BendBroadband, the Commission found that an all-digital network would:

> enable it to ensure that its cable subscribers will be able to view digital broadcast signals after the end of the DTV transition. It also may enable BendBroadband to provide additional HD content, which may facilitate the DTV transition by creating greater incentives for its subscribers to acquire digital television sets. Therefore ... a conditioned grant of the Waiver Request would facilitate BendBroadband's rapid transition to an all-digital network (*i.e.*, by 2008), which was a critical factor in the Commission's decision to consider waiver requests at all. ... [In addition, an all-digital network] would allow it to reclaim a considerable amount of spectrum within a clearly defined timeframe, which would enable it to provide consumers with advanced telecommunication capabilities, thereby furthering the goals of Section 706.[1]

As demonstrated below and in the attached affidavit, LCPR has recently migrated to an all-digital network and plans to offer increased HD programming before the DTV transition. However, the continued availability of the low-cost DCT-700 after the July

[1] *BendBroadband Order* at ¶¶ 24-25.

2007 effective date of the integration ban is critical to the continued viability of LCPR's all-digital network.

LCPR's migration to all-digital was made possible by a major breakthrough that occurred in 2005 – the release of the $79 Motorola DCT-700 digital set-top box. The DCT-700 is and remains the least expensive cable set-top box on the market today. Using these DCT-700s, LCPR was able to invest more than $10 million to transition to an all-digital network in May 2006 by placing these set-top boxes in the homes of the remaining 50% of its customers that had not previously subscribed to digital.[2] LCPR plans to use the reclaimed analog bandwidth for more high-definition and video-on-demand programming, higher Internet access speeds, and other advanced telecommunications capabilities.

But the integration ban would eliminate the fundamental building block of a small cable operator's all-digital strategy: the DCT-700 (and any comparable low-cost option).[3] As numerous parties have reported, the record is uncontroverted that the CableCARD-equipped replacement for the DCT-700 (the Motorola DCH-100) will cost small MSOs nearly three times as much as the DCT-700.[4] LCPR has determined that it would have to charge customers approximately $3-4 more per month per DCH-100 box than it charges for the DCT-700. For LCPR to continue to deliver only digital programming, each

[2] *See* Sworn Declaration of Ivan Rosa attached hereto. This declaration is intended to provide the information requested by the Commission in ¶ 27 of the *BendBroadband Order*.
[3] See *BendBroadband Order* at ¶¶ 22-24.
[4] *BendBroadband Order* at ¶ 22; *see also* CS Docket No. 97-80, *Ex Parte* Presentation of American Cable Association and Armstrong Cable Services (Aug. 31, 2006), at 2 (explaining that Motorola informed Armstrong that it "will not offer a CableCard-enable[d] DCT-700" and that "unless the DCT-700 receives a CableCard waiver, our only option will be the DCH 100, costing about $190" – almost two and one-half times as much as Armstrong now pays Motorola for the DCT-700); *see also* CS Docket 97-80, Letter from Jean Kiddoo, Counsel to RCN, to Marlene Dortch, FCC, at 2, fn. 1 (Nov. 21, 2006) (indicating the total cost of a DCH-100 plus CableCARD to be $232 per box). The record is also clear that no consumer electronics manufacturer has committed to make CableCARD-equipped set-top boxes at a price anywhere near the price of DCT-700s. *See* BendBroadband Request for Waiver at 8.

customer must have a set-top box for every non-CableCARD analog television in their home. Because many prospective customers have two or three analog televisions, the DCH-100 package would cost as much as $12 per month, or $144 per year, more than the DCT-700.

It would be extraordinarily difficult for LCPR to market its all-digital service to new customers if such customers were required to spend up to $144 more per year on top of the existing programming and equipment charges, for nothing extra in return. LCPR's service area is mostly in rural and small-town Puerto Rico, where the median household income is approximately $13,000 per year[5] – only 31% of the U.S. national median.[6] LCPR's customers and prospective customers would therefore be exceptionally sensitive such a $144 increase in the cost of service.

