

**Before The  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

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

**COMMENTS OF VERIZON<sup>1</sup>**

TiVo’s latest Petition for Waiver of 47 C.F.R. § 76.640(b)(4)(iii)<sup>2</sup> – its third<sup>3</sup> – demonstrates that not even the companies that were supposed to benefit from the Commission’s various technology mandates related to navigation devices want to abide by all of them and that consumer-facing equipment technology is fast outpacing the Commission’s regulations. Indeed, the gravamen of TiVo’s *Petition* is that these mandates need not be enforced because multiple solutions are now available for consumers to use retail commercial electronic devices with navigation devices supplied by Multichannel Video Programming Distributors (MVPDs). Given these marketplace developments since this rule was adopted, the Commission should seize this opportunity to waive all technology mandates related to navigation devices distributed by

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<sup>1</sup> The Verizon companies participating in this filing (“Verizon”) are the regulated, wholly-owned subsidiaries of Verizon Communications Inc.

<sup>2</sup> See Petition of TiVo Inc. for Waiver or Clarification of 47 C.F.R. §76.640(b)(4)(iii), CS Docket No. 97-80 (filed Aug. 29, 2014) (*Petition*).

<sup>3</sup> The Media Bureau has granted two prior TiVo requests for clarification or waiver of Section 76.640(b)(4)(iii). See *Implementation of Section 304 of the Telecommunications Act of 1996; TiVo’s Request for Clarification and Waiver of the Audiovisual Output Requirement of Section 76.640(b)(4)(iii)*, Memorandum Opinion and Order, 29 FCC Rcd 3674 (MB 2014) (2014 Order re TiVo Petition); *TiVo Inc.’s Request for Clarification and Waiver of the Audiovisual Output Requirement of Section 76.640(b)(4)(iii)*, 27 FCC Rcd 14875 (MB 2012) (2012 Order re TiVo Petition).

MVPDs, and let consumers enjoy the multiple and diverse market-based solutions that are rapidly being developed and implemented by MVPDs and the consumer electronics industry. At a minimum, if the Commission grants TiVo's proposed waiver, it should similarly grant a waiver of the IP-networking requirement for all providers, given the advances in home networking solutions independent of this requirement.

**I. THE COMMISSION SHOULD WAIVE ALL TECHNOLOGY MANDATES RELATED TO THE REMAINING NAVIGATION DEVICE RULES.**

TiVo's latest *Petition* confirms that the Commission's efforts at technology mandates for navigation devices – in all aspects – are now unnecessary.<sup>4</sup> First, the Commission's attempt to encourage consumer demand for non-MVPD-supplied navigation devices has simply failed “to create a strong retail market for navigation devices.”<sup>5</sup> Now, TiVo, developer and distributor of the most widely-known retail navigation device, has asked the Commission to set aside the IP-networking requirement that was designed to enable consumers to use commercial electronic (CE) devices with their MVPD-leased navigation devices. In theory, when this rule becomes effective, consumers could lease one set-top box from their MVPD and then network a range of consumer electronics equipment throughout their households because the navigation devices and consumer electronic devices would rely on the same “open industry standard” for the networking feature.<sup>6</sup>

Open standards encourage interoperability by allowing industries to build devices and services that work together without consultation: a service or product that is

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<sup>4</sup> Cf. *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, 25 FCC Rcd 4275, ¶¶ 4-11 (2010).

<sup>5</sup> *Id.*, ¶ 8; see also Letter from Neal M. Goldberg, National Cable & Telecommunications Association, to Marlene H. Dortch, FCC, CS Docket No. 97-80 (July 31, 2014) (counting the nine largest cable incumbents, over 48 million operator-supplied set-top boxes with CableCARDs have been deployed since July 1, 2007, versus 620,000 CableCARD-equipped, retail devices).

