

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

REPLY COMMENTS OF VERIZON

Commenters in this proceeding are in unanimous agreement that, despite good faith efforts, the industry as a whole needs additional time to develop home networking interface standards consistent with Section 76.640(b)(4)(iii) of the Commission’s rules. Verizon has worked diligently to develop devices, such as the Verizon Media Server (VMS), but ongoing standard-setting activities must be completed before such devices will fully meet the Commission’s requirements and provide more robust home networking capabilities. Thus, on its own motion, the Bureau should extend the deadline by at least 18 months in order to permit the completion, approval, and implementation of IP output standards. It is critical that the Bureau do so expeditiously, so as to provide parties with sufficient notice before the current deadline of December 1.

Given the progress described in the comments, however, there is no basis for the Bureau to specify a single standard that will satisfy the rule. As a practical matter, with the requested extension, there will be sufficient time for manufacturers (such as TiVo) who serve as set-top box vendors to obtain more information regarding how their video provider customers intend to

incorporate an audiovisual connector with the required functionality. Moreover, as Verizon and other commenters have demonstrated, the Bureau cannot establish an entirely new technology mandate by requiring use of a single home networking interface standard. Such an action would be outside the scope of the Bureau's delegated authority and directly contrary to the lessons learned from past technology mandates, as set forth in the very *Order* adopting the rule in question.¹ The Bureau thus should dismiss TiVo's request for "clarification," or, at a minimum, decline to act now on such request because it is premature. In any event, any Bureau action regarding specification of the standard should not delay the Bureau's expeditious grant of the broadly-supported extension.

I. THE BUREAU SHOULD ACT NOW TO EXTEND THE DEADLINE FOR AT LEAST 18 MONTHS

As the record here confirms, the Media Bureau should promptly extend the upcoming deadline for its IP output requirements by at least 18 months, particularly for providers like Verizon that have engaged in good faith efforts to develop devices that will fully meet those requirements but that will only do so after the completion of ongoing standards-setting activities. It is notable that no commenter objects to extending the home networking interface requirement deadline. TiVo, the Consumer Electronics Association (CEA), and the AllVid Tech Company Alliance ("AllVid Tech Alliance") all join Verizon and the National Cable and Telecommunications Association (NCTA) in recognizing that the industry has made substantial progress but needs more time to comply. Indeed, CEA and AllVid Tech Alliance both speak of

¹ See *Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices; Compatibility Between Cable Systems and Consumer Electronics Equipment*, Third Report and Order and Order on Reconsideration, 25 FCC Rcd 14657 (2010) ("*Order*").

the “imminent” need to extend the deadline.² Further, Verizon, NCTA, and CEA all argue that any relief should be industry-wide, because the challenge of incorporating an audiovisual connector that uses an “open industry standard” necessarily is industry-wide.³ Based on this record, the Bureau can and should move forward expeditiously to extend the deadline. By doing so now, it will afford industry the necessary time required to complete, approve, and implement the standard. A quick resolution also will allow video providers to continue to focus their attention and resources on the most consumer-friendly long-term solutions, rather than needing to divert attention in the short run to temporary solutions.

II. THE BUREAU CANNOT AND SHOULD NOT SPECIFY A SINGLE IP HOME NETWORKING STANDARD

While TiVo is correct in pointing out the need for more time in light of the current status of standards development, it misses the mark when it asks the Media Bureau to pick a particular technical standard to satisfy the Commission’s requirements. As an initial matter, the Bureau is not empowered under delegated authority to adopt the “clarification” TiVo seeks.⁴ In the *Order*, the Commission intentionally adopted a home networking interface requirement based on required functionality, and it “refrain[ed] from specifying the exact manner in which [the

² CEA Comments at 1 (“The Commission needs to address the December 1, 2012 compliance date imminently...”); AllVid Tech Alliance Comments at 1 (“With the imminent approach of the December 1, 2012 compliant date for Section 76.640(b)(4)(iii) ... the Alliance urges the Commission to grant TiVo’s waiver...”).

³ See Verizon Comments at 4; NCTA Comments at 6 (“[I]f the Commission provides relief to TiVo by delaying the effective date of the interface rule or otherwise, it should likewise do for all set-top box manufacturers.”); CEA Comments at 1 (characterizing TiVo’s request as seeking a waiver “for TiVo and (necessarily) for other providers of cable navigation devices....”).

