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

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

REPLY COMMENTS OF TIVO INC.

TiVo Inc. ("TiVo") urges the Commission to grant its above-captioned Petition seeking waiver of or clarification regarding the requirement, as set forth in 47 C.F.R. § 76.640(b)(4)(iii), that TiVo products supplied wholesale to cable operators include an interactive and recordable home networking interface based on an open industry standard. TiVo's Petition is unopposed, underscoring the lack of harm that would arise from grant of the waiver.

As TiVo explained in its Petition,[1] as a DVR pioneer that has always sought to compete in the retail marketplace by providing set-top boxes with superior features, TiVo has had to innovate in advance of the finalization of the standards-setting process in order to provide its users with advanced functionality.[2] While TiVo's existing home networking

[1] Petition of TiVo Inc. for Waiver or Clarification of 47 C.F.R. § 76.640(b)(4)(iii), MB Docket No. 14-146, CS Docket No. 97-80 (filed Aug. 29, 2014) ("TiVo Petition").
[2] *Id.* at 3-5.

technology does not have all the elements of an open industry standard as the Commission has defined that term,[3] it anticipates and in many respects surpasses the requirements of Section 76.640(b)(4)(iii), and consumers who lease TiVo products from their cable operators already enjoy the benefits of home networking that the rule seeks to enable.[4] Under these circumstances, strict compliance with the rule would serve no public interest benefit and would be extremely burdensome for TiVo after it has invested in developing a home networking solution that satisfies the purpose of Section 76.640(b)(4)(iii). It would also harm the small and mid-sized cable operators who lack the economies of scale to fund the development of high end set-top boxes and rely on TiVo products and services, developed originally for the retail marketplace, to enable them to provide a superior DVR solution to their subscribers.[5]

Only one party, Verizon, filed comments in response to TiVo's Petition.[6] Verizon does not oppose TiVo's Petition, and does not question any of the facts and circumstances cited in the Petition unique to TiVo that justify grant of a waiver. Instead, Verizon makes two main arguments. First, Verizon argues that TiVo's Petition demonstrates that *all* "technology mandates" relating to navigation devices are unnecessary, and therefore "the Commission should seize this opportunity to waive all technology mandates related to

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[3] *Id.* at 5-7; *TiVo Inc.'s Request for Clarification and Waiver of the Audiovisual Output Requirement of Section 76.640(b)(4)(iii); Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices; Compatibility Between Cable Systems and Consumer Electronics Equipment*, MB Docket No. 12-230, CS Docket No. 97-80, PP Docket No. 00-67, Memorandum Opinion and Order, DA 12-1910, ¶¶ 11-12 (rel. Nov. 28, 2012).
[4] TiVo Petition at 7-10.
[5] *Id.* at 10-13.
[6] Comments of Verizon, MB Docket No. 14-146, CS Docket No. 97-80 (filed Oct. 6, 2014) ("Verizon Comments").

navigation devices distributed by MVPDs …."[7] Second, Verizon argues that the Commission should find that Section 76.640(b)(4)(iii) is no longer valid, or, failing that, should grant an industry-wide waiver of the rule.[8] These arguments are addressed in turn below.

"Technology Mandates"

Verizon's request that the Commission "seize this opportunity to waive all technology mandates related to navigation devices distributed by MVPDs" is overly broad and far beyond the scope of this limited proceeding involving TiVo's Petition for waiver or clarification of the rules. Verizon's request is also not supported by facts, and granting it would be contrary to the public interest.

First, Verizon's argument appears premised on the idea that because TiVo's Petition describes an instance in which a waiver from a particular "technology mandate" is justified based on particular facts and circumstances, all technology mandates with respect to navigation devices should be eliminated. Verizon focuses on the CableCARD rules and the integration ban,[9] both of which are central to fulfilling Congress's intent when it enacted Section 629 of ensuring the competitive availability of navigation devices from manufacturers, retailers, and other vendors not affiliated with any MVPD. TiVo has addressed in detail the policy arguments in favor of the Commission's rules and policies

[7] Verizon Comments at 1-2; *see also id.* at 2-7.
[8] *Id.* at 7-8.
[9] *Id.* at 4.

codifying Section 629.[10] This waiver proceeding is not the forum for re-litigating this point. Public notice and comment would be necessary for the Commission to even consider the action suggested by Verizon. Such action would also be contrary to the Commission's obligations under Section 629, which has a specific sunset provision.[11]

