

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

In the Matter of	)	
Second Periodic Review of the	)	
Commission's Rules and Policies	)	MB Docket No. 03-15
Affecting the Conversion	)	
To Digital Television	)	
	)	
Children's Television Obligations	)	MM Docket No. 00-167
of Digital Television Broadcasters	)	
	)	

**REPLY OF TiVo INC.**

TiVo Inc. ("TiVo"), by its attorneys and pursuant to Section 1.429(g) of the Commission's rules,<sup>1</sup> hereby submits this Reply to the Oppositions of Tim Collings, Richard Kahlenburg, and the Coalition for Independent Ratings Services on Children's Television ("CFIRS").<sup>2</sup> The Oppositions were filed in response to the Petition for Clarification and/or Reconsideration of the Consumer Electronics Association ("CEA"),<sup>3</sup> which sought Commission clarification that the new V-chip requirements for DTV receivers will be sensibly interpreted to provide parents with additional flexibility and resources for screening programming coming into their home, without placing unreasonable or unachievable compliance burdens on DTV receiver manufacturers or improperly favoring existing patented technological solutions for carrying out the Commission's mandate. TiVo supports the CEA Petition and urges the Commission to reject

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<sup>1</sup> 47 C.F.R. § 1.429(g).

<sup>2</sup> Opposition to Petition for Clarification and/or Reconsideration by the Consumer Electronics Association, filed January 21, 2005 ("Collings Opposition"); Comments from Richard Kahlenberg in Opposition to the CEA's Attempt to Limit Flexibility in Parental Tools for Digital Television, filed January 21, 2005 ("Kahlenberg Opposition"); Comments of the Coalition for Independent Ratings services on Children's Television and Opposition to CEA Petition, filed January 21, 2005 ("CFIRS Opposition") (collectively, the "Oppositions").

<sup>3</sup> Filed November 3, 2004 (the "CEA Petition").

the Oppositions for the reasons discussed herein.

**I. TiVo and Other Consumer Electronics Manufacturers Continue to Expand Parents' Content-Screening Options without the Mandates demanded by the Oppositions.**

The Oppositions begin from the premise that parents should have the maximum flexibility to monitor and influence the programming to which their children are exposed. TiVo wholeheartedly agrees. The Oppositions ignore, however, that as parents have demanded greater control, the marketplace has increasingly sought to provide it to them. Digital Video Recorders ("DVRs") like those sold by TiVo provide an excellent example of this organic development.

The Kahlenberg Opposition claims that products like the TiVo DVR "make[] a parent's job of monitoring what their children are exposed to that much more difficult." In fact, the opposite is true. TiVo DVRs increase parental control in multiple ways. First, the TiVo DVR itself provides parental controls similar, but in some ways superior to those currently offered by the V-chip, providing password-protected program screening functionality as well as channel blocking capability.<sup>4</sup> Second, TiVo has received considerable customer feedback indicating that parents prefer the DVR functionality to the screening protections offered by the V-chip because it allows them to record and pre-screen actual programs to determine their suitability rather than forcing them to rely on independent ratings organizations.

All parties agree that the perfect parental control device will be sensitive and flexible enough to allow all parents to use their own values and judgment to tailor their children's television viewing. The new functionalities offered by the TiVo DVR make the achievement of this goal more, not less, likely by extending parents' options for controlling their children's access to potentially harmful content. Thus the Kahlenberg Opposition's argument that TiVo is

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<sup>4</sup> A description of TiVo's parental controls is attached as Exhibit 1.

seeking to “limit the range of technology tools that Americans can use to block or select” offensive programming is ludicrous. Like CEA, TiVo is simply trying to ensure that the parental-control-related technical requirements that the Commission imposes on DTV receiver manufacturers in this proceeding will provide parents with usable options that will actually help parents protect their children. Parental control options provided by devices like TiVo DVRs show that the marketplace is responding to parents’ needs.

## **II. CFIRS’s Vision of “Competitive” Ratings Systems Are More Likely to Confuse Rather than Help Parents Supervise Their Children’s Television Viewing.**

All parties agree that the increased capabilities of the DTV bit stream to accommodate additional content ratings information should be used to build upon and improve the current V-chip functionality. The Commission’s task is to create a regulatory regime that can actually succeed in achieving this result. CEA has proposed a reasonable means of expanding V-chip capabilities while still preserving manufacturers’ ability to develop products capable of bringing these new functionalities to consumers. The Oppositions’ proposed alternatives to CEA’s plan are unrealistic and inevitably will lead to a squandering of the new potential for enhanced V-chip functionality that digital transmission offers.