Such a price hike would have an especially severe impact on LCPR's ability to compete with DirecTV and DISH Networks. In three of LCPR's seven franchise areas

[5] *See* U.S Census Bureau, Puerto Rico Municipio (locality data), Census 2000 Summary, available at http://factfinder.census.gov/servlet/GCTTable?_bm=y&-context=gct&-ds_name=DEC_2000_SF3_U&-mt_name=DEC_2000_SF3_U_GCTP14_ST2&-CONTEXT=gct&-tree_id=403&-redoLog=true&-geo_id=04000US72&-format=ST-2&-_lang=en. The Commission has noted the substantial economic disparity between rural and small-town Puerto Rico and the continental United States. *See Applications for Transfer of Control WAPA-TV, San Juan, PR*, ID No. 52073, Letter Order, DA 07-500 (rel. Feb. 2, 2007) ("Problems caused by Puerto Rico's topography and market structure are compounded by its weak economic conditions. The gross national income per capita is only 30% of the U.S.' average and the average wage earned by island residents is only 54% of that earned by mainland residents. *Outside of San Juan, the income differential is even more dramatic.* For example, the median per capita income in San Juan, according to the Census Bureau in its 2000 report, was $12,437 while in Yauco, where WIRS(TV) is licensed, it was only $6,434. Furthermore, according to the Bureau of Labor Statistics, the unemployment rate in Puerto Rico is 9.9%, which represents a significant decline from past years, but is more than double the 4.5% rate for the overall U.S. economy during the same period") (emphasis added).

[6] See U.S. Census Bureau, Census 2000 Summary (showing U.S. household median annual income of $41,994), available at http://factfinder.census.gov/servlet/DTTable?_bm=y&-reg=DEC_2000_SF4_U_PCT088:001;DEC_2000_SF4_U_PCT089:001&-ds_name=DEC_2000_SF4_U&-CONTEXT=dt&-mt_name=DEC_2000_SF4_U_PCT088&-mt_name=DEC_2000_SF4_U_PCT089&-redoLog=false&-currentselections=DEC_2000_SF4_U_PCT0.

DBS subscribership has surpassed LCPR's.[7] In its service area as a whole, these DBS operators have now captured 45% of the MVPD market. The DBS operators offer to consumers inexpensive integrated set-top boxes comparable to the DCT-700,[8] and will apparently continue to do so after July 1, 2007 even without a waiver, despite the fact that the Commission's basis for exempting them from the integration ban has evaporated.[9] The Commission has previously found that LCPR is subject to effective competition in all seven of its franchise areas.[10] Especially given the price sensitivity of consumers in rural Puerto Rico, LCPR needs a low-cost box if its all-digital offering is to compete effectively with DirecTV and DISH Networks' low-cost integrated set-top box offerings.

Moreover, although LCPR has already moved all of its existing customers to digital, readiness for the DTV transition in its service area is far from achieved. Unlike the mainland United States, where nearly 86% of consumers already purchase MVPD services, most from the incumbent cable operator,[11] only 25% of the households in LCPR's franchise areas purchase cable from LCPR, and less than half purchase any

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[7] *See Liberty Cablevision of Puerto Rico, Ltd. Petition for Determination of Effective Competition in Seven Local Franchise Areas in the Commonwealth of Puerto Rico*, CSR-7015-E *et al.*, Petition for Special Relief at Exhibit 1 (March 31, 2006) (showing DBS subscribership by LCPR franchise area using data from the Satellite Broadcasting and Communications Association's Effective Competition Tracking Report and comparing to LCPR subscription data). *See also id.*, Memorandum Opinion and Order, DA 06-2119, ¶ 6, Ex. B (rel. Oct. 27, 2006) (finding that LCPR met the effective competition test based upon DBS penetration in four of its seven franchise areas).

[8] *See Cequel Communications, LLC d/b/a Suddenlink Communications' Request for Waiver of 47 C.F.R. § 76.1204(a)(1)*, CSR-7115-Z, Request for Waiver at 7 (Dec. 5, 2006) (describing the low-cost DIRECTV Standard Receiver (Model D11) and the DISH Network Standard Receiver 311).