Verizon also argues that the effective elimination of the CableCARD rules and the integration ban is justified because it and other MVPDs are making it possible to view MVPD programming on a variety of CE devices via "TV Everywhere" applications.[12] However, as TiVo has discussed in detail in the past,[13] the fact that some MVPDs make some cable content available on certain retail devices is not the sort of competition envisioned by Section 629. These apps, in effect, allow subscribers to view MVPD content on different screens rather than only on television screens. Remote access of lawfully-received signals is a benefit to consumers, but does not fulfill the core obligation to them as required by Section 629. The law requires that independent manufacturers and vendors be able to offer consumers more innovative, interesting, and user-friendly ways to view all of the content for which they pay — as TiVo has done for over a decade. After all, Section 629 requires the competitive availability of *navigation* devices, not the competitive availability of *viewing* devices.

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[10] *See, e.g.*, Comments of TiVo Inc., MB Docket No. 14-16, at 8-14 (filed Mar. 21, 2014) ("TiVo Video Competition Report Comments"); Petition for Rulemaking, CS Docket No. 97-80, PP Docket No. 00-67, at 21-23 (filed July 16, 2013); Reply Comments of TiVo Inc., CS Docket No. 97-80, PP Docket No. 00-67, at 5-14 (Oct. 25, 2013) ("TiVo CableCARD Petition Replies").
[11] 47 U.S.C. §549(e).
[12] Verizon Comments at 4-6.
[13] *See, e.g.*, TiVo Video Competition Report Comments at 10-14; TiVo CableCARD Petition Replies at 7-10.

The waiver sought by TiVo addresses the home networking interface and does not undermine the Commission's objectives in supporting other competitive products through that interface. Verizon has not pointed to a single circumstance in which it would do so.

Industry-Wide Waiver

Verizon also asks the Commission to find that Section 76.640(b)(4)(iii) is no longer valid or, failing that, to grant an industry-wide waiver of the rule. As TiVo's said in its Petition, a finding that the rule was negated as a result of the decision in *EchoStar v. FCC*[14] would make action on this Petition unnecessary. The Commission, however, has made no such finding and Verizon has not presented any additional arguments or facts in support of such a finding.

With regard to an industry-wide waiver, TiVo does not believe that the record supports such an outcome. In past requests for waiver of or extension of the compliance date for Section 76.640(b)(4)(iii), TiVo had noted that the DLNA standard-setting process was still ongoing, thereby justifying grant of an industry-wide extension of the compliance date. Here, TiVo filed a petition for waiver of Section 76.640(b)(4)(iii) on behalf of its wholesale cable operator customers based on specific facts and circumstances, such as:

- TiVo's boxes already provide a home networking solution that allows the home networking functionality envisioned by the rule;[15]
- The high cost to TiVo given its relatively limited resources of developing an alternate solution with lesser functionality than its existing solution;[16]

[14] 704 F.3d 992 (D.C. Cir. 2013).
[15] TiVo Petition at 7-10.
[16] *Id.* at 11-12.

- The harm to small and mid-sized cable operators with limited economies of scale who rely on TiVo's boxes to provide their customers with competitive products and services;[17]

- The lack of competitive harm given TiVo's domestic base of less than two percent of all cable subscribers;[18] and

- The fact that the primary purpose of Section 76.640(b)(4)(iii), which is to enable cutting-edge home networking solutions "while ensuring that cable operators do not rely on proprietary specifications that reject input from interested industries," is not at risk because TiVo is using a home networking specification that was developed for the retail market and not to serve its cable operator customer's proprietary interests.[19]

TiVo believes that these unique facts do not support an industry-wide waiver, and neither Verizon nor any other party has demonstrated good cause or "particular facts [that] would make strict compliance inconsistent with the public interest"[20] that would justify such a broad waiver grant. Of course, if particular operators or manufacturers were to demonstrate that their set-top boxes provide subscribers with home networking solutions that satisfy the goal of the rule and that do not cause competitive concerns by using operator-backed proprietary specifications, waiver of the rule may be justified.

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In conclusion, TiVo urges the Commission to grant its unopposed Petition for Waiver, and to ignore calls to adopt sweeping changes to its Section 629 rules in this narrow proceeding.

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[17] *Id.*
[18] *Id.* at 12.
[19] *Id.* at 11.
[20] *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)).

Respectfully submitted,

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