

AirTV will offer consumers access to digital HD television content broadcast over-the-air from almost any broadband-enabled multimedia platform using groundbreaking place-shifting technology from Sling Media.⁴ The ability to combine over-the-air television content on devices with over-the-top functionality makes the devices a perfect, economical choice for households that have “cut the cord” but still wish to enjoy the combination of over-the-air content and pay-per-view or subscription over-the-top services without the confusion of swapping TV inputs and using multiple remote controls. All of this functionality is packaged in an attractive energy-efficient form factor that can be used with a TV, monitor, or mobile device.

While historically the Bureau and the Office of Engineering and Technology (“OET”) interpreted the “all channels” provision to mean that any TV receiver that includes an over-the-air digital (ATSC) tuner must also include an over-the-air analog (NTSC) tuner,⁵ the Commission recently voted to sunset this requirement on August 31, 2017, less than one year from now.⁶ The sunset is based on several factors: The “vast majority of consumers no longer need to rely on devices with analog tuners and the number of consumers that still do will steadily

multi-tuner capabilities, over-the-top applications, interactivity, and energy efficiency. EchoStar has been designing and developing the next generation of TV receivers that are able to capture the benefits of digital-only integrated tuners. These devices are capable of receiving broadcast TV signals using the ATSC standard, the digital standard employed for the vast majority of over-the-air video content that consumers receive today.

⁴ Like EchoStar, DISH is an industry leader in innovating video delivery and the customer experience. See, e.g., Emily Steel, *Dish Network Unveils Sling TV, a Streaming Service to Rival Cable (and It Has ESPN)*, N.Y. TIMES, Jan. 6, 2015, at B3, <http://nyti.ms/1xvmtqJ>.

⁵ See *Dell Inc. and LG Electronics USA, Inc.; Request for Waiver of Section 15.117 of the Commission’s Rules*, Order, 25 FCC Rcd 9172, 9176 ¶ 2 (MB 2010) (“*Dell Waiver Order*”) (citing OET Laboratory Division Knowledge Database, Publication No. 218634 (rel. Dec. 17, 2009), <https://apps.fcc.gov/oetcf/kdb/forms/FTSSearchResultPage.cfm?switch=P&id=42863>).

⁶ *Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television and Television Translator Stations*, Third Report and Order and Fourth Notice of Proposed Rulemaking, 30 FCC Rcd 14927, 14947-49 ¶ 44-46 (2015) (“*Third Report and Order*”).

decline;” “devices with analog tuners will continue to be available in remaining retail inventory and on the secondary market” for the few consumers that require an analog tuner; the analog tuner requirement “imposes costs on television manufacturers that may be passed through to consumers;” and “including an analog tuner in a device increases its weight, size, and energy consumption.”⁷

All of these factors are apt with respect to the AirTV, and, even before the Commission formally committed to eliminate the requirement, the Bureau had granted waivers of the requirement to manufacturers, including EchoStar,⁸ who demonstrated that omitting analog broadcast tuners from their devices would reduce cost and power consumption, offer consumers additional options for accessing video programming, and enhance consumer choice in video equipment without frustrating the purpose of Section 15.117(b).⁹ Indeed, the Bureau’s findings in the *2013 EchoStar Waiver Order* with respect to the Channel Master K77 and its findings in the *2015 EchoStar Waiver Order* with respect to the SlingLoaded DVR arguably directly also

⁷ *Id.* at 14948-49 ¶ 45; *see also id.* at n.149 (citing *EchoStar Technologies L.L.C. Petition for Waiver of Section 15.117(b) of the Commission’s Rules*, Memorandum Opinion and Order, 28 FCC Rcd 14000, 14004 ¶ 7 (MB 2013) (“*2013 EchoStar Waiver Order*”); *TiVo, Inc. Petition for Waiver of Sections 15.117(b), 15.118(b), 15.123(b)(1), 15.123(c), and 15.123(d) of the Commission’s Rules*, Memorandum Opinion and Order, 28 FCC Rcd 12181, 12181 ¶ 1 (MB 2013) (“*TiVo Waiver Order*”).

⁸ *EchoStar Technologies L.L.C., Funai Electric Co., Ltd.; Petition for Waiver of Section 15.117(b) of the Commission’s Rules*, Memorandum Opinion and Order, 30 FCC Rcd 4562 (MB 2015) (“*2015 EchoStar Waiver Order*”); *2013 EchoStar Waiver Order*.

⁹ The All Channel Receiver Act, codified at 47 U.S.C. § 303(s), authorizes, but does not require, the Commission to impose the all-channel requirements in Section 15.117; thus, “the Commission may waive Section 15.117’s provisions regarding signal format reception capabilities for particular devices on public interest grounds.” *See Dell Waiver Order*, 25 FCC Rcd at 9176 ¶ 7; *2015 EchoStar Waiver Order*; *2013 EchoStar Waiver Order*; *TiVo Waiver Order*.

apply to the AirTV.¹⁰ All of these devices are HD and internet-enabled for streaming video, and all have an energy-efficient, cost-effective, compact form factor, due to the inclusion of only a digital, and not an analog, tuner.

