

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

In the Matter of)	
)	
Charter Communications, Inc.)	CS Docket No. 97-80
Request for Waiver of)	CSR-7049-Z
47 C.F.R. § 76.1204(a)(1))	
)	

OPPOSITION OF TIVO INC.

TiVo Inc. (“TiVo”) urges the denial of the above-captioned waiver request filed by Charter Communications, Inc. (“Charter”). As a small company that has invested over \$12 million of its scarce resources in research and development over the past year to create the TiVo Series3 CableCARD device, and who desires to provide competitive navigation device alternatives to Charter subscribers, TiVo is intensely interested in this proceeding.¹

Charter’s waiver request goes far beyond the “limited capability integrated digital cable boxes” contemplated in the *Second Report and Order* and would critically weaken the goal of the integration ban by exempting the vast majority of set-top boxes distributed by Charter. If, however, the Commission were to grant Charter some relief, it should be limited to those devices that receive only linear (or “one-way”) channels that unidirectional CableCARD devices supplied by independent manufacturers can receive today.

¹ TiVo recently announced the launch of its TiVo Series3 HD DVR, the world’s first THX®-certified digital video recorder. The TiVo Series3 HD DVR supports up to two CableCARD decoders. The product acts as two independent single stream UDCP CableCARD hosts within one set top box, enabling dual-tuner functionality. It can also be configured to operate as a single CableCARD device. For more information on TiVo, please visit www.tivo.com.

In addition, TiVo strongly opposes Charter's request to gain the benefit of any waiver granted to Verizon in response to the latter's recent waiver petition.² Verizon's petition was not confined to "limited capability" set-top boxes, as required by the *Second Report and Order*, but was premised on Verizon's status as a new entrant in the MVPD marketplace.³ Any relief granted to Verizon should be limited to new entrants such as Verizon and should not apply to all multi-service operators ("MSOs"). Applying any Verizon waiver to all MSOs would make the integration ban a dead letter.

Charter has not provided the requisite justification for its waiver request. In particular, it simply makes no sense to grant Charter a waiver for set top boxes that have two-way functionality. TiVo and other independent manufacturers have no way to provide such functionality without using the OpenCable Application Platform ("OCAP") and, thereby, sacrificing control of the user interface, functionalities, and other capabilities of its CableCARD devices – which make TiVo's devices unique and desirable to consumers in the first place.

I. CHARTER HAS NOT MET ITS BURDEN OF JUSTIFYING ITS SWEEPING WAIVER REQUEST

In the *Second Report and Order*, the Commission stated that it would "entertain requests for waiver of the prohibition on integrated devices for limited capability integrated digital cable boxes."⁴ The Commission made clear that it would entertain such waiver requests for "low-cost, limited capability boxes" in order to ensure that consumers

² Verizon's Petition for Waiver of the Set-Top Box Integration Ban, 47 C.F.R. § 76.1204(a)(1), CS Docket No. 97-80, CSR-7042-Z, at 10 n.12 (Filed July 10, 2006) ("Verizon Petition").

³ Opposition of TiVo Inc. to Verizon Petition, CS Docket No. 97-80, CSR-7042-Z, at 8-9 (filed Sep. 18, 2006).

⁴ *Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices*, Second Report and Order, CS Docket No. 97-80, FCC 05-76, para. 37 (rel. Mar. 17, 2005) ("*Second Report and Order*").

“have access to inexpensive digital set-top boxes that will permit the viewing of digital programming on analog television sets both during and after the transition.”⁵ A reasonable reading of the *Second Report and Order*, and the significance it placed on the continued need for the integration ban, demonstrates that the Commission intended to entertain waivers for some low-cost, limited capability devices without otherwise undermining the purpose of the integration ban, *i.e.*, to facilitate competition in the bulk of the navigation devices market.⁶

Yet Charter’s request encompasses the vast majority of set-top boxes it distributes to its subscribers. Grant of such a waiver would vitiate the purpose of the integration ban by effectively foreclosing competition in the navigation devices market with respect to Charter’s subscribers, because it would be difficult if not impossible for independent manufacturers to offer competitive devices. Charter has not even come close to meeting its burden of justifying such a sweeping waiver.

Charter has had more than seven years to comply with the integration ban, but has instead focused its resources on a fruitless challenge of the Commission’s rules. The Commission should not reward Charter for its failure to comply with rules for which it has had ample advance warning, and, accordingly, should deny Charter’s waiver request.

⁵ *Second Report and Order*, para. 37.

⁶ *Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices*, Report and Order, CS Docket No. 97-80, FCC 98-116, para. 49 (rel. June 24, 1998) (“*First Report and Order*”).

