Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
TiVo Inc.	)	
Petition for Clarification or Waiver	)	
of 47 C.F.R. § 76.640(b)(4)	)	
	)	CS Docket No. 97-80
Implementation of Section 304 of the	)	
Telecommunications Act of 1996;	)	
Commercial Availability of Navigation	)	
Devices	)	

PETITION OF TIVO INC.
FOR CLARIFICATION OR WAIVER OF 47 C.F.R. § 76.640(b)(4)(iii)

January 3, 2014

SUMMARY

TiVo Inc. ("TiVo") respectfully requests further clarification and / or a waiver with respect to the requirement that device suppliers to cable operators must include an industry standard, interactive and recordable home networking interface, as set forth in Section 76.640(b)(4)(iii) of the Commission's Rules. This application has two bases:

(1) Standards activity appears to be at least a year behind the date projected by the Media Bureau for when a suitable technical standard would be available to industry.

(2) The Bureau has not resolved whether 76.640(b)(4)(iii) remains an enforceable regulation or was vacated by the Court of Appeals opinion in *Echostar*.

TiVo requests this waiver and / or clarification on behalf of all device suppliers to the cable industry.

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PETITION OF TIVO INC.
FOR CLARIFICATION OR WAIVER OF 47 C.F.R. § 76.640(b)(4)(iii)

TiVo Inc. ("TiVo" or "Petitioner") respectfully requests a further clarification and a waiver with respect to the requirement that suppliers of set-top devices to cable operators must include an industry standard, interactive and recordable home networking interface, as set forth in Section 76.640(b)(4)(iii) of the Commission's Rules.[1] TiVo previously petitioned for clarification and waiver of this provision in July, 2012. On Nov. 28, 2012, the Media Bureau, acting on TiVo's petition, released a Memorandum Opinion and Order[2] for the benefit of all device suppliers to the cable industry. The November 2012 M&O clarified the Bureau's expectations with respect to compliant

[1] 47 C.F.R. § 76.640(b)(4)(iii).

[2] *In the Matter of TiVo Inc.'s Request for Clarification and Waiver of the Audiovisual Output Requirement of Section 76.640(b)(4)(iii); Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices; Compatibility Between Cable Systems and Consumer Electronics Equipment*, MB Dkt. No. 12-230, CS Dkt. No. 97-80, PP Dkt. No. 00-67, DA 12-1910, Memorandum Opinion and Order (rel. Nov. 28, 2012).

standards. The Bureau also, based on its understanding of progress and projected deliverables from standards organizations, extended the compliance date to June 2, 2014. As noted in TiVo's original waiver petition, TiVo supports this provision and intends to comply. Two intervening factors, however, compel TiVo to seek additional clarification and waiver, again for the benefit of all cable industry device suppliers.

First, the Bureau based its compliance date on a standards completion date of "sometime in 2013," yet publication of the relevant standard has not yet occurred. The actual progress appears at least a year behind the projection on which the Bureau relied. Hence it is not possible for TiVo and presumably for other cable suppliers to meet the deadline set in reliance on the Bureau's projection. Second, in a Memorandum Opinion and Order with respect to a waiver sought by Charter Communications, the Bureau posed but did not resolve whether Section 76.640(b)(4)(iii) is still operative or was vacated, along with the other nominal Second R&O[3] provisions, by the opinion[4] of the D.C. Circuit in the *EchoStar* case.[5]

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[3] *Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices*, CS Dkt. No. 97-80, PP Dkt. No. 00-67, FCC 03-225, Second Report and Order and Second Further Notice of Proposed Rulemaking (rel. Oct. 9, 2003, "Second R&O").

[4] *EchoStar Satellite L.L.C. v. FCC*, 704 F.3d 992 (D.C. Cir. 2013). Section 76.640(b)(4)(iii) was codified pursuant to the Commission's Second R&O. Its text, however, dates from the 2010 Third Report & Order. *See In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices*, CS Docket. No. 97-80, PP Docket. No. 00-67, Third Report and Order and Order on Reconsideration, FCC 10-181 (rel. Oct. 14, 2010, "Third R&O").

