

August 15, 2011

**VIA ECFS**

Marlene H. Dortch, Esq.  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, DC 20554

Re: 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, MB Docket No. 11-105  
**WRITTEN EX PARTE PRESENTATION**

---

Dear Ms. Dortch:

On August 10, 2011, I submitted on behalf of TiVo Inc. ("TiVo") a Notice of Oral and Written Ex Parte Presentation (confirmation 2011810152573 attached) in connection with the August 9, 2011 meeting among the undersigned; Martin Rauchwerk, Director of Platform Product Management for TiVo; Joshua Cinelli, Media Advisor for Commissioner Michael J. Copps; Michelle Carey, Deputy Chief of the Media Bureau; Mary Beth Murphy, Chief of the Policy Division of the Media Bureau; Alison Neplokh, Chief Engineer of the Media Bureau; and Brendan Murray of the Media Bureau.

Following that meeting — and as I, Mr. Paul Glist of Davis Wright Tremaine LLP, and Mr. Neal Goldberg, Vice President and General Counsel of the National Cable & Telecommunications Association ("NCTA") discussed this afternoon with Mr. Brendan Murray of the Media Bureau — Mr. Goldberg contacted me and TiVo to discuss NCTA's desire to ensure that TiVo's point-of-sale disclosures and retailer scripts highlighted potential issues encountered by customers who may relocate or change service providers. As a result of those discussions, TiVo and NCTA agreed that TiVo would amend the point-of-sale and retailer materials presented to the Commission's staff in its August 9, 2011 meeting as set forth below. TiVo and NCTA believe these amendments fully address concerns regarding customers who may change service providers or may relocate from an all-digital or digital simulcast cable system to an area or provider with a cable system that requires analog tuning capability. We therefore hope it will allow the Commission to reach an expeditious determination in the above-referenced proceeding.

1. TiVo agrees to modify the draft in-store product information data sheet it recently presented to the Commission's staff as follows (the highlighted and strike-through text reflects the modification).

CableCARD™ Decoder. A CableCARD decoder is required for your TiVo Premiere Elite DVR to receive cable programming. The TiVo Premiere Elite is designed for use only with digital cable systems. It does not receive analog programming, including over-the-air, and will not work with an over-the-air antenna. Most of the largest cable providers have "digital simulcast," which means they rebroadcast all their analog channel programming on digital channels as well. This means that all **or most of the** programs

available on analog channels are also available on digital channels when a CableCARD is inserted. Therefore, if your provider has “digital simulcast” and rebroadcasts all of its programming in analog, you will not miss any of your cable channel programming with a TiVo Premiere Elite. If you are unsure whether your cable operator’s service provides all-digital or digital simulcast of all analog programming, please contact your provider. If you plan to relocate to a new area or change your video service provider, please contact your new provider to determine whether it offers all-digital or digital simulcast service for all its analog programming.

2. TiVo has no objection to having the commitments it made in its waiver request as a condition to the Commission’s grant of the waiver. The following summary of those commitments would serve as a good basis for any conditions:

- TiVo will market the Premiere Elite primarily to customers that subscribe to all-digital cable systems and systems that offer digital simulcast;
- TiVo will manage the retail channel and train its retailers to ensure that customers have all-digital cable or digital simulcast service;
- TiVo will develop clear and easily understood point-of-sale disclosures and retailer scripts that educate about the Premiere Elite’s functionality, including informing customers that if they move or change service providers, the Premiere Elite will not tune analog programming, if any, carried by their new provider; and
- TiVo will offer a program allowing free 30 day return or exchange for a model that includes analog functionality.

3. TiVo agrees that its sales training scripts will not suggest that salespersons sell the Premiere Elite to customers who inform them that they “don’t know” whether they have all-digital cable or digital simulcast and that they “only watch HD.” The final materials that are distributed to sales channels will delete the following language from page 9 of the draft document submitted to the FCC: (1) “Does the customer care about the missing programming (do they watch all HD)?”; and (2) “If they only watch HD, then they may not miss the analog channels.”

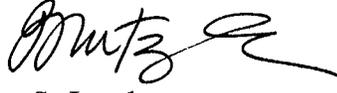
TiVo also reiterates its agreement with the position outlined in NCTA’s comments in this proceeding (NCTA Comments at 3) that the waiver should not impose new duties on MVPDs “to change the networks, services, or prices” in response to the new functionality offered by the Premiere Elite. See TiVo Reply Comments at 3, n.13.

Pursuant to Section 1.1206(b)(2)(i) of the Commission’s rules, 47 C.F.R. § 1.1206(b)(2)(i), this notice is being submitted to the Commission *via* the Electronic Comment Filing System and pursuant to Section 1.1206(b)(2) copies are being provided to the Commission participants in the meetings by e-mail.

Marlene H. Dortch, Esq.  
August 15, 2011  
Page 3

Kindly contact the undersigned if you have any questions regarding the foregoing.

Respectfully submitted,



Gary S. Lutzker  
Counsel to TiVo Inc.

attachment

GSL/sad

cc (w/attachment): William Lake, Esq.  
Sherese Smith, Esq.  
Joshua Cinelli, Esq.  
Erin McGrath, Esq.  
Dave Grimaldi, Esq.  
Alan Stillwell  
Michelle Carey, Esq.  
Mary Beth Murphy, Esq.  
Alison Neplokh  
Steven Broeckaert, Esq.  
Brendan Murray, Esq.

## Your submission has been accepted

**ECFS Filing Receipt - Confirmation number: 2011810152573**

### Proceeding

Name	Subject
11-105	Media Bureau seeks comment on TiVo Inc.'s petition for waiver of certain "Cable Ready" requirements.

### Contact Info

**Name of Filer:** TiVo Inc.  
**Attorney/Author Name:** Gary S. Lutzker  
**Lawfirm Name (required if represented by counsel):** Dow Lohnes PLLC

### Address

**Address For:** Law Firm  
**Address Line 1:** 1200 New Hampshire Ave., NW  
**Address Line 2:** Suite 800  
**City:** Washington  
**State:** DISTRICT OF COLUMBIA  
**Zip:** 20036

### Details

**exparte:** YES  
**Type of Filing:** NOTICE OF EXPARTE

### Document(s)

File Name	Custom Description	Size
TiVo Ex Parte -- Aug. 9 Meeting.pdf		775 KB

### Disclaimer

This confirmation verifies that ECFS has received and accepted your filing. However, your filing will be rejected by ECFS if it contains macros, passwords, redlining, read-only formatting, a virus, or automated links to other documents. Filings are generally processed and made available for online viewing within one business day of receipt. You may use the link below to check on the status of your filing:  
<http://fjallfoss.fcc.gov/ecfs/comment/confirm?confirmation=2011810152573>  
 For any problems please contact the Help Desk at 202-418-0193.