

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

In the Matter of)
)
Media Bureau Seeks Comment on) MB Docket No. 15-64
DSTAC Report)

REPLY COMMENTS OF TIVO INC.

TiVo Inc. (“TiVo”) hereby files these reply comments to respond to some of the arguments made by commenting parties whose goal is to restrict competition in the market for navigation devices in ways that would give consumers fewer choices than they have today. TiVo has been a longtime advocate for a replacement of the CableCARD standard with solutions that better reflect today’s marketplace and technology. It is essential, however, that the Commission ensure that such solutions reflect the goals of Section 629 to ensure meaningful consumer choice and product differentiation in navigation devices.

I. TIVO’S PRODUCTS AND HISTORY DEMONSTRATE THAT TRUE RETAIL DEVICE COMPETITION – WITH PRODUCT DIFFERENTIATION – CAN SUCCEED AND WILL PROVIDE CONSUMERS WITH GREATER CHOICE AND THE BENEFITS OF INNOVATION

In their comments, MVPDs and their vendors argue that proposals that allow consumers to use truly competitive navigation devices – *i.e.*, devices that can compete with the MVPD-supplied leased set-top box and that can differentiate themselves by offering competitive UIs, improved search functionality, and other features – will lead to a parade of horrors ranging from evasion of FCC rules to “disaggregation” of the

MVPDs' service to theft of service.¹

However, over the years, TiVo's products have demonstrated conclusively that retail navigation devices *can* compete with leased set-top boxes while providing consumers with greater choices in features, including competitive UIs – all without any of the alleged harms that NCTA and others claim will occur. Indeed, for over a decade, TiVo has developed and sold retail navigation devices that were the first to include features ranging from the recording functionality of the DVR that is ubiquitous today to secure streaming of recorded content to other consumer electronics devices such as tablets and smartphones. TiVo's products have also featured a competitive UI that has been one of the devices' most popular and highly-rated features, allowing consumers to search for and surface content in a more efficient and user-friendly manner.

Yet, despite TiVo offering a UI different from that of the MVPD, there has been no reordering or repackaging of channels, no substitution of network advertising, no "disaggregation" of services, no theft of service, no hosting of pirated content, no confusion as to the source of the programming or device – indeed, none of the worst-case scenarios described by NCTA and others have come to pass. TiVo's history and presence in the marketplace demonstrates that retail navigation devices that provide consumers with the option to replace the cable set-top box are possible, and that consumers can have greater choice than merely selecting "apps" that do not give

¹ NCTA Comments at 26-37; AT&T Comments at 15-22; Comcast Comments at 16-20.

consumers the ability to search for content across sources or record live or other programming for later viewing.

Many technology and consumer electronics reviewers have lauded TiVo's latest product, the TiVo Bolt, as an example of the benefits of retail navigation devices that compete with the cable set-top box and that feature a competitive UI with improved search functionality.² For example, a recent USA Today review of the TiVo Bolt highlights many of these features, including the improved UI and enhanced search capabilities.³ The author described the TiVo Bolt as an "all-in-one unit geared toward the TV lover in a big way", explaining:

After spending several weeks watching, recording and finding programming via Bolt, I never want to go back to renting my Verizon FIOS set-top box again. And unlike the new (and less expensive) Apple TV, or other streaming boxes from Roku and Amazon, the Bolt offers a major consumer plus. You don't have to change the TV input settings to bring on the streaming. Everything is tied together.

TiVo imagines a world in which broadcast, cable TV and streaming media apps like Netflix and Amazon Prime all live in one universe, and if you were to search for a TV series like *Big Bang Theory* on the Bolt, you'll find entries for CBS, local syndication or streaming on Amazon Prime.

TiVo's program guide is more viewer-friendly than what I get on my cable box, it's easier to read and more colorful, and finding my taped shows takes fewer clicks than with cable.⁴

Indeed, the USA Today review demonstrates that allowing consumers to have a

² See TiVo Comments at 2-4.

³ Jefferson Graham, *Review: TiVo Bolt stream, DVR + cord shaver*, USA Today (Nov. 4, 2015), at <http://www.usatoday.com/story/tech/2015/11/04/review---tivo-bolt-stream-dvr-cord-shaver/75109560/>.

⁴ *Id.*

choice of third party user interfaces in which to view their pay-TV content is in fact **beneficial** to MVPDs and programmers because it gives consumers more options and reasons to continue to subscribe to pay-TV bundles, thereby largely preserving the current economics of the MVPD industry. With a third party device like the TiVo Bolt “running the show, TV is more enjoyable.”⁵ When consumers lack choice and options, they seek other alternatives, leading to cord cutting.⁶

In summary, TiVo’s products demonstrate that retail navigation device competition can provide consumers with greater choice via product and user interface differentiation, giving them more reasons to stay with their MVPD subscriptions – all without the parade of horrors described by NCTA and others in their comments.

