

LAW OFFICES
GOLDBERG, GODLES, WIENER & WRIGHT
1229 NINETEENTH STREET, N.W.
WASHINGTON, D.C. 20036-2413

HENRY GOLDBERG
JOSEPH A. GODLES
JONATHAN L. WIENER
BRITA D. STRANDBERG
LAURA A. STEFANI

(202) 429-4900
TELECOPIER:
(202) 429-4912
e-mail:
general@g2w2.com
website: www.g2w2.com

HENRIETTA WRIGHT
THOMAS G. GHERARDI, P.C.
COUNSEL

March 4, 2004

Electronic Filing

Ms. Marlene H. Dortch
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, D.C. 20554

Re: Ex Parte Notice in CS Docket 97-80

Dear Ms. Dortch:

This is to inform you that on March 3, 2005, in connection with the above-referenced proceeding, the undersigned and Matthew Zinn of TiVo Inc. met with Catherine Bohigian, legal advisor to Commissioner Martin; John Branscome, acting legal advisor to Commissioner Abernathy; and Jordan Goldstein, legal advisor to Commissioner Copps. The substance of these meetings is reflected fully in this *ex parte* notice.

The purpose of the meetings was to discuss the implications of a February 24, 2005, *ex parte* letter filed by Time Warner Cable, Comcast, and Microsoft Corporation (the "Cable-Microsoft Letter"). This letter referred to discussions between senior executives of these three companies and Chairman Powell and his legal advisor, Jon Cody. Among other subjects, the letter contained a proposal for a delay of the July 1, 2006, deadline by which cable operators must rely on a common security interface.

TiVo expressed concern about the contents of the Cable-Microsoft Letter and the implications for the prospects and direction of on-going negotiations among the cable, IT, and CE industries. TiVo consistently has held the view that the July 1, 2006, date for such common reliance must be maintained, as the Commission's rules require. TiVo has pointed out in its filings in this proceeding and in the meetings with the legal advisors that such common reliance is the best way to assure that CableCARD modules will work, that they will be available to consumers at a reasonable price, and that a

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functioning multi-stream CableCARD will be available to consumers and manufacturers, which is of critical importance to TiVo to establish a competitive marketplace for set top devices.

At present, TiVo is developing a product based on multiple single-stream CableCARDS, but without a multi-stream card, even if TiVo can get such a one-way product approved by CableLabs, it will require two single-stream cards for dual tuner functionality. No rational consumer would pay for a set top box plus two CableCARD modules, when the same functionality can be leased from the cable operator for less than the cost to lease two CableCARD modules.

Although CableLabs has published specifications for a multi-stream card since September 2003, such cards are not being produced or supported by the cable industry, which has no which has no incentive to supply multi-stream modules unless the cable industry also uses them. NCTA has argued that its delay in developing a multi-stream CableCARD should be discounted because the Commission did not require cable to develop a multi-stream CableCARD in the Plug and Play Agreement. [fn 12/20/04] As TiVo has pointed out, retail availability of competitive navigation devices will never exist if all cable will do is only what the FCC explicitly directs them to do. This is precisely why the Commission put the common reliance rule in place in the first place and is why TiVo views adherence to the integration ban as the only practical way to have the cable industry support multi-stream cards.

If, however, as the TiVo representatives pointed out, the Commission intends to pursue the proposal set out in the Cable-Microsoft Letter, the Commission should require the cable industry to commit explicitly to produce and support a one-way multi-stream CableCARD. Microsoft, Comcast and Time-Warner do state that the companies will support “UDCPs in the near-term (including making multi-stream CableCARDS available for such products on an expedited basis)” and the letter concludes with language stating that: “All three companies agree that the integration ban should be deferred so that all parties can focus on (1) immediate deployment and support for current UDCPs...”. This statement, however, is meaningless without specification of a date certain.

To correct this deficiency, the Commission should require the cable industry to make unidirectional multi-stream CableCARD modules commercially available no later than December 31, 2005, under the following terms and conditions:

- “Commercially available” means available to licensees of DFAST without additional license requirements or other restrictions. If a new patent license related to multi-stream is required, the commercial terms (including the compliance and robustness rules) of the new license must be substantially similar to the existing DFAST license. If no new patent licenses are needed for host-side implementation of the multi-stream

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module interface, there must not be a requirement for additional license or contract.

- CableLabs' multi-stream specification should be submitted to an ANSI-approved standards body and final development of the standard(s) involved must be completed in that body in an open process, which CableLabs does not provide. Currently the multi-stream specification has been developed in OpenCable, which means that CableLabs has full control over final development of the standard and will produce a cable-centric standard that satisfies only the cable industry's needs on its side of the cable-set top device interface. In contrast, an unbiased standards body will accept the views of all the industries effected by the standard and will assure that multi-stream cards will work for CE companies. When the standard is complete, it should be referenced in the FCC rules.
- Leave the existing test amendment process unchanged. A set of tests (JTS/PICS) have been agreed to under the one-way Plug and Play Agreement and a process has been put in place to amend the set of tests. This existing process should continue to be used to revise tests to support multi-stream CableCARD modules.

Please direct any questions regarding this matter to the undersigned.

Respectfully submitted,

A handwritten signature in black ink that reads "Henry Goldberg". The signature is written in a cursive, flowing style.

Henry Goldberg
Attorney for TiVo Inc.

cc: Catherine Bohigian
John Branscome
Jordan Goldstein