

ORIGINAL

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)

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

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Federal Communications Commission
Office of the Secretary

PETITION FOR WAIVER

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SUMMARY

TiVo Inc. (“TiVo”) seeks to continue contributing to the growth and development of the retail navigation devices market by expanding its product line of all-digital digital video recorders (“DVRs”). In 2011, the Commission granted TiVo a waiver of the digital cable ready certification, marketing and labeling rules (the “**DCR Rules**”) to permit TiVo to bring all-digital cable-only DVRs to the retail market for the first time. This petition requests an extension of that waiver to several new all-digital cable only devices and a slight extension of that waiver to cover devices that permit reception of digital broadcast (“DTV”) signals. Each of the requested waivers would advance the Commission’s policies of fostering a robust retail market for set-top boxes characterized by innovation and consumer choice and encouraging both industry and consumers to adopt more efficient digital transmission and reception technologies. The requested waivers, moreover, would achieve these policy goals without limiting viewers’ access to the few remaining low-power analog broadcast signals (for the brief period before they convert to digital broadcasting) or compromising the purpose of rules that otherwise would mandate unnecessary analog tuning capability in TiVo’s new all-digital DVRs.

TiVo is uniquely qualified for the waivers it seeks because it has two years of consumer data showing that its audience no longer needs or wants analog tuning functionality in TiVo DVRs. Following the Commission’s previous waiver, TiVo tracked customer response to its all-digital devices and found that only 0.2% of customers commented about the absence of analog tuning capability and only 0.05% of customers ceased subscribing to TiVo service as a result. TiVo’s technologically savvy customer base simply no longer has any use for analog television service and saddling them with the cost (\$100 to \$150 per device) of analog equipment they do not need and will never use serves no rational policy goal. Moreover, TiVo’s competitors already are offering all-digital DVRs without analog tuning capability, and the Commission should not deny TiVo the opportunity to compete fairly in this market.

Grant of the waivers TiVo seeks will not harm consumers. TiVo has embarked on, and will continue, a vigorous customer education campaign to ensure that no prospective TiVo customer is confused about the functionality of TiVo’s all-digital DVRs. TiVo has a strong interest in ensuring

that no customer buys one of its devices expecting functionality they do not receive, and it will continue to educate consumers about what they can expect when they purchase TiVo DVRs. Moreover, the waiver to permit TiVo to market devices with ATSC over-the-air tuning capability will not deprive viewers of access to analog TV service. While every indicator shows that the number of viewers relying on analog transmission is small and dwindling rapidly, those few who have not yet made the transition to digital may still rely on the analog tuning functionality required to be included in the television sets they already own. Such customers likely will have little use for TiVo DVRs, and requiring TiVo to include legacy technology to facilitate their use of its products would only increase costs for everyone and depress the innovation that must characterize a successful retail navigation devices market.

Under these circumstances, the requested waivers will better serve the policies underlying the Commission rules than strict adherence to the lingering requirement for inclusion of analog tuning capability. American television service has moved on from analog to digital. The Commission should permit TiVo to move on as well.

therefore requires an extension of the existing waiver for those devices.⁴ One model of TiVo's new all-digital DVRs would include ATSC over-the-air reception capability; this model, therefore, requires waiver of both the DCR Rules and Section 15.117(b)'s dual analog/digital tuner requirement.⁵

A grant of the requested waivers, and the resulting expansion of the retail navigation devices market, will significantly advance longstanding congressional and Commission policies to promote consumer choice, retail competition, and the transition to digital services. Consumers will gain additional retail alternatives to the all-digital set-top boxes that local multichannel video programming distributors ("MVPDs") already offer, and the new TiVo devices will fulfill the expectations of TiVo customers, who have enthusiastically adopted digital technology and have no need or use for unnecessary analog tuners that in any case are redundant of functions included in the television receivers to which TiVo DVRs are attached. TiVo, moreover, has both the strong incentive and the demonstrated commitment to ensuring that customers are not confused about the capabilities of its products. Since the *Analog Tuner Waiver* was released, TiVo has diligently and effectively educated consumers about the capabilities of its all-digital DVRs, and TiVo is committed to carrying out a similarly energetic customer education campaign with the introduction of its new model DVRs. For these reasons, waiver of the DCR Rules and

(. . . continued)

TiVo to Marlene H. Dortch, Secretary, Federal Communications Commission, dated Apr. 23, 2012. As with earlier versions of the "Premiere" product line, neither of TiVo's next generation all-digital, cable-only DVRs will include over-the-air reception capability.

