

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

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

**COMMENTS OF VERIZON**

As TiVo points out in its Petition,<sup>1</sup> despite significant progress in industry-led standards-setting organizations, such as the Digital Living Network Alliance (DLNA), the anticipated standards for the audiovisual output feature and home networking requirements (*see* 47 C.F.R. § 76.640(b)(4)(iii)) are not yet complete. Although the final DLNA standards should be available soon, the product development cycle to incorporate the functionality into consumer products is typically 12 to 18 months, as the Bureau previously recognized.<sup>2</sup> While Verizon continues to work diligently with equipment manufacturers to have the relevant features included in set-top boxes to meet the existing June 2, 2014 deadline, the lack of settled final standards significantly complicates those efforts. Because the entire industry would benefit from a waiver until at least 12 months after the DLNA standards are published in order to allow those standards to be

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<sup>1</sup> *See Petition of TiVo Inc. for Clarification or Waiver of 47 C.F.R. § 76.640(b)(4)(iii)*, CS Docket No. 97-80 (filed Jan. 3, 2014) (“*TiVo 2014 Petition*”); Public Notice, *Media Bureau Seeks Comment on TiVo’s Request for Clarification or Waiver of the Audiovisual Output Requirement of Section 76.640(b)(4)(iii)*, CS Docket No. 97-80, DA 14-46 (Jan. 15, 2014).

<sup>2</sup> *TiVo Inc.’s Request for Clarification and Waiver of the Audiovisual Output Requirement of Section 76.640(b)(4)(iii)*, *Memorandum Opinion and Order*, 27 FCC Rcd 14875, ¶ 15 (2012) (“*TiVo I*”).

incorporated into a wider range of new equipment, the waiver requested by TiVo should be granted on an industry-wide basis.

Moreover, the rule at issue was premised on the CableCARD rules in Section 76.640 that were vacated in *Echostar Satellite v. FCC*,<sup>3</sup> thereby undermining the basis for the rule.

Consumers also now have available platforms to view video programming on devices other than cable-operator supplied set-top boxes because the competitive market is already increasing the number and type of such platforms. The soon-to-be-realized DLNA standards will only accelerate this expansion of consumer choice for devices on which video programming may be viewed. For both those reasons, the Commission should conclude that this rule is no longer in effect, and, indeed, is no longer needed.

**I. THE BUREAU SHOULD GRANT AN INDUSTRY-WIDE WAIVER UNTIL 12 MONTHS AFTER THE DLNA STANDARDS ARE PUBLISHED.**

Over the past year, various industry organizations have been developing standards for networking platforms that will expand consumers' ability to access video programming using devices other than the traditional set-top box. In particular, DLNA and the Multimedia Over Coax Alliance (MoCA) are developing home networking solutions that will allow multiple devices in the home to meet consumer demand for access to media content and services across devices.<sup>4</sup> Ultimately, these efforts will support the Commission's goal for migration to Internet Protocol (IP) as the next step in allowing a wider range of consumer equipment to access Multichannel Video Programming Distributor (MVPD) programming.<sup>5</sup>

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<sup>3</sup> *Echostar Satellite L.L.C. v. FCC*, 704 F.3d 992 (D.C. Cir. 2013).

<sup>4</sup> See DLNA, Discover the Possibilities, <http://www.dlna.org/consumer-home/The-Possibilities>; Multimedia over Coax Alliance, The Standard for Home Entertainment Networking, <http://www.mocalliance.org/index.php>.

<sup>5</sup> See *Implementation of Section 304 of the Telecommunications Act of 1934: Commercial Availability of Navigation Devices; Compatibility Between Cable Systems and Consumer Electronics Equipment, et al., Third Report and Order and Order on Reconsideration*, 25 FCC Rcd 14657, ¶ 43 (2010) (“*Third Report and Order*”) (adopting IP-interface requirement for all cable operator-supplied set-top boxes).

However, as TiVo points out, despite these diligent efforts on the part of industry in the standards-setting process, the standards have not yet reached completion. When the Commission adopted the current version of Section 76.640(b)(4)(iii) in 2010, it recognized that extending the compliance date would be justified by a “demonstrat[ion of] good faith efforts to work toward [the] functionalities” specified in the rule, noting that its prediction regarding the time to develop open industry standards might “prove inaccurate.”<sup>6</sup> When TiVo previously pointed out that the standards process was taking longer than the Commission initially predicted, the Bureau found the then-current state of progress on the standards justified an 18-month extension of the compliance date stated in Section 76.640(b)(4)(iii) on an industry-wide basis.<sup>7</sup>

