

**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 ALLVID TECH COMPANY ALLIANCE**

There seems a consensus that, as the Commission anticipated might occur,¹ the December 1, 2012 date for achieving compliance with Section 76.640(b)(4)(iii) through the implementation of “an open industry standard” is too aggressive. NCTA² and Verizon,³ however, have suggested that the Media Bureau, when it acts on TiVo’s petition to identify a new date or dates for compliance, cannot and should not honor TiVo’s request that the Bureau, in explaining why it is providing more time, provide clarity about what implementations it will consider to be compliant or noncompliant. The AllVid Tech Company Alliance (the “Alliance”) does not agree. As the Alliance asserted in its comments, the Media Bureau is obliged to provide such information.

¹ *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, at 23 n.151 (Oct. 14, 2012) (“*Third R&O*”).

² *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 (Sept. 21, 2012) (“Comments”), Comments of NCTA at 4.

³ Comments of Verizon at 8-11.

I. There Is No Opposition To Affording The Time Necessary To Refer To Open Industry Standards.

The comments of NCTA, Verizon, CEA,⁴ and Mediacom⁵ either support or do not oppose TiVo's assertion that more time is necessary for TiVo and others to comply with Section 76.640(b)(4)(iii). NCTA did not oppose the extension, but observed that TiVo's current implementation should be considered compliant for purposes of the December 1, 2012 deadline.⁶ NCTA also proposed that "[i]f the Commission is inclined to provide relief to allow TiVo to await developments in the market before TiVo adopts DLNA or any other means of providing the expected functionality, the relief should be more widely available than just to TiVo."⁷ Verizon affirmatively urges that the Bureau, "on its own motion, extend the deadline for all parties in light of the current status of standards development," and proposes "an extension of at least 18 months [for] Verizon and others who have worked in good faith to develop standards and devices that meet the Commission's requirements."⁸

Cable operators and their vendors, in receiving extensions of time, are entitled to understand not only the reasons for the grant, but also the Bureau's expectations as to what will be a compliant implementation, and how such compliance will be enforced. It is clear from the *Third R&O* that the answers depend on their degree of commitment to a truly standards-based solution. Therefore, the *clarification* element of TiVo's petition is inseparably related to the date extension element. Otherwise, in 18 months or whatever timeframe the Bureau chooses, the result may be more

⁴ Comments of CEA.

⁵ Comments of Mediacom.

⁶ Comments of NCTA at 3 - 4.

⁷ *Id.* at 4.

⁸ Comments of Verizon at 1.

uncertainty, additional waiver applications, and a divergence of implementations that can be remedied only with difficulty or not at all.

II. The Media Bureau Has Authority To Clarify Expectations As To Compliance With Section 76.640(b)(4)(iii) And Discretion To Respond Affirmatively To Requests For More Time.

NCTA and Verizon suggest that the Commission denied to the Media Bureau the power, in granting a waiver, to also clarify its expectations regarding what implementations would qualify as compliant. This argument finds support only through the *omission* of key words when quoting or referring to *Third R&O*. Verizon quotes extensively from the *Third R&O*'s decisive paragraph 44 but by elision *leaves out* three key words – so as to *reverse* the meaning of what the Commission said.⁹ The full text of paragraph 44 of the *Third R&O*, with the words left out by Verizon emphasized, is set forth below:

44. Contrary to Comcast, Verizon and NCTA's assertions, we believe that it is important to define a baseline of functionality to ensure that consumers who network their devices and device manufacturers can rely on networked devices' ability to communicate with leased set-top boxes. However, as with the physical interface itself, we find that it is appropriate, ***at this time***, to refrain from specifying the exact manner in which this baseline of functionality is to be implemented. Accordingly, we modify our rules to require that the IP-based connection deliver the video in a recordable format (*e.g.*, MPEG-2, MPEG-4, h.264), and pass through closed captioning data in a standard format. We also believe more advanced functionalities are necessary to provide a foundation for a retail market of navigation devices that are connected to leased set-top boxes with limited capabilities. Those functionalities include service discovery, video transport, and remote control command pass-through standards for home networking. While these functionalities may exist in some form today, there is considerable work ongoing in industry standard bodies to provide those functionalities in a manner designed for IP-based and home network solutions. We, therefore, do not mandate that these additional functionalities be supported by cable operators immediately. We do, however, wish to ensure that consumers benefit from these additional functionalities in a timely manner, and require operators to provide these additional functionalities by December 1, 2012, but do

⁹ NCTA in its initial summary (at 2) does quote accurately from paragraph 44 but later, in supporting its argument (at 4 and n.9), refers back only to the earlier *discussion* portion of the *Third R&O* – not to the resolution of that discussion in paragraph 44.

not mandate a particular means by which these functionalities are to be provided.¹⁰

From the full text of par. 44 it is evident that the Bureau is in no way prohibited from, at an appropriate time, providing guidance as to what it will consider a compliant implementation. The Commission was saying the opposite – that the standards development process was incomplete so could not *yet* be assessed in terms of “baseline” guidance. Nothing in this paragraph removes from the Media Bureau the obligation to make such an assessment at the appropriate time. Indeed, had the Commission actually tied the Bureau’s hands in the way that Verizon and NCTA suggest, it would be unfortunate public policy and potentially a denial of due process. TiVo and others¹¹ have a right to understand why the Bureau, in assessing standards developments as envisaged by the FCC,¹² has decided that more time is necessary to comply, and what the Bureau’s enforcement expectations will be once compliance is required.

