

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of )  
Samsung Electronics America, Inc. )  
Petition for Waiver of Section 15.118(b) of the )  
Commission's Rules )

**SAMSUNG ELECTRONICS AMERICA  
PETITION FOR EXPEDITED WAIVER**

John M. Godfrey  
*Vice President, Communications Policy  
and Regulatory Affairs*

Samsung Electronics America, Inc.  
1200 New Hampshire Ave, NW #500  
Washington, DC 20036  
202.887.5667

Natalie G. Roisman  
Phillip R. Marchesiello  
Neil A. Chilson

Wilkinson Barker Knauer, LLP  
2300 N Street, NW Suite 700  
Washington, DC 20037  
202.783.4141

*Counsel to Samsung Electronics  
America, Inc.*

May 21, 2013

**TABLE OF CONTENTS**

EXECUTIVE SUMMARY ..... i

I. INTRODUCTION .....1

II. THE SAMSUNG SMART MEDIA PLAYER MEETS CONSUMER DEMAND BY FULLY INTEGRATING LINEAR CABLE PROGRAMMING, OVER-THE-TOP VIDEO, AND A PROPRIETARY, USER-FRIENDLY, INTERACTIVE PROGRAMMING GUIDE.....3

    A. *SAMSUNG’S HISTORY OF INNOVATION WILL ADD IMMEDIATE VALUE TO THE NAVIGATION DEVICE MARKETPLACE*.....3

    B. *DETAILS OF THE SMART MEDIA PLAYER* .....4

III. THE SAMSUNG BRAND IS TRUSTED AND RESPECTED BY CONSUMERS, AND SAMSUNG COMMITS TO A LABELING, MARKETING, AND RETAILER EDUCATION PROGRAM TO PROTECT AGAINST ANY POSSIBILITY OF CONSUMER CONFUSION .....5

IV. WAIVER OF THE ANALOG TUNER REQUIREMENT WILL ENSURE THAT CABLE CUSTOMERS HAVE ACCESS TO A NEW COMPETITIVE PRODUCT.....6

    A. *FOR PURPOSES OF SECTION 15.118, THE SMART MEDIA PLAYER IS FUNCTIONALLY IDENTICAL TO DEVICES THAT HAVE RECEIVED A WAIVER* .....7

    B. *AS UNIQUE ANALOG TRANSMISSIONS DWINDLE, THE COST OF INCLUDING THE FUNCTIONALITY TO RECEIVE THEM IS INCREASING*.....8

    C. *WAIVING THE ANALOG TUNER RULE WILL ADVANCE COMMISSION POLICIES* .....9

        1. *A Waiver for the Smart Media Player Will Increase Competition and Consumer Choice in The Availability of Set-Top Boxes*.....10

        2. *A Waiver Will Promote the Transition to Digital Cable* .....10

V. THE BUREAU SHOULD EXPEDITE GRANT OF THE WAIVER .....11

    A. *WITHOUT EXPEDITED CONSIDERATION AND GRANT OF THE WAIVER, SAMSUNG CANNOT BRING THE SMART MEDIA PLAYER TO MARKET IN A TIMELY MANNER*.....11

    B. *THE MEDIA BUREAU CAN EMPLOY ONE OF SEVERAL MECHANISMS TO STREAMLINE ANALOG TUNER WAIVER REQUESTS* .....12

VI. CONCLUSION.....16

## EXECUTIVE SUMMARY

Samsung hereby petitions for expedited waiver of the analog tuner requirement in order to bring its new cable-compatible and Internet-enabled set-top box (“Smart Media Player”) to market as quickly as possible. The Smart Media Player, which will meet growing consumer demand and the Commission’s goals for fully integrating unidirectional linear cable content with interactive over-the-top video services and applications, will offer customers a new choice in retail devices from an experienced manufacturer long recognized for quality and innovation. Intended for use on digital cable systems, the Smart Media Player has no need for an analog tuner. It would be unfair to consumers to drive up the cost of the product and reduce energy efficiency to satisfy a rule that no longer is necessary or in the public interest.

Waiver of Section 15.118 is appropriate in light of the fact that the Media Bureau previously has waived the analog tuner requirement for devices that are functionally identical to the Smart Media Player. Waiving the requirement to allow the introduction of a new, competitive product in this case similarly is consistent with the Commission’s goals of increasing the availability of retail navigation devices and promoting the digital cable transition. In addition, as the Media Bureau has found, analog tuners substantially increase the production costs and retail prices of set-top boxes. Samsung estimates that a base analog tuner for the Smart Media Player would cost approximately \$10 each, and, including design and production costs, would increase the final retail price of the Smart Media Player considerably. Moreover, the vast majority of cable subscribers today already have transitioned to digital technology and are much less likely to seek or expect analog functionality in their cable equipment. Consumers thus will not be confused or adversely impacted by the device’s lack of an analog tuner. The Samsung brand is trusted and respected by consumers, and Samsung voluntarily commits to a labeling, marketing, and retailer education program to further protect against any possibility of such confusion.