II. CHARTER’S WAIVER REQUEST GOES BEYOND THE “LIMITED CAPABILITY” SET-TOP BOXES FOR WHICH WAIVERS WERE CONTEMPLATED AND WOULD SEVERELY WEAKEN THE IMPORTANT POLICIES BEHIND THE INTEGRATION BAN

As discussed above, the Commission stated in the *Second Report and Order* that it would “entertain requests for waiver of the prohibition on integrated devices for limited capability integrated digital cable boxes.”⁷ The Commission did not elaborate on what it would consider to be “limited capability” other than to say that certain devices would not fall under this definition – those “that contain personal video recording (“PVR”), high-definition, broadband Internet access, multiple tuner, or other similar advanced capability.”⁸

The devices for which Charter requests waivers go beyond a reasonable understanding of the term “limited capability.” The devices covered by Charter’s request include such capabilities as pay-per-view (“PPV”), video-on-demand (“VOD”), switched-digital, interactive television (“ITV”), and others that go beyond a fair reading of the term “limited capability.” TiVo cannot provide consumers with CableCARD devices that provide two-way capabilities such as PPV, VOD, and switched-digital without using OCAP and, thereby, sacrificing control of the user interface, functionalities and other capabilities that make TiVo unique and attractive to consumers. PPV, VOD, switched-digital, and other two-way capabilities cannot reasonably be considered “limited.” Moreover, a waiver that applied to all of the devices listed by Charter would exempt from the integration ban the vast majority of the set-top boxes distributed by Charter and would undermine the pro-competitive essence of the integration ban.

⁷ *Second Report and Order*, para. 37.

⁸ *Second Report and Order*, para. 37.

Accordingly, the Commission should deny Charter's waiver request. Having failed in its court challenge of the integration ban, Charter simply is looking for another way to avoid compliance. If, however, the Commission is inclined to grant Charter any relief, such relief should be limited to Charter devices that do no more than receive linear (or "one-way") channels that unidirectional CableCARD devices supplied by independent manufacturers can receive today. Charter should not be able to supply devices that receive two-way channels without CableCARDS that independent manufacturers are unable to provide. By so limiting any relief granted to Charter, the Commission would strike an appropriate balance between the *Second Report and Order's* goal of ensuring that consumers have a low-cost set-top box option and the critical broader goal of ensuring competition in the navigation devices market in accordance with Section 629 of the Act.

As the Commission discussed at length in the *Second Report and Order*, the fact that some consumers may face additional costs for set-top devices in the short term is outweighed by the benefits of competition in the navigation devices market.⁹ Moreover, Charter itself recognizes that the requirement to use CableCARDS will affect a relatively small percentage of Charter's customer base, so any additional costs faced by consumers should be minimal.¹⁰ By limiting any relief to devices that merely replicate the unidirectional CableCARD functionality that is available to unaffiliated manufacturers today, the Commission would ensure that consumers have access to low cost set-top devices while at the same time enabling unaffiliated manufacturers to compete with

⁹ *Second Report and Order*, para. 29; *cf. id.*, para. 27 ("[T]he mere fact that consumers will bear some of the costs resulting from the imposition of the integration ban is not a sufficient justification to eliminate the ban.").

¹⁰ Charter Communications, Inc. Request for Waiver of 47 C.F.R. § 76.1204(a)(1), CS Docket No. 97-80, CSR-7049-Z, at 9 (Filed July 14, 2006) ("Charter Petition").

respect to “value-added” features offered by navigation devices – the primary purpose of Section 629 as implemented in Section 76.1204(a)(1) of the rules.

III. CHARTER SHOULD NOT BENEFIT FROM ANY WAIVER GRANTED TO VERIZON AS SUCH A WAIVER WOULD BE BASED ON VERIZON’S STATUS AS A NEW ENTRANT AND NOT ON SET-TOP DEVICE CHARACTERISTICS

TiVo strongly opposes Charter’s request to gain the benefit of any waiver granted to Verizon in response to the latter’s recent waiver petition.¹¹ Verizon’s waiver petition was premised on an entirely different rationale than that of Charter’s request, and was not limited to “limited capability” set-top boxes as contemplated by the *Second Report and Order*. In fact, Verizon did not specify which devices would be covered by its requested waiver, which is directly contrary to the Commission’s statement in the *Second Report and Order* that “[a]ny waiver request [for limited capability integrated boxes] should include the full specifications for any device(s) for which waiver is sought.”¹² In fact, Verizon’s waiver petition was premised entirely on Verizon’s status as a new entrant in the MVPD marketplace. Accordingly, as discussed in TiVo’s opposition to Verizon’s petition,¹³ any relief granted to Verizon should be limited to new entrants such as Verizon and should not apply to all MSOs: Applying any Verizon waiver to all MSOs would make the integration ban a dead letter.

* * *

Accordingly, for the foregoing reasons, the Commission should deny Charter’s petition or, at minimum, limit it to devices that do no more than receive linear (or “one-

¹¹ Charter Petition at 18 (citing Verizon Petition).

¹² *Second Report and Order*, para. 37.

¹³ Opposition of TiVo Inc. to Verizon Petition, CS Docket No. 97-80, CSR-7042-Z, at 8-9 (filed Sep. 18, 2006).

way”) channels that unidirectional CableCARD devices supplied by independent manufacturers can receive today.

Respectfully submitted,

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Dated: September 18, 2006

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Opposition to Charter Waiver was sent by mail, this 18th day of September, 2006, to each of the following:

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