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

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| In the Matter of | ) | |
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| Buckeye Cablevision, Inc. | ) | CSR-8876-Z |
| Request for Waiver of Section 76.1204(a)(1) | ) | |
| of the Commission's Rules | ) | MB Docket No. 14-42 |
| | ) | |
| | ) | |

**REPLY**

Buckeye Cablevision, Inc. ("Buckeye") submits this Reply in support of its Waiver Request[1] and to respond to the Comments of TiVo Inc.[2]

## I. Introduction and Summary.

The Waiver Request seeks a limited waiver of the integration ban in 47 C.F.R. § 76.1204(a)(1). The waiver would enable Buckeye to initiate deployment of a "Hybrid Box," an innovative development in set-top technology. The Hybrid Box combines in one device a unidirectional QAM digital terminal adaptor ("DTA") and an Internet Protocol ("IP") video interface. As explained in the Waiver Request, the ability to deploy the Hybrid Box is the linchpin to the cost-efficient, customer-friendly, phased transition of Buckeye's video services to

[1] *In the Matter of Buckeye Cablevision, Inc. 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*, Request for Waiver, CSR-8876-Z, MB Dkt. No. 14-42 (filed Mar. 3, 2014) ("Waiver Request").

[2] *In the Matter of Buckeye Cablevision, Inc. 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*, Comments of TiVo Inc., CSR-8876-Z, MB Dkt. No. 14-42 (filed Mar. 27, 2014) ("TiVo Comments").

IP.[3] The substantial public interest benefits that will flow from the waiver include a better IP transition experience for consumers, recovery of bandwidth for redeployment to provide more advanced services, higher broadband internet access speeds, more high-definition video, and deployment of devices with separate and downloadable security.[4]

TiVo, the sole commenter, begins by expressing sympathy for ambitious "smaller operators such as Buckeye . . . who wish to modernize their systems."[5] But TiVo's support for small operator innovation ends there. TiVo asks the Media Bureau to take no action on the Waiver Request until the Media Bureau or the Commission completes a variety of other proceedings initiated by TiVo or in which TiVo has an interest.[6] Further, TiVo asks the Media Bureau to deviate from well-established precedent and require Buckeye to undertake a costly, burdensome, and unnecessary effort to demonstrate national interoperability. Finally, TiVo asks the Media Bureau to delay action on the waiver until Buckeye agrees to a set of additional conditions that would serve to benefit only TiVo.

The Media Bureau should reject TiVo's attempts to bury the Waiver Request beneath a stack of other TiVo-related proceedings, an unprecedented obligation to demonstrate national interoperability, and unnecessary TiVo-centric conditions. The Waiver Request fully satisfies applicable regulations and is consistent with precedent. As demonstrated in the Waiver Request, the Hybrid Box is the linchpin to Buckeye's plans to begin its IP transition, substantial public

[3] Waiver Request at 2, 9-10.

[4] Waiver Request at 10-12.

[5] TiVo Comments at 1.

[6] TiVo Comments at 2-3.

interest benefits will result, and time is of the essence. Buckeye respectfully requests the Media Bureau promptly conclude this proceeding and grant the Waiver Request.

## II. The Media Bureau should reject TiVo's request to take no action on the Waiver Request until the Media Bureau or the full Commission act on multiple other proceedings.

TiVo asks the Media Bureau to take no action on the Waiver Request until the following four proceedings are concluded:

> *In the Matter of Charter Communications, Inc.'s Request for Waiver of 47 C.F.R. §1204(a)(1) of the Commission's Rules*, Memorandum Opinion and Order, 28 FCC Rcd 5212 ("Charter Waiver"); Petition for Reconsideration of TiVo Inc. (May 20, 2013);
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> Charter Waiver, Application for Review of the Consumer Electronics Association (May 20, 2013) ("CEA Application for Review");
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> *Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigations Devices*, CS Docket No. 97-80, PP Docket No. 00-67, TiVo Inc. Petition for Rulemaking (filed July 16, 2013); and
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> *Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigations Devices*, Notice of Inquiry, 25 FCC Rcd 4275 (2010) ("AllVid NOI").