Samsung believes that there is a market *today* for the Smart Media Player and that consumers will benefit from the ability to purchase such devices as soon as possible. If Samsung cannot provide Smart Media Players to retailers by the end of the summer, it risks losing the opportunity to obtain any shelf space in 2013, including during the all-important holiday season. This would delay consumer access to the Smart Media Player until early in 2014, an unnecessary wait that would serve no purpose. Accordingly, Samsung is seeking the ability to bring the Smart Media Player to retail shelves in the coming months, which may require an expedited waiver. The Media Bureau might consider several ways to expedite Samsung’s waiver, including expanding grant of the pending TiVo waiver request in MB Docket No. 11-105 to include all devices of the same class, such as the Smart Media Player, or establishing an expedited approach for analog tuner waiver processing, to be articulated in the TiVo order and applied going forward to the Smart Media Player and any other forthcoming requests. If the Media Bureau does not adopt either of those approaches, Samsung respectfully requests that the Media Bureau place the instant Petition on public notice immediately, with an abbreviated comment cycle, which is warranted in light of the demonstrated lack of concern regarding waiver of the analog tuner requirement.

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of )  
 )  
Samsung Electronics America, Inc. )  
 )  
Petition for Waiver of Section 15.118(b) of the )  
Commission’s Rules )

**PETITION FOR EXPEDITED WAIVER**

**I. INTRODUCTION**

Samsung Electronics America (“Samsung”), by its attorneys and pursuant to Sections 1.3 and 76.7 of the rules of the Federal Communications Commission (“FCC” or “Commission”), hereby petitions for waiver of the analog tuner requirement in Section 15.118(b) of the Commission’s rules.<sup>1</sup> In order to bring Samsung’s new cable-compatible and Internet-enabled set-top box (“Smart Media Player”) to market as quickly as possible, Samsung also respectfully requests that the Media Bureau expedite processing of this request (“Petition”).

As discussed herein, Samsung’s introduction of the Smart Media Player will bring immediate value to the navigation device marketplace by offering customers a new choice in retail devices from an experienced manufacturer long recognized for quality and innovation. The

---

<sup>1</sup> Section 15.118(b) requires that “[c]able ready consumer electronics equipment shall be capable of receiving all NTSC or similar video channels on channels 1 through 125...” 47 C.F.R. § 15.118(b). Out of an abundance of caution, Samsung also seeks waiver of Sections 15.123(b)(1), 15.123(c), and 15.123(d) if necessary. However, Samsung notes the Media Bureau’s acknowledgement that the U.S. Court of Appeals for the D.C. Circuit has vacated Section 15.123 of the Commission’s rules, and the Bureau’s conclusion that any request for waiver of that rule section would be moot. Media Bureau Seeks Comment on TiVo Inc.’s Petition for Waiver of Certain “Cable Ready” Requirements, Public Notice, 28 FCC Rcd 2857, 2854 n.4 (MB 2013) (“*TiVo II Waiver PN*”) (citing *EchoStar Satellite, L.L.C. v. FCC*, 704 F.3d 992 (D.C. Cir. 2013)).

Smart Media Player meets growing consumer demand and the Commission's goals for fully integrating unidirectional (not interactive), linear cable content with interactive over-the-top video services and applications. The Smart Media Player also includes a new, proprietary interactive programming guide free of charge.

The Smart Media Player is intended for use on digital cable systems. It has no need for an analog tuner, and it would be unfair to consumers to drive up the cost of the product and reduce energy efficiency to satisfy a rule that no longer is necessary or in the public interest. The Media Bureau previously has waived the analog tuner requirement for TiVo, Inc. ("TiVo") for similar devices, and TiVo's most recent (and still pending) request for such a waiver did not give rise to any opposition, which underscores that there should be no concern about the lack of an analog tuner in the Smart Media Player. Further, grant of a waiver will increase the availability of retail navigation devices and promote the digital cable transition. As TiVo's data filed in support of its own waiver request demonstrates, consumers will not be confused or adversely impacted by the device's lack of an analog tuner, and Samsung voluntarily commits to engage in consumer education efforts to ensure that this is the case.

Time is of the essence for Samsung to bring the Smart Media Player to retail shelves in the coming months in order to ensure that the device will have shelf space during the holiday season. Major retailers generally freeze their product offerings in the months leading up to holiday shopping season, which ramps up in October; important shelf stocking patterns can be decided as early as September. In order to meet these time constraints, Samsung requests that the Media Bureau expedite its waiver in one of three ways: (1) expand grant of the pending TiVo waiver request in MB Docket No. 11-105 to include all devices of the same class, such as the Smart Media Player; (2) establish an expedited approach for analog tuner waiver processing,

to be articulated in the TiVo order and applied going forward to the Smart Media Player and any other forthcoming requests; or (3) place this Petition on public notice immediately, with an abbreviated comment cycle, which is warranted in light of the demonstrated lack of concern regarding waiver of the analog tuner requirement.