CFIRS, for example, insists that the Commission place no limitation on the ratings region code that new rating system designers can use to transmit ratings information. CFIRS views retaining this “flexibility” as essential to the realization of its vision of multiple competing ratings systems that “can meet . . . consumer demands for more accurate and detailed information on program content.”<sup>5</sup> CFIRS’s vision, however, will be no panacea for the V-chip’s current perceived shortcomings. Without prior knowledge of the ratings region code that a new ratings

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<sup>5</sup> CFIRS Opposition at 6.

system would use to transmit V-chip information, electronics manufacturers would have difficulty designing user interfaces that will allow consumers to utilize the new ratings systems effectively. In the absence of predetermined ratings region codes, new devices will respond to the new ratings information, but the likelihood that they will do so in a manner that is intelligible to television viewers is slight.

Moreover, proposals that would facilitate the rapid-fire introduction of a large number of new ratings systems simply have not taken into account how essential ease of use is to the success of any system that requires viewers to interact with the televisions. Regardless of how intelligently designed these new ratings systems are, parents will only use them if they are readily understandable and user-friendly. An unlimited number of ratings systems could force parents to navigate through an endless maze of television setup screens. Endorsing the Oppositions' failure to take into account the technical needs of manufacturers and the practical needs of parents and families will lead only to additional viewer frustration and disillusionment with the V-chip.

Even setting aside these critical user-interface issues, CFIRS's chaotic vision of multiple competing ratings systems is totally out of step with the needs of today's parents. One of the main reasons the V-chip is necessary is that busy parents are not able to dedicate the time necessary to screen the programs their children can watch. Still less are these parents likely to have the time to wade through the numerous distinct ratings systems that CFIRS envisions with their multiplicity of new ratings codes to select the one that most closely aligns with their values and preferences. The V-chip was not designed to give ratings system developers an outlet for their creativity, it was designed to provide real help to parents with real problems. Far from providing a solution, CFIRS's proposals will only exacerbate the twin problems of too much

information and too little time that parents currently face.

Rather than insisting that every ratings organization have the opportunity to set up their own separate, competing ratings system, TiVo encourages CFIRS to bring all concerned organizations together to develop a single alternative ratings system that takes advantage of the new possibilities that DTV offers without burying parents under an avalanche of new ratings codes and an endless array of television set-up screens. With proper attention to design and public education, such a new ratings system could prove to be a success. At the same time, the Oppositions' proposal for a competition among multiple new ratings systems is certain to fail parents' reasonable expectations of a usable V-chip.

**III. The Commission Should Adopt Rules to Establish Truly Non-Discriminatory License Terms for the Use of any Potentially Mandatory Technology and Confirm that No Particular Technological Solution Is Required.**

As TiVo has pointed out, if the Commission adopts the Oppositions' view of the Commission's initial Order in this proceeding, then it could, in effect, vest in Tri-Vision International, Ltd. ("Tri-Vision") a monopoly on technology that may be practically necessary for manufacturers to comply with the new rules.<sup>6</sup> CEA is undoubtedly correct that the Commission should concern itself with the possibility that Tri-Vision will attempt to leverage its monopoly by charging unreasonable licensing fees. This is a particular danger given the documented public statements of Mr. Collings and Tri-Vision that they expect to cash in on the Commission's initial ruling.<sup>7</sup>

The best way to avoid this looming problem is to grant CEA's Petition. If the Commission chooses not to do so, however, there are at least two actions the Commission should

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<sup>6</sup> See TiVo Notice of Ex parte Communication, MB Docket No. 03-15, filed Decemebr 22, 2004.

take on reconsideration to ensure that DTV manufacturers have a fair opportunity to design their own products in compliance with the Commission's rules or license the Tri-Vision patents on reasonable terms. First, the Commission should confirm that so long as a DTV product is able to process new ratings systems, it need not utilize the same technology or processes protected by the Tri-Vision patents. TiVo believes that it can design its devices to be capable of accommodating additional new ratings systems through a combination of hardware and software solutions that would render licensing of the Tri-Vision patents unnecessary. In addressing the CEA Petition, the Commission should be careful not to foreclose such new technical innovations that would enable newly designed devices to respond to any new ratings system within a reasonable period of time following that system's introduction.