TiVo has initiated two of these proceedings, participated extensively in the AllVid NOI, and has apparently coordinated closely with CEA in the CEA Application for Review. All of these proceedings have concluded their respective pleading cycles and remain pending for the Media Bureau or Commission to act on or, in the case of a petition for rulemaking or Notice of Inquiry, to decline to act. TiVo's attempt to use the Waiver Request as a forum to make collateral attacks on the Charter Waiver and to advocate its positions in unrelated proceedings is inappropriate, and the Media Bureau should rejected it.

The first problem with TiVo's argument is that it lacks legal foundation. The familiar and time-tested standards for granting the Waiver Request are specified by regulation – the Media Bureau must find good cause shown and that a grant of the waiver would serve the public

interest.[7] Ample precedent supports deciding the Waiver Request promptly on its merits.[8] On the other hand, TiVo cites no authority for its argument that the Waiver Request should be buried beneath other proceedings commenced by TiVo or in which TiVo has an interest. And for good reason, none exists. The Media Bureau must reject TiVo's argument as lacking any legal foundation.

The second problem with TiVo's argument is that it relies heavily on TiVo's claims that the Charter Order "is factually and legally flawed."[9] TiVo has raised those arguments in its Petition for Reconsideration, the Charter Order remains standing, and parties are entitled to rely on it.[10] That said, while the Waiver Request finds support in the Charter Order, it by no means

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[7] 47 C.F.R. §§ 1.3, 76.7.

[8] 47 C.F.R. §§ 1.3, 76.7; s*ee also, Northeast Cellular Tel. Co., L.P. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) ("FCC has authority to waive its rules if there is 'good cause' to do so."); *see also In the Matter of Consolidated Requests 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*, Memorandum Opinion and Order, 22 FCC Rcd 11780, ¶ 59 (2007) ("Consolidated Waiver Order") (requests granted under Sections 1.3, 76.7 because they "present non-speculative public interest benefits"); *In the Matter of Bend Cable Communications, LLC d/b/a BendBroadband; Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules;* Memorandum Opinion and Order, 22 FCC Rcd 209 ¶¶ 24-25 (2007) ("Bend Waiver Order") (request conditionally granted because petitioner's plan to migrate to an all-digital network, if timely accomplished, "would be sufficient to show good cause for a waiver under Sections 1.3 and 76.7" and would further the goals of Section 706).

[9] TiVo Comments at 4.

[10] *See, e.g.*, Charter Order ¶¶ 9-10 (waiver granted in partial reliance on a Cablevision waiver order while an application for review of the Cablevision order remained pending); *In the Matter of Cablevision Systems Corporation'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*, Application for Review of Consumer Electronics Association, CSR-7078-Z, CS Docket No. 97-80 (filed Feb. 17, 2009). *See also*, 47 U.S.C. § 405(a) (no petition for reconsideration "shall excuse any person from complying with or obeying any order, decision, report, or action of the Commission, or operate in any manner to stay or postpone the enforcement thereof, without the special order of the Commission"); *In the Matter of DISH Network Corporation; Petition for Waiver of Sections 27.5(j) and 27.53(h)(2)(ii) of the Commission's Rules and Request for Extension of Time*, Memorandum Opinion and Order, 28 FCC Rcd 16787, ¶ 51, n.161 (2013) (declining to delay action on a DISH Network request to waive certain AWS-4 spectrum rules pending action on a petition for reconsideration of unrelated AWS-4 rules because the "fact that a reconsideration of those rules is pending in the AWS-4 docket does not stay or postpone the legal effect of those rules").

relies upon it and can be readily distinguished. The Waiver Request seeks a waiver for the Hybrid Box, an innovative combination of a QAM DTA and an IP video output,[11] while the Charter Order grants a waiver for a digital set-top with integrated security pending Charter's company-wide roll out of separate, downloadable security.[12] The Waiver Request seeks a waiver to accelerate Buckeye's transition to an IP network,[13] while the Charter Order grants a waiver in the context of Charter's transition to all-digital systems.[14] The downloadable security discussed in the Waiver Request is application-based, meaning it can support multiple DRM solutions.[15] The Charter Waiver is software-based but requires a hardware root of trust housed on a commodity chip.[16] In short, Buckeye's Waiver Request differs in fundamental ways from the Charter Waiver. The Media Bureau should reject TiVo's attempt to lump the two together.