⁴ The DCR Rules include 47 C.F.R. §§ 15.117(b), 15.118(b), 15.123(b)(1), 15.123(c), and 15.123(d). Each of these rules was enacted as part of the *Second Report and Order* in CS Docket No. 97-80 and PP Docket No. 00-67. See Implementation of Section 304 of the Telecommunications Act of 1996, 18 FCC Rcd 20885 (2003). The United States Court of Appeals for the District of Columbia Circuit recently vacated that Order. See *EchoStar Satellite L.L.C. v. FCC*, ___ F.3d ___, 2013 WL 149996 (D.C. Cir. 2013). The Court has yet to issue its mandate in this case and the period for motions for rehearing has not yet passed. This waiver therefore treats the DCR Rules as currently effective. TiVo reserves the right to supplement or amend this waiver request as events warrant.

⁵ 47 C.F.R. §15.117(b) (the "**Dual Tuner Rule**").

the Dual Tuner Rule would serve the purposes of those rules more fully than their application to TiVo's new devices. The Bureau therefore should grant the requested waivers forthwith.

BACKGROUND

As the Commission knows, TiVo has been a pioneer in home entertainment technology and services since 1997, when it developed the world's first DVR and thereby created both a new product and a new multichannel video service. TiVo continues to revolutionize the consumer experience in watching and accessing home entertainment by making TiVo DVRs the focal point of the digital living room: a center for sharing and experiencing television, movies, music, photos, and more.

TiVo also has been a leader in the transition from analog to digital entertainment equipment. TiVo DVRs have included tuners capable of processing digital television signals since 2006. Now that all full-power broadcasts are digital and the transition to digital by low-power broadcasters is rapidly approaching completion, analog video transmissions have declined to the point that most consumers have no use for analog tuners. In addition, component manufacturers are beginning to eliminate or drastically curtail the production of analog tuners, and TiVo therefore has begun to phase out analog tuners in new lines of equipment where permitted by the FCC's rules and orders. For example, in the 2011 *Analog Tuner Order*, the FCC granted TiVo authority to market an advanced, all-digital, cable-only DVR as a unidirectional digital cable-ready product ("UDCP").⁶ This waiver permitted TiVo to provide its customers with a CableCARD-enabled DVR that offered unprecedented recording and storage capacity while eliminating the production costs and increased power consumption that inclusion of an unnecessary analog tuners would have entailed.⁷

⁶ *Analog Tuner Waiver*, 26 FCC Rcd 12743 at paras. 10-11.

⁷ *See id.*

More than a year later, consumer use of analog video signals continues to decline rapidly and the Commission has set a hard deadline of September 1, 2015 for the termination of all remaining analog television broadcast transmissions.⁸ Meanwhile, the price and power consumption of analog tuners in TiVo DVRs continues to raise costs for consumers without providing any discernible benefit. In fact, demand for analog tuning functionality has receded to the point that TiVo's main supplier of analog tuning components informed TiVo that it will continue producing them only if TiVo specifically requests that it do so. The market is demonstrating that including analog tuning capability in TiVo's DVRs no longer is practical or desirable. Other service providers also are responding to these market realities. For several years, MVPDs have distributed all-digital set-top boxes, and numerous set-top and DVR manufacturers with whom TiVo competes are distributing all-digital devices. Continued enforcement of the analog tuner requirements therefore puts TiVo's UDCPs at a significant competitive disadvantage — a result that was never intended by the rules and cannot be reconciled with Congress's intent to foster a robust retail cable set-top box market.⁹

The waivers that TiVo seeks will permit it and its customers to complete the transition to fully digital equipment. TiVo therefore seeks authorization to manufacture these new devices without analog tuners and permission to discontinue including analog tuners in future TiVo products.