Even as it protects manufacturers' ability to utilize different DTV V-chip technical solutions, the Commission also should protect those parties that require a license from Tri-Vision to comply with the new rules. In particular, smaller-volume producers like TiVo should not face higher per-unit expenses to comply with the Commission's rules than those faced by larger producers, particularly when those compliance costs are flowing to a single, identifiable private company. If the Commission endorses a rule where only Tri-Vision legally can produce or license the right to produce compliant devices, the Commission has a special responsibility to ensure that all regulated entities have access to the license on roughly the same terms.

The Collings Opposition repeatedly guarantees that the Tri-Vision patents will be licensed on a reasonable and non-discriminatory basis.<sup>8</sup> The Commission should hold Tri-Vision to Mr. Collings's word by conditioning approval of the new rules on a commitment from Tri-

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<sup>7</sup> *See id.*

<sup>8</sup> Collings Opposition at 4-5, 9.

Vision that it will include in each of its license agreements a most-favored licensee provision. That provision would guarantee that all consumer electronics manufacturers will receive the same terms – including per-unit license fees – regardless of their production volume, ensuring that Tri-Vision’s technology would be offered on a truly nondiscriminatory basis.

### CONCLUSION

For the foregoing reasons, the Commission should (1) grant CEA’s Petition; (2) reject the Oppositions’ unrealistic and unhelpful aspirations for the development of numerous conflicting content ratings systems; and (3) ensure that the regulatory climate does not permit Tri-Vision to abuse its claimed patent rights by requiring most-favored licensee provisions in Tri-Vision’s license agreements and confirming that DTV products need not use the same technology and processes claimed in Tri-Vision’s patents so long as those products respond to new ratings systems.

Respectfully submitted,

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January 31, 2005

# **Exhibit 1**

► **Parental Controls**

Parental Controls allow you to set limits on movie and television ratings, to lock specific channels, and to prevent viewing of recorded programs that violate Parental Controls. The padlock icon shows the current state of Parental Controls:



**Off.** No password or controls set. Padlock appears unlocked and dark.



**On.** Password and controls set. Padlock appears locked and bright.



**Temporarily off.** Controls set, but password was entered to temporarily turn off. Padlock appears unlocked and bright.

While Parental Controls are on, you can watch a locked program or channel by pressing SELECT, then entering the password. This temporarily turns off Parental Controls.

**To turn on Parental Controls and define a password (  ):** Select “Turn on Parental Controls.” Use the number buttons on the remote control to enter a four-digit password, then enter the same password again for confirmation.

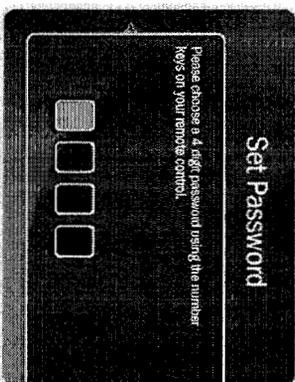
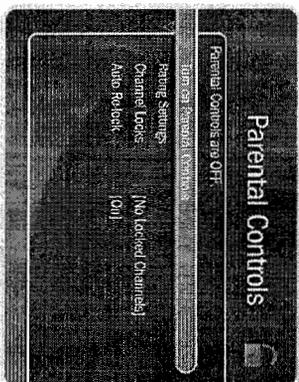
**To turn off Parental Controls (  ):** Select “Turn off Parental Controls,” enter the password, and press SELECT. When Parental Controls are turned off, the password is deleted and anyone can view any programs or watch any channels.

**To temporarily turn off Parental Controls (  ):** Just enter the password to watch a program or channel. Or, select “Temporarily turn off Parental Controls” on the Parental Controls screen. When Parental Controls are temporarily turned off, any program or channel can be viewed, but the password is still required to change Parental Controls settings. To re-enable Parental Controls, select “Re-enable Parental Controls.” Or, you can put the DVR into Standby mode, then take it out. To do this, select Messages & Setup, then Standby. Then press the TIVO or LIVE TV button.

