

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
TiVo Inc.)	
Petition for Clarification or Waiver)	MB Docket No. 14-146
of 47 C.F.R. § 76.640(b)(4))	
)	CS Docket No. 97-80
Implementation of Section 304 of the)	
Telecommunications Act of 1996;)	
Commercial Availability of Navigation)	
Devices)	

**PETITION OF TIVO INC.
FOR EXTENSION OF WAIVER OF 47 C.F.R. § 76.640(b)(4)(iii)**

July 22, 2016

SUMMARY

TiVo Inc. (“TiVo”) respectfully requests an extension through at least December 31, 2018, of its present waiver for its products, as provided to cable operators, to incorporate a recordable home networking interface as described in Section 76.640(b)(4)(iii) of the Commission’s Rules. TiVo’s waiver is presently effective through June 1, 2017. This application for extension has four bases:

- (1) The FCC has said it will consider and determine the status of Section 76.640(b)(4)(iii) in the context of its pending Notice of Proposed Rulemaking on navigation devices, in which this obligation could be changed or superseded.
- (2) The interface as described in Section 76.640(b)(4)(iii), although made available by major cable operators, apparently has not yet been widely implemented for home network devices so as to provide the experience necessary for TiVo’s customers, who are smaller operators.
- (3) TiVo devices, as provided to retail and cable operator customers, continue to support and enhance home networking.
- (4) Although TiVo’s waiver will not expire until June 2017, in the absence of an extension TiVo would have to begin now to change its product plans in order to conform to a regulation that may no longer be in force or that may be superseded.

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
TiVo Inc.)	
Petition for Clarification or Waiver)	MB Docket No. 14-146
of 47 C.F.R. § 76.640(b)(4))	
)	CS Docket No. 97-80
Implementation of Section 304 of the)	
Telecommunications Act of 1996;)	
Commercial Availability of Navigation)	
Devices)	

**PETITION OF TIVO INC.
FOR EXTENSION OF WAIVER OF 47 C.F.R. § 76.640(b)(4)(iii)**

TiVo Inc. (“TiVo” or “Petitioner”) respectfully requests an extension through at least December 31, 2018, of its waiver of the obligation to include an industry standard, interactive and recordable home networking interface, as set forth in Section 76.640(b)(4)(iii) of the Commission’s Rules,¹ in the devices TiVo provides to cable operators. TiVo’s waiver, which presently expires June 1, 2017, was granted by the Media Bureau in a Memorandum Opinion and Order dated May 21, 2015.² As the Media Bureau noted in its *Waiver Order*, the devices that TiVo sells to cable operators are retail-

¹47 C.F.R. § 76.640(b)(4)(iii).

² *In the Matter of TiVo Inc. Petition for Clarification or Waiver of 47 C.F.R. 76.640(b)(4)(iii); Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices; MB Docket No. 14-146, CS Docket No. 97-80, DA 15-622, Memorandum Opinion and Order (rel. May 21, 2015) (“Waiver Order”).*

based and account for a “relatively small subscriber base,” so TiVo’s interim waiver does not undermine the Commission’s goal, which TiVo shares, of advancing home network interoperability.³ In the Commission’s pending Notice of Proposed Rulemaking on navigation devices, the Commission has identified interoperability among MVPD networks, as well as within home networks, as an important goal,⁴ and has said that it would review the status and future utility of all CableCARD-era rules in this context.⁵ The standards addressed in Section 76.640(b)(4)(iii) are not yet in active use by cable operators, but have been widely discussed in the context of the pending NPRM.⁶ Given the stated intention of the Commission to determine the status of the Second⁷ and Third⁸ Report & Order rules in the context of the NPRM, TiVo respectfully requests that its

³ *Id.* at 5 ¶ 10.

⁴ *Expanding Consumers’ Video Navigation Choices; Commercial Availability of Navigation Devices*, MB Docket No. 16-42, CS Docket No. 97-80, Notice of Proposed Rulemaking and Memorandum Opinion and Order, FCC 16-18, at 17 ¶ 31 (rel. Feb. 18, 2016) (“*Navigation Devices NPRM*”).

⁵ *Id.* at 43-45 ¶¶ 87-91.

⁶ “Competitive Navigation advocates ... filed a set of specifications for Service Discovery Data, Entitlement Data, and Content Delivery Data, largely based on DLNA VidiPath The Competitive Navigation advocates submitted evidence that DLNA has a toolkit of specifications available. Given this evidence, we propose to require MVPDs to comply with the rules two years after adoption.” *Id.* at 22 ¶ 43.

⁷ *Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices*, CS Docket No. 97-80, PP Docket No. 00-67, Second Report and Order and Second Further Notice of Proposed Rulemaking, FCC 03-225 (rel. Oct. 9, 2003) (“*Second R&O*”).

