

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of

TiVo Inc.

Petition for Waiver of Sections 15.117(b),
15.118(b), 15.123(b)(1), 15.123(c), and
15.123(d) of the Commission's Rules

MB Docket No. 11-105

To: The Secretary's Office
Attn: The Media Bureau

REPLY COMMENTS OF TIVO, INC.

TiVo Inc., by its attorneys and pursuant to Sections 1.3 and 76.7 of the rules of the Federal Communications Commission (the "Commission"), 47 C.F.R. §§ 1.3, 76.7, hereby submits these Reply Comments in the above-captioned proceeding. TiVo filed its Petition for Waiver (the "Petition") on February 4, 2013 and the Media Bureau (the "Bureau") placed the Petition on Public Notice March 18, 2013.¹ No Comments or Oppositions were filed in response to the Petition.

TiVo's Petition demonstrated the substantial public interests that would be served by waiving the Commission's analog tuner requirement and thereby permitting TiVo to expand its offerings of next-generation digital video recorders ("DVRs"). A grant of the Petition would extend the waiver the Commission previously granted TiVo in 2011² and would further advance the Commission's twin goals of expanding the retail market for navigation devices while encouraging consumers to adopt more efficient digital transmission and reception technologies.

¹ As the Commission observed in the Public Notice, due to the court's decision in *Echostar Satellite, L.L.C. v. FCC*, 704 F.3d 992 (D.C. Cir. 2013), TiVo's request for waiver of 47 C.F.R. § 15.123 is now unnecessary. TiVo's waiver request, therefore, now includes only Sections 15.117(b) and 15.118(b) of the Commission's rules. *Public Notice*, __ FCC Rcd __, DA 13-457 (rel. Mar. 18, 2013).

² *TiVo, Inc.*, 26 FCC Rcd 12743 (Med Bur. 2011).

It also will create great benefits for consumers who will enjoy a wider choice of lower-cost, more energy efficient devices than TiVo could produce if it were required to include legacy analog tuners in each new DVR.

TiVo's experience selling all-digital DVRs since 2011 and the lack of any opposition to the Petition both demonstrate that industry and the public have moved beyond arguments over the preservation of antiquated rules requiring analog tuners in TiVo's all-digital DVRs. Over the past two years, only a tiny number of TiVo customers (0.2%) have even inquired about the lack of an analog tuner in its "Premiere" line of products, and even fewer (0.05%) discontinued TiVo service as a result.³ No party, moreover — either consumer, broadcaster, MVPD, or consumer electronics manufacturer — submitted any opposition to the Petition or otherwise expressed any reservations about granting the requested waiver. The reality is that analog tuning functionality now serves only a tiny and rapidly disappearing niche in the market, and TiVo's customers should not be required to pay higher prices (between \$100 and \$150 per device)⁴ to subsidize the preservation of this obsolete technology.

To ensure that no customers purchase TiVo devices expecting analog tuning capability, TiVo has committed to aggressively educate consumers that TiVo's DVRs are digital-only devices. TiVo already has conducted a highly successful consumer information campaign regarding its all-digital Premiere line of products and is ready to expand that effort to include its future devices also. The dearth of consumer complaints about TiVo's current all-digital products also should give the Bureau great confidence that TiVo's consumer education program will eliminate any potential consumer confusion regarding the functionality of TiVo's all-digital DVRs.

Given the demonstrated public benefits of the requested waiver and the absence of any opposition to it, TiVo requests that the Commission grant the Petition without delay. As the Commission is aware, the lengthy design and production cycle faced by consumer electronics

³ Petition at 6.

⁴ *Id.* at 7.

manufacturers like TiVo makes it extremely important that the Commission act expeditiously to resolve the kinds of technical issues raised in the Petition. In this case, if TiVo is to begin production of its proposed all-digital DVRs in time to begin delivering them for the 2013 holiday season, the Commission must act to grant the Petition soon. TiVo therefore requests that the Commission grant the Petition forthwith.

Respectfully submitted,

TiVo Inc.



Matthew Zinn
Senior Vice President, General Counsel,
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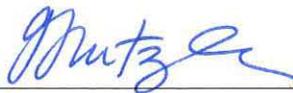
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Its Attorneys

April 18, 2013

Verification

To the best of my knowledge, information and belief formed after reasonable inquiry, this Petition for Waiver is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, and it is not interposed for any improper purpose.



Gary S. Lutzker

April 18, 2013

CERTIFICATE OF SERVICE

I, Sandra Dallas Jeter, a secretary at the law firm of Dow Lohnes PLLC, certify that on this 18th day of April 2013, I caused the foregoing Reply Comments to be served by hand delivery on the following:

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A handwritten signature in cursive script that reads "Sandra Dallas Jeter". The signature is written in black ink and is positioned above a solid horizontal line.

Sandra Dallas Jeter