**II. THE SAMSUNG SMART MEDIA PLAYER MEETS CONSUMER DEMAND BY FULLY INTEGRATING LINEAR CABLE PROGRAMMING, OVER-THE-TOP VIDEO, AND A PROPRIETARY, USER-FRIENDLY, INTERACTIVE PROGRAMMING GUIDE**

*A. SAMSUNG'S HISTORY OF INNOVATION WILL ADD IMMEDIATE VALUE TO THE NAVIGATION DEVICE MARKETPLACE*

While choices in products and services to access video programming continue to grow rapidly, the Smart Media Player offers the rare combination of fully integrated linear cable and over-the-top content. Samsung believes that consumer demand is ripe for this type of product, and the company's entry into this market is significant.<sup>2</sup> Samsung has a proud history of bringing disruptive, innovative products to consumers. Most recently, Samsung won 27 prestigious International Consumer Electronics Show ("CES") 2013 Innovations Awards, and CES, the world's largest consumer technology trade show held by the Consumer Electronics Association every year, has honored Samsung with 117 awards over the past four years.<sup>3</sup> In addition, Fast Company has named Samsung to its list of "most innovative companies" for five

---

<sup>2</sup> When the Commission's plug and play rules initially were adopted, Samsung developed models of digital cable ready, CableCARD-enabled TV sets. Over time, however, Samsung determined that the market would not support these products. Samsung subsequently signed the tru2way agreement with cable operators and became a leading supplier of tru2way set-top boxes to cable operators. More recently, Samsung has been collaborating with certain cable operators to integrate delivery of their cable content with the Samsung platform on Samsung Smart TV sets. The Smart Media Player represents Samsung's first foray into the retail set-top box market.

<sup>3</sup> CES News, *SAMSUNG Electronics Honored with 27 CES 2013 Innovation Awards*, Nov. 12, 2012, available at <http://www.samsung.com/us/news/20312>.

years running.<sup>4</sup> Moreover, as an industry leader in pioneering consumer-friendly products, the company also has emphasized sustainability and energy efficiency in its devices. The Environmental Protection Agency repeatedly has recognized Samsung for its efforts, including honoring the company with the 2013 ENERGY STAR Partner of the Year – Sustained Excellence Award.<sup>5</sup> As described below, the Smart Media Player brings all the hallmarks of a high-quality, innovative Samsung product to life in a retail set-top box.

*B. DETAILS OF THE SMART MEDIA PLAYER*

Intended for retail purchase and use by cable subscribers,<sup>6</sup> the Smart Media Player will access linear, one-way cable content through a CableCARD. In addition, it will connect to a customer's broadband Internet access service (which may be, but does not have to be, provided by the customer's cable provider). Through this Internet connection, the device can access any Internet content, including certain pre-loaded applications and over-the-top video sources. Internet connectivity also is the source of the device's electronic program guide ("EPG") – a proprietary application provided by Samsung free to Smart Media Player owners.<sup>7</sup> From the customer perspective, all of these choices are delivered in a seamless, integrated manner through

---

<sup>4</sup> See Fast Company, *Most Innovative Companies 2013: Samsung*, <http://www.fastcompany.com/most-innovative-companies/2013/samsung>.

<sup>5</sup> See Samsung, Press Release, *Samsung Electronics Wins 2013 ENERGY STAR® Partner of the Year – Sustained Excellence Award* (March 5, 2013), [http://www.samsung.com/us/news/newsRead.do?news\\_seq=20378&page=1](http://www.samsung.com/us/news/newsRead.do?news_seq=20378&page=1).

<sup>6</sup> The Smart Media Player is intended for use in cable systems where all offerings are available in digital but does not necessarily require that the system be all-digital. In cable systems in which certain programming is duplicated in both analog and digital distribution, the Smart Media Player will receive only the digital distribution of that programming—which is typically higher in picture quality than the analog distribution, so consumers using the Smart Media Player will lose nothing from the absence of analog tuning.

<sup>7</sup> The Smart Media Player will not include digital video recorder ("DVR") functionality.

the Samsung user interface. In addition, the Smart Media Player will offer innovative, pro-consumer, cost-saving benefits that will make it a popular choice in the marketplace, including elimination of a monthly set-top box rental fee.<sup>8</sup> The Smart Media Player will include a QAM digital cable tuner, but Samsung has not included an analog tuner. Samsung does not believe there is any consumer demand for an analog tuner that receives programming that is likely to be available in digital form and that would warrant the expense or additional energy consumption.

