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September 13, 2011

**BY ECFS**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> St., S.W.  
Washington, D.C. 20554

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

Dear Ms. Dortch:

On behalf of Time Warner Cable Inc. (“TWC”), this letter responds to TiVo’s recent request that the Commission “intensify” both its enforcement of its CableCARD rules and its oversight of the marketplace for competitive navigation devices.<sup>1</sup> TiVo bases this request primarily on an account by a *New York Times* columnist describing his recent experience with the installation of a CableCARD in a new TiVo Premiere DVR. As discussed below, that isolated incident does not demonstrate any lack of compliance on TWC’s part, nor does it justify any increased regulatory attention.

As an initial matter, TiVo’s letter should be understood in context. TWC serves more than 12 million cable customers, and among such a large customer base some isolated service issues are inevitable, whether as to CableCARD devices or other issues having nothing to do with those devices. TWC strives to provide exemplary service and is proud of its record, but mistakes as to any of the services it provides cannot be eliminated altogether, just as is the case with any provider that serves millions of customers. The key point is that, while TWC has encountered occasional complaints in serving customers with CableCARD devices, the mere fact that some issues have arisen by no means points to any systemic concerns with TWC’s handling

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<sup>1</sup> Letter from Matthew Zinn, Senior Vice President, General Counsel, Secretary & Chief Privacy Officer, TiVo Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, CS Docket No. 97-80, PP Docket No. 00-67 (filed July 26, 2011).

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of CableCARDS or provides any basis to believe that TWC has engaged in anti-competitive conduct.

In this regard, the account on which TiVo relies in seeking increased regulatory oversight, though regrettable, is illustrative. While TiVo alleges that this particular customer was a victim of anti-competitive practices by TWC, TWC's investigation of the underlying facts indicates that the difficulties he encountered resulted primarily from the inadvertent provision of incorrect information by TWC customer service representatives about how TWC's CableCARD practices apply to the TiVo Premiere DVR.

TWC's response to this situation demonstrates how today's marketplace can rectify problems more efficiently and effectively than heavy-handed regulation. TWC became aware of this incident very soon after it occurred, and it took immediate steps to remind its personnel of the applicable policies and procedures—as it would do with any similar service issue relating to other TWC products and services. In addition, TWC waived the CableCARD installation fee for this customer. And TWC has been in direct communication with TiVo to resolve any lingering concerns triggered by this situation. Ironically, if the Commission were to intensify its oversight of cable operators' CableCARD-related practices as TiVo requests, TWC likely would have diminished flexibility to address customers' needs. Forcing operators to divert resources from customer service toward efforts to comply with detailed regulatory mandates would be counterproductive. Indeed, avoiding excessive regulatory burdens is particularly important in this context, given the Commission's stated interest in phasing out CableCARDS altogether.<sup>2</sup>

The isolated incident addressed by TiVo also should serve to caution against reflexive intervention before all relevant facts are known. For instance, although the customer claimed he was told that leasing a CableCARD instead of a set-top box would result in a price increase—which forms the basis of TiVo's allegation of price discrimination in its letter—TWC's records show that the customer in fact is receiving a discount on his monthly bill of \$7.75, consistent with 47 C.F.R. § 76.1205(b). Thus, the single, customer-specific incident cited by TiVo does not reflect any deliberate agenda or “discriminatory” practices on TWC's part and does not warrant any further investigation.

TWC intends to take TiVo's concerns into account and will continue to work toward ensuring that similar incidents do not recur, consistent with its efforts over the years to collaborate with TiVo and other interested parties to address the needs of customers who use CableCARD-equipped devices. Indeed, TWC played a lead role in developing CableCARDS and likewise has spearheaded subsequent initiatives (such as tuning adapters that provide access to switched digital video programming) that facilitate customers' ability to use CableCARD-

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<sup>2</sup> *Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices; Compatibility Between Cable Systems and Consumer Electronics Equipment*, Fourth Further Notice of Proposed Rulemaking, 25 FCC Rcd 4303 ¶ 12 (2010) (describing CableCARDS as “an aging technology with certain limitations” that “is not a viable long-term solution”).

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equipped devices—efforts that have been well documented in this proceeding. TWC remains hopeful that such bilateral discussions will resolve any remaining concerns.

Sincerely,

*/s/ Matthew A. Brill*

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