⁸ Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, *Second Report and Order*, 26 FCC Rcd 10732 paras. 2, 7 (2011) ("*Low Power Transition Order*").

⁹ See 47 U.S.C. §549.

DISCUSSION

I. Waiver Of The DCR Rules And The Dual Tuner Rule Will Enhance Consumers' Retail Choices Without Diminishing Their Access To Relied-Upon Television Services.

Under longstanding FCC and federal court precedent, the Commission should waive its rules for good cause shown in cases where circumstances “warrant a deviation from the general rule and such deviation would better serve the public interest than would strict adherence to the general rule.”¹⁰ That standard is plainly met in this case because TiVo’s experience under the *Analog Tuner Waiver* demonstrates that its customers neither want nor need analog functionality in their DVRs. Any potential confusion among the rare customer expecting TiVo set-top boxes to provide analog functionality has been and can be remedied by effective marketing and point-of-sale disclosures, and TiVo is committed to that effort. No consumer will be deprived of the opportunity to receive analog programming because all television receivers provide analog tuning functions. Thus, the requested waivers will have no negative effects. Moreover, granting the requested waivers will provide substantial public interest benefits by furthering the longstanding Congressional goal of fostering much-needed competition in the retail set-top box market, encouraging broadcasters and consumers to take the final steps in fully adopting digital services, and providing consumers with advanced digital functionality at lower prices and at lower rates of power consumption.

A. TiVo’s Success Introducing All-Digital DVRs Demonstrates That Its Customers No Longer Need Or Want Analog Capable Set-Top Devices.

In the *Analog Tuner Waiver*, the Commission permitted TiVo to eliminate analog tuners from its new four-tuner all-digital cable-only DVRs so TiVo could market a competitive

¹⁰ See, e.g., *Comsat Corp.*, 12 FCC Rcd 12059 at para. 14 (1997); see also, e.g., *Intel Corp., et al.*, 25 FCC Rcd 7539 at para. 7 (2010); *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153, 1157(D.C. Cir. 1969).

alternative to similar products offered by cable operators.¹¹ The waiver allowed TiVo to offer consumers this exciting new product at a lower cost and at a lower level of power consumption than would have been possible under the “plug-and-play” labeling rules.¹² The results have been an unqualified success, and the Commission should extend that success to TiVo’s new generation of devices.¹³

Following the *Analog Tuner Waiver*, TiVo entered the consumer market for all-digital DVRs, exceeded its sales targets, and sold tens of thousands of its Premiere 4 and Premiere XL4 set-top boxes. This market response demonstrates that TiVo’s customers neither want nor expect TiVo’s set-top boxes to provide analog functionality. In addition, negative consumer reaction to TiVo’s existing all-digital products has been practically non-existent. Less than 0.2% of buyers have contacted TiVo to comment about the lack of analog reception capability and only 0.05% of customers both expressed concern about the issue and no longer subscribe to TiVo’s service. By any reasonable measure, the absence of an analog tuner in these devices has had no negative effect on consumers. To the contrary, TiVo’s experience confirms that the marketplace is demanding all-digital devices and that most consumers no longer need or value analog reception capability.

The Commission acknowledged in *Analog Tuner Waiver* that consumer reliance on analog tuning capability is declining rapidly and that the increased cost and power consumption attendant to requiring analog tuners in new, innovative DVRs no longer is justified.¹⁴ TiVo’s experience with its Premiere 4 and Premiere XL4 DVRs has vindicated the Commission’s

¹¹ *Analog Tuner Waiver*, 26 FCC Rcd 12743 at paras. 10-11.

¹² *Id.*

¹³ The number of retail CableCARD devices used by consumers continues to increase. According to the NCTA, the top five cable operators reported a 2.1% increase in the number of CableCARDs in use in retail CableCARD devices in the fourth quarter of calendar year 2012. See Letter from Neal M. Goldberg, Vice President and General Counsel of NCTA to Marlene H. Dortch, Secretary, Federal Communications Commission, dated Jan. 31, 2013.