### **III. THE SAMSUNG BRAND IS TRUSTED AND RESPECTED BY CONSUMERS, AND SAMSUNG COMMITS TO A LABELING, MARKETING, AND RETAILER EDUCATION PROGRAM TO PROTECT AGAINST ANY POSSIBILITY OF CONSUMER CONFUSION**

Samsung places a premium on sustaining its excellent relationship with consumers and does not wish for any purchaser of a Smart Media Player to be confused or dissatisfied by the lack of an analog tuner. Across the globe, Samsung has won numerous awards for excellence in customer satisfaction.<sup>9</sup> In the United States, respected third parties such as J.D. Power and Associates consistently have acknowledged Samsung's stellar customer satisfaction rankings.<sup>10</sup>

In addition, Samsung supports the policy behind the analog tuner requirement: avoiding consumer confusion by ensuring that customers receive cable equipment that truly is "Cable Ready" because it can connect with cable systems and provide the advertised and expected

---

<sup>8</sup> Subscribers may pay a monthly CableCARD rental fee, depending upon the cable operator, but this will be substantially less than the set-top box 2.3rental fee.

<sup>9</sup> See Samsung, *Facts & Figures in Samsung Electronics Sustainability Report 2012* at 70, available at [http://www.samsung.com/us/aboutsamsung/sustainability/sustainabilityreports/download/2012/2012\\_Facts\\_and\\_Figures\\_FINAL.pdf](http://www.samsung.com/us/aboutsamsung/sustainability/sustainabilityreports/download/2012/2012_Facts_and_Figures_FINAL.pdf).

<sup>10</sup> See, e.g., Samsung, *Samsung Receives Three Highest Rankings in 2012 J.D. Power and Associates Appliances Study* (July 20, 2012), <http://www.samsung.com/us/news/20214>; Apple, Samsung top J.D. Power satisfaction survey, *Wireless Week* (Sept. 8, 2011), <http://www.wirelessweek.com/news/2011/09/apple-samsung-top-jd-power-satisfaction-survey>.

functionality. However, the vast majority of cable subscribers today already have transitioned to digital technology and are much less likely to seek or expect analog functionality in their cable equipment. Indeed, the type of customers who are likely to buy an Internet-connected, retail set-top box such as Samsung's Smart Media Player are likely to view analog functionality as an out-of-date, second-class technology, instead of a must-have feature. TiVo's data corroborates this, strongly suggesting that consumer demand for analog tuners is near zero.<sup>11</sup>

Nevertheless, Samsung recognizes that there may be some remaining consumer expectations regarding the ability to tune analog channels. Samsung has a strong commercial incentive to avoid any customer confusion because returns and refunds are expensive to process and could damage Samsung's strong brand loyalty and customer trust. Samsung therefore voluntarily will commit to a labeling, marketing, and retail education program that informs consumers and retailers about the capabilities and limitations of the Smart Media Player.<sup>12</sup>

#### **IV. WAIVER OF THE ANALOG TUNER REQUIREMENT WILL ENSURE THAT CABLE CUSTOMERS HAVE ACCESS TO A NEW COMPETITIVE PRODUCT**

As the Media Bureau previously has found, and as TiVo's most recent waiver request (and the complete lack of opposition to it) clearly demonstrates, waiver of the analog tuner

---

<sup>11</sup> Only a minuscule fraction of the tens of thousands of consumers who purchased TiVo's digital-only device expressed concerns. Less than 0.2 percent of buyers contacted TiVo to comment about the lack of analog reception capability and only 0.05 percent of customers both expressed concern about the issue and dropped their subscription to TiVo's service. *See 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, at 6 (filed Feb. 4, 2013) ("*TiVo II Petition*").

<sup>12</sup> After *EchoStar v. FCC*, as the Media Bureau noted in the TiVo Public Notice, the UDCP "digital cable ready" labeling requirements no longer are in effect. *See supra*, note 1. Nevertheless, if the waiver is granted, Samsung will adopt a labeling, marketing, and retail education program to ensure consumers are well informed. *See, e.g., TiVo, Inc. Request for Waiver of Section 15.118(b), 15.123(b)(1), and 15.123(c) of the Commission's Rules*, MB Docket No. 11-105, Memorandum Opinion and Order, 26 FCC Rcd 12743, 12748 ¶ 10 (MB 2011) ("*TiVo Analog Tuner Waiver*").

requirement furthers longstanding Congressional goals, the Commission’s navigation device policies, and consumer welfare. Therefore, consistent with its prior actions in this area, and based on substantively identical facts, the Media Bureau should grant Samsung’s requested waiver of the Section 15.118(b) analog tuner requirement. A waiver is justified when, as is the case here, 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.”<sup>13</sup> Specifically, while Section 15.118(b) requires that cable-ready consumer electronics equipment (including equipment marketed as cable-compatible) be capable of receiving analog NTSC channels 1 through 125, consumers, equipment manufacturers, and cable operators largely have transitioned away from analog technology, and programming that is available in analog format also is available in digital format on the same cable system in most cases. Indeed, it will be only a few years until unique analog transmissions have disappeared entirely. Continuing to mandate the inclusion of an analog tuner in a retail set-top box in the face of such change undermines the Commission’s own goals and harms consumers.