TiVo’s 2014 Petition correctly points out that, despite the best efforts of all involved, the timeframe for developing the DLNA standard has extended beyond what both the Bureau and industry anticipated. “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 other cable suppliers to meet the deadline set in reliance on the Bureau’s projection.”<sup>8</sup>

To be sure, significant progress has been made since the Bureau previously addressed this issue. The proposed DLNA standards have been generally endorsed by the Bureau and consensus has emerged that the industry will largely rely on these standards once finalized. In addition, the final DLNA standard is expected to be released soon. DLNA’s home-networking standard CVP-2, although not yet final, was the subject of several product demonstrations at the 2014 Consumer Electronics Show.<sup>9</sup> Verizon itself also has continued to participate diligently in

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<sup>6</sup> *Id.*, ¶ 44 n. 151.

<sup>7</sup> *See TiVo I*, ¶ 15.

<sup>8</sup> *TiVo 2014 Petition*, at 2.

<sup>9</sup> DLNA Press Release, “DLNA Member Companies to Show Latest Certified Products at CES, and Future of Connected Digital Living” (Jan. 7, 2014), *follow* <http://www.dlna.org/dlna-for-industry/newsroom/press-releases> to 06.01.14.

the standards-setting process, and has worked with equipment manufacturers toward including compliant outputs and the relevant features in set-top boxes. But those efforts have been significantly complicated by the lack of a settled, final standard from DLNA, and, like TiVo, Verizon and others throughout the industry would benefit from having additional time after the standards are finalized to incorporate the new standards into their equipment and test the new features supported by these standards.. The additional time would benefit consumers by allowing time for these industry standards to be incorporated into a broader range of equipment.

Indeed, as TiVo points out, the industry is in a position similar to that in November 2012, when the Bureau found it appropriate to grant an industry-wide waiver under Section 629 of the Communications Act, and extend the date for compliance with Section 76.640(b)(4)(iii). At that time, the Bureau reasoned: “[T]he prediction about finalized standards has not materialized; DLNA has not finalized a specification that will provide all the required features” to meet the rule.<sup>10</sup> Moreover, “[t]he record shows that TiVo is not alone. Despite their efforts, cable operators need more time to develop and introduce new technology to comply with Section 76.640(b)(4)(iii).”<sup>11</sup>

The Commission has already recognized that if its timing prediction was inaccurate, extensions of the time frame for compliance with Section 76.640(b)(4)(iii) are justified based on a “demonstrate[ion of] good faith efforts to work toward [the] functionalities” specified in the rule. Here, despite the good faith efforts of all concerned, the industry standard is just now being finalized, and so the Commission should grant TiVo’s petition and waive the rule until 12

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<sup>10</sup> *TiVo I*, ¶ 14.

<sup>11</sup> *Id.*

months after the final standard is published.<sup>12</sup> In so doing, the Commission can ensure that all manufacturers and service providers have sufficient time to incorporate an industry standard into their set-top boxes and that a range of consumer products will be available to take advantage of that functionality.

## **II. DEVELOPMENTS SINCE SECTION 76.640(b)(4)(iii) WAS ADOPTED HAVE CALLED INTO QUESTION THE VALIDITY OF AND NEED FOR THE RULE.**

In *Echostar*, the D.C. Circuit vacated the Commission's CableCard rules in Section 76.640,<sup>13</sup> as adopted in the *Second Report and Order*<sup>14</sup> and *Order on Reconsideration*<sup>15</sup> in this docket. While the IP-based home-networking rule in Section 76.640(b)(4)(iii) was adopted in the *Third Report and Order*, that rule was premised on the previously adopted set-top box requirements which became a nullity as a result of the *Echostar* decision. Based on the *Echostar* decision, the Commission should find that the rule is no longer enforceable.

Moreover, in today's dynamic and innovative video marketplace, this type of technology mandate also is not necessary. As Verizon and other parties have explained,<sup>16</sup> while the IP-based networking feature may not yet be prevalent, other effective solutions for consumer use of commercial equipment with MVPD services are already available. The market is providing consumers new choices in how, where, and from whom they will receive and watch video programming, and consumers increasingly have the freedom to view and interact with content on any device, anytime, anywhere. These efforts in the marketplace are achieving the

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<sup>12</sup> See *id.*, ¶¶ 14-15 (explaining that Section 629(c) authorizes the Commission to grant an industry-wide waiver of a regulation upon a showing that the waiver is "necessary to assist the development or introduction of a new or improved ... technology, or product[]").

<sup>13</sup> *Echostar*, 704 F.3d at 992.

<sup>14</sup> See *Implementation of Section 304 of the Telecommunications Act of 1996, et al.*, Second Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 20885 (2003).