¹⁴ *Id.* at para. 8.

judgment. TiVo's request here for additional waivers to permit the marketing of more all-digital devices is the next logical step following the reasoning of the *Analog Tuner Waiver* and the market's continuing abandonment of analog technology.

B. As Consumer Reliance on Analog Reception Dwindles, No Justification Exists for Forcing TiVo's Customers To Pay for Analog Functionality They Will Not Use.

In 2011, the Commission's *Analog Tuner Waiver* recognized that analog tuners substantially increase the production costs and retail prices of DVRs.¹⁵ Since then, the costs of including now unnecessary analog functionality in TiVo DVRs have only increased. TiVo's base cost is approximately \$10 for each analog tuner included in each device.¹⁶ TiVo DVRs feature up to four analog tuners, which means TiVo's base cost to include analog tuners is \$40 per-device.¹⁷ When design and production costs are factored in, including this analog functionality increases the retail price of each device by between \$100 and \$150 depending on the model. The increasing cost of providing analog functionality is predictable given the shrinking demand for these components. Indeed, in 2012, TiVo's supplier of analog tuner components informed TiVo that it would cease manufacturing component parts TiVo has used to satisfy the FCC's analog tuner requirements. Although that company was sold and the new owners committed to continuing to supply the parts as long as TiVo continues purchasing them, the costs of continuing to procure these components simply is not worth what it costs TiVo or its customers.

Moreover, these increasing costs are occurring against a background of rapidly diminishing and soon to be non-existent analog transmissions. The FCC and full-power television broadcasters completed the transition to DTV on June 12, 2009, and the agency has

¹⁵ *Id.* at para. 8.

¹⁶ This figure includes roughly \$3 for an analog tuner and \$7 for an associated analog encoder.

¹⁷ Adding additional tuners in future devices would proportionally increase these costs.

established a hard-deadline for low-power and Class A stations to cease analog transmissions by September 1, 2015.¹⁸ In response to this rapid elimination of analog broadcasting, consumers have thoroughly adopted digital television reception capability with unprecedented speed.¹⁹ Although a small and shrinking number of television viewers continue to receive low-power broadcast analog transmissions,²⁰ the final end to analog broadcasting is less than three years away, which is substantially less than the normal product life for TiVo's DVRs. Cable operators and their customers are moving away from analog transmission almost as quickly as broadcasters and their over-the-air viewers.²¹ The sophisticated consumers of TiVo's products have fully embraced digital equipment; they seek devices that will facilitate the latest and most advanced functionalities rather than outmoded analog reception and should not be forced to pay for analog tuners that will soon become relics of a by-gone era.

The retail market for set-top boxes also reflects consumers' wholesale retreat from analog equipment. For the past several years, TiVo has been virtually alone in continuing to provide

¹⁸ *Low Power Transition Order*, 26 FCC Rcd 10732 at paras. 2, 7.

¹⁹ *See id.* at para. 7. *See also* Carriage of Digital Cable Television Broadcast Signals, *Fifth Report and Order*, 27 FCC Rcd 6529 at para. 13 (2012) (the "*Viewability Order*") (noting decline in reliance on over-the-air analog signals and reception capability).

²⁰ *See Dell Inc. and LG Electronics USA, Inc.*, 25 FCC Rcd 9172 at para. 18 (2010) ("*Mobile Analog Tuner Waiver*").