III. Commission Precedent Establishes That A Compliant Interface Must Be An IP Interface That Offers All Of The Operator’s Programming And Services.

Verizon and NCTA correctly quote the last sentence of paragraph 44 of the *Third R&O*, which states that Section 76.640(b)(4)(iii) is not intended to mandate a particular *means* of implementation. The regulation and the *Third R&O*, however, are each explicit that (1) an “open industry standard” is required, and (2) the standard must be IP-based. As paragraph 43 of the *Third R&O* explains:¹³

¹⁰ Emphasis supplied, citations omitted.

¹¹ The Alliance agrees with NCTA and Verizon, as quoted above, that others should get the benefit of the waiver. The Alliance also supports TiVo’s proposal with respect to sequence. TiVo petition at 8-10.

¹² *Third R&O* ¶ 44 & n.151.

¹³ *Id.*, ¶ 43, citations omitted.

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. IP has overwhelming marketplace support and serves the same purpose that our IEEE 1394 connection requirement was intended to serve. We agree with commenters that the method of physical transport (e.g., Ethernet, Wi-Fi, MoCA, or IP implemented over IEEE 1394) is not relevant in this situation, as we predict based on our examination of the record in this proceeding that consumers will use network adapters to choose the physical transport method that they prefer for networking their devices, in furtherance of the goals of Section 629.

When the Bureau provides a new date or dates for compliance in resolving TiVo's request for waiver, the Bureau also should reiterate the explicit message of the *Third R&O* that, irrespective of physical transport, the open standard that is implemented must be for an IP-based interface.

IV. The Media Bureau Should Clarify The Characteristics of a Compliant Implementation And Provide A Timetable For Compliance.

The dynamic standards context referenced in both the *Third R&O* and the record in the instant proceeding support the Bureau in supplying guidance about which means of implementation will be considered compliant with "an open standard" and which will not. Without such information, an entrant such as TiVo will continue not to know (1) whether an implementation will be considered "compliant," and (2) whether consumers who purchase retail products will get the benefit of the "open standard" interface on any particular cable system.

Availability of this information also is beneficial for cable operators. As Mediacom explained, content provider restrictions frustrate the very interoperability required by Commission regulations.¹⁴ Cable operators like Mediacom and others deserve to know whether such contractual restraints and license impositions, if they frustrate the operation of an open standard, will be

¹⁴ Comments of Mediacom at 3-5.

considered compliant, or will be subject to enforcement action after the date or dates on which full compliance with Section 76.640(b)(4)(iii) is required.

V. The Commission Should Set Forth Proposed Rules Regarding Open Standard, IP Interfaces That Would Apply To All MVPDs.

Because Section 76.640(b)(4)(iii) applies only to cable operators, the Commission should respond favorably to the Alliance's and CEA's calls to proceed with a rulemaking that would apply to all MVPDs.¹⁵ Support of some devices, on some systems, does not constitute compliance with Section 629, nor should it.¹⁶ Nor should the Commission's expectations for an open standard, IP interface that provides useful support to competitive products be limited to cable navigation devices but not those of other MVPDs. The Alliance has submitted to the Commission a suite of standards and specifications that would provide a universal IP-based interface for support, in competitive devices, of all MVPD programming and services from all MVPDs to all navigation devices. In light of the availability of such standards and the lack of any comparable solution otherwise, the Commission is obligated by Section 629 to pursue a rulemaking with an NPRM based on the Alliance's formulation of these standards, and the Alliance's proposal for an implementing regulation that would reference them.¹⁷

¹⁵ Purely in the cable context, if the Bureau credits NCTA's and Verizon's assertions that it lacks sufficient delegated authority, then the need for proceeding by NPRM should be evident.

¹⁶ The NCTA comments go beyond considerations of Section 76.640(b)(4)(iii), pointing to various ways in which *some* operator content is made available to *some* devices. The Alliance consistently has opposed this view as inviting a failure by the FCC to carry out the Congress's instruction to *assure in its regulations* the availability of MVPD programming and services to competitive devices. *See, e.g., 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, letters from Robert S. Schwartz, Counsel, AllVid Tech Company Alliance to Marlene H. Dortch, Sec., FCC, Feb. 16, 2011, Feb. 23, 2011, and June 23, 2011.

¹⁷ *Id.*, Letter from Robert S. Schwartz, Counsel, AllVid Tech Company Alliance to Marlene H. Dortch, Sec., FCC, Sept. 20, 2012, with attached regulation including draft specifications ("Alliance Specification"), and Discussion Document.

In addition to taking prompt action as requested by TiVo in light of the looming December 1 deadline for compliance with Section 76.640(b)(4)(iii), the Commission should publish the Alliance specification and draft regulation proposal as a Notice of Proposed Rulemaking.

VI. Conclusion

More time is necessary for TiVo and others to comply with Section 76.640(b)(4)(iii). The Media Bureau can and should clarify its expectations regarding what implementations would qualify as compliant with Section 76.640(b)(4)(iii). The Bureau also should reiterate the explicit message of the *Third R&O* that, irrespective of physical transport, the open standard that is implemented must be for an IP-based interface. Finally, because Section 76.640(b)(4)(iii) applies only to cable operators, the Commission should set forth rules regarding open standard, IP interfaces that would apply to all MVPDs. In addition to taking prompt action as requested by TiVo in light of the looming December 1 deadline for compliance with Section 76.640(b)(4)(iii), the Commission should publish the Alliance specification and draft regulation proposal as a Notice of Proposed Rulemaking.

Respectfully submitted,

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