December 8, 2009

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

RE: CSR-7902-Z; CS Docket No. 97-80
Evolution Broadband, LLC's Request for Waver

Dear Ms. Dortch:

Pursuant to Rule 47 C.F.R. § 1.106(l), Public Knowledge submits this supplement to our timely *Petition for Reconsideration*. Public Knowledge submits the Declaration of Jim Gee, of IPCO, LLC (IPCO). As explained by Mr. Gee, IPCO developed and prepared to market a low-cost set top box that complied with the Commission's integration ban. The Commission's decision to grant Evolution a waiver effectively eliminated the market for low-cost rule compliant devices and deterred future investment. This supplemental evidence not only directly undermines the Commission's basis for its original decision by demonstrating that a waiver is unnecessary to make a low cost option available to consumers, it demonstrates the validity of the concern expressed by Public Knowledge, Consumer Electronic Association (CEA) and others that grant of the waiver actively undermines investment in devices that comply with the integration ban.

BACKGROUND

In May of 2009 the Commission granted a waiver of the ban on integrated set top boxes in order to preserve "a low-cost set-top box option for subscribers."[1] Shortly thereafter, a number of manufacturers seized the opportunity and made similar waiver requests.[2] In June Public Knowledge, joined by Free Press, Media Access Project, New America Foundation, Open Technology Institute, and U.S. PIRG, submitted a petition for

[1] *Evolution Broadband, LLC's Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules; Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices,* CS Docket 97-80, Memorandum Opinion and Order, FCC 09-46 at ¶ 12 (rel. June 1, 2009) ("Evolution Order").
[2] *See In the Matter of Application of Motorola, Inc.'s Request for Waiver of 74 C.F.R. § 76.1204(a)(1),* MB Docket No. CSR-8175-Z (released June 16, 2009); *In the Matter of Application of Cisco Systems, Inc.'s Request for Waiver of 47 C.F.R. § 76.1204(a)(1),* MB Docket No. CSR-8176-Z (released June 16, 2009); *In the Matter of Application of Thomson,* Inc.'s Request for Waiver of 47 C.F.R. § 76.1204(a)(1), MB Docket No. CSR-8178-Z (released June 18, 2009).

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reconsideration of the original waiver.[3] On October 8, 2009 IPCO, LLC submitted the attached comments in Mass Media Bureau Proceeding CSR-8206-Z. This was the first time that Public Knowledge became aware of IPCO's products. In addition to IPCO's original comments, Public Knowledge has attached the declaration of IPCO's Managing Member Jim Gee describing IPCO's products and the impact of the Commission's waiver on the product's marketability.[4]

IPCO DECLARATION

IPCO is the manufacturer of low cost set top boxes that fully comply with 47 C.F.R. § 76.1204(a)(1) and Section 629 of the Communications Act. Mr. Gee's declaration vividly illustrates both that compliant low cost set top boxes are available today, and that the Commission's waiver effectively undermines good faith attempts to develop products that comply with existing Commission rules. The Commission's wavier directly and negatively impacted IPCO's ability to sell its compliant set top boxes. As a result, IPCO's filing demonstrates why the commission needs to grant Public Knowledge's Petition for Reconsideration.

IPCO's comments make it clear that compliant set top boxes can be produced and provided to MVPDs and to consumer electronics outlets. As conforming, low cost set top boxes are available in the marketplace, there is simply no reason to grant an exception to existing Commission rules.

Furthermore, the grant of waiver undermines the development of a competitive market in non-integrated set top boxes precisely in the manner predicted in Public Knowledge's Petition.[5] IPCO invested in research and development with the intent of entering the market with low cost set top boxes that fully complied with existing regulation. In granting the waiver, the Commission punished IPCO's good faith reliance on existing rules and at the same time sent a clear message to future innovators who may wish to fill needs created by Commission rules. It would be irresponsible for a company to devote scarce resources to meeting a specification set down by the Commission when the Commission will undermine that specification just as the product is coming to market.

IPCO's filing is concrete evidence that the fundamental pillars supporting the Commission's decision are unsound. First, a waiver is *not* required to preserve a low cost set top box option for consumers. IPCO's low cost compliant boxes are available today.

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[3] *See Public Knowledge, Free Press, Media Access Project, New American Foundation, Open Technology Institute, and U.S. PIRG Petition for Reconsideration*, CSR-7902-Z, CS Docket No. 97-80 (2009) (*Petition for Reconsideration*).
[4] While the existence of the set top boxes described in Mr. Gee's declaration are relevant to this issue, Public Knowledge takes no position on the patent claims contained therein.
[5] *See Reconsideration Petition* at 8-11.

Second, as CEA argued,[6] waivers destroy a market in compliant devices and punish companies who try and conform to existing rules. Set top boxes that comply with existing rules are available on the open market, and as such there is no reason to undermine existing rules by granting destructive exceptions. The Commission must act on our petition quickly and not allow IPCO and other companies like it to go bankrupt waiting for reconsideration.

Sincerely,

/s/

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[6] *Evolution Order* at ¶ 6.