A. *FOR PURPOSES OF SECTION 15.118, THE SMART MEDIA PLAYER IS FUNCTIONALLY IDENTICAL TO DEVICES THAT HAVE RECEIVED A WAIVER*

Samsung’s Smart Media Player is functionally identical, for all relevant purposes, to the TiVo Premiere Elite for which the Media Bureau found waiver of Section 15.118(b) to be in the public interest. Like the TiVo devices, the Smart Media Player is 1) a retail device that (2) uses a CableCARD to access one-way linear cable content, (3) includes Internet connectivity to access over-the-top services, and (4) incorporates its own proprietary guide software. As was the

---

<sup>13</sup> *Comsat Corp.*, 12 FCC Rcd 12059, 12066, ¶ 14 (IB 1997); *see also, e.g., Intel Corp.*, 25 FCC Rcd 7539, 7542 ¶ 7 (MB 2010) (“*Intel Corp.*”); *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990), *cert. denied* 525 U.S. 813 (1998); *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *cert. denied* 409 U.S. 1027 (1972).

case for the TiVo Premiere Elite, a waiver for the Smart Media Player would reduce consumer cost and power consumption and provide consumers a new, competitive retail set-top box option.<sup>14</sup> TiVo's original waiver request was unopposed – in fact, it was supported by both the cable and consumer electronics industries.<sup>15</sup> Now, two years further into the transition from analog to digital, the case should be even clearer for a waiver of Section 15.118(b). In addition, as discussed above, Samsung voluntarily commits to engaging in a labeling, marketing, and retailer education effort to ensure that consumers understand that the Smart Media Player can only access cable content in digital format.

*B. AS UNIQUE ANALOG TRANSMISSIONS DWINDLE, THE COST OF INCLUDING THE FUNCTIONALITY TO RECEIVE THEM IS INCREASING*

Although some cable systems continue to employ analog transmission and some subscribers have not transitioned to digital devices, Samsung predicts, as TiVo's experience has shown, that the type of customer interested in purchasing third-party retail set-top box equipment (particularly Internet-connected equipment) also will have embraced digital cable. In any event, it would be unfair to deprive digital cable customers of the benefit of a new product offering like the Smart Media Player simply because it does not include functionality that a tiny percentage of consumers might desire (and that such consumers already can obtain through a wide range of existing devices). In addition, the Media Bureau agreed in 2011 with TiVo that analog tuners substantially increase the production costs and retail prices of set-top boxes, and the costs of

---

<sup>14</sup> See *TiVo, Inc. Petition for Waiver of Section 15.118(b), 15.123(b)(1), and 15.123(c) of the Commission's Rules*, MB Docket No. 11-105 at 3-4 (filed June 7, 2011) ("*TiVo I Petition*").

<sup>15</sup> See Comments of the Consumer Electronics Association, MB Docket No. 11-105 (filed July 25, 2011); Comments of the National Cable & Telecommunications Association, MB Docket No. 11-105 (filed July 25, 2011). TiVo has a request pending to extend and expand the waiver to other devices. The comment cycle has closed on this request, and no party opposed grant of a waiver. See generally, *TiVo II Petition*.

including such functionality in set-top boxes have only increased in the intervening years. Samsung estimates that the base analog tuner would cost approximately \$10 each, and, including design and production costs, would increase the final retail price of the Smart Media Player considerably more. Given these additional costs, Samsung has determined in developing the Smart Media Player that it cannot offer the device at a market- appropriate price point if it were forced to include one or more analog tuners with no appreciable enhancement of the product's attractiveness to consumers.

Including an analog tuner also would increase the amount of energy consumed by the set-top box by approximately 1.2W, further increasing consumer costs and undercutting energy conservation efforts. The set-top box industry has been working diligently to significantly reduce the energy consumption of set-top boxes,<sup>16</sup> and Samsung has designed the Smart Media Player to be consistent with these efforts and with its own award-winning leadership in sustainability and energy efficiency.<sup>17</sup> The Commission can support these important efforts by waiving the rule for Samsung's energy efficient device.

*C. WAIVING THE ANALOG TUNER RULE WILL ADVANCE COMMISSION POLICIES*

By granting the requested waiver, the Commission can advance its goals of promoting a competitive market for retail set-top boxes and facilitating the cable industry's transition to more efficient digital technology. The requested waivers will promote these goals without undercutting the fundamental purpose of the analog tuner rules to ensure viewers' access to all cable programming.

---

<sup>16</sup> *Voluntary Agreement For Ongoing Improvement to the Energy Efficiency of Set-Top Boxes*, Dec. 6, 2012, available at <http://i.ncta.com/VoluntaryAgreement-EnergyEfficiencyofSetTopBoxes.pdf>.

<sup>17</sup> See *infra* note 5 and accompanying text.

