

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

In the Matter of)	
)	
TiVo Inc.'s Petition for Waiver of Certain)	
"Cable Ready" Requirements)	MB Docket No. 11-105
)	

COMMENTS OF NAGRAVISION

Nagravision, a Kudelski Group company, is the leading supplier of open conditional access systems ("CAS"), digital rights management ("DRM"), and integrated on-demand solutions for content providers and digital TV operators over broadcast, broadband, and mobile platforms.¹ In constructing solutions for digital television markets, Nagravision is deeply involved in digital television receiver functions and capabilities.

Nagravision hereby respectfully submits these comments in response to the Public Notice seeking comments on the TiVo, Inc. Petition for Waiver of Certain "Cable Ready" Requirements.²

I. BACKGROUND

Nagravision has long been a proponent of a free and open marketplace, and believes that both network equipment and digital television receivers – for all MVPDs – should be available in a

¹ Nagravision is a division of the Kudelski Group, a publicly traded company based in Switzerland. Its technologies are currently being used by more than 120 leading Pay-TV operators worldwide securing content delivered to over 144 million devices, including more than 14 million households served by MPVDs in the United States.

² *Petition for Waiver*, MB Docket No. 11-105 (filed June 7, 2011) ("*Waiver Request*"). See also *Media Bureau Seeks Comment on TiVo Inc.'s Petition for Waiver of Certain "Cable Ready" Requirements*, Public Notice, MB Docket No. 11-105, DA 11-1102 (rel. June 23, 2011) ("*Notice*").

free market. Such an environment would encourage innovation and yield greater functionality to consumers and network operators at lower prices.

While regulatory intervention in the marketplace for navigation devices is specifically authorized in the Communications Act,³ such intervention should be made with the understanding that regulations will occasionally need to be adjusted to keep pace with marketplace developments. Such adjustments are warranted in this case.

II. GRANTING TIVO'S WAIVER IS IN THE PUBLIC INTEREST

The *Waiver Request* describes a product which lacks analog tuning capabilities but otherwise complies with the Rules. It is Nagravision's position that granting the waiver request is in the public interest, and that the waiver should be granted to all similar products under similar conditions.

A. MANY CUSTOMERS NO LONGER NEED CABLE NAVIGATION DEVICES THAT PERFORM ANALOG TUNING

When the CableCARD rules were originally adopted, cable networks had generally transitioned to a hybrid analog/digital environment. At that time, even "digital cable systems" delivered a significant amount of programming using analog signals.

Since the Commission adopted its initial CableCard rules in 1998, both cable and broadcast programming have generally transitioned from relatively low-definition analog programming to high-definition digital programming. At the same time, due to the Commission's DTV Tuner Mandate,⁴ a significant proportion of consumers now have high-definition televisions (and expect to be able to view high definition programming).

³ 47 U.S.C. § 549.

⁴ 47 C.F.R. § 15.117(b), (h), (i).

Moreover, to be able to carry an ever-increasing amount of high definition programming and serve their customers, cable operators – particularly Comcast, the nation’s largest – are transitioning to all-digital cable systems.⁵

In any all-digital cable system, analog tuners are entirely superfluous and merely add cost, size, complexity and power consumption without providing any functionality to consumers. As a result, operators already provide all-digital devices in all-digital networks, where analog devices are unnecessary and superfluous.

B. VENDORS SHOULD NOT BE PROHIBITED FROM SELLING DIGITAL-ONLY NAVIGATION DEVICES

Vendors should not be prohibited from selling navigation devices that do not include analog tuners, and consumers should have competitive retail options available to them that compete against leased, operator-provided, digital-only devices.

The Commission’s navigation devices rules are based on the policy of promoting and enabling competition between operator-provided receivers and retail devices.⁶ Those rules permit Cable operators to lease digital-only receivers to their customers.⁷ The requirement to include analog tuners in retail devices when they are not required in leased devices imposes a *competitive*

⁵ See, e.g., *The Newest Switch: Comcast Updates Area to Digital*, Eileen Graham, ManassasPatch, July 18, 2011 available at <http://manassas.patch.com/articles/the-newest-switch-comcast-updates-area-to-digital-2> (describing Comcast all-digital upgrade in Prince William County, Virginia); *Cable Customers May Need Adapter Box*, Sena Christian, The Press Tribune, July 11, 2011, available at <http://rosevillept.com/detail/182998.html> (describing Comcast all-digital upgrade in Roseville, California). See also *Waiver Request* at 6 & n.15 (citing many additional examples of cable operators moving to all-digital operation).

⁶ 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, 20891 at para. 11 (2003).

⁷ *Supra* note 5.

disadvantage on retail devices. The rules, therefore, no longer are consistent with the policies underlying them.

TiVo has committed to market digital-only devices primarily to customers of all-digital cable systems, in a manner devised to minimize consumer confusion, and to return or exchange TiVo receivers inadvertently purchased by any consumer that wants or needs analog tuning capability.⁸ This approach is appropriate and will both minimize consumer confusion and remove the competitive disadvantage to retail navigation devices in all-digital cable systems. The Commission would be justified in requiring, as a condition of the waiver, that certain steps be taken to minimize consumer confusion.

C. THE WAIVER SHOULD BE EXTENDED TO ALL SIMILAR PRODUCTS

The CableCARD regulations were adopted to enable and promote a competitive retail environment for navigation devices. Granting a limited waiver from the analog tuner requirement, as discussed above, is appropriate to continue to enable and promote the emerging retail market for cable set top equipment. Such a waiver, however, should be extended to *all* retail devices under similar conditions. Such a broader grant will enable and promote competition.

⁸ TiVo *Waiver Request* at 9.

III. CONCLUSION

The Commission should find that the Waiver Request is in the public interest, and should grant the waiver to all retail navigation devices.

Respectfully submitted,

/s/

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