

STAMP & RETURN

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)
)
TiVo Inc.)
)
Petition for Waiver of Sections 15.118(b),)
15.123(b)(1), and 15.123(c) of the)
Commission's Rules)

FILED/ACCEPTED

JUN - 7 2011

Federal Communications Commission
Office of the Secretary

To: The Secretary's Office
Attn: The Media Bureau

PETITION FOR WAIVER

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June 7, 2011

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SUMMARY

TiVo Inc. (“TiVo”) is prepared to bring to the consumer retail market an exciting new four-tuner, all-digital digital video recorder (“DVR”) that promises customers increased recording capability, increased capacity (300 HD hours), reduced power consumption, and a space-saving design. This device – the Premiere Elite – will provide a new option for consumers that currently can obtain an all-digital DVR only from a multichannel video program distributor like their local cable operator. TiVo already is taking orders for a version of the Premiere Elite from cable operators for deployment later this year to customers served by digital cable systems, but TiVo also seeks to offer it directly to consumers served by such systems. TiVo’s entrance into the retail market for all-digital DVRs will provide exactly the type of competition Congress sought to foster when it enacted Section 629 of the Communications Act (the “Act”).

To bring retail consumers the Premiere Elite, however, TiVo requires a waiver of the Commission’s “Digital Cable Ready” certification, marketing, and labeling rules (the “DCR Rules”). Under the current rules, CableLabs cannot certify, and TiVo cannot verify, a unidirectional cable product (“UDCP”) such as the Premiere Elite for retail sale unless it includes an analog tuner. This requirement made sense when it was proposed and adopted years ago, but today it threatens to stifle innovation in the navigation devices market by preventing companies like TiVo from serving customers that receive all their programming in digital format and have no need for legacy analog tuners.

Maintaining an analog tuning requirement for the TiVo Premier Elite would increase production costs and the price to the consumer by \$80-100, increase the device’s power consumption by one-third, and increase the device’s size in an electronics market where reduced size often influences consumer decisions. Moreover, the customers TiVo is targeting with the Premiere Elite subscribe to cable systems that provide all their services in digital format, so they have no need or desire for analog tuners. To ensure that consumers fully understand the Premiere Elite’s capabilities, TiVo plans an aggressive marketing and customer support campaign that will properly match the Premiere Elite with the all-digital customers TiVo is seeking to serve.

Under these circumstances, a waiver would better serve the policies underlying the Commission's DCR rules – *i.e.*, stimulating the competitive availability of UDCPs and encouraging the adoption of digital services – than strict adherence to the current rules. Because a waiver also would help TiVo introduce new and improved services and equipment to consumers, the Commission also may grant this waiver within the expedited 90-day timeframe required by Section 629(c) of the Act.

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To: The Secretary's Office
Attn: The Media Bureau

PETITION FOR WAIVER

TiVo Inc. ("TiVo"), by its attorneys and pursuant to Section 629(c) of the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. § 629(c), and Sections 1.3, 76.7, and 76.1207 of the rules of the Federal Communications Commission (the "Commission"), 47 C.F.R. §§ 1.3, 76.7, and 76.1207, hereby petitions the Media Bureau for waiver of Sections 15.118(b), 15.123(b)(1), and 15.123(c) of the Commission's "Digital Cable Ready" certification, marketing, and labeling rules (the "DCR Rules").

TiVo has developed a digital video recorder ("DVR") – the Premiere Elite – that is all-digital and is prepared to market it directly to retail consumers. Grant of the requested waiver is necessary to allow CableLabs to certify TiVo's proposed all-digital retail device and license CableCard technology. This result will give consumers a retail alternative to the all-digital set-top boxes they currently can only lease from their local MVPDs. The requested waiver and TiVo's introduction of a four-tuner, all-digital DVR would significantly advance longstanding congressional and Commission policies to promote digital innovation, consumer choice, and retail competition in the navigation devices market. It also would satisfy the reasonable expectations of consumers who have embraced digital technology and no longer need or want to pay for unnecessary legacy analog equipment. TiVo, moreover, has tremendous incentives to

ensure that consumers fully understand the Premiere Elite's functionality and is committed to marketing and selling this device only to customers desiring an all-digital experience. For these reasons, a waiver of the DCR labeling and marketing rules satisfies the waiver standards set forth in the Act and the Commission's rules. The Bureau, therefore, should expeditiously grant the waiver.