II. THE APP-BASED APPROACH WILL NOT PROVIDE CONSUMERS WITH THE CHOICES, INNOVATION, AND OTHER BENEFITS ENVISIONED BY SECTION 629

TiVo has previously explained the problems with an app-based approach, and why this approach will not lead to the sort of consumer choice envisioned by Section 629.⁷ Apps would simply extend MVPD control of how users can consume pay

⁵ *Id.*

⁶ As the Consumer Video Choice Coalition noted in its comments, a recent survey of cord cutters and cord shavers indicated that a majority would be less likely to reduce their spending on pay-TV if they were offered a single device to search, discover, and watch all of their content, including OTT content. Consumer Video Choice Coalition Comments at 7-8 n.12, citing *The Digital Consumer: Global Views on the Pay TV Experience, Cable Analytics and Cable Wi-Fi* at 7, available at (citing a survey by Linx-IE Market Research Corp.).

⁷ TiVo Comments at 5-8; Reply Comments of TiVo Inc., MB Docket No. 15-158, at 2-3 (filed Sep. 21, 2015); Reply Comments of TiVo Inc., MB Docket No. 14-16, at 2-4 (filed Apr. 21, 2014); Comments of TiVo Inc., MB Docket No. 14-16, at 10-14 (filed Mar. 21,

television, and would not offer consumers choices including innovative user interfaces and ways of searching for content. Under the app approach, consumers would still have to lease a set-top box from the MVPD, and would continue to pay approximately \$230 per year in equipment rental fees to MVPDs.

Indeed, comments from NCTA and others admit that the purported benefits of the app approach are that apps extend MVPD control over every aspect of the customer relationship and how video programming is viewed by consumers.⁸ They argue that the ability of apps to extend the MVPD's user interface and "look and feel" on to multiple screens is a desirable feature, even though it would not allow the consumer-friendly universal search functions and other innovative and improved search and user interface functionality. The MVPDs also do not explain why the presence of apps today – NCTA estimates that 56 million MVPD apps are being used today – has done nothing to help consumers save on the almost \$20 billion they spend today leasing set-top boxes from MVPDs.

NCTA argues that apps preserve retail device differentiation,⁹ but this argument is specious. Section 629 envisions product differentiation among *navigation devices*, and differences in top level menus or operating systems on consumer electronics equipment used to view programming is not the type of differentiation that gives consumers

2014); Reply Comments of TiVo Inc., CS Docket No. 97-80, PP Docket No. 00-67, at 7-10 (Oct. 25, 2013).

⁸ NCTA Comments at 16-19; AT&T Comments at 8, 12-15.

⁹ NCTA Comments at 19.

meaningful choices. True product differentiation is similar to that described above — products with improved user interfaces and search and recording functionality that offer consumers meaningful choices in how they enjoy the pay TV content they have paid for.

In its comments, Public Knowledge makes clear that Congress and the Commission have always seen Section 629 as preventing MVPDs from limiting the navigation devices used to access pay TV programming and allowing for maximum innovation in features and functionality from manufacturers of navigation devices.¹⁰ The app approach pushed by MVPDs and their vendors would not accomplish these goals, and the Commission should pursue replacement solutions to CableCARD that do.

No parties have argued that MVPDs should not be able to continue to offer set-top boxes or apps with their own user interface and product features. The debate is whether consumers should have the option to choose among MVPD user interfaces and independent user interfaces. The MVPD industry is consolidating at a rapid pace leaving consumers with fewer MVPD choices.¹¹ One of the primary drivers of this consolidation is to reduce programming costs.¹² Consequently, no new entrant will be

¹⁰ Public Knowledge Comments at 5-10.

¹¹ See e.g., Mike Dano, AT&T to Stop Investing In U-Verse CPE, Will Move to New In-Home Architecture Using Directv System, Aug. 12, 2015, at <http://www.fiercecable.com/story/att-stop-investing-u-verse-cpe-will-move-new-home-architecture-using-direct/2015-08-12>.

¹² “One of AT&T’s primary motivations for buying DirecTV was to get better deals on programming costs...” Joan Engebretson, *DirecTV Impact: AT&T Saves \$17 Per Customer*

able to offer consumers a pay television package at rates competitive with the incumbent MVPDs. Rather, their only choice is the MVPD pay packages or settle for less programming by using OTT services to “work around” the problem. Against this backdrop of *reduced* MVPD choice, the Commission should *increase* the ability of consumers to watch their pay television package via the user interface of their choosing.

Conclusion

The DSTAC was not intended to be an academic exercise. The work of the DSTAC highlighted that the fundamental issue dividing the advisory committee was one of policy, not technical feasibility. Providing consumers with the ability to access pay television signals through an independent user interface can be accomplished through existing standards and guidelines in ways that are not unduly burdensome to operators. With the integration ban sunseting next month, now is the time for the Commission to commence a notice of proposed rulemaking to establish successor solutions to ensure that there is a market for competitive navigation devices as required by Section 629 of the Communications Act.

Monthly on U-verse Content Costs, Sep. 16, 2015, at <http://www.telecompetitor.com/directv-impact-att-saves-17-per-customer-monthly-on-u-verse-content-costs/>.

Respectfully submitted,

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