

**Before the
Federal Communications Commission
Washington, DC 20554**

In the matter of)	CS Docket No. 97-80
)	
TiVo Petition for Rulemaking to)	PP Docket No. 00-67
Reinstate the Commissions Second)	
Report & Order Implementing Section)	
629 of the Act and Associated Rules)	

COMMENTS OF PUBLIC KNOWLEDGE

The Commission should grant TiVo’s petition, and begin a proceeding to reinstate its CableCARD rules.

The Echostar decision¹ was a narrow one that does not touch the heart of the Commission's regulations—yet the Commission has interpreted it in a way that could substantially weaken CableCARD support among cable operators and reduce the ability of cable subscribers to use third-party devices.² The legal arguments have already been well-documented by various interested parties, but here should suffice to say that the Echostar court only struck down one of several CableCARD orders, and only after finding that the provisions in the order in question was not severable. A series of narrow findings like this provides no basis for a fundamental shift with regard to cable operators’ support requirements for CableCARD. In particular, the encoding rules remain important for device interoperability, and the “integration ban” simply requires that operators use

¹ *EchoStar Satellite L.L.C. v. FCC*, 704 F.3d 992 (D.C. Cir. 2013)

² Charter Communications, Inc. Files Request for Waiver of Section 76.1204(a)(1) With the Commission, Memorandum Opinion & Order, CSR-8740-Z, MB Docket No. 12-328, DA 13-788 (Apr. 18, 2013).

the same conditional access technology they make available to third parties, as a way of structurally ensuring adequate support.³

The CableCARD platform continues to be a platform for innovation that allows companies to bring products to market that do more and are easier to use than the equipment supplied by operators themselves. As the Bureau's recent Samsung CableCARD proceeding demonstrates,⁴ new manufacturers continue to be interested in building on CableCARD. TiVo itself has recently introduced the Roamio to positive reviews,⁵ showing that CableCARD provides a path for companies to reach consumers with interesting new devices.

The shortcomings of CableCARD are well-documented, to be sure. It does not apply to all MVPDs, and a standards-based gateway or home networking solution would be simpler and allow for lower-cost devices than the current PCMCIA card-based technology. But without a plan for a replacement system to implement Section 629 of the 1996 Telecommunications Act and allow for equipment choice and competition,

³ In the past, technology companies such as Microsoft have been accused of using “undocumented” system calls and their control of the platform competitors need to access to harm competition. *See, e.g.*, Consumer Federation of America & Consumers Union, Competitive Processes, Anti-Competitive Practices and Consumer Harm in the Software Industry (January 25, 2002), http://web.archive.org/web/20080625000937/http://www.consumerfed.org/pdfs/CFA_tunney_comments_20020125.pdf. The purpose of “common reliance” rules such as the integration ban is to ensure that operators have no incentive to engage in that category of behavior.

⁴ Samsung Electronics America Petition for Waiver of Section 15.118(b) of the Commission's Rules, Memorandum Opinion & Order, MB Docket No. 13-165 (Sep. 6, 2013).

⁵ Nilay Patel, TiVo Romeo Review: This is the Ultimate Cable Box, *The Verge*, Aug. 20, 2013, <http://www.theverge.com/2013/8/20/4638390/tivo-roamio-pro-review>.

weakening the current platform is foolhardy. It reduces consumers' choices and gives them no upside. Today, the largest consumer costs for cable set-top boxes continue to be rental fees—and these high, recurring fees more than offset any alleged cost issues that operators incur in supporting CableCARD. If the Commission or industry want to modernize the current approach to promoting consumer choice and bring costs down, the best way forward would be to “adopt regulations to assure the commercial availability, to consumers of multichannel video programming and other services offered over multichannel video programming systems” of video devices⁶ that are more flexible and technology-neutral. But actions that simply weaken CableCARD work contrary to Congress's pro-competitive intent.

For these reasons, the Commission should grant TiVo's petition and open a rulemaking that will reinstate its rules.

Respectfully submitted,
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PUBLIC KNOWLEDGE

September 16, 2013

⁶ 47 U.S.C. § 549.