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March 7, 2008

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th 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 March 6, 2008, Edwin Stevenson, John Gdovin and Pat Murphy for Puerto Rico Cable Acquisition Corp. d/b/a Choice Cable T.V. (“Choice”), and Paul Hudson and Jorge Bauermeister, counsel for Choice, met in separate meetings with Commissioner Adelstein and his legal advisor Rudy Brioché; Commissioner McDowell and his legal advisor Cristina Chou Pauzé; Michelle Carey, Legal Advisor to Chairman Martin and Monica Desai, Chief of the Media Bureau; and Rick Chesson, legal advisor to Commissioner Copps. At these meetings, Choice summarized and updated the case in support of its Application for Review regarding its unopposed request for a temporary waiver from the integration ban.

The Commission has long recognized that the integration ban imposes significant costs on consumers, but has found that those costs are outweighed by even greater benefits. But because of the unique circumstances of Choice’s rural Puerto Rican market, the costs of the ban are much, much higher, and the benefits non-existent.

Because the median household income in Choice’s service area is less than \$13,000, the only way that most of Choice’s customers can afford to rent HD or DVR devices is if the Commission continues to allow Choice to use refurbished devices from the secondary set-top box market that serves Latin America. But because CableCARD box models are brand new, there is not yet a market for second-hand refurbished CableCARD units. Under the integration ban, therefore, Choice would have to switch from using refurbished integrated boxes to brand-new CableCARD HD/DVR boxes, which would approximately double its costs for the box.

In Choice's challenging market, a doubling of HD set-top box prices would change HD from a difficult product to sell to a nearly impossible product to sell.¹ The same would be true of DVR service. Choice's HD and DVR services will therefore be effectively shut down to new customers once Choice runs out of integrated HD/DVR devices within a couple of weeks. It is possible that Choice could later order CableCARD boxes and find a few customers willing to pay for them, but the Commission should not have any interest in an outcome in which HD programming is reserved for the rich even as the price of HD sets becomes more affordable.

We also noted that due to satellite positioning, DirecTV does not offer HD service in Puerto Rico, and DISH offers only a very limited HD package (most of DISH's HD programming is transmitted by satellites not accessible with ordinary DISH receivers). Thus, because consumers in southern and western Puerto Rico generally cannot obtain HD from DBS or by using retail CableCARD devices,² if the Commission shuts down Choice's HD by failing to grant a waiver, it will have effectively shut down the availability of most HD to new customers altogether in much of Puerto Rico.

The higher costs of the integration ban in rural Puerto Rico – the doubling of set-top costs and the virtual denial of HD programming to new customers – alone would justify the requested waiver. But the waiver is also compelled by the fact that the ban provides absolutely no benefit to Puerto Rican consumers at this time. The purpose of the integration ban is to assure that cable operators have the incentive to support CableCARDs in retail devices. But CableCARD devices are not available within Choice's service area for its customers to buy. As Choice has previously demonstrated, the major electronics retailers in its area, Sears and Radio Shack, did not have a single CableCARD unit in stock in Ponce, the largest city in Choice's service area.³ The first Circuit City in Choice's region recently opened in Ponce, but Choice contacted the store this week and it also does not carry a single CableCARD unit. Choice previously noted that it found

¹ The impact of the cost increase in set-top box unit cost would be magnified by the fact that the expected lifespan for a Choice set-top box (whether new or used) is much shorter than on the mainland. Choice is unable to recover approximately 2000 set-top boxes every month from customers whose service is disconnected for non-payment. (Because of the economic conditions in Puerto Rico, Choice's disconnection rate is significantly higher than for a typical mainland operator). In addition, the antiquated electric utility systems in parts of Choice's region are subject to frequent power surges that destroy 3000-4000 of its set-top boxes every year.

² As Choice has previously explained, there are no retail CableCARD devices available in Choice's market for Choice to support. See Choice's October 26, 2007 ex parte at 2 ("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."); see also Liberty Cablevision of Puerto Rico Request for Waiver, CSR-7124-Z, at 9-10 (Feb. 14, 2007) ("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 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.")

³ See *supra* n. 2.

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two very expensive CableCARD units at a CompUSA store 100 miles away in San Juan, but all CompUSA stores in Puerto Rico subsequently have closed. A new Best Buy opened last week in San Juan (the first on the island), but it does not have any CableCARD devices and it will not allow Puerto Rican customers to buy one online and have it shipped to them.

Nor will Amazon ship DTVs to Puerto Rico, and Tivo will not ship its CableCARD devices to Puerto Rico and does not support its service there. It is clear that the consumer electronics industry has not yet made a serious effort to develop CableCARD products suitable for the Puerto Rican market and sell them there. This is presumably why CEA, Sony and other proponents of the integration ban have not opposed Choice's Application for Review seeking a *temporary*⁴ waiver.

Denial of the waiver or Commission inaction will within a few weeks leave consumers in southwestern Puerto Rico unable to obtain new HD service from any source. It would be utterly pointless and contrary to the Commission's broader objectives for the Commission to double the cost of Choice's leased HD/DVR devices for the purpose of assuring Choice's support of CableCARD devices that are not even available for its customers to buy. By contrast, 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 should therefore grant Choice's unopposed request for waiver.

Respectfully submitted,



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Counsel for Puerto Rico Cable Acquisition Corp.

cc: Michelle Carey
Rudy Brioché
Rick Chesson
Cristina Chou Pauzé
Amy Blankenship
Monica Desai
Thomas Horan

⁴ In its April 2007 request, Choice asked for a waiver of at least three years. The period for a waiver should begin as of the date the waiver is granted, and not the July 2007 effective date of the integration ban. Choice's ability to promote and aggressively market HD has been in a state of near-suspended animation while awaiting the Commission's decision on its request. In addition, it still appears that it will be at least three years from now before refurbished CableCARD set-top boxes become available and before the consumer electronics industry develops retail CableCARD products affordable to mainstream Puerto Rican consumers.

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