

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

In the Matter of)
)
Requirements for Digital Television Receiving) ET Docket No. 05-24
Capability)

COMMENTS OF TIVO INC.

TiVo Inc. (“TiVo”), by its attorneys, hereby submits these Comments in response to the Commission’s Further Notice of Proposed Rulemaking released on June 9, 2005, in the above-referenced proceeding (“FNPRM”).¹ In the FNPRM, the Commission seeks comment on whether it should accelerate from July 1, 2007 to December 31, 2006 the deadline by which devices that can receive over-the-air television signals (such as videocassette recorders and DVRs) must include the capability to receive over-the-air digital television (“DTV”) broadcast signals (the “DTV Tuner Deadline”). TiVo fully supports the Commission’s efforts to expedite the DTV transition and agrees that there is a need for a date certain by which all receivers of over-the-air television signals are able to receive DTV signals. As described herein, the Commission’s proposal to accelerate the DTV Tuner Deadline for DVRs to December 31, 2006, however, will have unintended consequences of significantly disrupting the market and causing economic hardships to manufacturers such as TiVo. Therefore, TiVo urges the Commission to retain July 1, 2007 as the DTV Tuner Deadline.

¹ TiVo manufactures and sells Digital Video Recorders (“DVRs”) to the public. For more information see www.tivo.com.

Almost three years ago, on August 9, 2002, the FCC released its *Second Report and Order and Second Memorandum Opinion and Order* adopting the July 1, 2007 deadline by which devices that receive over-the-air broadcast signals must include DTV tuners.² Since that time, TiVo has established its product development and engineering schedules with that deadline in mind. Just last month, in its Open Meeting, the Commission adopted the FNPRM and announced its proposal to move up this fast-approaching deadline by six months to December 31, 2006. Moving up the deadline by six months at this late date will cause significant burdens to manufacturers such as TiVo who have been making plans for these last three years in reliance on a July 1, 2007 deadline. Of even more concern, however, is the selection of December 31, 2006 as the new DTV Tuner Deadline. Designation of this particular date as the DTV Tuner Deadline will exponentially compound the hardships to DVR manufacturers that are posed by an accelerated deadline because it falls at the end of the traditional holiday season.

Like most, if not all, of the consumer electronics industry, TiVo experiences a significant increase in sales during the holiday season and therefore needs to ramp up its manufacturing output to ensure that a sufficient quantity of the product is available to meet the public demand. As a result, during the holiday season, the sales channel is full of TiVo's products. The imposition of a December 31, 2006 DTV tuner deadline would throw a wrench into TiVo's manufacturing and shipping plans because it would require TiVo not only to cope with the unpredictable and increased holiday season demand, but at the same time attempt to coordinate the timing of sales of non-DTV tuner products and DTV tuner products during these busiest

²² *Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, Second Report and Order and Second Memorandum Opinion and Order*, 17 FCC Rcd 15978 (2002).

consumer buying months.

To ensure compliance with the December 31, 2006 deadline and to avoid being saddled with non-DTV tuner inventory that it cannot sell after the deadline, TiVo would need to ship its entire non-DTV tuner inventory well before the deadline, which is not feasible from a practical and business standpoint. Shipment of the inventory depends on consumer and retailer demand, and predicting this demand becomes much more challenging during the holiday season. If TiVo did not accurately predict this demand and had excess inventory, TiVo would be left with non-DTV tuner products that it could not finish selling before December 31, 2006 and that it could no longer sell at all after December 31, 2006. Thus, to ensure depletion of its non-DTV tuner inventory, TiVo would need to manufacture a conservative number of non-DTV tuner products and ship them well before the December 31, 2006 deadline. This becomes particularly economically burdensome in the middle of the holiday season because if TiVo is too conservative and has not manufactured sufficient product to meet demand, then it has lost those sales.

Manufacturing and shipping DTV-tuner enabled devices earlier in the holiday sales season likely would not be a feasible option because it would, in effect, advance the FCC's December 31, 2006 effective date by another six months and pose a significant hardship due to the necessary manufacturing lead time and dramatically higher product costs. To compete with "free" DVRs supplied by cable and satellite providers, TiVo needs to keep the price of its DVR as low as possible. Adding a DTV-tuner at this stage of product development would practically double the product cost of the DVR – thereby dramatically reducing sales of the product to consumers. Of course, depending on when this proceeding is concluded, the option of adding a DTV tuner may become impossible due to the necessary manufacturing time.

A December 31, 2006 deadline also would cause a significant economic hardship to TiVo due to the substantial number of products that are sold to consumers but returned at the end of the holiday season. TiVo's rate of returns from holiday sales is typically far greater than the rate of returns during the rest of the year, and TiVo typically does not receive the bulk of the returns until after the end of the holidays. Last year, TiVo saw approximately 25% of the total number of DVRs purchased by consumers during the holiday season returned after December 31. Thus, even though TiVo may sell its non-DTV tuner products well before the December 31, 2006 deadline, a large number of those products likely would be returned at the end of December and in January. If the FCC adopted a December 31, 2006 deadline, TiVo would be prohibited from reselling the non-DTV tuner merchandise returned post-holidays and it would be forced to take a massive loss on this returned non-DTV tuner merchandise. As mentioned, TiVo does not experience the same rate of return during the rest of the year. Therefore, this increased economic penalty results solely from the selection of December 31, 2006 as a DTV Tuner Deadline -- a July 1, 2007 deadline would not have the same degree of adverse impact.

For the foregoing reasons, the Commission's proposal to advance the DTV Tuner Deadline to December 31, 2006 would create a tremendous hardship to TiVo. Although these hardships are factors even with the July 1, 2007 DTV Tuner Deadline, adoption of a December 31, 2006 deadline would magnify these problems exponentially well beyond the hardships that a six-month advancement of the deadline normally would pose.

Therefore, due to the significant disruption in the manufacturing cycle and the resulting significant adverse economic effects, TiVo urges the Commission to decline to adopt the proposed December 31, 2006 deadline and to retain its July 1, 2007 DTV Tuner Deadline.

Respectfully submitted,

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