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November 9, 2012

Via ECFS

Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

**Re: American Cable Association Notice of Ex Parte Communications; TiVo Inc.
Petition for Waiver or Clarification; MB Docket No. 12-230**

Dear Ms. Dortch:

The American Cable Association (“ACA”) files this letter in support of the suggestion of several commenters in this proceeding¹ that the Commission extend on an industry-wide basis the December 1, 2012 compliance deadline created under Section 76.640(b)(4)(iii) of the Commission’s rules, by which time HD set-top boxes provided by cable operators must meet an “open industry standard” for tuning, transport and remote control signaling (“IP output requirement”).² For the reasons stated below, ACA requests that, if the Commission grants these requests, it provide small cable operators an additional six months to come into compliance with the IP output requirement beyond the extension granted the industry as a whole.

In its Petition, TiVo sought a waiver of the compliance deadline for the Commission’s HD set-top box home networking requirement³ and clarification of certain standards governing the

¹ *Media Bureau Seeks Comment on TiVo’s Request for Clarification and Waiver of the Audiovisual Output Requirement of Section 76.640(b)(4)(iii)*, Public Notice, MB Docket No. 12-230, DA 12-1347 (Aug. 16, 2012) (“Public Notice”).

² See, e.g., *In the Matter of Petition for Clarification or Waiver of 47 C.F.R. § 76.640(b)(4)*, MB Doc. No. 12-230, Comments of Verizon, 4-8 (Sept. 21, 2012) (“Verizon Comments”) (requesting an 18 month extension of implementation of the IP output requirement for all entities); see Letter from Neal Goldberg, Vice President and General Counsel, National Cable & Telecommunications Association, to Marlene Dortch, Secretary, Federal Communications Commission, 1 (Oct. 15, 2012) (MB Docket No. 12-230) (supporting Verizon’s suggestion that the deadline for compliance with the HD set-top box home networking requirement be delayed by 18 months).

³ Section 76.640(b)(4)(iii) of the Commission’s rules requires cable operators to “ensure that ... cable-operator-provided high-definition set-top boxes, except unidirectional set-top boxes without recording functionality, ...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” by December 1, 2012. 47 C.F.R. § 76.640(b)(4)(iii); see also *In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of*

IP output requirement.⁴ In response to the TiVo Waiver Petition, Verizon requested that the Commission, on its own motion, extend the December 1 deadline by 18 months for *all parties* because some of the standards required for compliance have not yet been completed.⁵ A review of the record in this proceeding indicates unanimous agreement that, despite good faith efforts to date, manufacturers, software developers, service providers and consumers will benefit from allowing additional time for the appropriate standards bodies to complete the development of new IP output requirement standards and to allow the implementation of these standards in their offerings.⁶

ACA agrees. The record shows that extension of the IP output requirement deadline is warranted. However, the Commission must also take into account the fact that in the past, small cable operators have had trouble obtaining compliant equipment and software from manufacturers and developers when the same compliance deadline is set for both large and small operators. In these instances small cable operators have had to file waiver requests seeking additional time to come into compliance, placing an additional financial burden on these providers while also tying up the Commission's limited resources. Accordingly, ACA recommends that the Commission extend the compliance deadline for small cable operators for a reasonable amount of time beyond any extension granted to large operators. Specifically, small operators should be granted an additional six months' time beyond any extension granted to large operators to come into compliance with the IP output requirement.

It is well recognized that it is not economically practical for small cable operators (operators with fewer subscribers than the six largest cable operators) to have equipment manufacturers and software developers design, produce, and deliver hardware and software specifically for them.⁷ As the Commission observed in its recent order lifting its ban on

Navigation Devices, CS Doc. No. 97-80, PP Doc. No. 00-67, Third Report and Order and Order on Reconsideration (Oct. 14, 2010) ("Third Report and Order") (adopting rules governing set-top box IP output standards and creating December 1, 2012 implementation deadline).

⁴ *Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices; Compatibility Between Cable Systems and Consumer Electronics Equipment, Petition of TiVo Inc. for Clarification or Waiver of 47 C.F.R. § 76.640(b)(4)(iii)*, MB Docket No. 12-230 (July 25, 2012) ("TiVo Waiver Petition").

⁵ Verizon Comments at 4-8.