[9] *See BendBroadband Request for Waiver of 47 C.F.R. § 76.1204(a)(1)*, CSR-7057, Request for Waiver (Oct. 4, 2006) at 13-18.

[10] *Liberty Cablevision of Puerto Rico, Ltd. Petition for Determination of Effective Competition in Seven Local Franchise Areas in the Commonwealth of Puerto Rico*, CSR-7015-E *et al.*, Memorandum Opinion and Order, DA 06-2119 (rel. Oct. 27, 2006).

[11] *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 05-255, Twelfth Annual Report, FCC 06-11, ¶ 8 (rel. Mar. 3, 2006).

MVPD service.[12] Thus, even though LCPR's service is all-digital and most MSOs are not, a higher percentage of consumers in many mainland U.S. franchise service areas subscribe to digital cable than in LCPR's region. Because of this unusually large number of customers who rely upon over-the-air-broadcasting, the public interest in the DTV transition would be better served if LCPR still had a low-cost box available to lure prospective customers to digital cable before the end of analog broadcasting in 2009, just as the Commission agreed that BendBroadband needed a low-cost box to attract its analog cable customers to digital during this period.[13]

Denial of this request would unfairly punish consumers in LCPR's service area for the fact that LCPR was an early adopter of an all-digital network in 2006, rather than waiting until closer to 2009 or later. The purpose of the *BendBroadband Order* should be not simply to enable cable operators to eliminate analog broadcasting, but also to sustain an all-digital network once they get there so that operators may deliver more advanced services to all Americans during and after the DTV transition.[14] Therefore, there would be a substantial public interest benefit from granting the same relief to LCPR.

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[12] *See Applications for Transfer of Control WAPA-TV, San Juan, PR*, ID No. 52073, Letter Order, DA 07-500 (rel. Feb. 2, 2007) ("cable subscription on Puerto Rico is limited to approximately 25% of TV households and only 20% of TV households subscribe to DBS," citing *Television and Cable Factbook*, F-3 (2006)); *see also Liberty Cablevision of Puerto Rico, Ltd. Petition for Determination of Effective Competition in Seven Local Franchise Areas in the Commonwealth of Puerto Rico*, CSR-7015-E *et al.*, Petition for Special Relief at Exhibit 1 (March 31, 2006) (showing LCPR penetration of 25%); *see also id.*, Memorandum Opinion and Order, DA 06-2119, ¶ 3 (rel. Oct. 27, 2006) (finding that Liberty met the sub-30% penetration rate test for effective competition in five of its seven franchise areas). .

[13] LCPR is currently the only MVPD in its region that carries all of the local broadcast stations in its region. The DBS operators carry the four largest broadcasters, but not many of the other broadcast stations that will be affected by the DTV transition.

[14] *See* Telecommunications Act of 1996, Pub. L. No. 104-104, § 706, 110 Stat. 56, 153 (codified in notes under 47 U.S.C. § 157) (directing Commission "to encourage the deployment ...of advanced telecommunications capability to *all* Americans").

II. Grant of a Low-Cost Waiver to Small Operators in Puerto Rico Will Not Undermine the Commission's Objectives.

The Commission is obligated to grant waivers where the application of a general rule to a specific situation would not serve the public interest underlying the rule, and where the public interest benefits of a waiver exceed its costs.[15] Whatever the benefits of the integration ban may be for consumers in the continental United States, the incremental benefit of applying the ban to LCPR's low-cost set-top boxes in rural and small-town Puerto Rico would be minimal at most. Because the benefits of the waiver would be significant and the cost of granting the waiver would be very small in comparison, the waiver should be granted.