BACKGROUND

TiVo has been a pioneer in home entertainment technology and services since 1997, when it developed the world's first DVR and thereby created both a new product and a new multichannel video service. Following the Commission's 2003 approval of the CableCard solution for use with unidirectional cable products ("UDCPs"),¹ TiVo DVRs began offering cable customers the opportunity to replace the set top boxes offered by their cable companies with a competing device that provides a superior customer experience. TiVo currently offers two CableCard-enabled dual-tuner DVRs – the TiVo Premiere (45 HD hours of storage) and the TiVo Premiere XL (150 HD hours of storage). Both provide consumers the ability to record multiple channels of programming simultaneously and both feature two analog/ATSC tuners and two digital QAM tuners. TiVo's innovative products have won awards from numerous industry organizations, including the National Television Academy, *PC World*, *Wired*, CNET, and the Consumer Electronics Association.²

TiVo recently developed the Premiere Elite, which is an all-digital, CableCard-enabled DVR designed specifically for use in all-digital cable systems. The Premiere Elite features four integrated QAM digital tuners to permit simultaneous viewing and recording of up to four separate program streams and can store up to 300 hours of high definition programming. TiVo

¹ See Implementation of Section 304 of the Telecomms. Act of 1996: Commercial Availability of Navigation Device and Compatibility Between Cable Systems and Consumer Elec. Equip., *Second Report and Order and Second Further Notice of Proposed Rulemaking*, 18 FCC Rcd 20885 (2003) (the "CableCard Order").

² See *Awards*, TIVO.COM, <http://pr.tivo.com/easyir/awrd.do?easyirid=CA934452BA6418EF> (last visited June 5, 2011).

already is taking orders for a version of the Premiere Elite from cable operators for deployment later this year to customers served by digital cable systems. TiVo's Premiere Elite therefore will compete with other CableCard-enabled digital-only boxes that MSOs purchase for use in their systems.

Today, however, no retail market exists for these all-digital products because Sections 15.118(b) and 15.123(b)(1) of the Commission's rules require UDCPs to have tuners capable of tuning analog cable television channels that are transmitted in the clear before they can be certified and marketed to the public as "Digital Cable Ready."³ Moreover, TiVo cannot secure a license from CableLabs to use the CableCard technology for a consumer version of the Premiere Elite because under the Commission's labeling rules, CableLabs may license that technology only for devices that can be certified as "Digital Cable Ready." Section 15.123(c) of the rules only permits CableLabs (or any other testing body) to certify, and only allows TiVo to verify, devices that comply with *Uni-Dir-PICS-101-03903: Unidirectional Receiving device: Conformance Checklist: PICS Proforma*, which includes an analog tuner requirement.⁴ Therefore, the ultimate result of the Commission's rules is to prohibit the retail sale of digital-only UDCPs.

This result hurts consumers. Adherence to the current rule takes a valuable new choice out of the hands of even those consumers who have completely transitioned to digital cable services and have no need or desire for legacy analog equipment. To accommodate analog programming that many consumers no longer receive, today's retail DVRs include both an analog tuner and an MPEG encoder for each analog tuner in the DVR. By eliminating the analog tuner components, a TiVo Premiere Elite will reduce unit production costs and save consumers \$80-\$100 off the price of the box at retail. The digital-only design also is a "green" solution that reduces power consumption from 32W to 24W and saves customers additional money in utility

³ See 47 C.F.R. §§ 15.118(b); 15.123(b)(1).

⁴ See 47 C.F.R. § 15.123(c). The *Uni-Dir-PICS-101-03903* specification similarly is incorporated by reference in the FCC's rules. See 47 C.F.R. § 15.38(c).

bills. Consumers similarly will save space because the “foot print” of the Premiere Elite is significantly smaller without the inclusion of analog tuners and MPEG encoders. The Premiere Elite therefore promises digital cable customers the benefits of a smaller, less expensive, more energy-efficient device, without compromising any features those customers actually use.

