

**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-7124-Z

To: Chief, Media Bureau:

**REQUEST FOR MODIFICATION OF WAIVER OF  
LIBERTY CABLEVISION OF PUERTO RICO, LTD.**

Liberty Cablevision of Puerto Rico, Ltd. (“Liberty”) respectfully requests modification of the waiver granted to it by the Bureau in its *Consolidated Order* issued on June 29, 2007.<sup>1</sup> In that order, the Bureau granted to Liberty a permanent waiver from the integration ban<sup>2</sup> for low-cost set-top boxes, in light of Liberty’s transition to an all-digital cable system. That order granted the same relief to Liberty’s neighbor, Puerto Rico Cable Acquisition Corp. d/b/a Choice Cable T.V. (“Choice”). On July 1, 2008, the Bureau expanded Choice’s waiver to include a three-year waiver for all other set-top boxes, including devices that support high-definition (HD) output and digital video recording (DVR) capability.<sup>3</sup> Liberty now respectfully requests modification of its existing waiver to add the same relief, pursuant to Section 629(c) of the Act, Section 706

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<sup>1</sup> *Consolidated Requests for Waiver of Section 76.1204(a)(1) of the Commission’s Rules*, CS Docket No. 97-80, Memorandum Opinion and Order, DA 07-2921 (rel. June 29, 2007), as corrected by Erratum (rel. July 6, 2007) (“*Consolidated Order*”).

<sup>2</sup> 47 C.F.R. § 76.1204(a)(1) (second sentence). Choice does not seek a waiver from the requirements to offer separable security or to support CableCARD products.

<sup>3</sup> *Puerto Rico Cable Acquisition Corp. d/b/a Choice Cable T.V. Requests for Waiver of Section 76.1204(a)(1) of the Commission’s Rules*, CSR-7201-Z, Memorandum Opinion and Order, DA 08-1575 (rel. July 1, 2008) (“*Choice Waiver Order*”).

of the Telecommunications Act of 1996, and Sections 1.3 and 76.7 of the Commission's rules.<sup>4</sup> As demonstrated below, Liberty's case presents the same "idiosyncratic factual situation"<sup>5</sup> that led the Bureau to expand Choice's waiver, and it should grant Liberty's request for the same reasons.

Liberty serves the mostly rural eastern, northern and central mountain parts of Puerto Rico, and does not provide service in San Juan, the island's only major metropolitan area. Liberty also does not serve the second or third largest cities in Puerto Rico (Ponce and Mayaguez), which are served by Choice. Liberty's service area is very similar economically to the smaller communities and rural areas served by Choice. For example, the median household income in Liberty's service area is approximately \$13,000 per year,<sup>6</sup> and Liberty's penetration rate is only approximately 25%.

Unlike Choice, Liberty initially did order some CableCARD HD/DVR devices. However, to date, only approximately 2% of Liberty's customers have subscribed to HD service. The price of HDTVs in Puerto Rico has now fallen below \$250, and many rural Puerto Ricans have now purchased HDTVs,<sup>7</sup> but new CableCARD HD/DVRs cost more than twice as much as these budget HDTV models.<sup>8</sup> Given the low-income

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<sup>4</sup> The Bureau granted Choice's request, as well as Guam Cablevision, LLC's Request for Modification of Waiver, in the same docket as its prior orders in those cases without requiring Choice or Guam Cablevision to pay a second filing fee. Based on this precedent, and in light of the fact that Liberty has already paid a filing fee for its initial pending request for waiver, and because Liberty is providing service to low-income consumers, Liberty respectfully requests that to the extent necessary the Commission find good cause to waive any requirement for an additional filing fee, pursuant to § 1.3 of the Commission's rules.

<sup>5</sup> *Choice Waiver Order*, ¶ 5.

<sup>6</sup> 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](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).

<sup>7</sup> See Choice Waiver Request at 3 (reporting that at least 25% of Choice's customers have purchased HDTVs).

<sup>8</sup> See Choice Waiver Request at 2 and Exhibit 1 (citing Letter from Michael Adams, COO, Adams Cable Equipment, to Marlene H. Dortch, Secretary, FCC (March 31, 2008)).

demographics of its rural service area, Liberty has stopped ordering CableCARD devices and would like to purchase old, used set-top boxes refurbished for the Latin American market that cost half or less than half of the price of new devices.<sup>9</sup>

The higher costs of the integration ban in rural Puerto Rico alone would justify the requested expansion of Liberty's waiver. But grant of the request is also warranted by the fact that the Bureau has agreed that "compliance with the integration ban is unlikely to produce the same benefits in rural Puerto Rico as in the rest of the United States,"<sup>10</sup> and that accordingly that "the balance of equities ... tilts in favor" of not imposing the high costs of the ban on rural Puerto Rican consumers for the purpose of securing such unlikely benefits.<sup>11</sup>

The Bureau's conclusion was based upon its finding that "rural Puerto Rico's retail market for navigation devices is unlike nearly every other market in the continental United States."<sup>12</sup> Liberty serves the same types of rural Puerto Rican markets as Choice. As with Choice's market, CableCARD devices are generally unavailable at retail in Liberty's service area. In 2007, a Liberty employee visited one of the larger electronics retailers in its service area to search for CableCARD-ready devices, and found only one CableCARD set out of twenty different digital models available.<sup>13</sup> In early July 2008, Liberty renewed its investigation and this time found no CableCARD-ready devices for sale. This is consistent with Choice's demonstration that it could not find a single CableCARD device available at retail from multiple searches of the major electronics

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<sup>9</sup> See Choice Waiver Request at 2 and Exhibit 1 (citing Letter from Michael Adams, COO, Adams Cable Equipment, to Marlene H. Dortch, Secretary, FCC (March 31, 2008)).

