

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

In the Matter of)	
)	
TiVo Inc.'s)	CSR-8252-Z
Petition for Clarification or Waiver of)	
47 C.F.R. § 76.640(b)(4))	
)	
Implementation of Section 304 of the)	CS Docket No. 97-80
Telecommunications Act of 1996;)	
Commercial Availability of Navigation)	
Devices)	

TiVo Inc.'s Reply To Comments

March 4, 2010

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TiVo Inc.'s Reply To Comments

TiVo Inc. ("TiVo") respectfully submits this Reply To Comments on its Petition For Clarification Or Waiver of Section 76.76.640(b)(4) of the Commission's rules. TiVo's Petition is supported or not opposed by all but one commenter.¹ That commenter, Texas Instruments, has a proprietary² rather than user-based interest in the maintenance of a product mandate that *all* other interests – including those that initially requested this mandate – have declared obsolete.

The mandate to include a functional IEEE interface was recommended to the Commission in 2002 by the Consumer Electronics Association ("CEA") and the National Cable and Telecommunications Association ("NCTA").³ The FCC accepted this

¹ See Comments of Consumer Electronics Association, Intel, RCN, Texas Instruments and Verizon.

² See, e.g., <http://focus.ti.com/analog/docs/microsite.tsp?sectionId=585&tabId=2202µsiteId=10>.

³ Cox Communications, et al., Letter to Chairman Michael K. Powell, FCC, Re: Consensus Cable MSO-Consumer Electronics Industry Agreement on "Plug and Play Cable Compatibility and Related Issues," CS Docket No. 97-80, PP Docket No. 00-67 at 2 (Dec. 19, 2002).

mandate for “one way” devices in October 2003 as a first step in an anticipated “Plug & Play” regime.⁴ However, *both* CEA and the NCTA have since declared the “1394” mandate to be *obsolete* and an obstacle to progress toward the Commission’s current goals.⁵

A Telco MVPD, a cable overbuilder, and component manufacturer Intel join these consumer electronics and cable associations in saying the 1394 mandate is obsolete. Verizon supports TiVo’s Petition: “Manufacturers can provide consumers with a richer media experience at lower cost through the use of newer technologies.”⁶ RCN supports the Petition and observes, “[t]he IEEE 1394 standard for home networking is ... of little interest to consumers” and denial of this Petition would serve “only to delay our ability to bring our subscribers the benefits of a device that is readily available to consumers outside of the cable context” Intel supports the Petition and notes: “Connecting set-top boxes to an IP-based home network can better realize consumers’ reasonable and customary expectations with respect to home and personal recording and networking”⁷

Texas Instruments, the only commenter opposing this Petition, argues in opposition: (1) There is nothing sufficiently “unique” about TiVo’s circumstance to merit a waiver,⁸ (2) The IEEE 1394 interface has commercial merits that have been recognized in markets for other products,⁹ and (3) The IEEE 1394 interface has not been

⁴ *In the Matter of: Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices, Compatibility Between Cable Systems and Consumer Electronics Equipment*, CS Docket No. 97-80, PP Docket No. 00-67, Second Report and Order and Second Further Notice of Proposed Rulemaking (Oct. 9, 2003).

⁵ See CEA Comments at 2; NCTA Reply Comments on NBP #27 at 38.

⁶ Verizon Comments at 2.

⁷ Intel Comments at 1. Intel also has a waiver petition pending with respect to this rule.

⁸ TI Opposition at 7.

⁹ *Id.* at 4-6.

useful to consumers as intended by CEA, the NCTA, and the FCC, only because cable operators have refused to implement it bi-directionally.¹⁰ The first argument is manifestly incorrect; the second and third are irrelevant to this Petition.

Unique Circumstance of the TiVo Petition. TI entirely ignores rather than addresses TiVo's unique circumstance: TiVo products are competitively available at retail. TiVo DVRs are the one remaining major retail product to rely on the CableCARD interface. The competitive availability of such products was the main goal of Section 629 of the 1996 Telecommunications Act,¹¹ and their support was the main accomplishment of the 2003 Plug & Play regulations. Section § 76.640(b)(4) is a footnote to these regulations. Failing to grant this Petition expeditiously would impair the viability the FCC's "Plug & Play" regulations, out of fidelity to a footnote that the original proponents and others have declared obsolete and unnecessary, and which at present serves no consumers or consumer interests.

TiVo agrees with TI¹² that waivers should be in aid of, rather than in derogation of, Commission regulations. Granting this waiver would help to preserve not only TiVo's presence in the marketplace, but also the suite of FCC regulations that make TiVo's competitive entrant status possible. Hence, grant of this waiver would be entirely in accordance with the precedent that TI cites.

Other commenters take a more balanced and enlightened approach. CEA notes its longstanding position that the Commission should make policy by regulation rather than waiver. Nevertheless, CEA does not oppose TiVo's Petition because the subject products "are available competitively at retail," and "do support home networking of content

¹⁰ *Id.* at 8.