**1. A WAIVER FOR THE SMART MEDIA PLAYER WILL INCREASE COMPETITION AND CONSUMER CHOICE IN THE AVAILABILITY OF SET-TOP BOXES**

The requested waiver will directly promote the Commission's long-standing goal of increased competition in the market for consumer navigation devices.<sup>18</sup> Specifically, prompt action by the Bureau on the instant request for an expedited waiver will enable Samsung to deploy its Smart Video Player in time for the 2013 fall sales season. The competition offered by Samsung's new device will increase choice for consumers, and it could spur other set-top box manufacturers to develop and improve their own products. This is precisely the kind of virtuous cycle of competition and innovation that the Commission has sought to create in the set-top box marketplace.

**2. A WAIVER WILL PROMOTE THE TRANSITION TO DIGITAL CABLE**

Allowing Samsung to offer its Smart Media Player without an analog tuner also will advance the Commission's policy of transitioning the cable industry to more efficient digital video technologies.<sup>19</sup> Cable systems and cable subscribers are approaching the end of a rapid transition away from analog systems and toward digital systems. Today, DTV adoption is nearly universal - more than 75 percent of households have an HDTV,<sup>20</sup> and 56 percent of households

---

<sup>18</sup> See *Commercial Availability of Navigation Devices*, Third Report and Order and Order on Reconsideration, 25 FCC Rcd 14657, 14660 ¶ 4 (2010) ("*Third Report and Order*").

<sup>19</sup> See *id.* at 14679-80 ¶ 45 ("Transitioning to an all-digital cable system allows operators to make more efficient use of spectrum capacity, allowing the operators to dedicate more of their spectrum to broadband and other services. The impetus for this proposed rule change was to remove economic barriers that discourage cable operators from transitioning their systems to all-digital.").

<sup>20</sup> Deborah D. McAdams, *HDTV Adoption Surpasses 75 Percent*, TVTechnology (Oct. 17, 2012), <http://www.tvtechnology.com/research-&-technology/0114/hdtv-adoption-surpasses-percent/215958>.

with broadband internet access have a TV connected to the Internet.<sup>21</sup> Moreover, 81.3 percent of cable video subscribers now subscribe to digital cable services.<sup>22</sup> Thus, out of all the potential Smart Media Player customers, only a small fraction receives analog programming at all, and even these customers may not watch programming using analog equipment. In this environment, raising the price of innovative digital equipment by forcing it to include out-of-date and unwanted analog capabilities would discourage those few remaining consumers who view video in an analog format from transitioning to digital technology, while forcing those who only want digital functionality to pay extra for their equipment. In contrast, granting the requested waiver will increase the options available to consumers and lower the cost of equipment, making the transition to digital easier. Offering remaining analog viewers a new digital cable choice now also could help reduce potential dislocation as cable operators complete the transition to all-digital systems.

## **V. THE BUREAU SHOULD EXPEDITE GRANT OF THE WAIVER**

### **A. *WITHOUT EXPEDITED CONSIDERATION AND GRANT OF THE WAIVER, SAMSUNG CANNOT BRING THE SMART MEDIA PLAYER TO MARKET IN A TIMELY MANNER***

Samsung believes that there is a market *today* for the Smart Media Player and that consumers will benefit from the ability to purchase such devices as soon as possible. If Samsung cannot provide Smart Media Players to retailers by the end of the summer, it risks losing the opportunity to obtain any shelf space in 2013, including during the all-important holiday season.

---

<sup>21</sup> Pete Putman, *TV, Over The Air and Everywhere*, HDTV Magazine (May 10, 2013), <http://www.hdtvmagazine.com/columns/2013/05/hdtv-expert-tv-over-the-air-and-everywhere.php>.

<sup>22</sup> NCTA, Digital Penetration, <http://www.ncta.com/industry-data/item/307> (last visited May 20, 2013).

This would delay consumer access to the Smart Media Player until early in 2014, an unnecessary wait that would serve no purpose.

*B. THE MEDIA BUREAU CAN EMPLOY ONE OF SEVERAL MECHANISMS TO STREAMLINE ANALOG TUNER WAIVER REQUESTS*

Samsung respectfully requests that the Media Bureau consider mechanisms for streamlining Samsung's, and potentially other entities', analog tuner waiver requests. As discussed above and in the pending TiVo Petition, the market reality is that consumer reliance on analog reception is falling rapidly and consumers no longer need or want analog-capable set-top devices. Further, the fact that both TiVo and Samsung have now sought waivers of the analog tuner requirement for CableCARD-enabled set-top boxes implies that device manufacturers anticipate a growing market for such devices. Indeed, the growing availability of over-the-top services and consumers' growing familiarity with Internet-connected retail devices opens the possibility to address the shortcomings of unidirectional CableCARD in ways that were not available when CableCARD was first introduced to the market some years ago. To that end, it is reasonable to conclude that the Bureau will receive more such waiver requests in the future. Given this context, expedited waivers of the analog TV tuner rule both would promote the emerging market in digital set-top devices and avoid having the Bureau expend limited resources on dealing with such waiver requests on an *ad hoc*, one-by-one basis.

