



December 22, 2004

VIA ECFS

Mr. W. Kenneth Ferree
Chief, Media Bureau
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: *Ex Parte* Communications in CS Docket 97-80

Dear Mr. Ferree:

This letter is in response to the December 20, 2004 *ex parte* filing of the National Cable and Telecommunications Association (NCTA). In its filing, the NCTA points to a number of TiVo's pleadings and *ex parte* filings with respect to the requirement for all digital cable products to use CableCARDS by July 1, 2006 (the "Reliance Date") and distorts the positions we expressed. We hereby set the record straight.

First, in a surprising assumption of the role of watchdog against cable subscriber rate increases, NCTA cites TiVo's filings as conceding that requiring cable to use the same CableCard technology that is mandated for all companies providing cable navigation devices will add significant set-top costs for cable subscribers without benefits. This is not the case. All providers of conditional access digital devices contend with the same cost structure; requiring a level playing field in cable set-top boxes is not unfair to cable and will not add costs to cable subscribers, particularly when cable starts complying with the requirement in good faith and costs are reduced by anticipated economies of scale.

As for benefits, TiVo need not recite for the FCC the consumer benefits that flow from competition in the provision of digital navigation devices or the need to make such benefits available for the first time to cable subscribers.

Second, NCTA twists TiVo's position regarding multistream CableCARDS beyond all recognition, which only serves to highlight that cable's "support" of CableCARD fundamentally conflicts with cable's own market imperatives.

Cable's treatment of multistream CableCARD is illustrative in this regard. Contrary to NCTA's filing, TiVo most certainly did ask for a multistream CableCARD in the FCC

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rulemaking proceeding concerning the Plug and Play Agreement.¹ While TiVo was not involved in the negotiation of the Plug and Play Agreement, it was clear to TiVo from its experience in deploying dual-tuner set-top boxes for DIRECTV in 2001, that dual tuner functionality was part of the base feature set necessary to being able to provide consumers with a true competitive alternative to leased set-top boxes.

While a multistream specification was developed in September 2003, no multistream CableCARDS have been produced or are scheduled to be produced until mid-2006; ironically, the very same time frame in which cable operators are required to use CableCARDS themselves. Moreover, because multistream CableCARDS for unidirectional products are not cable's "focus," no significant resources are being put into implementation of multistream CableCARDS for unidirectional products. As the NCTA has stated, MSOs would like to continue to use integrated security in their leased products. Hence, MSOs have no business reason to hasten the development of multistream CableCARDS when they do not plan to use them in their own products.

NCTA's argument that it's delay in developing a multistream CableCARD should be discounted because the Commission did not require cable to develop a multistream CableCARD in the Plug and Play Agreement clearly demonstrates what happens when cable's market incentives are not aligned with those of CE Manufacturers. Retail availability of competitive navigation devices will never exist if all cable will do is what the FCC directs them to do. This is precisely why the Commission put the common reliance rule in place in the first place.

Without a multistream CableCARD, the best companies like TiVo can do to bring a competitive offering to consumers is to try to create a device with two single-stream CableCARDS. As NCTA knows, this would be a expensive and unwieldy device with increased hardware costs, increased customer costs resulting from the need to lease two CableCARDS, and a host of complexities resulting from the fact that dual tuner functionality was not designed to be provided by two CableCARDS.

It is abundantly clear that requiring cable operators to use the same CableCARD security system as CE Manufacturers is the only way to give cable operators the incentive to develop multistream CableCARDS and enable CE Manufacturers to make competitive cable set-top boxes. TiVo urges the Commission not to make any change to the July 1, 2006 integration ban.

¹At the time, CableCARDS were called "PODs". TiVo stated that CE Manufacturers should be able to deploy devices with dual tuner functionality and stated that: "TiVo would like the Commission to require that, when a definition for a dual tuner POD is available, the MOU would permit its use by CE Manufacturers. See Comments of TiVo Inc., CS Docket No. 97-80; PP Docket NO. 00-67, filed March 20, 2003, at 13.

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This letter is being provided to your office in accordance with Section 1.1206 of the Federal Communication Commission's rules.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Zinn', with a long, sweeping underline.

Matthew P. Zinn
Vice President, General Counsel & Chief Privacy Officer

cc: The Honorable Michael K. Powell
Jonathan Cody
Jordan Goldstein
Stacy Robinson Fuller
Johanna Mikes Shelton
Monica Desai
Deborah Klein
Rick Chessen
William Johnson
Steve Broeckert
Mary Beth Murphy
Natalie Roisman
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John Wong
Thomas Horan