¹¹ 47 U.S.C. § 549.

¹² TI Opposition at 7 and n. 5.

received from a variety of sources, and so operate in a manner consistent with the salutary purposes underlying” Commission regulations.¹³

TI also ignores that fact that the TiVo petition is, unlike others that are pending, one for Clarification Or Waiver. This is significant because (1) neither the parties who recommended this mandate nor the Commission comprehended that this Section 76.640(b) would apply to competitive, non-MVPD devices, and (2) the provision is directed at cable operators, not competitive manufacturers. As TiVo pointed out in its Petition, “Cable operators can continue to deploy devices, including DVRs, from their incumbent providers to subscribers who request a 1394 port, if any should do so. Therefore, granting TiVo’s request will cause no harm to cable subscribers or the operators who serve them.”¹⁴ Accordingly, the Commission has the option – unrecognized by TI – of proceeding via clarification as well as by waiver.

TiVo’s petition is distinct from the waivers requested by other manufacturers.¹⁵ If other set-top box manufacturers would like to make available at retail the same boxes they sell to MVPDs and use home networking technologies other than 1394, it would significantly advance the Commission’s objectives with regard to availability of competitive navigation devices. A clarification or waiver for retail boxes would in no way “distort the market and hinder competition for video devices” as suggested by Verizon.¹⁶

Comparative Benefits Of Home Networking Technologies. The merits of the IEEE 1394 interface as a home networking technology and its use in other contexts

¹³ CEA Comments at 2.

¹⁴ TiVo Petition at 9.

¹⁵ *See, e.g.*, Request for Waiver of Motorola, Inc., CS Docket No. 97-80 (filed Nov. 25, 2009).

¹⁶ Verizon Comments at 4.

would be relevant to a discussion of marketplace choices. It is the 1394 mandate, however, that serves to *pre-empt* such marketplace choice. Granting TiVo's petition would do nothing to impede any decision by TV and recorder manufacturers to begin putting the 1394 interface in their products, and by cable operators or others to begin supporting this interface bi-directionally. It is only the *mandate* from which TiVo has requested relief. Nothing would rule out the emergence of the 1394 interface as a future competitive option, or even as a reference in a future Commission proceeding.¹⁷

MSO Lack Of Bidirectional Support For 1394. Curiously, TI offers the fact that since the regulation took effect in 2003, cable operators have never implemented the 1394 interface on a bi-directional basis,¹⁸ as a reason that the FCC should *not* grant TiVo's waiver. The admitted abject failure of this mandate to produce *any* bi-directional home networking, in light of the Commission's goals as expressed in NBP #27, should instead be a compelling reason for the Commission to act on TiVo's Petition expeditiously.

As a commercially interested and harmed party, TI at any time since 2003 could have petitioned the Commission for an enforcement proceeding against any cable MSO TI believed was not implementing 1394 on a "functional" basis. That TI did not do so suggests a focus more on selling chips than on consumers actually benefiting from them. Alternatively, it suggests that the regulation itself is flawed – hardly a reason for denial of a petition for clarification or waiver.

¹⁷ As CEA observes, "TiVo has requested specific relief for a specific product type and line. To the extent the Commission may later take an approach to home networking not anticipated by TiVo, TiVo and its products would be at risk." CEA Comments at 4-5.

¹⁸ TI Opposition at 8.

Finally, both CEA and TI suggest that the Commission should address the subject of navigation devices and home networking through rulemaking.¹⁹ TiVo has also urged the Commission to update its navigation device regulations, and to do so in the context of the National Broadband Plan.²⁰ TiVo has stressed, however, that in the interim it is vital for the Commission to maintain its existing rules that require MSOs to support competitive products at retail.²¹ TiVo's petition is unique and granting the petition would *preserve* the intention of the Commission's rules on competitive availability, rather than undermine them. TiVo asks the Commission to act expeditiously on its Petition so that competitive set top boxes can be introduced into the marketplace as early as April 2010.²²

Respectfully submitted,

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¹⁹ CEA Comments at 3, TI Opposition at 7-8.

²⁰ Petition for Reconsideration or Clarification of TiVo Inc., File Nos. EB-07-SE-351, EB-SE-352 (July 27, 2009); Comments of TiVo Inc. on NBP Public Notice #27 (Dec. 22, 2009).

²¹ See *ex parte* comments, letter of Matthew Zinn, NBP Public Notice #27, GN Docket No. 09-47, GN Docket No. 09-51, GN Docket No. 09-137, CS Docket No. 97-80 (Feb. 17, 2010).

²² Comments of RCN Telecom Services, Inc. at 2 ("assuming that a waiver is granted promptly by the Commission, RCN is prepared to begin deployment of the devices in its Washington, DC market as early as April 2010.")