A waiver of Sections 15.118(b), 15.123(b)(1), and 15.123(c) of the rules would permit CableLabs to certify the Premiere Elite as DCR-compliant, and facilitate licensing of the CableCard technology and retail marketing of the device to consumers as “Digital Cable Ready.” TiVo therefore requests a waiver of the DCR Rules to bring consumer choice and competition to the all-digital DVR market.

DISCUSSION

I. Waiver of the DCR Certification, Labeling, and Marketing Rules Will Further Longstanding Congressional Goals, the Commission’s Navigation Devices Policies, and Consumer Welfare.

The Commission has held repeatedly that its rules should be waived pursuant to Sections 1.3 and 76.7 for good cause shown in specific cases where it determines that circumstances “warrant a deviation from the general rule and such deviation would better serve the public interest than would strict adherence to the general rule.”⁵ Congress, moreover, specifically directed the Commission to waive the rules adopted pursuant to Section 629 of the Act, such as the rules in question here, when a service provider or equipment manufacturer can show that a waiver will “assist the development or introduction of a new or improved multichannel video programming or other service, technology, or products.”⁶ TiVo’s waiver request may and should be granted under either of these standards.

⁵ *Comsat Corp.*, 12 FCC Rcd 12059, 12066, para. 14 (1997); *see also, e.g., Intel Corp., et al.*, 25 FCC Rcd 7539, 7542, para. 7 (2010); *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153, 1157(D.C. Cir. 1969).

⁶ *See* 47 U.S.C. § 549(c); 47 C.F.R. § 76.1207.

A. A Waiver Will Further Congressional Goals and the Commission's Navigation Devices Policies.

Fifteen years ago, Congress directed the FCC to stimulate competition in the cable consumer navigation device market by enacting Section 629 of the Communications Act.⁷ As the Commission has recognized, the “overarching goal” of the statute and the Commission’s implementing regulations has been to “assure competition in the availability of set-top boxes and other customer premises equipment.”⁸ Both Congress and the Commission have found such competition to be crucial in securing for consumers the benefits of greater innovation, lower prices, and higher quality that naturally follows increased consumer choice in a competitive market.⁹ The Commission’s adoption of the CableCard rules for UDCPs in 2003 opened the market to competition for important classes of consumer devices, and TiVo answered the call by offering consumers exciting new products and services.¹⁰ The requested waiver will further these same policies by allowing TiVo’s all-digital DVR to compete at retail with cable operators’ all-digital devices, which cable operators already provide to their subscribers.

The requested waiver also will further the Commission’s policies of recognizing and promoting consumer adoption of digital technology and the overall cable industry transition from analog to digital.¹¹ This transition is well underway and the introduction of retail devices like the Premiere Elite can only hasten the process. When the CableCard rules were adopted in 2003, an analog tuner requirement for UDCPs made sense because most consumers still relied on analog television sets and most cable systems still transmitted basic tier channels in an analog format.

⁷ See Telecomm. Act of 1996, Pub. L. No. 104-104 § 304, 110 Stat. 56 (1996).

⁸ See Commercial Availability of Navigation Devices, *Report and Order*, 13 FCC Rcd 14775, 14777-78, para. 7 (1998) (citing Implementation of Section 304 of the Telecomm. Act of 1996, Commercial Availability of Navigation Devices, *Notice of Proposed Rule Making*, 12 FCC Rcd 5639, 5641, para. 3 (1997) (“Section 629 NPRM”).

⁹ See Section 629 NPRM, 12 FCC Rcd at 5641 para. 3 (citing H. Rep. No. 104-204, 104th Cong., 1st Sess. 112 (1995)).

¹⁰ See *CableCard Order*, 18 FCC Rcd at 20891, para. 11.

¹¹ See Commercial Availability of Navigation Devices, *Third Report and Order and Order on Reconsideration*, 25 FCC Rcd 14657, 14662, 14679-80 paras. 7, 45 (2010) (“Third Report and Order”).