⁴ NCTA Comments at 4 (citing 47 C.F.R. § 0.283).

requirement's] baseline functionality is to be implemented.”⁵ This Commission-level decision “may not be reconsidered and overturned (in the guise of a ‘clarification’) in the context of a Bureau-level waiver proceeding.”⁶ Any specification of a single industry standard would need to be addressed at the Commission level through a rulemaking process.

Even if the Bureau could grant TiVo’s request to mandate a specific standard, doing so now would be both ill-advised and premature. First, the requested “clarification” would be completely inconsistent with the Commission’s experience (recognized in the *Order*) regarding technology mandates for video outputs.⁷ History demonstrates that the Commission is not best positioned to determine which technology consumers will ultimately embrace or how technology will evolve, particularly in fast-developing fields like home networking. As multiple commenters note, the last output technology mandate the Commission adopted—requiring the use of IEEE 1394 “Firewire” outputs on MVPD leased set-top boxes—proved unsuccessful. For example, while the IEEE 1394 output appeared to offer great promise when it was incorporated by the Commission as a technological mandate on providers, “other interfaces (such as Ethernet, USB, Wi-Fi, and MoCA) rapidly eclipsed 1394, leaving cable customers bearing the costs for 1394 connectors that retail manufacturers had abandoned and few consumers used.”⁸ CEA agrees that “[t]he choice of the 1394 interface ultimately did not match the direction of private sector home network standards developments.”⁹ Nevertheless, it took many years before the

⁵ *Order*, ¶ 44.

⁶ NCTA Comments at 4 (citing 47 C.F.R. § 0.283).

⁷ *See Order* ¶ 39.

⁸ NCTA Comments at 1-2.

⁹ CEA Comments at 3.

Commission actually removed the IEEE 1394 mandate.¹⁰ Now TiVo, CEA, and AllVid Tech Alliance would have the Bureau repeat that costly mistake by mandating the use of a single standard—even though no such standards are fully established or approved—based on concern over a so-called “fragmented market”¹¹ that is more accurately described as a *flexible* market where standards can compete and adapt to best meet the needs of consumers. The Commission correctly afforded video providers flexibility in meeting the requirements of Section 76.640(b)(4)(iii) precisely to avoid the past mistakes of locked-in technology mandates, and the Bureau should act consistently with that determination.

Second, and in any event, TiVo’s request is premature. TiVo notes that it “needs sufficient time to *follow* the cable industry, not lead,” in part because it wishes to sell to MVPDs a device also suitable for retail.¹² To maximize its retail devices’ marketability, TiVo will need to incorporate the home networking standards used by as many MVPDs as possible.¹³ Grant of an adequate extension—which all parties agree is necessary, and which Verizon has requested to be at least 18 months—will provide sufficient time for manufacturers (such as TiVo) who serve as set-top box vendors to obtain more information regarding how their video provider customers

¹⁰ In October 2003 the Commission adopted the IEEE 1394 requirement in the *Plug and Play Order. Implementation of Section 304 of the Telecommunications Act of 1996*, 18 FCC Rcd 20885, ¶ 24 (2003). In June 2010 the Media Bureau granted a waiver of that rule for all set-top boxes with an IP-based interface, *Intel Corp. et al.*, 25 FCC Rcd 7539, ¶ 1 (MB 2010), pending the outcome of its CableCARD Reform rulemaking, in which it replaced that requirement with the home networking interface requirement. *See Order* ¶ 44.

¹¹ *See* Petition of TiVo Inc. for Clarification or Waiver of 47 C.F.R. § 76.640(b)(4)(iii), at i (filed July 25, 2012) (“TiVo Petition”). *See also*, CEA Comments at 4-5; AllVid Tech Alliance Comments at 5.

¹² TiVo Petition at 7-8, 10.

¹³ *See id.* at 8.

intend to comply with the rule, and to design and construct their devices accordingly. TiVo can use this same information to inform design of the devices it wishes to sell at retail.

If the Bureau does not dismiss TiVo's request as procedurally deficient and unnecessary, it should at least defer action on the request until the industry has made further progress in its standards-setting efforts. It is likely that the information that TiVo seeks will become available simply through marketplace developments, thereby obviating the need for any regulatory action. In any event, any action the Bureau takes with respect to the standard should not delay the Bureau's grant of the broadly-supported extension.

III. CONCLUSION

The Bureau should promptly extend the December 1, 2012, deadline by at least 18 months. Furthermore, it must decline to overturn the Commission's considered decision to permit flexibility in the exact standard or manner in which video providers implement Section 76.640(b)(4)(iii).

Respectfully submitted,

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