[5] *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 at n. 18 (Apr. 18, 2013, "Charter M&O"). Although TiVo has filed a Reconsideration petition with respect to the Charter waiver result and has separately petitioned, *inter alia*, for reinstatement of the entirety of Section 76.640, action on the instant petition does not necessarily depend on resolution of those petitions, or on stakeholders agreeing on how

I. The Bureau Should Delay The Effective Date of Section 76.640(b)(4)(iii) In Light of the Present Status of Standards Activity Referenced In The Memorandum Opinion And Order.

In its M&O granting the initial waiver, the Bureau first determined that "[t]he record indicates that most cable operators plan to use a future version of the DLNA Premium Video profile as a home-networking solution to comply with Section 76.640(b)(4)(iii)."[6] Accordingly, the Bureau, while not requiring that compliance be achieved exclusively through this solution, used it as the touchstone for calculating a date achievable for industry-wide compliance. The M&O then arrived at such a date based on projections for completion of the DLNA solution referred to:

> As Verizon explains in its comments, "the next DLNA standard is unlikely to be approved until sometime in 2013. Moreover, even after standards are established, manufacturers will have to implement those standards in their devices, and subsequently deploy those devices into the marketplace – a process that can often take a year or more." Therefore, waiver is necessary to ensure the development of the new products contemplated under Section 76.640 of the Commission's rules, which is precisely the situation that warrants waiver under Section 629(c). … Accordingly, we believe that an 18-month waiver of Section 76.640(b)(4)(iii) will provide cable operators adequate time to introduce this new technology without unduly delaying consumer benefits.[7]

With the date of June 2, 2014 approaching in five months, DLNA has not published the standard referred to and TiVo is not aware that any progress update has been provided to the Bureau. Accordingly, on behalf of itself on other suppliers of

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they ought to be resolved. For purposes of the instant Petition TiVo simply seeks clarification but takes no position on whether Section 76.640(b)(4)(iii) was vacated by *EchoStar*. TiVo and other suppliers to the industry have a common interest in knowing the current status of Section 76.640(b)(4)(iii), and in knowing the date on which compliance, if required, must be achieved.

[6] TiVo MO&O ¶ 12 (footnotes omitted).

[7] *Id.* ¶ 15 (footnotes omitted).

devices to cable operators, TiVo requests a waiver until such time that the Bureau, through public comment on this Petition, determines that compliance is achievable on an industry-wide basis that includes TiVo.

II. The Bureau Should Clarify Whether Compliance With Section 76.640(b)(4)(iii) Is Required.

This Petition is premised on the assumption that Section 76.640(b)(4)(iii) remains an active regulation because its *text* was released in the Third R&O, rather than in the vacated Second R&O. However, as noted above, the Bureau in its Charter M&O declined to resolve this question.[8] If the Bureau now determines that the requirement has been vacated, no compliance, hence no waiver, would be necessary. This is a pan-industry issue so TiVo is requesting waiver and / or clarification on behalf of all suppliers. TiVo believes it is better to proceed by public comment rather than for TiVo to premise this Petition on its own point of view.[9]

Conclusion

Until there is a generally accepted, industry-standard implementation and deployment pursuant to this section by the major and customary suppliers to the industry, TiVo and others will not be able to make compliant and interoperable products. Therefore, TiVo respectfully requests that the Commission determine a further achievable date for compliance with Section 76.640(b)(4)(iii), and clarify whether this regulation remains binding on the cable industry and suppliers such as TiVo.

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[8] *See* n. 5, *id.*

[9] TiVo reserves the right, as an interested party, to comment on this point when its Petition is published for comment.

Respectfully submitted,

TIVO INC.

_____/s/_____

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