July 21, 2009

ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: ***Ex Parte, In re: Petition of Lafayette City-Parish Consolidated Government of Lafayette, Louisiana, d/b/a Lafayette Utilities System, for Waiver of Section 76.1204(a) of the Commission's Rules*, CS Docket No. 97-80, CSR-8152-Z**

Dear Ms. Dortch:

TiVo Inc. ("TiVo") respectfully submits these *ex parte* comments relating to the above-captioned waiver request. Recent media reports suggest that Lafayette Utilities System ("LUS") may be proceeding with its plans to deploy set-top boxes that do not comply with Section 76.1204(a) of the Commission's rules (the "common reliance rule") even though it has not received a waiver of the rule. TiVo urges the Commission to conduct an inquiry into any possible rule violations and take any appropriate enforcement actions.

On March 27, 2009, LUS petitioned the Commission to waive the common reliance rule for its video programming network in Lafayette, LA, claiming that it is unable to locate equipment and technology that would enable it to separate security and navigation functions for its IPTV service.[1] TiVo has expressed its opposition to LUS's waiver request, pointing out that the request should be denied because: (1) Cable CARD-reliant devices will be denied access to the digital channels on the IPTV service; (2) granting LUS's petition would be inconsistent with previous waivers; (3) LUS did not seek a waiver of Section 76.640(b); and (4) granting LUS's petition would provide a clear signal to other MVPDs that the deployment of an IPTV system is a green light to avoid the common reliance rule entirely.[2] Grant of the LUS's broad waiver request — which would apply to an entire network with a particular technology and would

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[1] *Petition of Lafayette City-Parish Consolidated Government of Lafayette, Louisiana, d/b/a Lafayette Utilities System, for Waiver of Section 76.1204(a) of the Commission's Rules,* CSR-8152-Z, CS Docket No. 97-80 (filed Mar. 27, 2009) ("LUS Waiver Request").
[2] *Ex Parte* Filing by TiVo Inc., CSR 8152-Z, CS Docket No. 97-80 (filed June 26, 2009).

not be limited in time or to specific, low-cost, limited capability devices — would go far beyond prior limited waivers and would signal the demise of the Commission's common reliance rule for networks that use the increasingly popular IPTV technology.[3]

Recent press reports suggest that LUS may be going ahead with its plans to use non-compliant set-top boxes prior to the Commission's decision on the LUS waiver request.[4] TiVo urges the Commission to examine whether LUS is in fact deploying non-compliant set-top boxes and to take appropriate enforcement actions if necessary. While no party should engage in such "self-help" prior to being granted a waiver by the Commission, this is especially true with respect to LUS's waiver request, which would expand significantly the scope of prior waivers of the common reliance rule and substantially undermine the rule as applied to MVPD networks that use IPTV technology.

Accordingly, TiVo urges the Commission to determine whether LUS has willfully violated Commission rules, take appropriate enforcement action if this is the case, and, in any event, deny LUS's unprecedented waiver request.

Respectfully submitted,

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[3] While the use of new technology to deliver video programming such as IPTV should be encouraged, operators must ensure that such video programming remains accessible to retail set-top boxes. Any retail set-top box with an IP connection should be technically capable of receiving signals delivered using IPTV technology.

[4] Amanda McElfresh, *LUS Still Awaiting FCC Ruling on Set-Top Boxes*, The Advertiser, July 13, 2009, *available at* http://www.theadvertiser.com/apps/pbcs.dll/article?AID=2009907130314 (noting that LUS was proceeding with the deployment of its fiber-based network and that consumers could sign up for television services — presumably through non-compliant set-top boxes).