²¹ *See* Basic Service Tier Encryption, *Report and Order*, 27 FCC Rcd 12786 at para. 3 (2012) (noting the swift introduction of all-digital cable systems); *Viewability Order*, 27 FCC Rcd 6529 at para. 13. *See also* TiVo, Inc. petition for Waiver, MB Docket No. 11-105, at n.15 (citing cable operators' efforts to transition to all-digital cable systems). *See also, e.g.*, Steve Donohue, *Cablevision to Go All-Digital in New Jersey*, FIERCE CABLE, July 13, 2012, available at <http://www.fiercecable.com/story/cablevision-go-all-digital-new-jersey/2012-07-13>; Brandon Santiago, *Comcast Goes Fully Digital*, THE SENTINEL, Feb. 13, 2012, available at http://www.hanfordsentinel.com/news/local/comcast-goes-fully-digital-valley-customers-may-need-adapter-for/article_ec7b9268-5681-11e1-8612-001871e3ce6c.html; Matt Wickenheiser, *Time Warner Cable's All-Digital television Campaign Starting in Mid-Maine*, BANGOR DAILY NEWS, July 28, 2011, available at <http://bangordailynews.com/2011/07/28/business/time-warner-cable%E2%80%99s-all-digital-television-campaign-starting-in-mid-maine/>; *Mediacom's All-Digital Upgrade, Analog Reception Phase-Out Begins June 19*, THE DAILY IOWEGIAN, June 15, 2012, available at <http://dailyiowegian.com/local/x514652984/Mediacom-s-all-digital-upgrade-analog-reception-phase-out-begins-June-19>.

analog functionality in retail DVRs.²² Major cable MSOs ceased distributing set-top boxes supporting analog reception years ago. Only MSOs distributing TiVo Series 4 DVRs have provided that functionality to their customers.²³ The retail navigation devices market today features several all-digital DVRs other than those offered by TiVo. Recent models distributed by TiVo's competitors such as Boxee, Channel Master, and SimpleTV all have ATSC over-the-air reception capability but have no ability to receive or record analog signals. Eliminating analog tuners substantially reduces production costs and permits TiVo's competitors to offer customers lower prices than they otherwise could. In the *Analog Tuner Waiver*, the Commission noted that its grant of waiver was due in part to TiVo's continued provision of analog DVRs.²⁴ Requiring TiVo to continue providing this functionality to a dwindling number of customers at substantial cost to TiVo and its customers is unfair, puts TiVo at a substantial competitive disadvantage because its competitors are not following the same rules, and will impede rather than promote a competitive market for navigation devices.

C. Waiving The Analog Tuner Rules Will Advance Commission Policies And Enhance Consumer Welfare.

Granting the requested waivers also will advance congressional and Commission policies of promoting a robust competitive market for retail set-top boxes and transitioning to more efficient digital video technologies. Both of these results would increase consumer welfare without impairing the purpose of the analog tuner rules; namely ensuring viewers' access to over-the-air television signals.

²² TiVo included analog tuners in its Series 2, Series 3 and Series 4 DVR's (Premiere S (300) and Premiere XL) and is unaware of any other DVR manufacturer that has provided retail set-top boxes with analog DVR functionality.

²³ In response to declining consumer demand, TiVo has decreased production of new analog-capable equipment. The only TiVo model currently in production that includes analog tuners is the 500 GB hard drive version of the Premiere. Two other TiVo models with this capability, the 320 GB hard drive Premiere and the Premiere XL are no longer in production (although the remaining inventory still is being distributed through sales channels).

²⁴ *Analog Tuner Order*, 26 FCC Rcd 12743 at n.42.

In Section 629 of the Communications Act, Congress directed the FCC to stimulate competition in the retail market for consumer navigation devices.²⁵ The “overarching goal” of Section 629 is to “assure competition in the availability of set-top boxes and other customer premises equipment.”²⁶ TiVo has led the industry in helping the Commission make the promise of Section 629 a reality. After the Commission adopted the CableCARD rules for UDCPs in 2003,²⁷ TiVo responded to the Commission’s market-opening policies by offering consumers exciting new products and services. As customer needs and desires evolved, TiVo’s offerings evolved with them, leading to TiVo’s first all-digital cable-only UDCPs approved in the *Analog Tuner Order*. Now the market that Congress entrusted the FCC to build and regulate is demanding additional all-digital devices and is transforming analog equipment into historical curios. The requested waivers are the logical next step in the Commission’s drive to create and nurture a fair and robust retail market for cable navigation devices.

