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

Re: *Ex Parte*, MB Docket Nos. 15-149

Dear Ms. Dortch:

This is to inform you that on January 19, 2016, Matthew Zinn, Senior Vice President, General Counsel, Secretary & Chief Privacy Officer of TiVo Inc. ("TiVo") and the undersigned (collectively, the "TiVo Representatives") met with the following Commission staff in connection with the above-captioned proceeding: (1) Owen Kendler, Joel Rabinovitz, Jim Bird, Elizabeth Cuttner, and Kiley Naas of the Office of General Counsel, Betsy McIntyre of the Wireline Competition Bureau, and Brendan Murray, Susan Singer, Jessica Campbell, Brendan Holland, Chris Clark, and Hillary DeNigro of the Media Bureau; and (2) Ambassador Philip Verveer, Senior Counselor to Chairman Wheeler.

The TiVo Representatives expressed concerns regarding the continued supply of CableCARDS by the merged Charter-Time Warner Cable-Bright House company in light of language contained in the Commission's 2013 waiver of the integration ban granted to Charter.¹ The 2013 waiver permits Charter to stop provisioning new CableCARDS to consumers once a third-party device compatible with Charter's

¹ *Charter Communications, Inc. Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, MB Docket No. 12-328, Memorandum Opinion and Order, DA 13-788 (rel. Apr. 18, 2013) ("Charter Waiver Order").

downloadable security is available for purchase at retail — even if no consumers actually purchase or are even aware of the availability of such device,² and even though such downloadable security does nothing to assure a retail market for navigation devices due to limitations inherent in the solution or imposed by Charter. The TiVo Representatives explained that while the waiver was granted to Charter in part because its footprint was “widely dispersed and ... the least densely concentrated among the six largest operators,”³ the merged company’s systems would serve more than four times the number of subscribers as Charter in 2013 including subscribers in some of the largest and most densely populated metropolitan areas like New York City and Los Angeles. Thus, the proposed merger raises serious concerns about the ability for consumers to have a choice of competitive retail set-top boxes in areas served by the merged company.

The TiVo Representatives urged the FCC to ensure that the more than 17 million subscribers of the merged company benefit from retail navigation device competition pursuant to Section 629. The TiVo Representatives explained that this could be accomplished by requirements for the merged company to (1) continue to supply CableCARDS to new subscribers until no new or existing subscriber has asked New Charter for a CableCARD for a new retail device for 24 consecutive months;⁴ (2) continue to abide by all of the terms and conditions of the 2013 waiver granted to Charter, including the requirements to support CableCARDS indefinitely, continued support of CableCARD self-installation, M-Card, switched digital video solutions, uniform CableCARD fees, bring-our-own-box discount, and \$2 pricing, cooperate in a timely manner with third-party device manufacturers seeking to use any future downloadable security system being employed by Charter, and to license on an open, royalty-free basis any hardware software, specifications and codes necessary to implement such downloadable security;⁵ and (3) ensure that retail navigation devices are able to access all of the linear channels that comprise the cable package they purchase at an equivalent service price.⁶

Please direct any questions regarding this matter to the undersigned.

² *Id.* at 8 n.65.

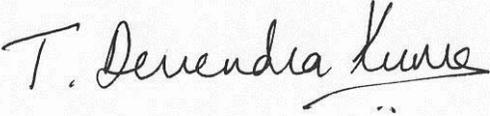
³ *Id.* at 7 (citations omitted).

⁴ Note that TiVo has previously explained why operators’ obligation to provide CableCARDS remains in place following the D.C. Circuit’s 2013 decision in *EchoStar Satellite L.L.C. v. FCC*, 704 F.3d 992 (D.C. Cir. 2013). See TiVo Inc. Reply to Opposition, MB Docket No. 12-328, CS Docket No. 97-80, at 2-7 (filed June 10, 2013).

⁵ Charter Waiver Order at 7-9 ¶ 10.

⁶ See *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, at 10 ¶ 14 (rel. Oct. 14, 2010).

Respectfully submitted,

A handwritten signature in black ink that reads "T. Devendra Kumar". The signature is written in a cursive style with a prominent underline under the name "Kumar".

Henry Goldberg
Devendra T. Kumar
Attorneys for TiVo Inc.

cc: Owen Kandler
Joel Rabinovitz
Jim Bird
Elizabeth Cuttner
Kiley Naas
Betsy McIntyre
Brendan Murray
Susan Singer
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Brendan Holland
Chris Clark
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Ambassador Philip Verveer