⁸ *In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices*, CS Docket. No. 97-80, PP Docket. No. 00-67, Third Report and Order and Order on Reconsideration, FCC 10-181 (rel. Oct. 14, 2010) (“*Third R&O*”).

interim waiver be extended so as to align with the Commission’s projected time period for achieving interoperability among, as well as within, MVPD systems.

Although TiVo’s waiver will not expire until June 2017, in the absence of an extension TiVo would have to begin now to change its product plans in order to conform to a regulation that may no longer be in force or that may soon be superseded.

I. THE NAVIGATION DEVICE NPRM WILL ADDRESS WHETHER SECTION 76.640(b)(4)(iii) IS IN FORCE AND IF SO WHETHER IT WILL BE CHANGED OR SUPERSEDED.

In TiVo’s *Waiver Order* the Media Bureau noted that the Commission “has not yet taken a position on whether the rule is effective after the D.C. Circuit’s decision in the *EchoStar* case.”⁹ In the navigation device NPRM released earlier this year (“*Navigation Devices NPRM*”), the Commission asked for public comment on whether, and if so how, these and other interoperability rules should be re-stated.¹⁰ The Commission’s recent Order pertaining to New Charter also noted the present uncertainty and said that these rules will be reconsidered in the context of the *Navigation Devices NPRM*.¹¹ This is only logical. As the Commission stated in its 2012 Order granting a limited waiver of Section 76.640(b)(4)(iii), and repeated in the *Waiver Order*, “[w]hen the Commission revised Section 76.640(b)(4)(iii) in the 2010 *CableCARD Order*, it had interoperability between

⁹ *Waiver Order* at 3 n.13. Section 76.640(b) was codified pursuant to the *Second R&O*, which was vacated in *EchoStar Satellite L.L.C. v. FCC*, 704 F.3d 992 (D.C. Cir. 2013). The text of Section 76.640(b)(4)(iii), however, dates from the 2010 Third R&O.

¹⁰ *Navigation Devices NPRM* at 43-45 ¶¶ 87-91.

¹¹ *In the Matter of Applications of Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership For Consent to Assign or Transfer Control of Licenses and Authorizations*, MB Docket No. 15-149, Memorandum Opinion and Order, FCC 16-59, at 123 n.872, 127 ¶ 258 and n. 903 (rel. May 10, 2016).

video programming services and devices in mind.”¹² The Commission has stressed in the *Navigation Devices NPRM* that achieving device portability among as well as within services is a key objective.¹³ Now that the FCC has proposed a timetable for addressing the ultimate objective through a similar interface, TiVo should focus its efforts and resources on the ultimate, rather than the interim, objective.

II. CABLE INDUSTRY IMPLEMENTATION OF SECTION 76.640(b)(4)(iii) HAS NOT REACHED THE STAGE OF HOME NETWORK DEVICE SUPPORT, SO AN INTERIM EXTENSION FOR TIVO WILL NOT DETRACT FROM IT.

TiVo’s understanding is that although new MVPD devices are being supplied with interfaces that will be capable of operation as foreseen by Section 76.640(b)(4)(iii), these products are presently not supporting any home network devices through this interface.¹⁴ Thus TiVo’s interim reliance on its earlier-developed means of home network support has not been inconsistent with any prevailing industry practice.¹⁵ Given the pendency of the *Navigation Devices NPRM* and the nascent state of operator implementation, it seems most efficient for TiVo’s smaller cable operator customers to

¹² *Waiver Order* at 5 ¶ 9 and n.31, quoting *TiVo’s Request for Clarification and Waiver of the Audiovisual Output Requirement of Section 76.640(b)(4)(iii)*, MB Docket No. 12-230, Memorandum Opinion and Order, DA 12-1910, at 4 ¶ 9 (rel. Nov. 28, 2012).

¹³ *Navigation Devices NPRM* at 17 ¶ 31 (“[O]ur rules should allow consumers to use the same device with different MVPDs throughout the country. Device portability will encourage MVPD competition because consumers will be able to change their video service providers without purchasing new equipment.”).

¹⁴ A search of the DLNA database, <http://www.dlna.org/products/>, indicates that the only VidiPath certified device is a server.