<sup>6</sup> *Implementation of Section 304 of the Telecommunications Act of 1934: Commercial Availability of Navigation Devices; Compatibility Between Cable Systems and Consumer Electronics Equipment*, Third Report and Order and Order on Reconsideration, 25 FCC Rcd 14657, ¶¶ 39-44 (2010) (*Third Report and Order*).

offered according to a standard will work on any device built to the standard, even if the party responsible for the service or product has never had any contact with the party that made the device.<sup>7</sup>

TiVo apparently is not opposed to the concept of consumers using third-party CE devices with its own and its MVPD-partners' navigation devices, it just wants TiVo boxes and the devices that network with them to rely on a "TiVo networking standard" rather than an open industry standard, hence its *Petition* for waiver of the rule.<sup>8</sup>

Verizon takes no position on whether TiVo's solution complies with the rule, and does not oppose TiVo's request. However, in ruling on TiVo's *Petition*, Verizon requests that the Commission recognize the futility of further attempts to dictate standards in the innovative and rapidly changing market for devices and software applications that consumers can use to access video programming from their MVPDs. This would be a relatively modest step because most of these navigation device rules are no longer in force, and the remaining ones are no longer necessary.

TiVo's *Petition* itself demonstrates that innovation is taking place even in the absence of the effectiveness of the Commission's rules, bringing benefits to consumers through various means to network CE devices with leased navigation devices. Moreover, proprietary solutions, such as TiVo's, can bring the same benefits to consumer devices as devices based on industry standards. TiVo's *Petition* also demonstrates that technology mandates impose delays in rolling out new consumer products while "open industry" solutions are developed, raise costs for retrofitting navigation devices into compliance, and force the use of solutions that have been overtaken by the rapid change in the industry and, in any event, are simply not needed to achieve

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<sup>7</sup> 2012 Order re TiVo Petition, ¶ 9.

<sup>8</sup> See *Petition*, at 5 (though generally supportive of industry standards, "TiVo could not anticipate the precise outcomes of the DLNA process or the timing and content of published specifications, and had to develop its own home networking solution in order to maintain its role in providing innovative solutions to retail consumers that allow them to share and view cable content on a variety of devices in the home").

the goals of Section 629 of the Communications Act (47 U.S.C. § 549). Those factors harm the industry and consumers.

The Commission should, therefore, use TiVo's *Petition* to announce that it will waive all remaining technology mandates imposed on navigation devices, including any remaining CableCARD-related rules and the integration ban. At most, the Commission should require that MVPDs provide consumers with some commercially-viable means to access the MVPD's video programming over consumer electronics equipment purchased from unaffiliated manufacturers (which could be a CableCARD or some other solution).

This approach makes sense because effective solutions for consumer use of commercial equipment with MVPD services are already available – with more becoming available each day. The video equipment marketplace exhibits rampant innovation that is providing consumers new choices in how, where, and from whom they will receive and watch video programming. These efforts in the marketplace are achieving the Commission's goal of “ensur[ing] that video . . . can be received and displayed by devices manufactured by unaffiliated manufacturers”<sup>9</sup> without CableCARDS or an IP-networking mandate.

For example, Verizon's FiOS TV service has multiple solutions available to access video programming on retail CE devices without the need to connect a traditional set-top box to every such device. Subscribers can access FiOS TV programming on CE devices such as Xbox game consoles and smart TVs, through the FiOS TV application.<sup>10</sup> Also, FiOS TV customers can access over 100 live channels in the home with the FiOS mobile TV application on tablets and

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<sup>9</sup> *Third Report and Order*, ¶ 39.

<sup>10</sup> *See, e.g.*, Verizon News Release, “FiOS App Now Available on Xbox One” (Dec. 17, 2013), <http://newscenter.verizon.com/corporate/news-articles/2013/12-17-xbox-one-fios-tv-app/>.

smartphones as well as over 50 live channels outside the home.<sup>11</sup> This year, Verizon introduced the Video Media Server (VMS), an in-home device that enables multiple TVs to connect and access the suite of FiOS media services.<sup>12</sup> The VMS, when implemented for home networking, will be capable of accepting requests from and simultaneously streaming high-definition (HD) FiOS content to multiple third-party devices over a subscriber's home network, thus achieving the Commission's goal of allowing consumers to access video content over a wide range of devices.

Verizon is not alone in these efforts.<sup>13</sup> The MVPD industry generally is delivering video programming directly to more products, such as game consoles, mobile tablets and personal computers, without the MVPD-supplied set-top box through "TV Everywhere" applications.<sup>14</sup> In addition, manufacturers are offering consumers "Smart TVs" that allow access to multiple MVPD services over the Internet, again without any set-top box or even a networked connection

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<sup>11</sup> See Verizon News Release, "Dive into Summer with 39 New Channels on FiOS Mobile App" (June 27, 2014), <http://www.verizon.com/about/news/dive-summer-39-new-channels-fios-mobile-app/>.

