

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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In the Matter of)	
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Implementation of the Child Safe Viewing)	MB Docket No. 09-26
Act; Examination of Parental Control)	
Technologies for Video or Audio Programming)	
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REPLY COMMENTS OF TIVO INC.

TiVo Inc. (“TiVo”) hereby submits the following reply comments in the Commission’s Notice of Inquiry implementing the Child Safe Viewing Act.

**I. Any New Ratings System or Update to the Existing Ratings System
Should Be Developed with Usability in Mind**

Any new ratings system, and any update to the existing ratings system, should be developed with usability in mind. Extensive outreach campaigns have educated parents about the existing V-chip system and TV Parental Guidelines. Any new ratings system should be developed with the understanding that parents have only so much time to learn a new ratings system and to configure all of the television receiver equipment in the household to block programming according to the new ratings system. The use of many different ratings systems could lead parents to give up on the technology rather than make use of innovative features such as TiVo KidZone. TiVo therefore suggests that the Commission study this issue carefully before supporting the use of more than a single new ratings system.

Some parents make use of use the basic recording functionality of the TiVo DVR rather than configure V-chip settings today and there is no evidence that the addition of new ratings systems will increase the usage of parental control technology. In surveys of households that do not make use of V-chip parental controls or TiVo KidZone, parents have explained that they use basic recording functionality to prevent their children from viewing objectionable programming. Rather than allowing their children to watch live TV, children in such households are told that they can watch any show on the TiVo “Now Playing List,” which is a list of programs that they parents have recorded. The TiVo DVR itself is thus a tool that empowers parents to block objectionable programming without relying on industry ratings or third parties.

II. The Commission Should Avoid Prescribing Particular Technological Implementations

TiVo disagrees with suggestions from at least one of the commenters that the Commission mandated any particular technological implementation when it required that “[d]igital television receivers shall be able to respond to changes in the content advisory rating system.” Section 15.120(d)(2). Nothing in the rule requires over the air receipt and processing of new RRTs. Thus, networked television receivers that process new ratings systems received via a network connection are fully capable of responding to changes in the content advisory system. The Commission has a long history of being careful not to mandate particular technological implementations, and it should not do so here.

III. Wi-LAN's Licensing Terms Are Not Reasonable

Wi-LAN stated in its comments in this proceeding that it makes patent licenses available to DTV receiver manufacturers on reasonable and non-discriminatory terms. Comments of Wi-LAN Inc. at 5. TiVo believes the Commission should review these license terms to determine whether or not they are truly reasonable and non-discriminatory. Wi-LAN's proposed per unit royalty rate is far in excess of the amount a DTV receiver manufacturer would have agreed to pay to add the claimed feature to a product in the absence of a Commission mandate. Where a patent holder has advocated a regulatory mandate that could make some or all manufacturers use a particular patent, a reasonable royalty should be based on what parties would have agreed *ex ante* rather than after the regulatory mandate has been adopted.

Wi-LAN further asserted that "many licensed manufacturers have reached commercial agreement on rates they consider reasonable." *Id.* This assertion is apparently based on the fact that many manufacturers have taken a license and passed along these excessive costs to U.S. consumers. But the reality is that many manufacturers felt they had no choice but to take a license or face either expensive and unpredictable patent litigation or fines for non-compliance with a Commission rule.

IV. The Commission Should Not Mandate Digital Watermarking Technology

Digital watermarking advocates have asked the Commission to mandate the use of digital watermarking technology to permit blocking of objectionable content. The proponents have not stated what such a solution would cost in terms of additional license fees and any other required technology for DTV receiver manufacturers to implement this technology. Without an understanding of the true costs, the Commission has no way of

assessing the costs versus the benefits of such a solution. In addition, it is not clear why such a solution is needed given the availability of existing technologies.

V. Conclusion

The Commission should avoid calls for mandating particular technologies or implementations, especially where the benefit for consumers is highly suspect or where the mandate will impose high costs.

Respectfully submitted,

TIVO INC.

/s/ David L. Fligor_____

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May 18, 2009