¹⁵ Thus far, it appears that cable operator support for ancillary home network devices has been Internet or cloud-based, rather than through DLNA-based interfaces from operator-supplied set-top boxes or gateways.

have the opportunity to learn from the actual implementations of the larger MVPDs, as well as from Commission expectations, before TiVo must ask them and their customers to abandon the existing and successful system of home network support and move to a technology that the major operators have not yet had to activate and may never be required to implement.¹⁶

III. TIVO'S CABLE CUSTOMERS AND THEIR SUBSCRIBERS WILL NOT BE DISADVANTAGED BY THE EXTENSION OF THE INTERIM WAIVER.

In the *Waiver Order* the Media Bureau noted that TiVo, as a retail competitor who also supplies smaller cable operators, must continue to develop and market competitive products.¹⁷ TiVo, despite lacking the resources of larger MVPDs, has been a leader in device-based home networking and continues to enhance these capabilities. TiVo continues to develop its home networking interface and products so as to support ancillary devices and uses that are competitive with the Internet or cloud-based support afforded to such devices by major cable operators.¹⁸ Given the comparable results through different avenues of support, the extension of TiVo's waiver will detract neither from the ultimate reliance on standards-based technologies (to be addressed in the

¹⁶ The National Cable & Telecommunications Association (NCTA) has been among those asserting that Section 76.640(b)(4)(iii) and other *Third R&O* rules were also vacated in *EchoStar*, a position the FCC has said it will address when it acts on the pending NPRM. Thus if the field implementation of a major operator were to be questioned, the operator may assert that it is not under any obligation to support a home network device.

¹⁷ *Waiver Order* at 5 ¶ 10.

¹⁸ See, e.g., Comcast Product How-To, *How To Turn Any Device Into A Personal TV Inside The Home*, <http://corporate.comcast.com/news-information/news-feed/heres-how-to-turn-any-device-into-a-personal-tv-inside-the-home>.

Navigation Devices NPRM) nor from the daily experiences of cable subscribers who lease TiVo-supported DVRs from their cable operator.¹⁹

IV. EXTENSION OF TIVO'S WAIVER IS SUPPORTED BY GOOD CAUSE

Waiver of the Commission's rules is permitted upon a showing of "good cause."²⁰ In the *Waiver Order*, the Media Bureau found that TiVo had demonstrated good cause for a waiver of Section 76.640(b)(4)(iii) because "its set-top boxes fulfill the objective of the rule . . . and that strict compliance with the rule would be unduly burdensome."²¹ The Bureau found that TiVo's existing home networking solution "advances th[e] purpose [of the rule] and has furthered the goal of allowing cable subscribers to take advantage of all of the features their subscription service has to offer"²² and that "requiring TiVo to add support for an open industry standard to its boxes would unfairly disadvantage TiVo after its early innovation in home networking."²³

¹⁹ Some cable operators implement TiVo technology and systems on devices for which manufacture is sourced from other device makers. This petition is filed on their behalf as well as on the behalf of operators who buy the device itself from TiVo. There is no difference in the impact on these two groups of cable operators, or potentially on TiVo's retail business if TiVo cannot market to both groups of cable operators.

²⁰ 47 CFR § 1.3; *see also id.* § 76.7. The Commission may exercise its discretion to waive a rule "where particular facts would make strict compliance inconsistent with the public interest." *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969)). The Commission has noted that in order to be granted a waiver, an applicant must show that "any benefits achieved by its proposal are in the public interest and that a waiver would not compromise the fundamental policies served by the rule." *Midwest Communications, Inc.*, 7 FCC Rcd 159, 160 (1991).

²¹ *Waiver Order* at 4 ¶ 7.

²² *Id.* at 4 ¶ 8.

²³ *Id.* at 4-5 ¶ 9.

Such good cause remains to extend TiVo's waiver. As explained above, TiVo's set-top boxes continue to provide users with industry-leading home networking capability, fulfilling the objectives of the rule. Meanwhile, requiring TiVo to strictly comply with the rule by adding support for an open industry standard that is not yet widely supported (and that cable operators claim does not need to be supported), and that may be rendered moot by an updated interoperability solution adopted as part of the *Navigation Devices* proceeding, would be unduly burdensome.

Conclusion

TiVo's ability to provide consumers with a standards-based home networking experience will depend on the progress of the *Navigation Devices NPRM*, rather than on whether TiVo implements the present Section 76.640(b)(4)(iii). Indeed, given present industry trends and the pending NPRM, if TiVo is required to achieve such interim compliance its customers' subscribers might be the *only* cable subscribers who rely on such an interface. Extending the present waiver, under which TiVo has continued to develop home networking capabilities, for at least two years, so as to be roughly co-extensive with the timeframe of the *Navigation Devices NPRM*, will in no way impair standardization or disappoint cable subscribers. Failing to do so would require TiVo, beginning *now*, to divert its resources toward technologies that will neither improve consumer experiences nor necessarily reflect ultimate industry standards. This would make TiVo's cable industry products, and hence its retail products, less competitive.

Respectfully submitted,

TIVO INC.

/s/

Matthew Zinn
Senior Vice President, General Counsel,
Secretary & Chief Privacy Officer
2160 Gold Street
Alviso, CA 95002-2160
(408) 519-9131

Dated: July 22, 2016