There is no basis to conclude that importation, marketing, and sale of the AirTV less than a year before the sunset would frustrate the limited remaining lifespan of the rule or otherwise harm consumers – and the Commission has granted waivers in similar circumstances, *i.e.*, where a rule is about to expire.¹¹ In addition, waiver of Section 15.117(b) is appropriate in this case for the same reasons that the Bureau concluded the public interest would be served by a waiver for the SlingLoaded DVR and Channel Master K77 devices.

First, waiver of the analog tuner requirement for the AirTV will promote consumer choice, cost savings, and energy efficiency. The AirTV provides new, innovative functionality in a premium quality package that reflects EchoStar’s experience as a creative force in home entertainment. The availability of the AirTV will promote cost-effective consumer choice in equipment by adding an innovative new product to the marketplace, and also will promote consumer choice in services for individuals or households seeking a non-MVPD option with no subscription or monthly fee required. One of the most compelling features of the AirTV – its

¹⁰ EchoStar believes that, in lieu of a notice-and-comment proceeding, the Bureau could clarify in response to this Petition that the *2013 EchoStar Waiver Order* and/or the *2015 EchoStar Waiver Order* apply to the AirTV.

¹¹ *See, e.g.*, Letter From Roger S. Noel, Mobility Division, Wireless Telecommunications Bureau, to Donald J. Evans, Counsel to Corr Wireless Communications, LLC, WT Docket 07-10, Request for Waiver of the Analog Service Requirement, 22 FCC Rcd 10197 (WTB 2007) (granting a waiver of the analog service requirement prior to the date set by the Commission in an order sunsetting the requirement); Letter From Roger S. Noel, Chief, Mobility Division, Wireless Telecommunications Bureau, to Raymond J. Quizanon, Esq., Counsel to Copper Valley Wireless, Inc., WT Docket 07-80, Request for Waiver of the Analog Service Requirement, 22 FCC Rcd 11465 (WTB 2007) (same); Letter From Roger S. Noel, Chief, Mobility Division, Wireless Telecommunications Bureau, to Suzanne Yelen, Counsel to Puerto Rico Telephone Company, Inc., WT Docket No. 07-140, Petition of Puerto Rico Telephone Company, Inc. for Conditional Waiver, 22 FCC Rcd 18347 (WTB 2007) (same).

compact design – is only possible through extreme economy in choice of components; with an analog tuner, these boxes would be far more bulky, less energy efficient, and less appealing to consumers. In addition, an analog tuner would add significantly to EchoStar’s manufacturing costs and, ultimately, to the retail price. This includes certain non-recurring engineering costs, such as adding a board spin or creating a daughter card to support analog tuner circuitry, rerunning thermal calculations, and designing a new chassis. It also includes the added cost of materials on a per-unit basis, which alone could cost consumers from \$15-30 more per device. Designing a new, bulkier chassis to accommodate an analog tuner also would cost EchoStar in projected revenue, as one of the key selling features is intended to be the attractive form factor of the device in its current design.

Moreover, the absence of an analog tuner in this product will not have a negative impact on consumers.¹² No full-power TV broadcast stations and almost no LPTV stations are broadcasting analog signals. By the time the AirTV is brought to market, consumers will be able to use AirTVs for digital over-the-air access to all full-power and Class A television stations, as well as most LPTV stations and TV translators. At best, the continued inclusion of an analog tuner could offer only very minor benefits for a very limited number of consumers, and only for a limited period of time.

While EchoStar has committed in prior waiver proceedings to undertake a labeling, marketing, and retail education program, EchoStar respectfully submits that such commitments would be unnecessary – and, indeed, counterproductive – here. The Commission determined that consumer education and labeling requirements could cause consumer confusion for digital-

¹² See *2015 EchoStar Waiver Order*, 30 FCC Rcd at 4566 ¶ 8 (“waiving the analog broadcast tuner requirement will have a *de minimis* effect on consumers”).

only tuners after the August 31, 2017, transition date,¹³ and the same would be true with respect to any new device launched in the short period between the projected market date for the AirTV and next August 31. Nevertheless, if the Bureau deems it necessary to avoid consumer confusion during the limited time between the introduction of the AirTV and the sunset date, the company is willing to commit to a labeling, marketing, and retail education program that informs consumers and retailers about the capabilities and limitations of the AirTV.¹⁴ However, any such obligations should terminate with the August 31, 2017 transition date.

For the foregoing reasons, EchoStar respectfully urges the Commission to waive the Section 15.117 analog tuner requirement for the AirTV devices described herein.

Respectfully submitted,

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¹³ *Third Report and Order* at 14949 ¶ 46 (“[W]e believe that imposing a universal requirement that manufacturers notify consumers about the limitations of digital-only devices would be counterproductive after the sunset.... A label that indicates that a device cannot receive analog signals could confuse consumers, the vast majority of whom do not receive analog signals.”).

¹⁴ *See 2013 EchoStar Waiver Order*, 28 FCC Rcd at 14005 ¶ 8.