The most efficient mechanism for expediting such waivers would be for the Bureau to grant TiVo's waiver request broadly to cover CableCARD-enabled devices that provide the same functionality as TiVo's DVRs and Samsung's Smart Media Player, rather than restricting the

waiver to the manufacture and sale of TiVo's DVRs alone. There are several significant reasons the Bureau should be willing to follow this approach.<sup>23</sup>

First, there already have been two requests for waiver of the analog TV tuner requirement with respect to CableCARD-enabled devices; both requests were unopposed.<sup>24</sup> As discussed above, the issues raised by the instant request for waiver are no different than those presented in TiVo's requests for waiver with regard to its CableCARD-enabled DVRs. Put another way, the public has had the opportunity to raise any concerns regarding a waiver of the analog tuner rule for CableCARD-enabled devices such as the Smart Media Player, and no such concerns have been identified.

Second, TiVo's waiver petition seeks not only authority to manufacture and sell "the next generation of TiVo's all-digital 'Premiere' line,"<sup>25</sup> but also permission "to discontinue including analog tuners in future TiVo products."<sup>26</sup> Thus, the public also has had the opportunity to raise concerns about a broader waiver of the analog tuner rule for future, unspecified CableCARD-enabled devices. Again, there were no objections to the grant of the broader relief TiVo is seeking.

---

<sup>23</sup> In response to TiVo's first waiver petition, NagraVision and Transparent Video Systems both filed comments in support of the waiver and urged the Bureau to extend the waiver to all set top devices that connect primarily to the Internet. *See* Comments of NagraVision, MB Docket No. 11-105, at 2, 4 (filed July 25, 2011); Comments of Transparent Video Systems, MB Docket No. 11-105 at 6 (filed July 25, 2011). The Bureau acknowledged these comments, but did not address the proposal for an expanded waiver in any meaningful sense. *See TiVo Analog Tuner Waiver*, 26 FCC Rcd at 12746. Samsung submits that the time is now ripe for the Bureau to consider a more expansive waiver of the analog tuner rule.

<sup>24</sup> *See TiVo Analog Tuner Waiver*, 26 FCC Rcd at 12743; *see also TiVo II Petition*.

<sup>25</sup> *TiVo II Petition* at 1.

<sup>26</sup> *Id.* at 4.

Third, the Bureau has granted such a general waiver for classes of devices in the past. In response to requests by Intel Corporation, Motorola, Inc., and TiVo for interim waivers of the requirement that cable operators include an IEEE 1394 interface on all high definition set-top boxes they distribute, the Bureau granted a general waiver for “classes of devices with IP connections in place of IEEE 1394 interfaces, rather than for a specific cable operator’s deployment of such devices.”<sup>27</sup> The Bureau granted such relief because of the potential competitive effects of granting such relief as to such devices manufactured only by the specified entities.<sup>28</sup> The Bureau’s rationale applies with full force here. The fact that both TiVo and Samsung have now sought waivers of the analog tuner requirement for CableCARD-enabled set-top devices with similar functionality implies that these companies see a market for such devices. The Bureau should establish a level regulatory playing field to allow this market to flourish.

Nevertheless, should the Bureau decline to grant an expanded waiver covering all CableCARD-enabled devices with similar functionality, the Bureau could establish a streamlined, accelerated waiver process for waiver petitions that will be acted upon after the Bureau grants TiVo’s pending request. Under such a streamlined approach, parties seeking a waiver would be required to file their own, separate requests, but such requests would be granted on an expedited basis if the requesting party submits a certification attesting, under penalty of perjury, that (1) the party is seeking waiver of the analog TV tuner rule, (2) for a CableCARD set top device that is functionally identical in all material respects to a device for which the Bureau has already granted a waiver of that rule, and (3) the party agrees to comply with all of the conditions, if any, imposed in such earlier waiver grants.

---

<sup>27</sup> See *Intel Corp.*, 25 FCC Rcd at 7544.

<sup>28</sup> *Id.*

The use of such a streamlined waiver approach finds support in prior Commission practice. For example, the Wireless Telecommunications Bureau (“WTB”) adopted an expedited waiver process in connection with its quarterly inspection requirements for antenna/tower structure lighting.<sup>29</sup> Beginning in 2007, WTB granted a series of waivers of this requirement for tower owners that had deployed technologically advanced monitoring systems, concluding that quarterly inspections were unnecessary for those towers monitored by advanced electronic systems.<sup>30</sup> Monitoring system providers were required to follow standard waiver procedures for each new advanced monitoring technology being deployed. However, to simplify the process going forward, WTB implemented an expedited waiver process for these tower owners that used previously-approved systems. Under the streamlined process, a tower owner seeking a waiver simply needed to submit a certification that (1) its towers utilized one of the approved monitoring technologies, and (2) it maintains a facility to receive notification of failures from the monitoring system provider that would enable the tower owner to carry out its responsibilities under Part 17 of the Commission’s rules.<sup>31</sup>

A similar streamlined process for CableCARD-enabled set-top box waivers would be appropriate. Such waiver requests would raise no new questions of law or fact that have not been addressed in earlier waiver grants. Moreover, a waiver applicant’s commitment to comply

---

<sup>29</sup> 47 C.F.R. § 17.47(b).

