

August 15, 2013

VIA ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Notice of *Ex Parte* Presentation: *EchoStar Technologies L.L.C.*
Petition for Waiver of Section 15.117(b) of the Commission's
Rules, MB Docket 13-177

Dear Ms. Dortch,

This is to notify you that on August 13, 2013, Jeffrey Hale of EchoStar Technologies L.L.C. and Joe Bingochea of Channel Master, along with their counsel Bradley Gillen and Neil Chilson of Wilkinson Barker Knauer, LLP, met with Sarah Whitesell, Brendan Murray, and Keenan Adamchak of Chairwoman Mignon Clyburn's office, and separately met with Nancy Murphy, Steven Broeckart, Alison Greenwald Neplokh, and Mary Margaret Jackson of the Media Bureau. The parties met to discuss EchoStar's pending petition for waiver of Section 15.117(b) of the Commission's rules, the analog tuner requirement.¹

During both meetings the EchoStar and Channel Master representatives described the design of and business opportunity for the two models of the Channel Master K77, for which the companies are seeking the waiver.² Specifically, they explained how the devices combine over-the-air content, DVR functionality and access to over-the-top internet streaming services. Channel Master explained that the product is intended to appeal to budget-conscious consumers who want to avoid expensive subscription fees but wish to view and record over-the-air television content and access online video from a single box, all with all the convenience and

¹ EchoStar Technologies L.L.C., Petition for Waiver, MB Docket No. 13-177 (filed June 21, 2013) ("Petition").

² There are currently two variants of the K77 device. Model CM-7500GB16 is Flash memory based with 16GB of memory but no internal hard drive; an external USB hard drive can be added. Model CM-7500TB1 includes an internal 1 TB hard drive. The initial petition described this second unit as having a 320 GB hard drive, but in July the companies were able to source a much larger hard drive for only a slight cost increase.

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functionality of many cable set-top boxes as well as DVR subscription services.³ The parties highlighted that the waiver was unopposed and is fully consistent with the relief granted TiVo last week.⁴

Effects of Adding an Analog Tuner. EchoStar described how the K77 hardware was originally designed for and distributed in the United Kingdom, where an analog tuner is not required, and that adding an analog tuner would increase the form factor, energy consumption, and price of the device, which would dramatically delay introduction of the device in the United States and could ultimately render the product commercially unviable. Specifically, placing an analog tuner in the device would require a twelve to sixteen month redesign of both the chassis and the internals, and would increase the size of the device by up to 33 percent. The increased size would be driven in part by the need to dissipate the additional heat created by the analog tuner's 2 watt increase in energy consumption. These additional expenses would increase the retail price of the devices by at least \$20 to \$30. Channel Master highlighted the substantial challenge of incorporating any additional costs and the considerable effort to design a box that is affordable, explaining that the target audience for the K77 is price-sensitive households—including low-income and minority communities—that rely upon over-the-air broadcasting today.

Timing. EchoStar and Channel Master also detailed the need for expedited action on the waiver request. Channel Master is seeking to market the K77 to both big box and online retailers in time for holiday sales this year. To reserve space on retailer's shelves, Channel Master must commit in early September to delivering the product. Based on recent feedback from big box retailers, Channel Master would need to receive the waiver by **Monday, September 9th** at the latest to provide a viable opportunity for the products to be stocked at big box retail locations for the holidays. If a waiver is not received before **Thursday, October 17th**, the entire product could be in jeopardy as key dates for online holiday sales, production runs, and the right go-to market timing would be missed.

Consumer Education Commitments. During the meetings, EchoStar and Channel Master emphasized their strong commitments to educating consumers about the K77 and its capabilities and limitations. EchoStar and Channel Master are committed to ensuring that every purchaser has a positive experience with each K77 device, and understand that providing accurate information about the capability of the device is critical to that experience. In order to

³ The parties explained that consumers using the K77 can easily access analog broadcast signals from the television or other source because the K77 remote control includes an input button that allows the user to easily toggle to the attached television's receivers.

⁴ *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*, DA 13-1740, Memorandum Opinion and Order, MB Docket No. 11-105 ¶¶ 1, 5, 9 (MB rel. Aug. 9, 2013).

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prevent any consumer confusion about the analog capabilities of the K77, EchoStar and Channel Master commit to the following disclosure and refund practices with regard to the K77 devices. These commitments mirror the relevant commitments TiVo made in its broader waiver request, which was granted by the Media Bureau on August 9, 2013.⁵ Specifically, EchoStar and Channel Master agree to:

- Develop and distribute clear and easily understood point-of sale disclosures and retailer scripts that educate about the Channel Master K77's functionality, including clearly stating that the device lacks the ability to receive NTSC over-the-air signals.
- Clearly disclose in product guides, including in any Quick Start Guides or User Guides, that the device lacks the ability to receive NTSC over-the-air TV signals.
 - Sample language for these disclosures would be substantially similar to: "The Channel Master K77 is intended for use with the ATSC digital, over-the-air television broadcast standard used by all U.S. full power television stations and is not capable of receiving the legacy NTSC analog television standard used by some low-power and Class A television stations."
- Offer a full 30-day refund to any customer who purchases the device under the mistaken assumption that it would receive NTSC over-the-air TV signals.

EchoStar and Channel Master therefore respectfully urge the Media Bureau to grant expeditiously the waiver request subject to the conditions described above.

⁵ *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*, DA 13-1740, Memorandum Opinion and Order, MB Docket No. 11-105 ¶¶1,5, 9 (MB rel. Aug. 9, 2013).

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This letter is filed pursuant to Section 1.1206 of the Commission's rules, and copies will be delivered to each of the Commission participants. Please direct any inquiries to the undersigned.

Respectfully submitted,

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