With the Commission's support and encouragement, however, both consumers and the cable industry have adopted digital technology, and they continue to do so at an accelerating pace. Consumers quickly adopted digital television technology; by early 2011, more than 70% of U.S. households owned a digital television, and more than 65% owned an HDTV.¹² Today, moreover, more than 75% of basic video cable customers subscribe to digital cable service.¹³ For some MSOs, the percentage is much higher: Comcast now reports that 87% of its basic subscribers receive digital service, and for Cablevision, that figure stands at 94%.¹⁴ As they transition to digital, consumers and the cable industry are discarding analog services and equipment entirely. Many cable operators, including Comcast, the nation's largest, as well as smaller operators like Insight, Mediacom, and Suddenlink, have upgraded to all-digital cable systems that have no analog component at all.¹⁵ In addition, among those cable companies that

¹² *Consumer Tech Revenues Will Reach Record High in 2011, According to CEA*, DIGITAL TV NEWS (Jan. 6, 2011), <http://www.digitaltvnews.net/content/?p=17815> (last visited June 5, 2011); Deepak Joseph, *The Shrinking DTV Replacement Cycle*, CEA DIGITAL DIALOGUE BLOG (Dec. 10, 2010), <http://blog.ce.org/index.php/2010/12/10/the-shrinking-tv-replacement-cycle/> (last visited June 5, 2011).

¹³ See NCTA, *Industry Data: Availability*, <http://www.ncta.com/StatsGroup/Availability.aspx> (last visited June 2, 2011) (citing data from SNL Kagan); see also Mari Rondeli and Michelle Ow and Ian Olgeirson, *US Multichannel Penetration Increases During Q1*, SNL Kagan: Multichannel Market Trends (April 2011).

¹⁴ See *Video Subscribers 3Q09 – 4Q10*, THE BRIDGE at 2 (Apr. 2011), available at <http://www.mediabiz.com/thebridge/>.

¹⁵ See, e.g., *Comcast Annual Review 2010*, COMCAST, <http://www.comcast.com/2010annualreview/#/customerstats> (as of the end of 2010, all-digital deployed in 75% of Comcast markets) (last visited June 5, 2011); Bob Wallace, *RCN: All Digital by Month's End*, VISION2MOBILE (Jan. 21, 2009), <http://www.vision2mobile.com/news/2009/01/rcn-all-digital-by-month-s-end.aspx> (conversion to all-digital completed in New York, Washington, D.C., Boston, Chicago, and Philadelphia by year-end 2009) (last visited June 5, 2011); Jeff Baumgartner, *Cablevision Eyes All-Digital Future*, LIGHT READING (Mar. 12, 2009), http://www.lightreading.com/document.asp?doc_id=173494&site=lr_cable (last visited June 5, 2011); Mike Robuck, *Mediacom Jumpstarts All-Digital in Iowa*, CED MAGAZINE (Jan. 21, 2011), <http://www.cedmagazine.com/News/2011/01/Mediacom-all-digital-Iowa-Cedar-Rapids-analog-reclamation.aspx> (last visited June 2, 2011); Todd Spangler, *Insight Going All-Digital in Lexington, Promises 100 HDs*, MULTICHANNEL NEWS (Apr. 23, 2010), http://www.multichannel.com/article/451848-Insight_Going_All_Digital_In_Lexington_Promises_100_HDs.php (last visited June 5, 2011); Press Release, BendBroadband, *BendBroadband Completes its Move to an All-Digital Platform – Now Boasts 71 HD Channels and More on the Way* (Jan. 13, 2009), http://www.bendbroadband.com/press/BendBroadband_Completes_its_Move_to_an_All_Digital_Platform.pdf (last visited June 5, 2011); *Greenville, Miss., All-Digital TV Conversion Finished*, SUDDENLINK (Mar. 3, 2011), <http://suddenlinkfyi.com/2011/03/03/greenville-miss-all-digital-tv->

(continued . . .)

continue offering some analog service, many have introduced switched digital service, typically accompanied by a digital simulcast of analog programming for digital customers.¹⁶ The end result is that only a small and dwindling number of the potential customers for UDCPs receive analog programming at all. In this new environment, requiring an analog tuner in every UDCP no longer is necessary or desirable. Granting the requested waiver to permit TiVo to market the Premiere Elite to digital cable customers would both recognize these Commission-sanctioned trends and promote their further development.