<sup>12</sup> See Verizon News Release, "TV Redefined: Verizon Brings FiOS Quantum TV Service to Maryland, Virginia and DC" (May 20, 2014), <http://www.verizon.com/about/news/tv-redefined-verizon-brings-fios-quantum-tv-service-maryland-virginia-and-dc/>.

<sup>13</sup> See, e.g., Letter from Michael Powell, National Cable & Telecommunications Association, to The Honorable Tom Wheeler, FCC, attached to Letter from Neal Goldberg, NCTA, to Marlene H. Dortch, FCC, MB Docket Nos. 10-91 & 07-269, CS Docket No. 97-80 & PP Docket No. 00-67 (Feb. 5, 2014) (describing cable industry developments).

<sup>14</sup> See, e.g., "Altman Vilandrie & Company Survey: Tablets Are Not Dead, Smartphone Viewers Are TV's New 'Holy Grail'," Bloomberg Business Wire (Sept. 25, 2014), <http://www.bloomberg.com/article/2014-09-25/aPjD.Zk.K9FU.html> (reporting the percentage of all consumers watching TV or movies on tablets weekly jumped from 17% to 26% last year, and that 40% of consumers under 35 watch TV or movies on smartphones weekly); A. Maxwell, "Slowly But Surely, TV Everywhere Is Becoming a Reality," HomeTheaterReview.com (Aug. 13, 2012), <http://hometheaterreview.com/slowly-but-surely-tv-everywhere-is-becoming-a-reality/> (describing the offerings by major content providers and MVPDs); see also *Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, Fifteenth Report, 28 FCC Rcd 10496, ¶¶ 91, 102 (2013).

to a set-top box.<sup>15</sup> And, there are multiple ways for consumers to view on-line streaming video on their own televisions.<sup>16</sup>

Other participants in the MVPD industry, such as the Digital Living Network Alliance (DLNA) and Multimedia Over Coax Alliance (MoCA), have developed home networking solutions that allow multiple devices in the home to meet consumer demand for access to media content and services across devices.<sup>17</sup> In this regard, DLNA took an important step forward this year as it completed the CVP-2 home-networking standard, and commenced certification of devices to the standard in September 2014.<sup>18</sup>

The end result of these efforts is that consumers are increasingly using viewing platforms that do not require an MVPD-supplied set-top box, or that require only one such set-top box as a base to network CE devices. Enforcing technology mandates or other government regulation in this collaborative, dynamic, and rapidly evolving marketplace is clearly unnecessary and would only slow the brisk pace of innovation.

Accordingly, in this rapidly changing market, maintaining technology mandates yields no benefits to consumers and only distracts from other consumer-driven efforts underway that are increasing the device choices available to consumers. Rather than attempting to straitjacket the marketplace into one technology solution, the Commission should waive compliance with any

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<sup>15</sup> See, e.g., “LG Electronics and Verizon Collaborate to Offer FiOS TV App on LG’s Smart TV Platform” (Jan. 11, 2012), <http://www.prnewswire.com/news-releases/lg-electronics-and-verizon-collaborate-to-offer-fios-tv-app-on-lgs-smart-tv-platform-137086198.html>.

<sup>16</sup> See, e.g., Walter S. Mossberg, “So Many Ways to Deliver Online Video to Your TV,” Wall Street Journal (Aug. 14, 2013), <http://online.wsj.com/news/articles/SB10001424127887323585604579010722909527660> (last visited Oct. 6, 2014).

<sup>17</sup> See DLNA, Discover the Possibilities, <http://www.dlna.org/consumer-home/The-Possibilities>; Multimedia over Coax Alliance, Press Release, *MoCA 2.0 Certification Program Now Available* (Jan. 6, 2014) [http://www.mocalliance.org/news/pr\\_140106\\_PDI\\_MoCA\\_2.0\\_Certification\\_Program\\_Now\\_Available.php](http://www.mocalliance.org/news/pr_140106_PDI_MoCA_2.0_Certification_Program_Now_Available.php) (for the “next generation of connected home technology products”); cf. *Petition*, at 8 (“TiVo’s solution is accessible today and complies with the objective of the rule to enable home networking interoperability”).