A third problem with TiVo's argument is that it seeks to delay action on the Waiver Request pending adoption of a national conditional access standard for IP systems.[17] This argument is not new; it is nearly the identical argument CEA made in its Application for Review

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[11] Waiver Request at 1, 3-4.

[12] *In the Matter of Charter Communications, Inc. 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*, Memorandum Opinion and Order, 28 FCC Rcd 5212, ¶ 9 (2013) ("Charter Order").

[13] Waiver Request at 6-10.

[14] Charter Order at ¶ 6.

[15] Waiver Request at 4.

[16] Charter Order at ¶ 5.

[17] TiVo Comments at 3.

of the Charter Waiver.[18] Charter's persuasive response to CEA's argument applies equally to TiVo's argument here:

> [T]he Commission should reject CEA's call for the Commission to mandate uniform security because diversity in technological deployments well serves consumers: if only one security solution were permissible, consumer would not have cable service to tablets, to PCs, or low-cost-DTAs, and MVPDs would not have the flexibility needed to enable consumers to use third-party IP-enabled devices such as Boxee boxes without a set-top box. Allowing for multiple, rather than exclusive, solutions is the approach successfully used by the Commission in dealing with other dynamic technology environments.[19]

The Waiver Request presents the Media Bureau with one innovative solution for IP video delivery in the dynamic and complex process of transitioning Buckeye's network from hybrid analog/digital to IP. The Media Bureau should reject TiVo's call to delay that innovation pending the development of a mandated national IP conditional access standard.

No legitimate legal or policy basis exists to delay action on the Waiver Request until the Media Bureau or the Commission acts on other proceedings initiated by TiVo or in which TiVo has an interest. The Media Bureau has ample legal authority and a sound policy basis to promptly grant the Waiver Request.

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[18] CEA Application for Review at 13.

[19] *In the Matter of Charter Communications, Inc.'s Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, Opposition of Charter Communications, Inc. to Application for Review, CSR-8740-Z, MB Docket 12-328 at 8-9 (filed June 3, 2013) (citing, among other authorities, *Basic Service Tier Encryption; Compatibility Between Cable Systems and Consumer Electronics Equipment*, Report and Order, 27 FCC Rcd 12786, ¶ 3 (2012); *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices; Compatibility Between Cable Systems and Consumer Electronics Equipment*, Fourth Further Notice of Proposed Rulemaking, 25 FCC Rcd 4303, ¶ 20 (2010)).

## III. The Media Bureau should reject TiVo's request to take no action on the Waiver Request until Buckeye demonstrates national interoperability.

TiVo asks the Media Bureau to take no action on the Waiver Request until Buckeye provides, on the record, "a specific demonstration of why and how its system will support system interoperability and IP-based retail products on a nationwide basis."[20] The Media Bureau must reject this extraordinary request because it lacks any basis in law or regulation and would be bad policy, stifling innovation by imposing costly, unduly burdensome, and unnecessary research and development obligations on a small company.

The first problem with TiVo's attempt to impose a new national interoperability standard on waiver applications is that it lacks any foundation in Section 629, applicable regulations, or precedent. Tellingly, TiVo cites no authority for its argument, and, we submit, none exists. Commission regulations set forth the showings necessary for obtaining a waiver,[21] and the Media Bureau has consistently applied these requirements to set-top box waiver requests, granted and denied alike.[22] Consistent with these requirements, the Waiver Request sets forth why good

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[20] TiVo Comments at 15.

