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October 21, 2004

Electronic Submission

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: CS Docket No. 97-80; PP Docket No. 00-67
Ex Parte

Dear Ms. Dortch:

This is to inform you that, on Wednesday, October 20, 2004, in connection with the above-referenced docket, the undersigned and Matthew Zinn, Andy Goodman and James Denney of TiVo, Inc. met with Ken Ferree, Chief of the Media Bureau, and with Steve Broeckaert and Natalie Roisman of the Media Bureau. The purpose of the meeting was to discuss the topics addressed in the attached materials, in particular, the importance of maintaining the July 1, 2006 deadline concerning the prohibition of MVPD-provided integrated devices. This position is set out fully in TiVo's Reply Comments in MB Docket No. 04-227, which should be made part of the record of this proceeding.

Please direct any questions regarding this matter to the undersigned.

Respectfully submitted,

Henry Goldberg

Henry Goldberg
Attorney for TiVo, Inc.

cc: Ken Ferree
Steve Broeckaert
Natalie Roisman

Attachments

TiVo faces competition from cable companies with DVRs that are more powerful

Jim Finkle

The Orange County Register

10.18.04

Alan Lavallee doesn't get bent out of shape if you call him while he's watching TV. Even if it's a captivating show like ABC's new reality series "Wife Swap."

When the phone rings, he simply pushes "pause" on a remote control. The picture freezes, then he answers the phone. When the conversation ends, he touches the "play" button on his remote control and the program picks up where he left it.

That remote control works with a box known as a digital video recorder, or DVR. DVRs are more commonly known by the name of the company that's sold 2 million in five years -- TiVo Inc.

The devices record shows onto computer drives as they're broadcast, allowing viewers to pause, rewind, and do slow-motion replays of live television shows. They also automatically hook up to electronic services and download programming lists that make it a cinch to record programs.

It takes a typical user less than a minute to tell a DVR to record an entire season of "The O.C." or "Everybody Loves Raymond." The software is sophisticated enough to follow a show around, even if it switches channels or time slots. It knows enough not to won't waste precious memory by recording the same show twice. And it's far easier to learn how to use a TiVo than a VCR.

For years TiVo has been widely regarded as the heavyweight champ of the DVR world. But that's changing. Orange County's major cable TV companies have recently introduced DVRs with some big advantages over the typical TiVo box. Most of the cable DVRs have two tuners, allowing customers to record two shows at once and simultaneously watch a third show that's already been recorded. The cable boxes can also record high-definition TV programs, generating copies that look as clear as the original when they're replayed.

A cable DVR generally costs about $13 a month, a fee that includes equipment rental. TiVo charges a monthly service fee of $13, but requires customers to buy their own equipment.

Satellite providers also sell DVRs.

DirecTV has a two-tuner TiVo device, which only costs $50 but can't record in HD. Only one TiVo model is powerful as the new generation of high-definition cable DVRs, but it's pricey. DirecTV lent the Register one of the $999 devices to review.

It performed flawlessly during a one-month trial. Like the cable DVRs, it was able to record two shows at once, then replay on a 42-inch plasma TV screen at a level of clarity that looked the same as the original high-definition broadcast. The TiVo software performed as elegantly as it does on less sophisticated models.

Besides the initial $999 cost, DirecTV charges $5 a month for the service and requires customers to sign a one-year programming contract.

TiVo hasn't announced plans to introduce other high-definition DVRs.

Dish Network sells a high-definition DVR that also costs $999. A review of that model found that it had technical problems and was far more difficult to navigate than TiVo or most cable DVRs.

With the new choices, TiVo could see its market share shrink in the coming years.

Take the Lavallees for example. They have a top-of-the-line cable package, a cable Internet connection, and four Adelphia DVRs. That costs the family $188 a month. But Lavallee says he doesn't mind the high cost. He'd rather rent DVRs from Adelphia instead of buying them up front. That way he can upgrade them whenever he wants.

"On something like this, I want all the bells and whistles," he says. "When something new comes out, we're going to get it."

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Annual Assessment of the Status of	)	MB Docket No. 04-227
Competition in the Market for the	)	
Delivery of Video Programming	)	

REPLY COMMENTS OF TIVO INC.

