



July 26, 2011

VIA ECFS

Ms. Marlene H. Dortch  
Federal Communications Commission  
Office of the Secretary  
445 12<sup>th</sup> Street, SW  
Washington, D.C. 20554

***Re: CS Docket 97-80, PP Docket No. 00-67***

Dear Ms. Dortch:

TiVo Inc. (“TiVo”) files this letter to urge the Commission to intensify its oversight of the market for competitive navigation devices and its enforcement of its CableCARD rules. Specifically, in light of a recent article by a *New York Times* writer (copy attached), TiVo urges the Commission to investigate whether the discriminatory conduct by cable operators that led to the reform of the Commission’s CableCARD rules continues today.

In October of last year, the Commission adopted several rules aimed at remedying shortcomings in the Commission’s CableCARD rules in order to enhance consumers’ experience with retail navigation devices such as TiVo set-top boxes.<sup>1</sup> In adopting these requirements, the Commission noted that it sought “to remove the disparity in consumer experience between those who choose to buy a retail device and those who lease the cable provider’s set-top box, as the disparity is impeding the development of a retail market for navigation devices.”<sup>2</sup> Among the rules adopted by the Commission were those designed to “prohibit price discrimination against retail devices to support a competitive marketplace for retail devices” and to “require cable operators to allow self-installation of CableCARDs where

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<sup>1</sup> *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, Third Report and Order and Order on Reconsideration, FCC 10-181 (rel. Oct. 14, 2010) (“CableCARD Reform Order”).

<sup>2</sup> *Id.* at 2, ¶ 1.

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device manufacturers offer device-specific installation instructions to make the installation experience for retail devices comparable to the experience for leased devices.”<sup>3</sup>

A recent article by a writer for the *New York Times* indicates that Time Warner Cable is ignoring these requirements.<sup>4</sup> The story recounts that the writer was first discouraged by Time Warner Cable’s employees from using a TiVo box and was instead encouraged to use the cable operator’s leased box. Next, the writer was not given the option to self-install a CableCARD, even though TiVo provides customers with clear and easy-to-follow instructions on self-installation. The writer was also told that he would be charged \$14 a month *more* for using a CableCARD because he would lose his bundled service discount, effectively penalizing the consumer — instead of offering him a discount — for bringing his own retail navigation device. Based on the writer’s account, Time Warner Cable apparently is actively impeding the development of retail competition for cable set-top boxes contrary to the Commission’s policies.

The writer’s experience in attempting to install a CableCARD in a TiVo Premier set-top box exemplifies the challenges cable subscribers too often face in seeking to connect retail boxes rather than operator provided set-top boxes and is no different from the experience that many consumers faced prior to the adoption of the new CableCARD rules in October 2010.<sup>5</sup> TiVo therefore urges the Commission to engage in careful oversight of its CableCARD rules and investigate whether Time Warner Cable and other cable operators’ practices are consistent with the rules. While cable operators continue to attack the CableCARD rules as unnecessary, the reality is that retail navigation devices such as the TiVo Premier will continue to face an uphill battle as long as discriminatory cable operator practices continue. Indeed, the writer’s experience was that he felt very positive about the TiVo device itself and its enhanced functionality; it was the set-up difficulties and discriminatory CableCARD charges that left him ambivalent about endorsing using the TiVo Premier. While some consumers will no doubt continue to overcome these obstacles for a superior product, a truly competitive marketplace for retail navigation devices simply cannot develop so long as cable operators continue to engage in such discriminatory conduct in violation of the Commission’s policies and the spirit of Section 629 of the Communications Act.

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<sup>3</sup> *Id.*

<sup>4</sup> Joshua Brustein, *TiVo, Nice Service if You Can Get It*, July 18, 2011, at <http://gadgetwise.blogs.nytimes.com/2011/07/18/tivo-nice-service-if-you-can-get-it/>.

<sup>5</sup> Although, due to delays in Federal Register publication, the new CableCARD rules do not go into effect until August 8, 2011, that is no excuse for continuing to engage in discriminatory conduct 9 months after adoption of rules prohibiting such conduct.

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Please do not hesitate to contact me should you have any questions regarding this letter.

Respectfully submitted

**/s/ Matthew Zinn**

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

cc: William Lake  
Bob Ratcliffe  
Michelle Carey  
Nancy Murphy  
Mary Beth Murphy  
Brendan Murray  
Alison Neplokh  
Jeff Neumann  
Steve Broeckaert  
Lyle Elder  
Paul De Sa

Attachment

The New York Times

## Gadgetwise

Getting Smart About Personal Technology

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JULY 18, 2011, 5:44 AM

### TiVo, Nice Service if You Can Get It

By *JOSHUA BRUSTEIN*

**9:44 p.m. | Updated** to clarify the pricing of Time Warner Cable's DVR service.

TiVo has a bit of a problem. It wants to be the future of television, seamlessly mixing cable television with Internet programming. But it's still largely thought of as a fancier version of the DVR available through the cable company. And it asks for a lot more in return for its service than its clunkier competitors in the world of DVRs do.

The TiVo Premiere.

TiVo has been working diligently to distinguish itself. Its Premiere service recently added Hulu Plus to its Internet offerings, which already include Netflix, Amazon Instant Video, Blockbuster and Pandora. This week, TiVo introduced a free iPhone app that allows you to use the phone as a remote if it and your TiVo are connected to the same wireless network. An iPad app developed earlier this year does the same thing. Through the the iPhone app, a user can also set up shows to record from the road.

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Of course, this comes with a price. The TiVo Premiere costs \$99.99 and comes with a \$19.99 monthly charge. This would cost me more than getting Time Warner Cable's DVR service, which is \$12.95 a month. But, as I learned when TiVo recently offered to let me try out the Premiere service in my apartment, it is not all about the money.

To a certain extent, TiVo relies on cable providers to get its product into its customers' hands, because its service has to work with their cable service. In its most seamless form, this means that TiVo provides the technology for a carrier's DVR service. On the other end of the spectrum is the awkward situation that I found myself in when I tried to finagle Time Warner Cable into easing my experiment with TiVo Premiere.

In order to get the Premiere working, I needed to exchange my Time Warner Cable set-top-box for a cable card that I would insert into Tivo's box.

I probably should have taken it as a bad omen when the customer service representative suggested that, instead of getting a cable card, I just get Time Warner's own DVR. This seemed to be a coached response to anyone who inquired about TiVo. He told me I could either pay \$40 to have a card installed, or I could drag my box into Manhattan and exchange it. I decided to pack up my box and bring it in.

When I arrived, though, I was told that they couldn't simply give me a cable card. I lugged the

box back home and called to make an appointment. Another customer service representative told me that a cable card would actually add \$14 to my bill each month, because they would no longer offer me the deal they give customers who bundle set-top box cable and Internet service. I decided to go forward anyway.

Then the serviceman didn't show up.

I rescheduled the appointment.

Four days later, a man who did not know quite what he was doing showed up at my apartment. He nervously fiddled with the cords around my television for several hours before he left.

I was all set.

After that point, TiVo was very nice. If I wanted to, say, rewatch the first season of the Sopranos, I could search for the show and set the TiVo up to record each episode as it appeared on television. If I got impatient in the meantime, I could buy an episode from Amazon immediately (after linking my TiVo and Amazon accounts). All from the same menu, using the same remote. The system also paid attention to what I watched, and recommended shows I might like.

Still, all told I spent more than 10 hours working to get the service working and would be paying \$34 a month if I wanted to keep it going.

This is going to be a tough sell.