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May 29, 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*, CSR-7201-Z

Dear Ms. Dortch:

On May 28, 2008, Paul Hudson, counsel for Puerto Rico Cable Acquisition Corp. d/b/a Choice Cable T.V. ("Choice"), met with Matthew Berry, General Counsel of the Commission, and Susan Aaron and Marilyn Sonn of the Office of the General Counsel, and had separate ex parte telephone conversations with Elizabeth Andrion, Acting Legal Advisor to Chairman Martin, and Brendan Murray of the Media Bureau, to discuss Choice's request for a temporary waiver from the integration ban. The substance of these conversations is summarized in the attached document that was provided at the meeting.

Respectfully submitted,

Paul B. Hudson

The Integration Ban in Rural Puerto Rico:
Extraordinary Costs and No Benefits

The costs of the integration ban are much greater in rural Puerto Rico than in the mainland:

- Choice is the smallest of the three cable operators in Puerto Rico, and serves the mostly rural southern and western parts of the island. Choice is all-digital and therefore received a waiver for low-cost boxes, but the Bureau still has not acted on Choice's request for a temporary waiver for HD and DVR devices (filed a year ago on April 25, 2007).
- The median household income in Choice's service area is less than $13,000, and 90% of households have an income less than the U.S. median.[1]
- For this reason, Choice has traditionally purchased old, used set-top boxes refurbished for the Latin American market that cost half or less of the price of new devices.
- There are not yet any refurbished CableCARD set-tops available, so the integration ban would force Choice to move from refurbished HD/DVRs that may cost less than $200 to new CableCARD HD/DVRs that cost more than $500. In contrast to the more than doubling of Choice's cost, the integration raised the price of new HD set-top boxes by about 15%.
- The doubling of HD set-top prices has shut down Choice's offering of HD service to new customers. Even if Choice ordered HD CableCARD boxes, its customers could not afford the higher lease costs. Choice has therefore not ordered any HD CableCARD devices and cannot provide HD service to new customers except when an existing customer returns a box. As a result, Choice has stopped adding HD channels.
- At least 25% of Choice's customers have purchased HDTVs, most within the past year, but less than 1% currently subscribe to Choice's HD service.
- DirecTV does not offer HD in Puerto Rico, DISH only offers a few HD channels, and PRTC (the ILEC) does not offer video. A cable operator's HD shutdown in Puerto Rico is therefore much more harmful to consumers than it would be on the mainland.
- Four months ago, Congressman Fortuño wrote to the Chairman to voice his "grave concern that the digital transition will be imperiled in significant portions of Puerto Rico unless the Commission quickly takes action to grant [Choice's] requested waiver," and implored that "it would be unconscionable and contrary to Congressional intent for the Commission to shut down Choice's HDTV transition and leave any consumers unable to purchase HD cable services during this critical next fourteen months before analog broadcasting is terminated in February 2009." Yet that is now exactly what has happened.
- Choice would be willing to commit to doubling the number of HD channels it offers by February 2009 if the Commission grants the requested waiver.

The record also shows that rural Puerto Rican consumers will not receive any near-term benefits from the integration ban:

- The purpose of the integration ban is to incent operators to support CableCARDs used in retail devices.
- Choice has been unable to find a single CableCARD device on the shelves of the major retailers in its region. In addition, Tivo does not support its service and will not ship devices to Puerto Rico, and Best Buy and Amazon will not ship DTVs to Puerto Rico.
- This is presumably why Choice's request is unopposed; CEA's members have no clear plan to try to sell retail CableCARD devices in rural Puerto Rico in the next three years. And as the Puerto Rico Telecommunications Regulatory Board explained, "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. By contrast, denial of the waiver would unnecessarily saddle Puerto Rican consumers with significant costs that many cannot afford to bear."
- The integration ban is therefore incapable of helping Choice's customers at this time. Choice has only requested a temporary waiver, so the Commission could revisit the waiver in three years if market conditions have changed.
- In the meantime, Choice will support any and all requests for CableCARDs.
- The Commission has never previously decided whether the ban helps Puerto Rican consumers, or whether an HD/DVR waiver is justified under these unique circumstances.

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[1] It would be contrary to public policy and incorrect to conclude that the $13,000 median household income figure is not relevant to the waiver analysis on the theory that families at that income level will not purchase HD in any event. First, Choice's market research and experience shows that households at the median do purchase HD sets and want HD. Second, the Commission should aspire to make HD available to "all Americans." *See* § 706, 1996 Act. Third, nearly all households, and not only the median households, would be significantly impacted by a doubling of Choice's HD set-top box cost. Approximately 70% of the households in Choice's service area have an income of less than $25,000, and approximately 90% have an income lower than the nearly $50,000 median household income for the U.S. as a whole. *See* http://factfinder.census.gov/servlet/ADPTable?_bm=y&-context=adp&-qr_name=ACS_2005_EST_G00_DP3&-ds_name=ACS_2005_EST_G00_&-tree_id=305&-redoLog=false&-_caller=geoselect&-geo_id=33000US364&-format=&-_lang=en (Mayaguez CSA) and http://factfinder.census.gov/servlet/ADPTable?_bm=y&-context=adp&-qr_name=ACS_2005_EST_G00_DP3&-ds_name=ACS_2005_EST_G00_&-tree_id=305&-redoLog=true&-_caller=geoselect&-geo_id=33000US434&-format=&-_lang=en (Ponce CSA).