B. A Waiver Will Benefit Consumers.

The requested waiver would not only serve the Commission's pro-consumer navigation device and digital transition policies, it would provide concrete benefits to individual consumers by allowing TiVo to provide a higher quality product at a lower price. The substantial benefits of the TiVo Premiere Elite in terms of price, power consumption, size, and increased storage capacity will allow TiVo to provide retail competition to similar products that cable operators

(. . . continued)

conversion-finished/ (last visited June 5, 2011); *Kingwood All-Digital TV Project Completed*, SUDDENLINK (Aug. 17, 2010), <http://suddenlinkfyi.com/2010/08/17/kingwood-all-digital-tv-project-completed/> (last visited June 5, 2011); *All-Digital Switch Finished in Two Arkansas Markets*, SUDDENLINK (Nov. 19, 2010), <http://suddenlinkfyi.com/2010/11/19/all-digital-switch-finished-in-two-arkansas-markets/> (last visited June 5, 2011); *Charter Activates All-Digital TV Service*, HARMONIC INC. (Jan. 15, 2004), http://www.harmonicinc.com/ah_press_release_text.cfm?ID=503&source=archive (last visited June 5, 2011).

¹⁶ See, e.g., Time Warner Cable 2010 Annual Report, TIME WARNER CABLE, at 6, <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9NDIxMDYwfENoaWxkSUQ9NDM0NjY2fFR5cGU9MQ==&t=1> (Time Warner Cable has deployed switched digital "in all its areas") (last visited June 5, 2011); Press Release, Charter Communications, Get TV, Internet and Phone – Charter Communications (June 9, 2010), <http://phx.corporate-ir.net/phoenix.zhtml?c=112298&p=iro1-newsArticle&ID=1436261&highlight=> (last visited June 5, 2011) (Charter planned to have rolled out switched digital video to 60% of its footprint by year-end 2010); Todd Spangler, *Insight Completes Digital Simulcast Upgrade, Adds HD Channels*, MULTICHANNEL NEWS (Oct. 12, 2009), http://www.multichannel.com/article/357729-Insight_Completes_Digital_Simulcast_Upgrade_Adds_HD_Channels.php (last visited June 5, 2011). A recent study by CEA also shows that only approximately 8% of customers continue to rely on over-the-air television broadcasts. CEA, *Cord Cutting and TV Service: What's Really Going On* (May 2011). Among that group, the only viewers continuing to rely on analog technology are viewers of LPTV and Class A television stations. For such viewers interested in purchasing a TiVo DVR, TiVo continues to market its TiVo Premium and Premium XL models.

lease to their subscribers. TiVo's offering will increase choice for consumers, which, in turn, will pressure cable operators to improve the price and functionality of their own products. This inevitably will lead to even greater future improvements in all-digital consumer devices and thereby benefit the public.

The consumer and industry conversion to digital technology also changes the policy calculus the Commission should use in evaluating the CableCard labeling and marketing rules that subject to the requested waiver. The policy behind those rules is to ensure that customers receive UDCPs that truly are "Digital Cable Ready," *i.e.*, capable of interacting with digital cable systems and providing customers with the performance they expect.¹⁷ The point is to avoid customer confusion and ensure that devices are providing the functionality they advertise.¹⁸ Consumers today—most of whom have already transitioned to digital technology and a growing number of whom are served by all-digital cable systems— are much less likely to expect that a product labeled DCR will include analog functionality or be confused about the capabilities of an all-digital product like the Premiere Elite. To the contrary, TiVo's generally tech-savvy customers would be more likely to view analog functionality as a quaint relic rather than as a necessary component of a device's capabilities.

C. TiVo's Marketing Will Ensure That the Premiere Elite Is Only Deployed in Digital Cable Systems.

Consumers' changing needs and expectations mean that the consumer protection functions of the CableCard labeling and marketing rules now can be better served through consumer education and point-of-sale disclosures than through adherence to legacy analog technology requirements like the DCR labeling and marketing rules. TiVo's economic self-interest will ensure that customers do not buy the Premiere Elite expecting to gain analog functionality. The added costs to TiVo of device returns and lost customer goodwill if TiVo fails

¹⁷ See *CableCard Order*, 18 FCC Rcd at 20903-04 paras. 40-41.

