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January 23, 2009

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

Re: *James Cable LLC Request for Waiver*, CSR-7216-Z

Dear Ms. Dortch:

On January 22 and 23, 2009, Paul Hudson of Davis Wright Tremaine, LLP, as counsel for James Cable, LLC, communicated and met with Rick Chessen, legal advisor to Chairman Copps, and with Rudy Brioché, legal advisor to Commissioner Adelstein, to discuss James Cable's pending request for an extension of its existing waiver from the integration ban. Mr. Hudson also discussed the matter briefly with Brendan Murray of the Media Bureau on January 23. The substance of these meetings is summarized below.

James Cable operates small cable systems in the rural South and inner West. Seventy percent of its systems serve fewer than 1,500 subscribers, and more than a third serve fewer than 300 subscribers. It passes an average of 40 homes per mile of facilities, compared to 200-600 for most larger operators, so providing service is much more expensive per customer. Its communities are significantly older and less affluent than the national average,[1] and its penetration rate of 35% is only about half of that of most cable operators.

In July 2007, the Media Bureau found that the public interest was served by granting James Cable a waiver from the integration ban because of its "demonstrated dire financial straits,"[2] as evidenced by its negative free cash flow. Cable operators such as James Cable with negative free cash flow lack the ability to make needed capital investment to maintain and upgrade their systems. James Cable still does not offer telephone service or video-on-demand in any market, does not offer broadband Internet access, DVRs or digital cable in some of its

[1] The nationwide household median income is 39% higher than the median household income in James Cable's service area. In addition, James Cable's service areas have a percentage of senior citizens that is 24% higher than the national average.

[2] *James Cable, LLC's Request for Waiver of 47 C.F.R. § 76.1204(a)(1)*, CSR-7216-Z, Memorandum Opinion and Order, DA 07-3316, ¶ 39 (rel. July 23, 2007) ("*Waiver Order*").

markets, and does not offer HD service to approximately half of its customer base. In granting the waiver, the Bureau recognized that requiring James Cable to significantly increase its set-top box acquisition costs would directly divert James Cable's limited capital investment away from these upgrades desired by consumers.

The *Waiver Order* invited James Cable to reapply for an extension if it could show continued financial difficulties. James Cable's finances indeed worsened, so it sought and received an extension from the Bureau in July 2008. However, the extension order inexplicably set the new expiration date only to January 31, 2009, which is only three weeks prior to the DTV transition and prior to the completion of the audit of James Cable's 2008 financials that would have been the basis for a further extension request. James Cable sought reconsideration of this order in August 2008, and its unopposed request remains pending.

It would be extraordinarily disruptive to the DTV transition in James Cable's service area for its waiver to terminate prior to the DTV transition. Many of its customers have a set-top box for a primary television but may have additional analog TVs for viewing broadcast channels that are not connected to a set-top box. Some of these customers will only discover their need for a converter when analog broadcasting is terminated, at which time they may be unable to receive DTV converter coupons. Other non-cable customers may decide to purchase basic cable after February 18 as a means of restoring access to broadcast stations. James Cable would like to be able to provide low-cost set-top boxes to these customers at a low monthly lease rate. However, without an extension of its waiver, it may instead run out of devices.

A January 31 expiration date would also disrupt James Cable's efforts to assist the DTV transition. James Cable is a small company with limited personnel and resources, and it is still working to hang digital antennas and install digital receivers in its headends as part of the transition effort. Many of the personnel involved in such efforts are the same people who would have to manage the difficulties and disruptions to its inventory and provisioning processes that would be caused by a transition to CableCARD devices in the middle of the DTV transition period. For these reasons, the public interest would be disserved by a termination of James Cable's waiver prior to the DTV transition.

Therefore, at a minimum, James Cable requests an extension to a date a couple of months past the DTV transition. Given the possibility that the transition may be moved to June 12, James Cable asks that an extension be provided at least through the end of August 2009. However, James Cable would greatly appreciate if the Commission could instead grant at least a full-year extension based upon the attached 2008 financials, which plainly show that James Cable's free cash flow was significantly worse in 2008 than in 2006 or 2007 (upon which prior waivers were granted).[3] Such an extension should run at least to July 2010 so that James Cable

[3] Pursuant to Section 0.459 of the Commission's Rules, James Cable requests that the attachment be designated as confidential and not be made routinely available for public inspection. James Cable is a privately-held company and its financial statements have not been disclosed to the public. This sensitive financial information could be used by

would be able to provide audited 2009 financials to the Commission reasonably in advance of expiration in the event that it needed to seek an additional extension. In so doing, the Commission would save James Cable from the additional legal expense of hiring counsel to seek a further extension for the remainder of 2008.

Respectfully submitted,

Paul B. Hudson
Counsel for James Cable, LLC

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its competitors in a manner that would be likely to cause substantial competitive harm to James Cable. Accordingly, James Cable takes all reasonable precautions to avoid public disclosure of this confidential information.