There is no evidence in the record that the Commission has considered and determined that the integration ban would produce the same consumer benefits in rural Puerto Rico as in the continental United States. In fact, the Commission's regulations reveal that the Puerto Rican market was not considered to be a relevant part of the Commission's analysis in its prior orders. Section 76.1204(a)(2) of the Commission's rules exempt from the integration ban (in Puerto Rico and otherwise) any MVPD that supports the active use by subscribers of navigation devices that "operate throughout the *continental United States* ...."[16] In the prior proceedings in which the Commission

[15] 47 C.F.R. § 76.7(i) ("The Commission, after consideration of the pleadings, may determine whether the public interest would be served by the grant, in whole or in part, or denial of the request . . . ."); *see also id.* § 1.3 ("Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown."); *KCST-TV, Inc. v. FCC*, 699 F.2d 1185, 1191-1192, 1195 (D.C. Cir. 1983) (vacating FCC denial of waiver request, holding that once the premise of the rule had been shown not to apply, the "logic of applying [the rule] collapses," and it was arbitrary to apply the rule); *WAIT Radio v. FCC*, 418 F.2d 1153, 1157-59 (D.C. Cir. 1969) ("[A] general rule, deemed valid because the overall objectives are in the public interest, may not be in the 'public interest' if extended to an applicant who proposes a new service that will not undermine the policy, served by the rule, that has been adjudged in the public interest."); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).
[16] 47 C.F.R. § 76.1204(a)(2).

considered the integration ban, Puerto Rico simply was not even on the Commission's map.

In consideration of this waiver request, therefore, the Commission should evaluate the Puerto Rican market independently. As the D.C. Circuit explained:

> The Commission is charged with administration in the 'public interest.' That an agency may discharge its responsibilities by promulgating rules of general application which, in the overall perspective, establish the 'public interest' for a broad range of situations, does not relieve it of an obligation to seek out the 'public interest' in particular, individualized cases.[17]

The Commission has frequently granted waivers and other forms of individualized treatment to operators in Puerto Rico and other insular areas in light of exceptional circumstances in these areas, such as "weak economic conditions" and the low penetration of MVPD services.[18] Here, it is readily apparent that there are important differences between the navigation device markets in Puerto Rico and in the continental United States with respect to material assumptions on which the Commission's prior analysis on the integration ban has been based.

First, the record from other waiver cases indicates that the only CableCARD-ready devices available at retail today anywhere in the United States are a $1000 TiVo and $1700-$7000 DTVs.[19] These expensive devices are not likely to interest nearly as many consumers in small-town and rural Puerto Rico, which as noted above has median

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[17] *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

[18] *See, e.g., Applications for Transfer of Control WAPA-TV, San Juan, PR*, ID No. 52073, Letter Order, DA 07-500 (rel. Feb. 2, 2007) (granting exception from 47 C.F.R. § 73.3555(b) for television stations in Puerto Rico, noting "weak economic conditions" ("The gross national income per capita is only 30% of the U.S.' average and the average wage earned by island residents is only 54% of that earned by mainland residents. Outside of San Juan, the income differential is even more dramatic") and low MVPD penetration ("cable subscription on Puerto Rico is limited to approximately 25% of TV households and only 20% of TV households subscribe to DBS. This is substantially below the subscription rate of over 80% for multi-channel video providers in the United States.").

[19] *See* CS Docket 97-80, Reply Comments of Charter, at Exhibit A (Sept. 28, 2006) (showing that the only CableCARD-ready devices from Best Buy and Circuit City in September 2006 were DTVs priced from $1700-7000 and a Tivo Series 3 priced at $800 plus more than $150/year in TiVo subscription fees).

household annual income of only $13,000. The Commission has previously recognized that waivers of its generally-applicable regulations may be appropriate in such lower-income communities. For example, in the case of a regulation limited the application of higher Lifeline and Link-up discount to residents of "Tribal lands," the Commission granted a waiver to extend the discounts to a region in New Mexico outside of Tribal lands where "nearly 45% of the … residents subsist at or below the federal poverty level."[20] According to U.S. Census Bureau data, the income of 48.2% of households in LCPR's service area is below the poverty level.[21] In such a market, the economic analysis of the integration ban is necessarily different from the continental United States as a whole. For a much greater percentage of the population in Puerto Rico, a set-top box as inexpensive as the DCT-700 is the only way that they can afford digital cable (and, since LCPR has gone all-digital, the only way such consumers can afford cable at all). The Commission must give special consideration to the "hardship [and] equity"[22] of imposing the integration ban on low-cost boxes in LCPR's service area.