<sup>10</sup> *Choice Waiver Order*, ¶ 5.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> See Liberty Request for Waiver at 9-10.

stores in its service area, including those in Ponce, which is a larger city than any in Liberty's service area.<sup>14</sup> In addition, Tivo does not support its service and will not ship devices to Puerto Rico,<sup>15</sup> and Amazon and many other e-retailers will not ship DTVs to Puerto Rico.<sup>16</sup>

The purpose of the integration ban is to assure that MVPDs have the incentive to support CableCARDs in retail devices. There is no material danger that Liberty would discriminate against devices its customers are generally unable to obtain, so the integration ban is incapable of helping Liberty's customers at this time.<sup>17</sup> This is why the Bureau found that "the balance of equities ... tilts in favor" of granting the additional waiver to Choice, and why it should do the same for Liberty based on the same facts and circumstances.

If a mainland operator charged more for HD set-top boxes than consumers were able to pay, customers would switch to DBS to obtain these services. But as Choice explained, the situation in Puerto Rico is completely different from the mainland. Due to satellite positioning, DirecTV does not offer HD in Puerto Rico and DISH only offers a few HD channels, while PRTC (the ILEC) also does not offer video. Therefore, Liberty

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<sup>14</sup> Last year, Choice was able to find two CableCARD device models at a CompUSA store in San Juan, but these were 61" and 65" televisions priced at approximately \$2700 and \$2200, well beyond the price range of nearly all of Choice's and Liberty's customers. In any case, all CompUSA stores in Puerto Rico subsequently closed. A new Best Buy recently opened in San Juan, 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. See Choice Request for Waiver at 4.

<sup>15</sup> See <http://www.tivo.com/whatistivo/faqs/mostpopular/index.html> ("The TiVo service is currently not supported in Mexico, or any U.S. territories including Puerto Rico.")

<sup>16</sup> Choice Waiver Request at 4; see also <https://www.amazon.com/gp/help/customer/display.html?nodeId=468634&#protectorates>.

<sup>17</sup> In addition, the Telecommunications Regulatory Board of Puerto Rico explained that 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." Comments of the Telecommunications Regulatory Board of Puerto Rico at 3-4 (Mar. 19, 2007).

is the only MVPD that seeks to offer a broad range of HD programming to consumers in its region. In addition, while consumers on the mainland have the option of obtaining CableCARD devices at retail, as discussed above, these devices are not available in Liberty's service area, and in any case would be too expensive for most of Liberty's customers even if they were.<sup>18</sup> These differences “distinguish[] the Puerto Rican market from other markets in the United States where ... CableCARD devices are freely available from retail outlets, customers are better able to afford them given the higher median household income, and competitive high definition service is available from multichannel video programming service competitors.”<sup>19</sup> Thus, while Section 629 was intended to increase consumer choice, denial of Liberty's request would leave many consumers with no choice at all if they cannot afford the higher costs of new CableCARD devices.

Liberty's request is therefore premised on the same idiosyncratic market conditions in rural Puerto Rico that formed the basis of Choice's additional waiver. Moreover, 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.<sup>20</sup> The record clearly shows that the same result is

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<sup>18</sup> No party has made any commitment to immediately offer retail HD/DVR devices in Puerto Rico as a result of the integration ban, a rule that has now been in effect for one year. Even if the CE industry suddenly offered all of the CableCARD devices that they now offer in the continental United States in Puerto Rico, the Puerto Rico Telecommunications Regulatory Board explained in support of Liberty's initial waiver request that Puerto Rican cable consumers “on average have lower incomes and [are therefore] less likely to purchase a high-end set-top than consumers in the mainland United States.” Comments of the Telecommunications Regulatory Board of Puerto Rico at 2 (Mar. 19, 2007).

<sup>19</sup> *Choice Waiver Order*, ¶ 4 (Bureau describing Choice's presentation).

<sup>20</sup> 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.’

warranted here. The Commission should therefore modify Liberty's waiver to include the same relief granted to Choice, to facilitate Liberty's delivery of advanced HD and DVR services to the low-income small and rural communities of eastern Puerto Rico.

Respectfully submitted,



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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."). Liberty's penetration is approximately 25%, only slightly higher than Choice's.

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**DECLARATION**

I, Iván Rosa, Technical Director of Field Operations of Liberty Cablevision of Puerto Rico, Ltd. ("Liberty"), have read the foregoing Request for Modification of Waiver and I am familiar with the contents thereof, and declare under penalty of perjury that the facts contained therein are true and correct to the best of my knowledge, information, and belief, and that I am authorized to execute this Declaration on behalf of Liberty.



Iván Rosa  
Technical Director, Field Operations  
Liberty Cablevision of Puerto Rico, Ltd.  
Executed July 10, 2008