[21] 47 C.F.R. §§ 1.3, 76.7; *see also* Consolidated Waiver Order at ¶ 59 (requests granted under Sections 1.3, 76.7 because they "present non-speculative public interest benefits"); Bend Waiver Order at ¶ 24-25 (request conditionally granted because petitioner's plan to migrate to an all-digital network, if timely accomplished, "would be sufficient to show good cause for a waiver under Sections 1.3 and 76.7" and would further the goals of Section 706).

[22] *See, e.g.*, Bend Waiver Order, Consolidated Waiver Order, Charter Waiver Order (all granted under Sections 1.3, 76.7); *In the Matter of Innovative Cable TV St. Thomas-St. John & St. Croix; Petition for Waiver of 47 C.F.R. § 76.1204(a)(1); Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices*, Memorandum Opinion and Order, 22 FCC Rcd 13447 (2007) (denied under Sections 1.3, 76.7); *In the Matter of Millennium Telecom, LLC d/b/a OneSource Communications; 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*, Memorandum Opinion and Order, 22 FCC Rcd 8567 (2007) (denied under Sections 1.3, 76.7); *In the Matter of National Cable & Telecommunications Association; 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*, Memorandum Opinion and Order, 22 FCC Rcd 11767 (2007) (denied under Sections 1.3, 76.7).

cause exists for the waiver, and the public interest benefits that will result from the waiver.[23] Moreover, Buckeye's IP transition will enable it to provide new services to an expanding range of IP devices.[24] In short, when evaluated under 47 C.F.R. §§ 1.3 and 76.7 and applicable precedent, there is no legitimate question whether Buckeye has submitted adequate and ample evidence in support of the requested waiver. The Media Bureau should reject TiVo's proposal as in conflict with Section 629, Section 76.7, and applicable precedent.

The Media Bureau should also reject TiVo's proposed requirement to demonstrate national interoperability as bad policy. TiVo's proposal would require Buckeye to engage in a costly and burdensome research and development effort to show that Buckeye's plans for its system in northern Ohio could be replicated in all other cable systems and with all other IP-based retail products. Buckeye is in no position to undertake that project. Consequently, imposing this obligation would stifle innovation, undermine Buckeye's plans to begin its IP-transition, and deny Buckeye's customers the benefits of that transition. No good policy objective supports that outcome.

TiVo's request is also unnecessary. As explained in the Waiver Request, the downloadable security used in the IP side of the Hybrid Box is application-based.[25] This is the same type of DRM technology that has enabled secure, high quality, high value video content to proliferate on an expanding range of consumer devices – tablets, laptops, PCs, mobile phones, Roku boxes, and more. Interoperability requires device manufacturers to develop applications compatible with the applicable DRM, an increasingly commonplace undertaking today.

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[23] Waiver Request at 6-10.

[24] Waiver Request at 3-4.

[25] Waiver Request at 4.

Buckeye has strong incentives to encourage the efforts of device manufacturers seeking to provide innovative products to display video content to Buckeye customers. That said, Buckeye is a small company with limited resources, and Buckeye distributes programming under limited licenses from programmers, many of which place heavy restrictions on the types of devices to which Buckeye can deliver programming. Buckeye's support for third-party devices will be limited by these constraints.

No legitimate legal or policy basis exists to impose on the Waiver Request the national interoperability standard request by TiVo. The Media Bureau should reject this request and promptly grant the Waiver Request based on the record before it.

## IV. The Media Bureau should reject TiVo's request to impose unnecessary TiVo-centric conditions on a waiver for the Hybrid Box.

TiVo's comments conclude with a list of conditions or clarifications TiVo seeks, each of which seems tailored to protect TiVo's business rather than benefit consumers. The Media Bureau should reject these proposals as unnecessary.

**Buckeye has committed to continued support for CableCARD devices.** TiVo requests clarification of Buckeye's support for CableCARD devices. As stated in the Waiver Request, "By deploying the Hybrid Box, Buckeye will achieve its IP-transition in a gradual, distinctly consumer friendly way. This will include ongoing support for customers using CableCARD devices, including TiVo devices."[26] TiVo quibbles that this commitment could be construed to be limited only to customers *currently* using CableCARD devices.[27] Buckeye affirms that its commitment, as stated in the Waiver Request, covers both current and future

[26] Waiver Request at 12.

