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Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Ex Parte*, CS Docket No. 97-80, MB Docket No. 15-64

Dear Ms. Dortch:

This is to inform you that on December 15, 2015, Matthew Zinn, Senior Vice President, General Counsel, Secretary & Chief Privacy Officer of TiVo Inc. ("TiVo") and the undersigned (collectively, the "TiVo representatives") met with: (1) Johanna Thomas, Legal Advisor, and Jennifer Thompson, Special Advisor to Commissioner Rosenworcel; (2) Erin McGrath, Legal Advisor to Commissioner O'Rielly; (3) Matthew Berry, Chief of Staff to Commissioner Pai; (4) Jessica Almond, Legal Advisor to Chairman Wheeler; and (5) Chanelle Hardy, Chief of Staff to Commissioner Clyburn.

TiVo stressed the continued importance of competition in the market for retail navigation devices as required by Section 629. As more MVPDs seek to consolidate, consumers have fewer choices to access linear video. Indeed, one of the primary stated goals of consolidation is that larger operators can negotiate reduced program acquisition costs, making it increasingly difficult if not impossible for new entrants to compete with existing operators in terms of offering more comprehensive video packages to consumers. In parallel, as has been reported recently, MVPDs are using their control of broadband networks to reshape the market by, for example, implementing usage-based caps that make OTT services such as Netflix and Amazon less attractive, while exempting their own or affiliated "OTT-like" On Demand and

streaming services from such data caps.¹ In this environment, giving consumers a competitive choice of user interface to access their pay TV programming along with competitive OTT options, all using a single search, clearly is more important than ever.

TiVo explained that giving consumers a choice of competitive, independent user interfaces that integrate linear TV channels with OTT content also will broaden the opportunity for independent and minority programmers by providing additional ways for them to find an audience without having to go through an MVPD gatekeeper. Consumers interested in diverse content will be able to use the advanced search and recommendation features in competitive UIs to surface and access content from a variety of sources – a superior method in a market in which minority-focused programming is found not only on the small number of cable channels like BET, TV One, and Univision but also OTT providers,² including independent, minority-owned OTT networks.

TiVo also explained that the various issues raised by NCTA and other opponents of competition in the retail navigation devices market have been non-issues for the last decade or so of TiVo providing retail navigation devices to consumers.³ Retail navigation devices manufacturers are already subject to a variety of federal and state laws that address concerns related to advertising, privacy, and accessibility. Regardless, TiVo stressed that any remaining concerns can be addressed as part of a rulemaking proceeding, and are not reasons for the Commission to delay in releasing a *Notice of Proposed Rulemaking* to follow on the efforts of the Downloadable Security Technical Advisory Committee (“DSTAC”) to assure a competitive retail navigation devices market as envisioned by Section 629.

Finally, TiVo emphasized that despite some recent revisionist history being put forth by opponents of competition, Section 629 has always been about extending the principle of *Cartferfone* to the video navigation devices market and giving consumers a choice among retail products for the consumer interface. To this end, TiVo showed the FCC staff a two decade-old picture (attached) of Section 629 co-sponsors Chairman Tom

¹ See *Ex Parte* Letter filed by TiVo Inc., MB Docket No. 15-64, at 5 n.17 (Dec. 7, 2015) (TiVo Dec. 7 *Ex Parte*).

² See, e.g., Ariana Bacle, *Spike Lee's Chirag Is Heading to Amazon in December*, July 15, 2015, at <http://www.ew.com/article/2015/07/15/spike-lee-chirag-amazon>; Hispanic Market Works, *Netflix Continues Expansion on Latino Programming*, Sep. 13, 2015, at <http://hispanicmarketworks.org/newsletter/netflix-continues-expansion-on-latino-programming/>; Jethro Nededog, *3 Reasons Aziz Ansari Took His Critically Acclaimed New Show, 'Master of None,' To Netflix*, Nov. 13, 2015, at <http://www.businessinsider.com/why-aziz-ansari-took-master-of-none-to-netflix-2015-11>.

³ TiVo Dec. 7 *Ex Parte* at 1-2; Reply Comments of TiVo Inc., MB Docket No. 15-64, at 2-4 (Nov. 9, 2015).

Bliley (R-VA) and Ed Markey (D-MA) with a poster titled "Don't Box Us In" showing set-top boxes being used with TV sets, and analogizing the set-top box market to *Carterfone* in the telephone network by pointing to a black rotary phone. As Chairman Bliley stated at the time:

"I cannot accept the notion that to accommodate [concerns relating to theft of service and harm to the network] it is necessary to convey a monopoly on any consumer electronics devices, any more than previous Congresses and Commissions should have accepted the notion that our telephone system would fall apart if consumers would hook up their own devices.... Consumers deserve to be able to evaluate and select competing products at retail, side-by-side. Their freedom to do so is a core strength of our economy.... I believe we will have telecommunications reform this year, and I will work to achieve this goal. But we cannot fail to address the most important interface, the consumer interface. I, therefore, ask my colleagues to join me in supporting the Competitive Consumer Electronics Availability Act of 1995."⁴

Please direct any questions regarding this matter to the undersigned.

Respectfully submitted,



Henry Goldberg
Devendra T. Kumar
Attorneys for TiVo Inc.

cc: Johanna Thomas
Jennifer Thompson
Erin McGrath
Robin Colwell
Matthew Berry
Jessica Almond
Chanelle Hardy

⁴ The Competitive Consumer Electronics Availability Act of 1995, Statement of Hon. Thomas J. Bliley, Jr of Virginia, Mar. 21, 1995, 141 Cong. Rec. E635-01, 1995 WL 118602 (1995). Note that The Competitive Consumer Electronics Availability Act of 1995 went on to be codified (with slight modifications not relevant to this discussion) as Section 629 in the Telecommunications Act of 1996.