⁶ See, e.g., *In the Matter of Petition for Clarification or Waiver of 47 C.F.R. § 76.640(b)(4)*, MB Doc. No. 12-230, AllVid Tech Company Alliance Reply Comments, 2 (Oct. 1, 2012) ("AllVid Tech Company Alliance Reply Comments") (arguing in favor of an extension of the deadline and identifying the comments advocating for, or not opposing a grant of additional time for compliance); *In the Matter of Petition for Clarification or Waiver of 47 C.F.R. § 76.640(b)(4)*, MB Doc. No. 12-230, Verizon Reply Comments, 2-3 (Oct. 1, 2012) ("Verizon Reply Comments") (arguing in favor of an extension of the deadline and identifying comments agreeing with the extension of the compliance deadline); see letter from Neal Goldberg, Vice President and General Counsel, National Cable and Telecommunications Association, to Marlene Dortch, Secretary, Federal Communications Commission, 1 (Oct. 15, 2012) (MB Docket No. 12-230) (supporting Verizon's suggestion that the deadline for compliance with the IP output requirement be delayed by 18 months).

⁷ See *In the Matter of the Basic Service Tier Encryption, Compatibility Between Cable Systems and Consumer Electronics Equipment*, MB Doc. No. 11-169, PP Doc. No. 00-67, Report and Order, FCC 12-126, ¶¶ 20-21 (rel. Oct. 12, 2012) ("Basic Tier Encryption Order") (applying additional basic tier encryption consumer protection measures concerning third-party provided IP-enabled clear QAM devices only to the

encryption of the basic tier, “[l]arge cable operators generally dictate equipment features to manufacturers and commonly get priority in delivery of that equipment.⁸ As a result, set-top boxes and required software that manufacturers and developers produce specifically for larger operators are made available to them before similar boxes and software are made available to other operators, particularly smaller ones.

Moreover, once final standards for equipment designed to comply with Commission-imposed mandates are adopted, it is the larger cable operators that will arrange with manufacturers to have compliant equipment produced and related software written. As a consequence, it is their orders that will be filled first. Only after the needs of larger operators are satisfied will compliant equipment and software become available for purchase by small cable operators. Past experience indicates that prior to the compliance deadline, there is often a surge in demand for new compliant equipment and software, with the result that small operators, who are last in line, are unable to timely procure the devices and related software because the orders of the largest operators are being met first.

Indeed, there have been several occasions where the Commission has established deadlines for compliance with equipment standards and small cable operators were forced to seek individual waivers because they found that all compliant equipment was on back-order as the deadline approached. For example, with regard to the ban on set-top boxes with integrated security, the Commission recognized the difficulty that small operators would have in obtaining non-integrated set-top boxes in time to deploy them by the original July 1, 2007 deadline and specifically permitted deferral requests.⁹ In one such waiver order, the Commission stated:

[W]e understand the difficulties that small cable operators may face in complying with the July 1, 2007 deadline...therefore...if Bend Broadband chooses not to accept this conditional waiver, it can request that we defer enforcement of the July 1, 2007 deadline so long as it can demonstrate that it has placed orders for set-top boxes that comply with the integration ban but that its orders will not be fulfilled in time for it to comply with the deadline.¹⁰

A number of small cable operators experienced similar difficulty in obtaining set-top boxes that complied with the integration ban prior to the implementation deadline and were forced to file waiver requests.¹¹ Making matters worse, the Commission did not establish a streamlined waiver process.

six largest incumbent cable operators – Comcast, Time Warner Cable, Cox, Charter, Cablevision and Bright House).

⁸ *Id.*, ¶ 21 (citing Mike Robuck, *Technicolor tops 10 million DTAs sold in North America*, CED Magazine, Jan. 31, 2012, available at <http://www.cedmagazine.com/news/2012/01/technicolor-tops-10-million-dtas-sold-in-north-america>. (“Comcast set the table when it came to the SD DTA product specifications, and has started to roll out HD DTAs.”)).

⁹ See 47 C.F.R. § 76.1204(a)(1); *In the Matter of Bend Cable Communications, LLC d/b/a Bend Broadband, Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, Memorandum Opinion and Order, CSR-7057-Z, CS 97-80, DA 07-47 (rel. Jan. 10, 2007) (“*Bend Broadband Order*”).

¹⁰ *Id.*, ¶ 10.

¹¹ See, e.g., *In the Matter of Baja Broadband Operating Company, LLC (f/k/a Orange Broadband Operating Company, LLC) and Carolina Broadband, LLC, Petition for Deferral of Enforcement of July 1,*

More recently, as the Commission's June 30, 2012, EAS CAP compliance deadline approached, many small cable operators were forced to request waivers of the deadline after they found that equipment was back-ordered and would not be available until after the compliance deadline.¹² Here to, the Commission failed to establish a streamlined waiver process.