¹⁸ See *id.*

to properly educate its customers and retail sellers would make it uneconomical for TiVo to offer an all-digital device. TiVo therefore plans to take several steps to ensure that its customers recognize the capabilities of the Premiere Elite and purchase it only where it will be deployed in a compatible digital cable system.

- First, TiVo will market the Premiere Elite primarily to customers that subscribe to cable systems that offer all their services, including basic tier signals, in digital format, *i.e.*, to subscribers to all-digital cable systems and systems that offer a digital simulcast of their analog signals.
- Second, to avoid any customer confusion, TiVo plans to market the Premiere Elite primarily through its custom install, high-end retail, and TiVo.com channels. Customer installers are highly trained and will verify that customers have all-digital service or digital simulcast service before recommending the TiVo Premiere Elite. TiVo also will train its high-end retailers (*e.g.*, Magnolia) to ensure that customers have all-digital cable or digital simulcast service before selling them a Premiere Elite model. TiVo will ensure that TiVo.com's online description of the product makes customers fully aware of the Premiere Elite's capabilities and will require a live consultation before purchase.
- Third, TiVo will develop clear and easily understood point-of-sale disclosures and retailer scripts and will work to educate any retailers as well as cable operators about the Premiere Elite's functionality. For customers that continue to receive analog cable service, TiVo's other models will remain available, and TiVo's sales representatives will be trained to recommend TiVo's dual analog/digital devices to those customers.
- Fourth, while TiVo expects its efforts will virtually eliminate consumer confusion, any customers that nevertheless purchase a Premiere Elite for use in an analog cable system will be free to return or exchange it for a TiVo product that includes analog functionality.

Given the important policies that grant of the requested waiver would further, the declining importance of the requirements embodied in the CableCard labeling and marketing rules, and TiVo's commitment to ensuring that consumers are fully informed and protected from confusion about the Premiere Elite's capabilities, a waiver of Sections 15.118(b), 15.123(b)(1), and 15.123(c) would better serve the Commission's policies and the public interest than strict adherence to the rules.

Indeed, the instant request presents a much more compelling case than the many Section 629 "integration ban" waivers the Commission has granted over the past several years.¹⁹ In those cases, the Commission temporarily waived the integration ban – a fundamental element of the Commission's Section 629(a) implementation plan – to ensure the widest dissemination of digital cable services even though the requested waivers did not permit the requesting cable operators to offer any new services. In some cases, the requesting operators were offering "low cost, limited capability" equipment that actually reduced the quality of service available to consumers.²⁰ In this case, TiVo is seeking to offer new and improved services that currently are not available at retail and that will vastly improve the consumer experience. The Commission's waiver of the integration ban under far less compelling circumstances than exist here provides strong precedent for granting TiVo's request.

¹⁹ See Implementation of Section 304 of the Telecomms. Act of 1996: Commercial Availability of Navigation Devices, *Second Report and Order*, 20 FCC Rcd 6794, 6813-14 para. 37 (2005) (establishing standards for future waiver requests involving the security/decoding separation requirement of 47 C.F.R. 76.1204); see also, e.g., *Baja Broadband Operating Co., LLC*, 25 FCC Rcd 2200 (2007).

²⁰ *Evolution Broadband, LLC*, 24 FCC Rcd 7890, 7894 para. 10 (2009); *Comcast Corp. Request for Waiver of Section 76.1204(a)(1) of the Comm'n's Rules*, 22 FCC Rcd 17113, 17120 para.11 (2007). See *Third Report and Order*, 25 FCC Rcd at 14681, para. 49 (2010) (extending the waiver for low cost, limited-capability boxes to all cable operators).

D. TiVo's Commitment To Introducing New and Improved Cable Services and Equipment to Digital Cable Consumers Justifies Waiver of the Rules Pursuant to Section 629(c).

TiVo's requested waiver also satisfies the standards for expedited treatment of navigation device rule waivers established by Section 629(c) of the Act and 76.1207 of the Commission's rules. That provision instructs the Commission to grant temporary waivers of rules adopted pursuant to Section 629(a) within 90 days to requesting cable service providers and equipment manufacturers when doing so will "is necessary to assist the development or introduction of a new or improved multichannel video programming or other service offered over multichannel video programming systems, technology, or product."²¹ The instant request satisfies each element of that standard.