<sup>30</sup> *See, e.g., Requests of American Tower Corp. and Global Signal, Inc. to Waive § 17.47(b) of the Commission’s Rules*, 22 FCC Rcd 9743 (WTB 2007).

<sup>31</sup> *See TowerSentry LLC Request for Waiver of 47 C.F.R. § 17.47(b)*, 24 FCC Rcd 10274, 10279 ¶ 11 (WTB 2009); *Request of Mobilitie, LLC for Waiver of 47 C.F.R. § 17.47(b)*, 24 FCC Rcd 11949, 11952-53 ¶ 9 (WTB 2009). The Wireline Competition Bureau also adopted a streamlined, expedited waiver process for carriers needing to correct errors in their study area boundaries that might impact the amount of High-Cost Universal Service support they might receive going forward. *See Connect America Fund*, 27 FCC Rcd 4235, 4246 ¶ 27 (WCB 2012).

with all of the conditions imposed in the earlier grants should alleviate any concerns the Bureau may have identified in granting the original waiver. In short, adoption of such an accelerated waiver process would promote all of the public interest benefits identified above with no countervailing adverse consequences.

In the event that the Bureau declines to expand the applicability of TiVo's pending waiver request or to create an accelerated waiver process, then Samsung respectfully requests that the Bureau grant Samsung's waiver request on an expedited basis. As discussed above, time is of the essence for Samsung. Further, a waiver of the analog tuner requirement for Samsung's Smart Media Player presents no novel issues. All the relevant issues have already been adequately addressed in the original waiver provided to TiVo's CableCARD-enabled DVRs, or were raised for comment in TiVo's pending waiver request for the next generation of its devices. Indeed, neither of the two TiVo waiver petitions drew any opposition.

If the Bureau chooses to take this approach, Samsung urges the Bureau to place the instant waiver petition on public notice as soon as practicable, but, in all events, within 10 days of this submission. The Bureau should also provide for a truncated public notice period of not more than 14 calendar days, with seven calendar days for oppositions and no opportunity for filing replies. The Bureau should then commit to granting the waiver quickly upon the close of the pleading cycle.

## **VI. CONCLUSION**

For the reasons set forth above, Bureau action to waive the analog tuner requirement is appropriate and necessary to enable and promote the emerging retail market for cable set top equipment. Such action will allow Samsung to manufacture and sell its CableCARD-enabled Smart Media Player without including a vestigial analog TV tuner that increases costs and power consumption without providing any useful functionality to consumers. Moreover, time is of the

essence for Samsung, and Samsung respectfully requests that the Bureau grant this waiver on an expedited basis.

Respectfully submitted,

**SAMSUNG ELECTRONICS AMERICA, INC.**

John M. Godfrey  
*Vice President, Communications Policy  
and Regulatory Affairs*

Samsung Electronics Washington Office  
1200 New Hampshire Ave, N.W. #500  
Washington, DC 20036  
202.887.5667

By:           /s/ Natalie G. Roisman            
Natalie G. Roisman  
Phillip R. Marchesiello  
Neil A. Chilson

Wilkinson Barker Knauer, LLP  
2300 N Street, NW Suite 700  
Washington, DC 20037  
202.783.4141

*Counsel to Samsung Electronics America,  
Inc.*

May 21, 2013

**VERIFICATION REQUIRED UNDER 47 C.F.R. § 76.6**

The undersigned has read the above pleading, and to the best of my knowledge, information and belief formed after reasonable inquiry, it 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.

*/s/ Natalie G. Roisman*

Natalie G. Roisman

May 21, 2013

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of )  
 )  
Samsung Electronics America, Inc. )  
 )  
Petition for Waiver of Section 15.118(b) of the )  
Commission's Rules )

**DECLARATION OF JAECHEOL HEO**

1. My name is JaeCheol Heo, and I am Principal Engineer for Samsung Electronics Co., Ltd., parent company of Samsung Electronics America, Inc.
2. I have read the foregoing Petition for Waiver and I am familiar with the contents thereof.
3. The facts contained herein and within the Petition are true and correct to the best of my knowledge, information, and belief.
4. I declare under penalty of perjury that the foregoing is true and correct.



\_\_\_\_\_  
JaeCheol Heo  
Principal Engineer  
Samsung Electronics Co., Ltd., parent company of  
Samsung Electronics America, Inc.

Executed on May 20, 2013