<sup>15</sup> See *id.*, Order on Reconsideration, 18 FCC Rcd 27059 (2003).

<sup>16</sup> See, e.g., Comments of Verizon on TiVo Petition for Rulemaking, CS Docket No. 97-80, at 3-5 (Sept. 16, 2013); Comments of the National Cable & Telecommunications Association on TiVo, Inc.'s Petition for Rulemaking, CS Docket No. 97-80, at 5-11 (Sept. 16, 2013).

Commission’s goal of ensuring video programming “can be received and displayed by devices manufactured by unaffiliated manufacturers.”<sup>17</sup>

For example, Verizon has deployed and is deploying various solutions for access to its FiOS TV service other than through traditional set-top boxes. Subscribers can access FiOS TV programming on consumer equipment, including Xbox game consoles, and smart TVs, through its FiOS TV application.<sup>18</sup> Also, FiOS TV customers currently can access up to 91 linear channels in the home with the FiOS mobile TV application on tablets and smartphones as well as 25 channels outside the home.<sup>19</sup> Moreover, Verizon is developing its Verizon Media Server (VMS), an in-home device that will enable third-party devices to discover, access and control the suite of FiOS media services, and plans to deploy the VMS this year.<sup>20</sup> The VMS, when fully implemented to include an industry standard for home networking, will be capable of accepting requests from and simultaneously streaming high-definition (HD) FiOS content to multiple third-party devices over a subscriber’s home network, thus achieving the Commission’s goal of allowing consumers to access video content over a wide range of devices.

Verizon is not alone. Both traditional and new video distributors now are delivering video programming directly to more products, such as game consoles, mobile tablets and personal computers.<sup>21</sup> In addition, manufacturers are offering consumers “Smart TVs” that allow access to multiple video services over the Internet, again without any set-top box or even a

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<sup>17</sup> *Third Report and Order*, ¶ 39.

<sup>18</sup> *See, e.g.*, Verizon Press Release, “FiOS App Now Available on Xbox One” (Dec. 17, 2013), available at <http://newscenter.verizon.com/corporate/news-articles/2013/12-17-xbox-one-fios-tv-app/>.

<sup>19</sup> *See* Verizon Press Release, “FiOS Mobile App Adds 16 More Channels for Out-of-Home, On-The-Go TV Pleasure” (Dec. 5, 2013), available at <http://newscenter.verizon.com/corporate/news-articles/2013/12-05-fios-mobile-app-adds-channels/>.

<sup>20</sup> *See* Steve Donohue, “Verizon to begin deploying FiOS Media Service at end of Q1,” *FierceCable* (Jan. 30, 2014), available at <http://www.fiercecable.com/story/verizon-begin-deploying-fios-media-server-end-q1/2014-01-30/>.

<sup>21</sup> *See, e.g.*, A. Maxwell, “Slowly But Surely, TV Everywhere Is Becoming a Reality,” *HomeTheaterReview.com* (Aug. 13, 2012), available at <http://hometheaterreview.com/slowly-but-surely-tv-everywhere-is-becoming-a-reality/> (describing the offerings by major content providers and MVPDs); *see also Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, Fifteenth Report, 28 FCC Rcd 10496, ¶¶ 91, 102 (2013).

networked connection to a set-top box.<sup>22</sup> And, there are multiple ways for consumers to view on-line streaming video on their own televisions.<sup>23</sup>

As a result of the expanding range of choices driven by the competition and innovation throughout the video marketplace, consumers increasingly have available and are using viewing platforms that do not require an MVPD-supplied set-top box.<sup>24</sup> Therefore, consumers will have an ever-expanding range of choices in devices that enable them to view video services even in the absence of a technology mandated by the Commission.

Respectfully submitted,

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<sup>22</sup> See, e.g., “LG Electronics and Verizon Collaborate to Offer FiOS TV App on LG’s Smart TV Platform” (Jan. 11, 2012), available at <http://www.prnewswire.com/news-releases/lg-electronics-and-verizon-collaborate-to-offer-fios-tv-app-on-lgs-smart-tv-platform-137086198.html>.

<sup>23</sup> See, e.g., Walter S. Mossberg, “So Many Ways to Deliver Online Video to Your TV,” Wall Street Journal (Aug. 14, 2013).

<sup>24</sup> See, e.g., Letter from Michael Powell, NCTA, to The Honorable Tom Wheeler, FCC, attached to Letter from Neal Goldberg, NCTA, to Marlene Dortch, FCC, MB Docket No. 10-91, CS Docket No. 97-80, MB Docket No. 07-269 & PP Docket No. 00-67 (Feb. 5, 2014).