Moreover, because the demographics of LCPR's service area means that there is less demand for expensive retail CableCARD-ready devices, such devices are not nearly as widely available in LCPR's service area as they are in the continental United States, even to those LCPR customers who can afford them. There are no Circuit City or Best Buy stores anywhere in Puerto Rico, in LCPR's service area or otherwise. An LCPR employee recently visited one of the larger electronics retailers in its service area to search for CableCARD-ready devices; he found only one CableCARD set out of twenty

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[20] *Federal-State Joint Board On Universal Service, Smith Bagley, Inc. Petition for Waiver of Section 54.400(e) of the Commission's Rules*, WC Docket No. 03-109, Memorandum Opinion and Order, FCC 05-77, ¶ 11 (rel. Mar. 30, 2005).
[21] *See supra* note 5.
[22] *WAIT Radio v. FCC*, 418 F.2d at 1159.

different digital models available. Even for the small number of consumers willing to buy a digital television without seeing it, Amazon.com and many other on-line retailers will not ship DTVs to Puerto Rico.[23] These facts may change over time, but LCPR expects that demand for CableCARDs from its customers will remain virtually nonexistent in the foreseeable future.

Therefore, application of the integration ban to LCPR would not produce any significant benefit to consumers in Puerto Rico that would outweigh its significant costs. Nor would consumers in the continental United States receive any material incremental benefit from application of the ban to LCPR. Whether or not LCPR's devices have CableCARDs will not affect the development of new CableCARD-ready technologies and devices. LCPR serves only 0.12% of the nation's MVPD subscribers. As BendBroadband noted:

> BendBroadband's share of the American MVPD market is approximately 0.036%, while the Top 24 MVPDs hold a 94% share. BendBroadband and other smaller operators will not determine the success of the multi-billion dollar consumer electronics industry or the retail market for navigation devices.[24]

It is therefore immaterial to the success of the integration ban in the continental United States whether the rule is immediately applied or not in LCPR's service area.

Because the public interest harms that would be caused by application of the integration ban to LCPR would exceed its benefits, grant of the requested waiver for the DCT-700 is appropriate pursuant to Sections 1.3 and 76.7 and of the Commission's rules. In addition, because grant of the requested waiver would further the digital and DTV transitions in Puerto Rico, grant of the waiver is also warranted pursuant to Section 706.

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[23] *See* https://www.amazon.com/gp/help/customer/display.html?nodeId=468634&#protectorates.
[24] BendBroadband Waiver Request at 13.

CONCLUSION

For the foregoing reasons, the Commission should grant LCPR's request for a waiver from the integration ban for the low-cost DCT-700 set-top box.

Respectfully submitted,

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February 14, 2007

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of Liberty Cablevision of Puerto Rico Request for Waiver of 47 C.F.R. § 76.1204(a)(1)	CSR-

SWORN DECLARATION OF IVAN ROSA

1. My name is Ivan Rosa. I am the Director of Technical Operations of Liberty Cablevision of Puerto Rico ("LCPR"). I have read the forgoing Request for Waiver, and declare under penalty of perjury that the facts contained therein and in this Declaration are true and correct to the best of my knowledge, information, and belief, and that I am authorized to give this Declaration on behalf of LCPR.

2. LCPR transitioned to an all-digital network in May 2006. LCPR is currently not transmitting programming in analog.

3. In the six months prior to its termination of analog transmission, LCPR sent three separate written notices to each of its customers advising them of the transition and the need for them to have digital converters in place.

4. LCPR has sufficient inventory of set-top boxes to ensure that each of its customers can continue to view its video programming on their television sets.

5. I am familiar with LCPR's utilization of the Motorola DCT-700 and its need to continue to have access to such a low-cost digital set-top box to maintain a competitive all-digital network.

Ivan Rosa
Director of Technical Operations
Liberty Cablevision of Puerto Rico

February 14, 2007

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REDACTED FOR PUBLIC INSPECTION
IN MB DOCKET NO. 07-18
Before the Federal Communications Commission

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