Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
TiVo Inc.	)	
Petition for Clarification or Waiver	)	
of 47 C.F.R. § 76.640(b)(4)	)	MB Docket No. 12-230
	)	CS Docket No. 97-80
Implementation of Section 304 of the	)	PP Docket No. 00-67
Telecommunications Act of 1996;	)	
Commercial Availability of Navigation	)	
Devices	)	

REPLY COMMENTS OF
THE CONSUMER ELECTRONICS ASSOCIATION

The Consumer Electronics Association (CEA) in its September 21 comments[1] supported both elements of TiVo's application for Clarification or Waiver of 47 C.F.R. Section 76.640(b)(4)(iii). CEA agreed that the FCC Media Bureau should:

- Provide necessary clarification, so that TiVo can plan for its retail products to also be acquired by cable operators for provisioning and lease on their own systems; and

- Waive the December 1, 2012 compliance date, for TiVo and (necessarily) for other providers of cable navigation devices, until such time as a non-discriminatory, standards-based solution is available and can be implemented by (1) major operators and suppliers to major operators, and (2) other operators, and other suppliers, such as TiVo.

Based on comments received, the only part of TiVo's petition to generate any controversy is whether or not the Bureau, in determining when cable operators must implement an "open industry standard," can or should provide any guidance about what the Media and Enforcement Bureaus will consider to be compliant implementations. The Bureau can and it must.

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[1] *In the Matter of TiVo Inc. Petition for Clarification or Waiver of 47 C.F.R. § 76.640(b)(4), Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices,* MB Docket No. 12-230, CS Dkt. No. 97-80, PP Docket No. 00-67, Comments of CEA (Sept. 21, 2012).

I. The Media Bureau Can And Must Indicate What Will And Will Not Satisfy The Requirement Of An Open Industry Standard.

Section 629 of the Communications act requires the Commission, in its regulations, to *assure* the commercial availability of competitive navigation devices. The Court of Appeals for the D.C. Circuit has on three occasions upheld the Commission's authority to issue regulations to assure this outcome.[2] NCTA and Verizon do not question this authority, but assert that the Third Report & Order to implement Section 629 somehow precludes the Media Bureau from interpreting Section 76.640(b)(4)(iii).[3] The Third Report & Order, however, explicitly anticipates that the Bureau will continue oversight with respect to this provision.

Section 76.640(b)(4)(iii) clearly requires cable operators to afford consumer-sourced home network products the benefit of *an open industry standard* to connect to and interact with their networks:

> (iii) Effective December 1, 2012, ensure that the cable-operator-provided high definition set-top boxes, except unidirectional set-top boxes without recording functionality, shall comply with an open industry standard that provides for audiovisual communications including service discovery, video transport, and remote control command pass-through standards for home networking.

In par. 43 of the Third Report & Order the Commission is explicit that this open standard must be IP-based:

> We conclude that the best step we can take in this regard to fulfill our statutory mandate under Section 629 is to modify our interface rule to require cable operators to include an IP-based interface on all two-way high-definition set-top boxes that they acquire for distribution to customers without specifying a physical interface.[4]

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[2] *General Instrument Corp. v. FCC*, 213 F.3d 724 (D.C. Cir. 2000); *Charter Communications, Inc. v. FCC*, 460 F.3d 31 (D.C. Cir. 2006); *Comcast Corp. v. FCC*, 526 F.3d 763 (D.C. Cir. 2008).

[3] Comments of NCTA, at 4, Comments of Verizon, at 8-11.

[4] *In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices*, CS Dkt. No. 97-80, PP Dkt. No. 00-67, Third Report and Order and Order on Reconsideration ¶ 43 ("Third Report & Order") (Oct. 14, 2010).

In par. 44, the Commission rejects assertions by Comcast, Verizon and NCTA that it should not define any "baseline of functionality," but says that given the dynamic nature of standard-setting it would refrain from specifying "at this time … the exact manner in which this baseline of functionality is to be implemented." In a note to this paragraph, the FCC indicates that details of compliance would indeed be subject to oversight, presumably by the Media Bureau:[5]

> While we believe this additional time is more than sufficient to complete any necessary standard-setting work, and address implementation, testing and deployment issues, we recognize that standard setting procedures can be complex and resource intensive. Should the Commission's predictions with respect to finalization of appropriate standards prove inaccurate, we would entertain reasonable requests for extensions as long as cable operators demonstrate good faith efforts to work towards these functionalities.

The Bureau could not possibly determine whether standards bodies have progressed sufficiently to provide an open standard interface if its stays blinkered about what must and will be supported and what functions might be unsupported or impaired. As an arm of the FCC, the Bureau cannot ignore the requirements of Section 629. In particular, the Bureau cannot ignore the requirements of Sections 76.1201, 1203 and 1205(a), that prohibit MVPDs from imposing technical, license, or contractual constraints not directed to protecting against theft of service or technical harm to the network.[6]

II. References To Proprietary Navigation Device Interfaces Are Inapposite.

NCTA and Verizon suggest that the atomistic support for some programming on some devices should serve as a substitute for supporting all competitive products on all devices

[5] Third Report & Order, at 23 n.151. No commenter asserts that the Bureau lacks the power to waive the compliance date and establish a new implementation schedule in response to TiVo's petition.

[6] 47 U.S.C. §§ 76.1201, 1203, 1205(a).

through an open and standard interface. Nothing in Section 76.640 supports this idea. Until the Commission moves beyond the interim nature of its navigation device rules and requires a universal IP-based interface for all MVPD programming and services, cable operators have a specific obligation under Section 76.640(b)(4)(iii) to support consumer-sourced products through an open and standard IP interface. Operators' second-screen and other proprietary approaches to content distribution are not proxies for compliance with Section 76.640(b)(4)(iii).

III. An Open Standard IP Interface Should Not Be Hindered By Contractual Restraints And Should Carry Data Necessary For The Device's Interactive Program Guide.

As TiVo observed in its petition, "If each cable operator deploys set-top devices based on its *own* understanding of 'an' open industry standard, the result may be an outcome that, in terms of home network interoperability, is neither standard nor open." As CEA observed in its comments, the Bureau must assure that that the FCC rule is not undermined by proprietary overlays, requirements, or limitations imposed by cable operators or content providers. The Bureau is obliged by Sections 76.1201, 76.1203, and 76.1205(a) to assure that connected devices may equally service consumer needs. Any action by the Bureau that abides limitations on secure, standard technologies would contravene core Commission rules and policy.

Mediacom reports that unless the Bureau requires a meaningful implementation of Section 76.640(b)(4)(iii) content providers will continue to impose contractual and technical constraints that frustrate entry, competition, and consumer utility.[7] The Commission and the Bureau have an obligation under Section 629 to *assure* that such constraints are not allowed to impair a standard interface, and that enforcement activity will be pursued if any do.

[7] Comments of Mediacom.

CEA has emphasized that for an IP interface to support competitive products it must carry data describing available programs and services, so as to provide effective support for a device's own integrated program guide in its interaction with the operator's network.[8] The subscriber pays for the network data and for the guide, and is entitled for them to operate together for her benefit. The Bureau, in assessing the goals and progress of standards organizations, should be explicit in requiring such support.

Respectfully submitted,

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[8] *See In the Matter of Video Device Competition, Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices, Compatibility Between Cable Systems and Consumer Electronics Equipment*, MB Dkt. No. 10-91, CS Dkt. No. 97-80, PP Dkt. No. 00-67, Comments of CEA and CERC on Notice of Inquiry, at 13 (July 13, 2010); Reply Comments, at 6-8 (Aug. 12, 2010).