[27] TiVo Comments at 12

customers using CableCARD devices, whether those devices are currently in use or acquired later.

**The Waiver Request describes the functionality of the Hybrid Box.** As described in the Waiver Request, the Hybrid Box combines a DTA processing unidirectional QAM video signals and an IP video interface for processing video signals delivered via IP.[28] The Hybrid Box has a single video output and contains no onboard storage or recording capability.

TiVo argues that "a petitioner seeking coverage under a blanket waiver that limits functions such as storage and two-way operation should be required to state categorically whether *any* storage capacity, *any* connection to a device other than a display, and *any* other advanced functionality will be supported. If the answer is affirmative the product should not be considered eligible under the prior blanket waiver."[29] Put another way, TiVo seeks clarification of what constitutes an exempt DTA. This request is irrelevant to the Waiver Request; Buckeye does not seek a waiver for the Hybrid Box as an exempt DTA.

TiVo seems to argue that the waiver should be denied unless the functionality is limited to that of an exempt DTA.[30] Here, TiVo's position would deprive customers of the benefits of an IP video output. An increasing array of IP-based services and devices enable consumers to view, time-shift, and place-shift their video content through wired, wireless, and cloud-based connections. iOS devices, Android devises, Roku boxes, Slingboxes, and Aereo's service are just a few examples. As third-party devices and services become available to offer Buckeye

[28] Waiver Request at 3-4.

[29] TiVo Comments at 13.

[30] *Id.*

customers more options on how they view programming from the IP portion of the Hybrid Box, those customers should be able to access those options.

The Media Bureau should reject TiVo's request for a condition restricting consumers' ability to use the Hybrid Box IP output. This would stifle innovation in third-party devices and services and would frustrate customers' enjoyment of the benefits of IP video.

**Use of switched-digital video technology is unrelated to the Waiver Request.** As explained in the Waiver Request, Buckeye currently delivers video programming through a combination of broadcast and switched digital video ("SDV") delivery.[31] TiVo seeks a condition on a grant of the Waiver Request obligating Buckeye to phase out SDV, making vague claims that SDV requires additional home visits for TiVo subscribers and results in unspecified operational problems.[32]

The Media Bureau should reject this requested condition as unrelated to the Waiver Request and, with respect to Buckeye customers using a TiVo box, lacking basis in fact.

As set forth in the Waiver Request, Buckeye has committed to continued CableCARD support and to transition at least 85% of its video services to IP within 36 months of receiving a waiver for the Hybrid Box. The additional conditions requested by TiVo are unnecessary to advance or protect the public interest or any applicable policy goal, and the Media Bureau should reject them.

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[31] Waiver Request at 7.

[32] TiVo Comments at 14.

## V. Conclusion.

For the reasons set forth in the Waiver Request and in this Reply, a grant of Buckeye's requested waiver will benefit consumers and will advance the public interest in: (i) accelerating deployment of advanced networks and services; and (ii) continuing development of a competitive marketplace for navigation devices. Further, the waiver will in no way undermine the purposes of the integration ban. The Commission should therefore grant Buckeye a waiver from the integration ban to allow it to deploy the Hybrid Box described here, and any functionally equivalent Hybrid Box offered by other manufacturers.

The signatory has read this Reply, and, to the best of his knowledge, information and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law, and is not interposed for any improper purpose.

Respectfully submitted,

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April 7, 2014

**DECLARATION OF JOSEPH JENSEN**

On behalf of Buckeye Cablevision, Inc., I certify that the factual statements contained in this Reply are accurate to the best of my knowledge.

Joseph Jensen

Block Communications, Inc.

Executive Vice President – Cable and Telecom

April 7, 2014

**CERTIFICATE OF SERVICE**

I, Alma Hoxha, paralegal with Cinnamon Mueller, certify that a copy of the foregoing Reply was delivered by me electronically via email and via hardcopy to the United States Postal Service on April 7, 2014 for delivery via First Class Mail to the person listed below.

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