TiVo Inc. ("TiVo") submits these reply comments regarding retail availability of navigation devices to consumers, in response to the Federal Communications Commission's (the "FCC's" or "Commission's") Notice of Inquiry in the captioned proceeding.[1] TiVo applauds the Commission for considering the impact on competition at the end of the "pipe" in the context of this inquiry.

As things currently stand, by July 1, 2006, cable operators will no longer be allowed to offer conditional access and other functions in a single integrated device (the "Reliance Date").[2] Maintenance of this date is absolutely critical. Unless cable operators are required to use CableCards in their own products, there will never be any meaningful competition in the navigation device market.

Cable operators already enjoy a significant competitive advantage over consumer electronics companies in providing navigation devices to consumers, given their ongoing

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1 *In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 04-227, Notice of Inquiry, FCC 04-136, rel. Jun. 17, 2004 ("NOI") at para. 31.

2 *See Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices,* 18 FCC Rcd 20885 (2003). *See also* 47 C.F.R. Section 76.1204(a)(1).

relationship with the consumer and their ability to lease set-top boxes for a low monthly fee, rather than requiring consumers pay hundreds of dollars to purchase a set-top box. The Commission should not allow this substantial, inherent advantage of cable operators to be compounded by the further considerable advantage that would result from any extension or elimination of the Reliance Date. If cable operators do not have to use CableCards in their devices, it will be nearly impossible for consumer electronics companies to overcome their competitive disadvantage in terms of cost and convenience.

The “buy” versus “lease” situation is difficult enough to overcome. If added to that disadvantage is the additional cost and inconvenience of having the cable operator “install” a CableCard and then having to pay an extra monthly fee to lease the CableCard, most, if not all, cable customers will choose the product supplied by the cable operator. Similarly, any differences in functionality or programming that the competitive products are unable to offer will further exacerbate the competitive imbalance. In short, every way in which a competitive product must differ from cable operator-provided products impedes competition.

The cable industry’s call for the elimination of the Reliance Date on the grounds of promoting consumer choice is rather remarkable.[3] If the playing field is so tilted in favor of the cable operator-provided set-top box (*i.e.*, no purchase necessary, no CableCard fee, access to all programming, HD, dual-tuner, free installation, and so on), no meaningful competition can exist. If one player in a market has an insurmountable advantage, by definition, there exists a “non” or “anti” competitive situation.

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[3] *See* Reply Comments of National Cable & Telecommunications Association, CS Docket No. 97-80 (March10, 2004) at p.10-14.

On the other hand, requiring cable operators to use the same separate security device used by consumer electronics companies would undoubtedly result in a reduction in the cost of CableCards, reduce this element of competitive imbalance, and thereby benefit consumers by offering real competitive choice in set-top-boxes.[4]

Further, retention of the Reliance Date is critically important to ensure that CableCard enabled devices actually work in cable systems. If cable operators are not obligated to use CableCards themselves, they have no economic incentive to ensure that CableCard devices will work on their systems. Indeed, there may be a clear disincentive to make them work properly. To the extent that a CE-provided CableCard device offers a service or functionality that competes with an offering provided by a cable company – a DVR service, for instance – a cable operator will be motivated to steer customers away from the CableCard device and towards the cable operator-provided set-top-box.

As the Commission's annual reports over the past few years amply demonstrate, the Commission's policies have helped usher in an era of unprecedented video competition, to the great benefit of consumers. Knowing that, by July 1, 2006, cable operators will no longer be allowed to offer conditional access and other functions in a single integrated device will enable TiVo and other consumer electronics companies to develop and deploy set-top boxes bringing innovative new services to consumers with the confidence that such products have a fair chance to succeed in the marketplace. The

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[4] Since cable operators already are required to support CableCards, use of CableCards themselves should not be an additional operational burden. To the extent that CableCards cause an increase in costs, such increase should be short-lived given the economic effects of volume resulting from widespread use by cable operators.

Commission should continue to foster competition in the video marketplace by not allowing any further postponement, much less elimination of, the Reliance Date.

Respectfully submitted,

TIVO INC.

By: __/s/Matthew P. Zinn____________
Matthew P. Zinn
Vice President & General Counsel
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August 25, 2004

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