First, the TiVo Premiere Elite represents both a new and improved multichannel video service and product. As described above, the all-digital Premiere Elite DVR will offer customers increased program recording capability, increased hard-drive storage space, improved power efficiency, and space savings at a price that would be impossible to offer if the devices were required to include an unneeded analog tuner. Second, the waiver is clearly necessary within the meaning of Section 629(c) for TiVo to introduce this new product and service because TiVo otherwise will be unable to offer the Premiere Elite at retail. If the waiver is denied, consumers will continue to obtain all-digital DVRs, but they will only be able to lease them from their cable operators, and no retail competition will occur in the reasonably foreseeable future in this new and growing segment of the set-top box market. That result would be directly contrary to Congress's intent in enacting Section 629 and would deprive consumers of retail access to this important new product category.

²¹ See 47 U.S.C. § 549(c). While Section 629(c) requires that the Commission grant only "temporary" waivers when petitions satisfy the standards established by the statute, it does not prohibit the Commission from granting permanent waivers where, as here, conditions warrant. Because the conversion to digital technology is ongoing and inevitable, a temporary waiver would not be sensible.

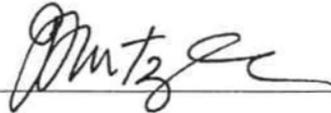
Grant of the requested waiver is particularly appropriate because the market for all-digital devices like the Premiere Elite is relatively new and quickly emerging. Establishing retail competition now is crucial to shaping the market for these devices in the years to come. As Congress and the Commission have recognized, a competitive navigation devices market will be a more efficient and more innovative market that will provide consumers with higher quality and less expensive alternatives to proprietary, leased devices. Grant of the instant waiver will be a big step toward allowing such a competitive market to develop.

CONCLUSION

For the reasons stated above, the Bureau should grant waiver of Sections 15.118(b), 15.123(b)(1), and 15.123(c) of the FCC's rules to permit TiVo to introduce an all-digital DVR to the retail consumer in accordance with congressional and Commission policy.

Respectfully submitted,

TiVo Inc.



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June 7, 2011

Verification

To the best of my knowledge, information and belief formed after reasonable inquiry, this Petition for Waiver is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, and it is not interposed for any improper purpose.

A handwritten signature in cursive script, appearing to read "Lutzker", is written over a horizontal line.

Gary S. Lutzker

June 7, 2011

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of

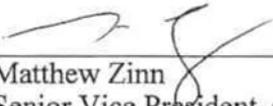
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Petition for Waiver of Sections 15.118(b),
15.123(b)(1), and 15.123(c) of the
Commission's Rules

To: The Secretary's Office
Attn: The Media Bureau

DECLARATION OF MATTHEW ZINN

1. My name is Matthew Zinn, and I am Senior Vice President, General Counsel, Secretary & Chief Privacy Officer for TiVo Inc.
2. I have read the foregoing Petition for Waiver and I am familiar with the contents thereof.
3. I declare under penalty of perjury that the facts contained herein and within the foregoing Petition are true and correct to the best of my knowledge, information, and belief.



Matthew Zinn
Senior Vice President, General Counsel, Secretary
& Chief Privacy Officer
TiVo Inc.

Executed On: June 6, 2011

CERTIFICATE OF SERVICE

I, Sandra Dallas Jeter, a secretary at the law firm of Dow Lohnes PLLC, certify that on this 7th day of June 2011, I caused the foregoing Petition for Waiver to be served by hand delivery on the following:

William Lake
Chief, Media Bureau
Federal Communications Commission
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Sherrese Smith
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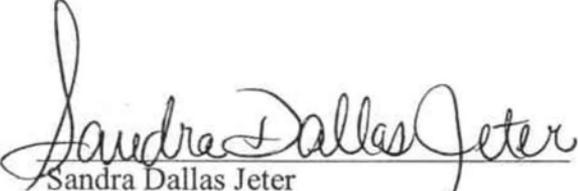
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