

**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 EXTENSION OF WAIVER OF
LIBERTY CABLEVISION OF PUERTO RICO, LTD.**

Pursuant to Section 629(c) of the Act, Section 706 of the Telecommunications Act of 1996, and Sections 1.3 and 76.7 of the Commission's rules, Liberty Cablevision of Puerto Rico, Ltd. ("Liberty") respectfully requests a three-year extension of the deadline of the time-limited portion of its waiver from the integration ban¹ that the Media Bureau previously granted to Liberty for HD, DVR and other set-top boxes not covered by its pre-existing permanent waiver through November 14, 2011.² Liberty seeks the same extension that the Bureau recently granted to its similarly-situated neighbor, Puerto Rico Cable Acquisition Corp. d/b/a Choice Cable T.V.³

In 2008, the Bureau found that a complete waiver from the integration ban was

¹ 47 C.F.R. § 76.1204(a)(1) (second sentence).

² See *Liberty Cablevision of Puerto Rico, Ltd. Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, CSR-7124-Z, Memorandum Opinion & Order, DA 08-2513 (Nov. 14, 2008) ("*Liberty Waiver Order*"). Liberty also has a permanent waiver for non-HD, non-DVR devices that is not a subject of this request. See *Consolidated Requests for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, Memorandum Opinion and Order, CS Docket No. 97-80, DA 07-2921 (rel. June 29, 2007) (as corrected by Erratum rel. July 6, 2007).

³ See *In re 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*, Memorandum Opinion and Order, CSR-7201-Z, DA 11-1456 (rel. Aug. 24, 2011).

warranted because Liberty “faces an idiosyncratic factual situation in its service area” and 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.”⁴ Liberty had reported that the imposition of the integration ban in rural Puerto Rico would do far more harm than good because of the very low availability and demand for expensive retail navigation devices in its very low-income markets. In addition, both consumers and Liberty are more reluctant to invest in ownership of new, expensive set-top boxes because of much more frequent damage to the devices from power surges. As a result of these very different conditions, the imposition of the integration ban threatened to suppress HD and DVR adoption in rural Puerto Rico without any offsetting comparable benefit to the public interest.

The waiver has been a tremendous success. Since the waiver was granted, Liberty has nearly tripled its number of HD channels, and more than 4500 customers have added HD service, thanks to more affordable integrated HD set-top boxes and the expanded HD lineup. In addition, more than 5000 subscribers have added DVRs, thanks again to the availability of lower-cost integrated devices under the waiver. The waiver has also facilitated Liberty’s launch of higher-speed DOCSIS 3.0 broadband services. However, Liberty’s waiver for HD and DVR devices is scheduled to expire November 14, 2011. As demonstrated below, the public interest would be best served by an extension of this waiver.

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

⁴ *Liberty Waiver Order*, ¶ 6.

Rico (Ponce and Mayaguez), which are served by Choice. As the Commission has previously found, Liberty's service area is very similar economically to the smaller communities and rural areas served by Choice, with very low household incomes.⁵

As is the case with Choice, Liberty has now received a small handful of requests for CableCARDs, including from customers who either brought TiVos from the mainland or who purchased them outside of Liberty's service area in San Juan. CableCARD devices have at times been available in Liberty's service area, but an employee recently checked and found none. Eight Liberty customers have now requested CableCARDs, and Liberty has obligingly provided them and will continue to support CableCARDs with the same quality of service irrespective of its waiver. Liberty believes that the number of customers using these devices will remain small, since most Liberty customers are unlikely to elect to commit to pay up front for a TiVo device and commit to its expensive service contracts.⁶

An extension is also warranted because the Commission has already turned its focus to encouraging the development of a "successor technology to CableCARD,"⁷

⁵ *Liberty Waiver Order*, ¶ 5.

⁶ See *In re Baja Broadband Operating Company, LLC Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, Memorandum Opinion and Order, CSR-7111-Z, DA 10-373, ¶¶ 10, 13 (noting Baja Broadband's argument that the total cost of a TiVo device is at least \$698 and stating that "Baja soundly refuted CEA's assertion that TiVo devices are available at a price point that is competitive with refurbished devices, and therefore such a solution could not provide relief for Baja"). Although a TiVo Premiere may cost as little as \$99.99 to purchase, that price is accompanied by a \$19.99 monthly service fee, with a minimum commitment of one year. *TiVo Premiere: Select Box and Service*, TIVO.COM, <https://www3.tivo.com/store/premiere.do> (last visited Sept. 6, 2011). And if the device fails after the 90-day warranty on parts and labor, or even during the warranty as a result of a non-covered event, the customer would have to pay for a repair or another device to get started again. See *TiVo DVR Limited Warranty*, TIVO.COM, <http://www.tivo.com/buytivo/dvrlimitedwarranty.html> (last visited Sept. 6, 2011).

⁷ *In re Video Device Competition; Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices; Compatibility Between Cable Systems and Consumer Electronics Equipment*, Notice of Inquiry, MB Docket No. 10-91, CS Docket No. 97-80, PP Docket No. 00-67, 25 FCC Rcd 4275, 4276 ¶ 3 (rel. Apr. 21, 2010).

which it has concluded is “not a viable long-term solution.”⁸ In addition, the market is developing many additional new alternatives.⁹ It is one thing to assure that CableCARD regulations remain in force where they have already been applied, but at this juncture it would make no sense to impose the integration ban for the first time in rural Puerto Rico. In the meantime, Liberty will continue to fully support CableCARDs for any customer that requests one, as it does today.

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.¹⁰ The record clearly shows that the same result is warranted here. The waivers for Puerto Rico have been previously supported by its Member of Congress and the Telecommunications Regulatory Board of Puerto Rico, and were not opposed by CEA or any customer. Liberty’s waiver has enabled successful expansion of HD and DVR services and lower cost options for its low-income communities, without imposing any material harm on consumers.

The Commission should therefore extend Liberty’s waiver for at least three additional years to enable Liberty to continue to deliver advanced HD and DVR services

⁸ *Commercial Availability of Navigation Devices; Compatibility Between Cable Systems and Consumer Electronics Equipment*, Fourth Further Notice of Proposed Rulemaking, CS Docket No. 97-80, PP Docket No. 00-67, 25 FCC Rcd 4303, 4307 ¶ 12 (rel. Apr. 21, 2010).

⁹ See MB Docket 10-91, CS Docket 97-80, Letter from Michael K. Powell, President and CEO of NCTA, to Hon. Julius Genachowski, Chairman, FCC (July 7, 2011).

¹⁰ 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.’ 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%.

to the low-income small and rural communities of Puerto Rico, as it recently did for its neighbor Choice Cable T.V.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "P. Hudson", written in a cursive style.

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