Due to the likelihood of a similar scenario occurring when the industry as a whole seeks to come into compliance with the IP output requirement even with an extended deadline, additional time for small operators is warranted. Without an additional extension of the compliance deadline for small cable operators, it can be reasonably expected that small operators will once again have to file, and the Media Bureau to address, numerous individual waiver requests based on the unavailability of equipment. For most small operators, the costs required to prepare and file such waivers are significant, and place additional financial strain on systems which are already disproportionately burdened by this equipment mandate. This would impose a significant burden both on the smaller operators, and on the resources of the Commission. Congress has long recognized that advancing the public interest requires the Commission to take steps to reduce regulatory compliance costs for small cable operators.¹³ Given the experience of the Commission with previous deadlines for compliance with new equipment mandates, the Commission should take reasonable measures now to preemptively address this issue.

In light of the likelihood that small cable operators will have difficulty obtaining compliant devices and associated software if they are required to meet the same implementation deadline as the largest operators, the Commission should stagger the implementation deadline by giving

2007 Deadline in 47 C.F.R. § 76.1204(a)(1), Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices, CSR 7111-Z, CS Doc. No. 97-80, Memorandum Opinion and Order (rel. Sept. 27, 2007) (granting in part, denying in part request for waiver of integration ban deadline for certain set-top boxes based on the lack of availability of compliant devices); see also The City of Crosslake, Minnesota d/b/a Crosslake Communications Petition for Deferral of Enforcement of July 1, 2007 Deadline in 47 C.F.R. § 76.1204(a)(1), DA 07-2918 (MB rel. June 29, 2007) (granting waiver of July 1, 2007 deadline where orders for equipment were placed but would not be filled prior to the deadline); In the Matter of Cass Cable TV, Inc. Petition for Special Relief and Request for Deferral of July 1, 2007 Deadline in 47 C.F.R. § 76.1204(a)(1), CS 97-80, CSR-7352-Z (June 21, 2007) (requesting waiver based on the unavailability of compliant set-top boxes).

¹² See, e.g., *In the Matter of Baja Broadband Operating Company, LLC, Petition for Limited Waiver of the CAP Compliance Obligations Contained in Part 11 of the Commission's Rules*, EB Doc. No. 04-296, Petition for Limited Waiver of the CAP Compliance Obligations, (June 27, 2012) (requesting waiver due to lack of availability of compliant EAS equipment); *In the Matter of Lakeview Cable, Inc., Petition for Limited Waiver of the CAP Compliance Obligations Contained in Part 11 of the Commission's Rules*, EB Doc. No. 04-296, Petition for Limited Waiver of the CAP Compliance Obligations, (June 29, 2012) (requesting waiver due to, among other things, lack of availability of compliant EAS equipment); *In the Matter of RB3, LLC and Arklaoktex, LLC, Petition for Limited Waiver of the CAP Compliance Obligations Contained in Part 11 of the Commission's Rules*, EB Doc. No. 04-296, Petition for Limited Waiver of the CAP Compliance Obligations, (June 29, 2012) (requesting waiver due to, among other things, lack of availability of compliant EAS equipment).

¹³ See 47 USC § 543(i) ("In developing and prescribing regulations pursuant to this section, the Commission shall design such regulations to reduce the administrative burdens and cost of compliance for cable systems that have 1,000 or fewer subscribers."); Section 301(c) 1996 Telecommunications Act (providing greater deregulation for small systems), *codified at* 47 U.S.C. § 543(m).

small cable operators, defined for this purpose as those smaller than the six largest incumbent cable operators, an additional six months to come into compliance with the HD set-top box home networking requirement.¹⁴ This is a reasonable step that will avoid shortages of devices and software as the implantation deadline approaches. It will also alleviate the need for the small cable operators to file, and for the Media Bureau to address, multiple individual waiver requests based on the unavailability of compliant equipment.

If you have any questions, or require further information, please do not hesitate to contact me directly. Pursuant to section 1.1206 of the Commission's rules, this letter is being filed electronically with the Commission.

Sincerely,



Barbara Esbin

¹⁴ In the aggregate, these small cable operators serve only 14 percent of all cable subscribers. See Basic Tier Encryption Order, ¶ 20.