Allowing TiVo to eliminate unnecessary analog tuners in its DVRs also will advance the Commission’s policy of transitioning to more efficient digital video technologies.²⁸ The Commission recognized in the recent *Viewability Order* that the transition to digital technologies is continuing to progress swiftly and that consumer reliance on both analog over-the-air reception and analog cable continues to decline.²⁹ Today, DTV adoption is nearly universal:

²⁵ 47 U.S.C. § 549.

²⁶ See Commercial Availability of Navigation Devices, *Report and Order*, 13 FCC Rcd 14775 at para. 7 (1998) (citing Implementation of Section 304 of the Telecomms. Act of 1996, Commercial Availability of Navigation Devices, *Notice of Proposed Rule Making*, 12 FCC Rcd 5639 at para. 3 (1997)).

²⁷ Implementation of Section 304 of the Telecomms. Act of 1996: Commercial Availability of Navigation Device and Compatibility Between Cable Systems and Consumer Elec. Equip., *Second Report and Order and Second Further Notice of Proposed Rulemaking*, 18 FCC Rcd 20885 (2003), *reversed and vacated sub. nom. EchoStar Satellite L.L.C. v. FCC*, ___ F.3d ___, 2013 WL 149996 (D.C. Cir. 2013).

²⁸ See, e.g., *Viewability Order*, 27 FCC Rcd 6529 para. 2; Commercial Availability of Navigation Devices, *Third Report and Order and Order on Reconsideration*, 25 FCC Rcd 14657 at paras. 7, 45 (2010) (“*Third Report and Order*”);

²⁹ *Viewability Order*, 27 FCC Rcd 6529 at para. 13.

more than 75% of households have an HDTV, 43% of households have a DVR, and 40% of households have a TV connected to the Internet.³⁰ Among cable video subscribers, 81.3% now subscribe to digital cable services.³¹ Thus, only a small and dwindling number of potential DVR customers receive analog programming at all, and these customers have no use for analog equipment. In this environment, requiring TiVo's customers to continue paying for analog functionality will inhibit rather than promote the continued transition to digital technology.

In addition to furthering these important Commission policies, grant of the requested waivers will enhance consumer welfare by making each individual's transition to digital easier through increased choice and reduced costs. Encouraging remaining analog viewers to make the transition now also will reduce potential dislocation when the few remaining analog broadcasts terminate in 2015.

II. The Requested Waivers Will Fulfill The Purposes Of The Commission's Remaining Analog Tuner Requirements.

Given these circumstances, waiver of the rules will better serve the Commission's policies than applying them to TiVo's new products. The DCR Rules were enacted (1) to establish standards of compatibility between retail electronics equipment and digital cable services; and (2) to prevent consumer confusion.³² TiVo's DVRs have long been and will continue to be compatible with digital cable systems and eliminating analog tuners will not in any way undermine the Commission's policies. Moreover, TiVo has a strong commercial incentive to avoid customer confusion. Returns and refunds are expensive to provide and unhappy customers often cannot be won back. TiVo already has demonstrated its ability to provide the customer education necessary for avoiding causing consumer confusion, which is

³⁰ See TVB, *TV Basics*, June 2012, available at http://www.tvb.org/media/file/TV_Basics.pdf; Peter Kafka, *Your Internet Is Already on Your TV*, ALL THINGS D, Dec. 19, 2012, available at <http://allthingsd.com/20121219/your-internet-is-already-on-your-tv/>.

³¹ See NCTA, *Industry Data: Availability*, <http://www.ncta.com/Statistics.aspx> (last visited Jan. 31, 2013).