<sup>18</sup> See Letter from Donna Moore, DLNA, to Marlene H. Dortch, FCC, CS Docket No. 97-80 (May 30, 2014) (attaching press release announcing release of DLNA’s CVP-2 Guidelines with certification to begin in September 2014); cf. *Third Report and Order*, ¶ 43 (adopting IP-interface requirement for all cable operator-supplied set-top boxes).

remaining navigation device technology mandates and encourage marketplace developments that are already well underway to achieve the goals of Section 629 of the Communications Act in ways that CableCARDs and the rules ancillary to the CableCARD regime have never come close to achieving.

**II. THE COMMISSION SHOULD FIND THAT SECTION 76.640(b)(4)(iii) IS NO LONGER VALID GIVEN VACATUR OF CABLECARD RULES; BUT, IF IT DECLINES TO DO SO, IT SHOULD GRANT AN INDUSTRY-WIDE WAIVER OF THE RULE.**

In *Echostar v. FCC*, the U.S. Court of Appeals for the District of Columbia Circuit vacated the Commission's rules in Section 76.640,<sup>19</sup> as adopted in the *Second Report and Order* and *Order on Reconsideration* in CS Docket 97-80.<sup>20</sup> While the IP-based home-networking rule in Section 76.640(b)(4)(iii) was adopted in the *Third Report and Order*, that rule was premised on the existence of the rest of Section 76.640, which became a nullity as a result of the *Echostar* decision. Indeed, current Section 76.640(b)(4)(iii) cannot be fully understood unless one reads back into the rule other parts that were vacated. Since Section 76.640 is no longer effective, and Section 76.640(b)(4)(iii) cannot be enforced as a stand-alone rule, the Commission should find that current Section 76.640(b)(4)(iii) has also been nullified by the D.C. Circuit decision, and thereby moot TiVo's waiver request.<sup>21</sup>

If the Commission declines to find the rule vacated, and grants TiVo's Petition, it should apply the waiver with respect to the "open industry standard" in Section 76.640(b)(4)(iii) – or TiVo's request for another nine-month extension of the rule – to all industry participants, as it has in its two prior orders on TiVo's petitions for waiver.<sup>22</sup> The rule reflects an outdated view of

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<sup>19</sup> *Echostar Satellite v. FCC*, 704 F.3d 992 (D.C. Cir. 2013).

<sup>20</sup> *See Implementation of Section 304 of the Telecommunications Act of 1996*, Second Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 20885, *on recon.*, 18 FCC Rcd 27059 (2003).

<sup>21</sup> *See Petition*, at 14.

<sup>22</sup> *See 2014 Order re TiVo Petition*, ¶ 4; *2012 Order re TiVo Petition*, ¶ 15.

the navigation device industry that has undergone rapid and extensive change in the intervening five years. As Verizon explained above,<sup>23</sup> while the IP-based networking feature may not yet be prevalent, other effective solutions for consumer use of commercial equipment with MVPD services are already available, and, indeed, TiVo itself has made one available on its boxes. As additional IP-based networking solutions are deployed, the lack of an industry standard solution will not deprive consumers of the opportunity to use their own equipment with MVPD services of their choice. Rather, consumers will benefit from innovations offering more flexibility in navigation devices and devices that connect to them, and more opportunities than just TiVo.

### **III. CONCLUSION.**

For the reasons set forth above, the Commission should find that Section 76.640(b)(4)(iii) is no longer in effect, cease enforcing technology mandates related to navigation devices, including any remaining CableCARD rules and the integration ban, and allow the video distribution market to continue to develop without technology mandates to satisfy the Commission's goal to allow consumers to access MVPD services on equipment from unaffiliated manufacturers. The Commission can fulfill the goals of Section 629 and allow consumers to enjoy innovative solutions to use consumer electronic devices with a variety of MVPD services by simply requiring MVPDs to provide a commercially-viable solution to access their video distribution services over unaffiliated manufacturers' CE equipment. On the other hand, if the Commission finds that Section 76.640(b)(4)(iii) remains in effect, the Commission should grant an industry-wide waiver of the requirement to implement Section 76.640(b)(4)(iii) with an "open industry standard," or a nine-month extension of the current compliance date.

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<sup>23</sup> See, e.g., Comments of Verizon on TiVo Petition for Rulemaking, CS Docket No. 97-80, PP Docket No. 00-67, at 3-5 (Sept. 16, 2013); Comments of the National Cable & Telecommunications Association on TiVo, Inc.'s Petition for Rulemaking, CS Docket No. 97-80, PP Docket No. 00-67, at 5-11 (Sept. 16, 2013).

Respectfully submitted,

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