

**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)

**REPLY COMMENTS OF
THE ALLVID TECH COMPANY ALLIANCE**

Because all parties commenting on this petition¹ agree that additional time would be necessary for compliance with Section 76.640(b)(4)(iii),² the remaining issue is the present status of this subsection of the FCC’s regulations. The Commission should act expeditiously to clarify the status of Section 76.640(b)(4)(iii) by acting favorably on TiVo’s pending Petition for Rulemaking³ to reinstate the Second Report & Order.⁴

Given the consensus that more time would be necessary for implementation of Section 76.640(b)(4)(iii), the Commission now has both the time and the necessity to address TiVo’s July, 2013 Petition for Rulemaking which seeks, *inter alia*, the reinstatement of *all* of Section

¹ *In the Matter of TiVo Inc.’s Request for Clarification and Waiver or Waiver 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; Compatibility Between Cable Systems and Consumer Electronics Equipment*, CS Dkt. No. 97-80, Petition of TiVo Inc. for Clarification or Waiver of 47 C.F.R. § 76.640(b)(4)(iii) (Jan. 3, 2014).

² *Id.*, DLNA Comments at 2, NCTA Comments at 6, Verizon Comments at 1 - 5, CEA Comments at 1-2, AllVid Tech Company Alliance Comments at 1-2.

³ *Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices; Compatibility Between Cable Systems and Consumer Electronics Equipment*, CS Dkt. No. 97-80, PP Dkt. No. 00-67, Petition for Rulemaking (July 16, 2013).

⁴ All rules enacted with the Second Report & Order were vacated in *EchoStar Satellite L.L.C. v. FCC*, 704 F.3d 992 (D.C. Cir. 2013, “*EchoStar*”).

76.640. NCTA⁵ and Verizon⁶ oppose any further action by the Commission to comply with Section 629 of the Communications Act. Section 629 requires the Commission to *assure* in its regulations the commercial competitive availability of navigation devices in “consultation with appropriate industry standards-setting organizations.”⁷ Thus the question for the Commission to resolve is whether the FCC should be guided by NCTA’s and Verizon’s general resistance to rules, or by a direct instruction of the U.S. Congress. This should not be a close call.

The FCC record, including the instant petition and TiVo’s Petition for Rulemaking, is devoid of any basis for the Commission to fail to reinstate Section 76.640 of its rules. Section 76.640 was neither discussed nor addressed on the merits in *Echostar*, nor is it substantively controversial. Public comment on TiVo’s rulemaking petition has been noticed and received. Hence the Commission should address the pending and important matter of the overall status of Section 76.640, rather than split hairs in the context of a waiver application over the provenance of a subsection whose text was later modified. In implementing Section 629 the Bureau has already acted too often by waiver rather than by rule.⁸

⁵ NCTA Comments at 5 - 6. NCTA at 4 – 5 argues that relevant elements of the 2010 Third Report & Order must be considered vacated due to an incidental Reconsideration reference in which, for convenience, the Commission used the obligation to comply with Section 76.640 as a short-hand reference to identify who is a “cable operator.” The CEA dispatched this argument when made by NCTA member Charter in the context of CEA’s pending Application for Review of the waiver granted to Charter. *See In the Matter of Charter Communications, Inc.’s Request for Waiver of Section 76.1204(a)(1) of the Commission’s Rules, Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices*, CSR-8740-Z, MB Docket No. 12-328, CS Docket No. 97-80, Reply Comments of the Consumer Electronics Association at 2 – 3 (June 13, 2013). The Commission had and has other means at its disposal for identifying who is a “cable operator” and in all other contexts NCTA and its members would agree that they are “cable operators.” Rather than splitting hairs, the Commission can conclusively resolve any such questions by acting on TiVo’s pending petition to reinstate the Second Report & Order, and with it Section 76.640. If the Commission must continue to proceed through regulation by waiver, however, it could clarify that the convenient cross-reference was not meant to and did not revoke a fully considered rulemaking that has never been questioned or challenged on its merits.

⁶ Verizon comments at 5 - 7.

⁷ 47 U.S.C. § 549(a).

⁸ *See, e.g., In the Matter of Basic Service Tier Encryption, Compatibility Between Cable Systems and Consumer Electronics Equipment*, MB Docket No. 11-169, PP Docket No. 00-67, Comments of the Consumer Electronics Association at 5 – 6 (Nov. 28, 2011).

Acting on TiVo's Petition for Rulemaking should be a first step in a necessary⁹ re-focusing on the implementation of Section 629, as carriers transition to IP delivery of MVPD programming and services.¹⁰ In addition to resolving TiVo's Petition for Rulemaking, the Commission should also issue an "AllVid" gateway Notice of Proposed Rulemaking, to establish references to private sector standards for IP-level direct connection of competitive commercial navigation devices to MVPD systems, without the necessary interposition of any leased device or any proprietary user interface.

Respectfully submitted,

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February 28, 2014

⁹ The Commission has agreed with the Alliance and CEA that the Commission must resolve policy matters in order to update its implementation of Section 629: "We agree with CEA and the AllVid Tech Company Alliance that ensuring the effective implementation of Section 629 of the Act and continuing future device compatibility are important issues that the Commission must resolve." *In the Matter of Basic Service Tier Encryption*, MB Dkt. No. 11-169, PP Dkt. No. 00-67, Report and Order at ¶ 35 n.162 (rel. Oct. 12, 2012).

¹⁰ See letter from Robert S. Schwartz and Jeffrey L. Turner to Chairman Tom Wheeler, FCC, *Video Device Competition*, MB Docket No. 10-91; *Commercial Availability of Navigation Devices*, CS Docket No. 97-80; *Compatibility Between Cable Systems and Consumer Electronics Equipment*, PP Docket No. 00-67; *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 14-16 (Jan. 18, 2013).