

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

In the Matter of

Annual Assessment of the Status of
Competition in the Market for the
Delivery of Video Programming

MB Docket No. 07-269

SUPPLEMENTAL REPLY COMMENTS OF DIRECTV, INC.

DIRECTV, Inc. submits these brief reply comments in response to comments filed by TiVo, Inc. (“TiVo”) in the above-captioned proceeding.¹ TiVo urges the Commission to “review” whether the decade-old exemption to the Commission’s integration ban for Direct Broadcast Satellite (“DBS”) providers should remain in effect in light of satellite marketplace gains.² The Commission need not undertake any such review because the operative facts behind the exemption remain valid today.

More than a decade ago, Congress directed the Commission to assure the commercial availability of “navigation devices” (set-top boxes and the like).³ Shortly thereafter, the Commission determined that, unlike cable set-top boxes, satellite set-top boxes were *already* commercially available and portable throughout the United States.⁴

¹ See *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Supplemental Notice of Inquiry, MB Docket No. 07-269 (rel. Apr. 9, 2009) (“Supplemental NOI”); Comments of TiVo, Inc. (filed July 29, 2009).

² TiVo Comments at 12 n. 23.

³ 47 U.S.C. § 549(a).

⁴ *Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices*, 13 FCC Rcd. 14775, ¶¶ 64-66 (1998) (“*First Report and Order*”) (“We believe . . . that differences in the marketplace for DBS equipment, where devices are available at retail and offer consumers a choice, as compared to equipment for other MVPD services, particularly cable operators, provide justification for not applying the rule requiring separation of security functions to DBS service.”),

The Commission thus exempted satellite operators from the ban on set-top boxes with integrated security-and non-security functions.⁵

Satellite set-top boxes remain commercially available and portable today.

DIRECTV's set-top boxes can still be used anywhere in the country.⁶ They are still produced by multiple vendors, soon to include TiVo itself.⁷ They are still available at retail establishments.⁸ They are still inexpensive – in fact, many subscribers can receive them for free.⁹ In addition, because DIRECTV still competes against incumbent cable operators – who now offer bundled voice and data services – DIRECTV has every incentive to continue to produce innovative and inexpensive set-top boxes.¹⁰

Accordingly, there is no reason for the Commission to revisit the DBS integration ban exemption.

aff'd on recon., 14 FCC Rcd. 7596, ¶ 37 (1999) (“We believe that legitimate distinctions exist between DBS equipment and that used in connection with other MVPDs and decline to depart from our approach in the *Navigation Devices Order*. We reiterate our view that because DBS devices are widely available to consumers at retail from multiple vendors, as compared to equipment for other MVPD services, particularly cable operators, there is justification for not applying the rule requiring separation of security functions to DBS services.”).

⁵ *First Report and Order*, ¶¶ 64-66; *see also* 47 C.F.R. § 76.1204(a)(1).

⁶ *First Report and Order*, ¶ 66 (“In DBS service, due to the means of signal delivery, a particular provider’s equipment is already portable as to that provider across the continental United States because DBS operators offer services nationally.”).

⁷ *Id.*, ¶ 64 (“In the DBS environment, there are three service providers and at least ten equipment manufacturers competing to provide programming and equipment to consumers.”). *See also* Press Release: “DIRECTV and TiVo to Launch New HD DIRECTV DVR with TiVo Service,” Sept. 3, 2008, *available at* <http://www.directv.com/DTVAPP/global/contentPage.jsp?assetId=P4900010>.

⁸ *Id.* (noting that DBS “equipment is available at retail stores”).

⁹ *Id.* (noting that DBS satellite operators offered “lower equipment prices, enhanced options and features”). DIRECTV offers a number of packages that include free equipment. *See* <https://www.directv.com/DTVAPP/wizard/buildYourSystem1.jsp>.

¹⁰ *First Report and Order*, ¶ 65 (emphasis added) (finding that DBS operators, as relatively new entrants in the MVPD market, possessed “substantial incentive to pursue additional market share through additional services and improved equipment”).

Respectfully submitted,

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