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October 26, 2007

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> St., S.W.  
Washington, DC 20554

Re: *Puerto Rico Cable Acquisition Corp. Request for Waiver of 47 C.F.R. § 76.1204(a)(1),  
CSR-7201-Z*

Dear Ms. Dortch:

On October 25, 2007, Paul Hudson of Davis Wright Tremaine LLP, and Jorge Bauermeister, Counsel for Puerto Rico Cable Acquisition Corp. d/b/a Choice Cable T.V. (“Choice”) met with Mary Beth Murphy, Steven Broeckaert, Brendan Murray and Dave Konczal of the Media Bureau to discuss Choice’s request for a waiver of the integration ban. On October 26, 2007, Paul Hudson discussed the same matter separately with Monica Desai, Chief of the Media Bureau.

In these meetings, we emphasized that Choice’s customers will soon be unable to obtain HD devices from any source and that Choice will have to scale back its plans to expand its HD service offerings unless the requested waiver is granted. Given the low-income demographics of its rural Puerto Rican market,<sup>1</sup> Choice has determined that it is not financially viable for it to purchase and attempt to lease the new CableCARD HD or DVR set-top boxes, which are approximately twice as expensive as the refurbished integrated HD and DVR devices that Choice could obtain on the secondary market if it were granted a waiver. Choice expects to run out of its existing supply of used HD devices before or during the 2007 holiday shopping season.

Because Choice would no longer be able to supply HD devices to additional customers, it would be forced to scale back its planned additions of new HD channels. Choice currently offers six HD channels and would intend to double or triple that number by December 2008 if the

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<sup>1</sup> See Choice Request for Waiver at 2-3 (using census data to show that the median household income in Choice’s service area is \$12,960 (one quarter of the national median) and that 52.8% of all people live below the poverty level.).

requested waiver is granted, using capacity reclaimed from its recent transition to an all-digital network. But Choice has been forced to put on hold these HD expansion plans given the uncertainty as to whether it will be able to supply HD devices to its customers.<sup>2</sup>

If a cable operator on the mainland did not offer HD devices, its customers could instead purchase CableCARD devices at retail.<sup>3</sup> However, these devices are not available at retail in Choice's market, and the few devices that can be purchased from outside of its region are unaffordable to most of Choice's customers. There are no Circuit City or Best Buy stores anywhere in Puerto Rico. Most people in Choice's market instead buy televisions either from independent retailers or from Sears or Radio Shack. Within the past week, a Choice employee contacted Sears and Radio Shack in Ponce (the largest city in Choice's service area) and determined that there was not a single CableCARD DTV or Tivo available at either. For customers willing to travel as many as 100 miles to the San Juan metropolitan area, Choice was able to find two CableCARD device models at a CompUSA store, but these were 61" and 65" televisions priced at approximately \$2700 and \$2200 -- well beyond the price range of nearly all of Choice's customers. It is therefore not surprising that Choice still has never received an order from any customer for a CableCARD.

There is no benefit in requiring Choice's low-income customers to bear the much higher costs of leased CableCARD devices for the purpose of facilitating Choice's support for retail CableCARD products that are unavailable in its market. This is why the Telecommunications Regulatory Board found that "the integration ban ... is a solution for a problem that does not clearly exist in Puerto Rico,"<sup>4</sup> and why the Honorable Luis Fortuño, the Member of Congress from Puerto Rico, wrote to Chairman Martin that the integration ban "appears to have been designed primarily with the markets in the continental United States in mind," and "would have a disproportionately severe impact on Puerto Rican consumers given the demographics of the Commonwealth."<sup>5</sup> Therefore, there would be no detriment to Puerto Rican consumers to grant Choice a waiver of limited duration through 2009, at which time the Commission could revisit whether CableCARD devices had become more widely available in Puerto Rico for Choice to support.

Finally, Choice explained that a waiver for DVR devices is also important to its ability to market HD devices to customers. Integrated HD/DVR devices cost only marginally more than HD-only devices, but DVR functionality is a very compelling service that helps many customers

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<sup>2</sup> Choice still intends to add two additional HD channels this fall to fulfill earlier promises to existing HD customers.

<sup>3</sup> Even then, this option would be little consolation to a customer who had already purchased an expensive new HDTV without a CableCARD slot.

<sup>4</sup>CSR-7124-Z, Comments of the Telecommunications Regulatory Board of Puerto Rico (Mar. 19, 2007).

<sup>5</sup> See Request for Waiver at 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).

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justify the expense of leasing an HD device. A waiver for DVR functionality therefore helps to sell HDTV in aid of the DTV transition.<sup>6</sup>

In summary, the integration ban threatens to shut down Choice's HD offering without any offsetting benefit to consumers in Puerto Rico. Grant of the requested waiver would immediately lead to more HD channels, more demand for HDTVs, and more new and improved HD and DVR services available to Choice's customers. The Commission<sup>7</sup> should therefore grant Choice's unopposed request for waiver.

Respectfully submitted,



Paul B. Hudson  
Counsel for Puerto Rico Cable Acquisition Corp.

cc: Monica Desai  
Mary Beth Murphy  
Steven Broecker  
Brendan Murray  
Dave Konczal

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<sup>6</sup> Moreover, there is no sound basis to apply the integration ban to Choice's DVRs (HD or otherwise) given that the ban cannot produce any significant benefits for Choice's customers at this time.

<sup>7</sup> Choice has no objection to the Bureau reconsidering its June 29 order *sua sponte* pursuant to 47 C.F.R. § 1.113(a) for purposes of granting the requested waiver. The Bureau has authority to waive the 30-day limitation for such actions for good cause or where such action would serve the public interest. *See Request for Review of the Decision of the Universal Service Administrator by Pioneerland Library System Willmar, Minnesota*, File No. SLD-32103, Order on Reconsideration, DA 01-353, ¶¶ 6-8 (rel. Feb. 13, 2001) (Common Carrier Bureau issued *sua sponte* order on reconsideration granting requested relief more than 30 days after its denial order, waiving the 30-day rule pursuant to Section 1.3 of the Commission's rules.) The public interest would be served by a waiver of the ordinary time limit in Rule 1.113 given that the requested relief is necessary to preserve the ability of Choice customers to obtain HD cable services, and good cause exists for a waiver of the time limit since Choice promptly advised the Commission and the public of the June 29 order's failure to address part of Choice's requested relief in its timely-filed Application for Review. If the Bureau grants Choice's requested waiver in a reconsideration order, Choice would withdraw its pending Application for Review as moot.