³² See *Analog Tuner Waiver*, 26 FCC Rcd 12743 at para. 7.

confirmed by the almost non-existent customer complaints TiVo received regarding the absence of analog functionality in TiVo's existing all-digital products. To ensure this record continues and that consumers understand the functionality of TiVo DVRs, for all devices manufactured under this waiver, TiVo hereby commits to providing the customer disclosures and point-of-sale materials required by the *Analog Tuner Waiver* and any other customer communications the Commission deems necessary.³³

Adherence to the Dual Tuner Rule in this case also is unnecessary to further the policies underlying that rule. The Commission adopted the Dual Tuner Rule to accelerate the DTV transition and ensure that consumers gained access to broadcast DTV signals at a time when the DTV transition was stalled.³⁴ Application of the Dual Tuner Rule to TiVo's new products is unnecessary to fulfill that policy because consumers have almost universally adopted digital reception. Indeed, inasmuch as the Dual Tuner Rule was designed to further the DTV transition, the requested waiver would be consistent with that policy because it would hasten the final transition of remaining analog low-power stations to DTV. The Dual Tuner Rule was implemented to encourage the cessation of analog broadcasting; denying the requested waiver would have the opposite effect.

Even if the Commission interprets the policy underlying the Dual Tuner Rule more broadly to encompass the few viewers that continue to watch analog low-power stations over-the-air,³⁵ denial of TiVo's request is not necessary for that purpose. Ample consumer electronics equipment is available for those few viewers who desire to watch analog television over-the-air or through a cable operator. All televisions are required to have both analog and digital tuners and the limited waiver TiVo seeks would not affect that requirement. Most TiVo devices are used in conjunction with televisions that already have analog reception capability, so TiVo's

³³ See *Analog Tuner Waiver*, Appendix A.

³⁴ See Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, *Second Report and Order*, 17 FCC Rcd 15978 at para. 34 (2002).

³⁵ Cf. *Mobile Analog Tuner Waiver*, 25 FCC Rcd 9172 at para. 18.

inclusion of analog reception capability is redundant in terms of access to analog over-the-air signals.³⁶ TiVo has learned through experience that its customers do not want or need analog reception capability, but even if they did, no shortage exists of options other than TiVo for providing that functionality.

To ensure that customers are not confused about the capabilities of TiVo DVRs that feature ATSC but not NTSC reception capability, TiVo will provide additional customer educational materials to retailers and interested customers. These materials will clearly state that the device lacks NTSC over-the-air reception capability. Moreover, while TiVo expects its efforts will virtually eliminate consumer confusion, any customers that nevertheless purchase one of these devices for use in an analog cable system or for reception of analog over-the-air television signals will be free to return it for a full refund.

Under these unique circumstances, TiVo's requested waivers would serve the Commission's policies better than enforcement of either the DCR Rules or the Dual Tuner Rule to new TiVo products. The Commission therefore should grant the requested waivers and allow TiVo to cease including analog tuners in its upcoming DVR models.

³⁶ While TiVo customers would lose the ability to create digital copies of analog programming, nothing in Section 15.117(b) or the Commission's decisions interpreting that rule suggests a policy underlying that rule is the preservation of home recording capability. Such a construction of the Dual Tuner Rule would make no sense because the Commission cannot require DVR manufacturers to include any over-the-air capability in their devices. Many DVR models are fully compliant with the FCC's rules while entirely omitting over-the-air reception capability.

CONCLUSION

For the reasons stated above, the Bureau should grant waivers of Sections 15.117(b), 15.118(b), 15.123(b)(1), 15.123(c), and 15.123(d) of the FCC's rules to permit TiVo to introduce an all-digital DVR to the retail consumer in accordance with congressional and Commission policy.

Respectfully submitted,

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February 4, 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

February 4, 2013

CERTIFICATE OF SERVICE

I, Sandra Dallas Jeter, a secretary at the law firm of Dow Lohnes PLLC, certify that on this 4th day of February 2013, I caused the foregoing Petition for Waiver to be served by hand delivery on the following:

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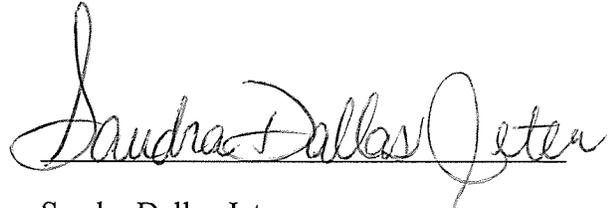
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A handwritten signature in cursive script that reads "Sandra Dallas Jeter". The signature is written in black ink and is positioned above a horizontal line.

Sandra Dallas Jeter