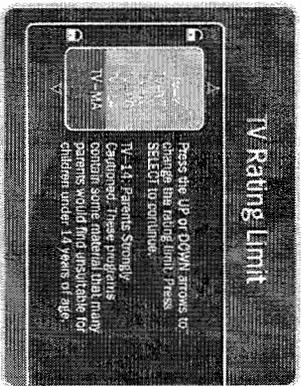
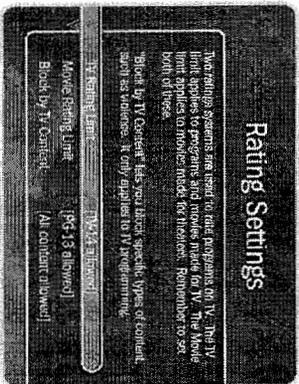
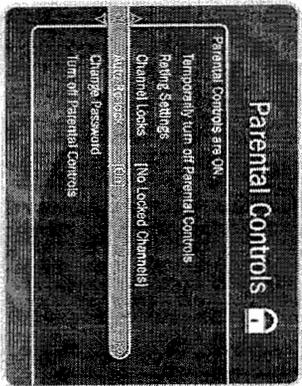
TIVO Central ► Messages & Setup ► Settings ► Parental Controls



The large version of the channel banner has a shortcut to Parental Controls; see page 68 for details.



When you turn Parental Controls off,  your password is deleted. You may prefer to temporarily turn off Parental Controls, so that another person in your household does not choose a new password.



**To change the Password (P):** To change the password for Parental Controls, Parental Controls must be on. Select “Change Password” on the Parental Controls screen. Enter a new password, then re-enter the new password to confirm.

**Auto Re-lock Option.** When Parental Controls are temporarily turned off, they re-lock automatically after four hours if you don’t use your remote. Parental Controls won’t re-lock in the middle of a show. By default, the Auto Re-lock option is on. To turn off Auto Re-lock, go to Messages & Setup, then Settings, then Parental Controls. Press the DOWN arrow to highlight “Auto Re-lock,” then press SELECT. Enter your password, then highlight and select “Auto Re-lock off.”

**Rating Settings for TV and Movies (P).** Movies originally meant for release to theaters have a different rating system from programs made for TV. You can use Parental Controls to set limits for both rating systems (see page 82). You can also set limits for specific types of TV content that may be objectionable—such as sexual content or violence.

**To set Rating Limits for TV and Movies:** From Parental Controls, select “Rating Settings.” Enter the password and select the kind of limit you want to change.

The next screen contains a box listing all potential ratings. Ratings shaded in green are not locked; those in red are locked. Use the UP and DOWN arrows to move the red shading and adjust which ratings are locked. Your changes are saved automatically. When you are done, press RIGHT or LEFT arrow to return to Parental Controls.

**To set Rating Limits for Specific TV Content:** From Parental Controls, select “Rating Settings,” then enter the password and press SELECT. Select “Block by TV Content.” A list of categories appears on the next screen. Select a category (for example, V-Violence). A box containing all the possible ratings appears. Ratings in green are not locked; ratings in red are locked. (Ratings in gray do not apply to the category. For example, a TV-Y program would not have *V-Violence* content so there is nothing to block.)

TVo Central > Messages & Setup > Settings > Parental Controls

Use the UP and DOWN arrows to adjust which ratings are locked or unlocked. The display to the right of the box will change to tell you exactly what ratings level you are allowing. Your changes are saved automatically. To return to the Parental Controls screen, press SELECT or RIGHT arrow.

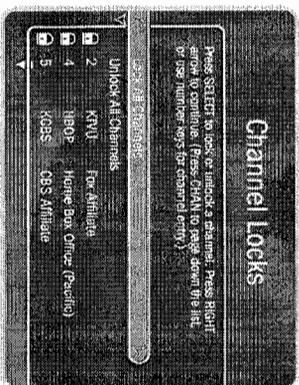
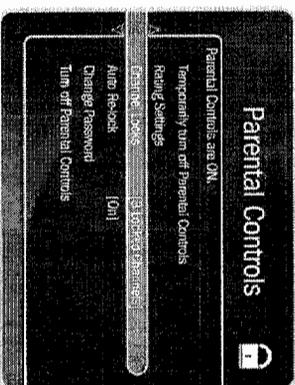
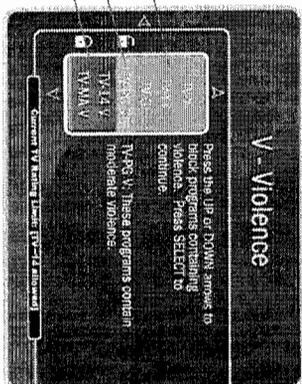
Broadcasters are not required to provide ratings for specific types of content. If you want to be sure to block programs that do not include ratings for specific types of content, you will have to use age-based ratings to block content. See "Rating Limits for TV and Movies," above.

gray = does not apply to the category  
green = not locked  
red = locked

**Movies and TV Programs with No Rating Information.** If a movie has no rating information, it is treated as if it has the highest movie rating, 'X.' If you require a password for X-rated movies, then movies without rating information also require a password. If a television program has no rating information, it is treated as if it has the lowest TV rating, 'TV-Y.' A password is required to view it only if you set Parental Controls to require a password for programs rated 'TV-Y'.

**Channel Lock for Live TV ( ).** You can lock individual channels so that a password is required to view any program on those channels. To lock or unlock channels:

1. From the Parental Controls screen, select "Channel Lock," and enter the password.
2. A channel list appears with a padlock icon to the left of any locked channels. Highlight a channel and press SELECT to add or remove a padlock icon. Use CHAN UP/DOWN to move through the list quickly. You can highlight a specific channel by entering its channel number with the number buttons on the remote.
3. When you are done, press RIGHT or LEFT to return to Parental Controls. Your changes are saved automatically.



► **Motion Picture Association of America ratings for movies**

**G: General Audiences.** Most parents would find this material suitable for all ages.

**PG: Parental Guidance Suggested.** Parents may find portions of this material unsuitable for younger children.

**PG-13: Parents Strongly Cautioned.** This material contains portions many parents would find unsuitable for children under 13 years of age.

► **Ratings for television movies and programs (including content ratings)**

**TV-Y. All children.** This program is designed to be appropriate for all children. Whether animated or live action, the themes and elements in this program are specifically designed for a very young audience, including children from ages 2-6. This program is not expected to frighten younger children.

**TV-Y7. Directed to older children.** This program is designed for children age 7 and above. Themes and elements in this program may include mild fantasy or comedic violence, or may frighten children under the age of 7. Programs where fantasy violence that may be more intense or more combative than other programs in the TV-Y7 category are designated TV-Y7-FV.

**TV-G. General audience.** Most parents would find this program appropriate for all ages. Although this rating does not signify a program designed specifically for children, most parents may let younger children watch this program unattended. It contains little or no violence, sexual dialogue, or situations; and no strong language.

**R: Restricted.** This material is specifically designed to be viewed by adults and therefore may be unsuitable for children under 17.

**NC-17: Adult Content.** This material contains intense, disturbing, or graphically portrayed themes or content that are not suitable for viewing by children under 17.

**AO: Explicit Sexual Content.** This material contains explicit sexual content and is intended to be viewed by adults ONLY.

**(TV-PG. Parental guidance suggested.)**

**TV-PG. Parental guidance suggested.** This program contains material that parents may find unsuitable for younger children. Many parents may want to watch it with their younger children. The theme itself may call for parental guidance and/or the program contains one or more of the following: moderate violence (V), some sexual situations (S), infrequent coarse language (L), or some suggestive dialogue (D).

**TV-14. Parents strongly cautioned.** This program contains some material that parents would find unsuitable for children under 14 years of age. Parents are strongly urged to exercise greater care in monitoring this program and are cautioned against letting children under the age of 14 watch unattended. This program contains one or more of the following: intense violence (V), intense sexual situations (S), strong coarse language (L), or intensely suggestive dialogue (D).

**TV-MA. Mature audiences only.** This program is specifically designed to be viewed by adults and therefore may be unsuitable for children under 17. This program contains one or more of the following: graphic violence (V), explicit sexual activity (S), or crude, indecent language (L).

TVo Central ► Messages & Setup ► Settings ► Parental Controls