

**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))	MB Docket No. 12-230
)	CS Docket No. 97-80
Implementation of Section 304 of the)	PP Docket No. 00-67
Telecommunications Act of 1996;)	
Commercial Availability of Navigation)	
Devices)	

**COMMENTS OF
THE CONSUMER ELECTRONICS ASSOCIATION**

The Consumer Electronics Association (CEA) supports both elements of TiVo's application for Clarification or Waiver of 47 C.F.R. Section 76.640(b)(4)(iii). In essence, TiVo asks the Commission to:

- Provide necessary clarification, so that TiVo can plan for its retail products to also be acquired by cable operators for provisioning and lease on their own systems; and
- Waive the December 1, 2012 compliance date, for TiVo and (necessarily) for other providers of cable navigation devices, until such time as a non-discriminatory, standards-based solution is available and can be implemented by (1) major operators and suppliers to major operators, and (2) other operators, and other suppliers, such as TiVo.

CEA supports this application for the following reasons:

- (1) The rule from which waiver is sought is itself an interim exception to common reliance by operators and device providers on a standard network interface for navigation devices.
- (2) Grant of the waiver promotes rather than undermines the purpose of the rule.
- (3) The Commission needs to address the December 1, 2012 compliance date imminently and urgently to avoid proprietary implementations that would undermine the purpose of the rule and chill the innovation and consumer utility that the rule was designed to enable.

(4) TiVo’s call for a clarification based on FRAND principles and supporting two-way, interactive functionality of home network devices is well founded.

CEA notes that the rule in question applies only to cable operators, and addresses interoperability with home networks at the device level rather than at the network level.

Therefore, the necessary clarification sought by TiVo should not be regarded as a substitute for the rulemaking that the Commission must proceed with in order to identify an IP-level successor, to the CableCARD navigation device interface for cable networks, for all MVPD networks.¹

I. Background And Necessity of Section 76.640(b)(4)(iii)

In the 2002 CE – Cable negotiations seeking a “plug & play” solution to navigation device connectivity, the parties recognized that, at the network connection level, they were providing for a CableCARD interface capable of two-way communication, but in a license environment that – pending further scheduled “two-way” negotiations – would be licensed only for downstream tuning, decryption, and storage. Operator-provided devices, however, would maintain their “two-way” functionality. Therefore, the parties agreed that there should be a requirement, that applied to operator-provided equipment *only*, that devices capable of HD operation be equipped with an additional interface that supports compressed digital content and remote storage and can trigger upstream requests. For this purpose the parties recommended the IEEE 1394 interface. By establishing this requirement for operator-provided equipment but not for consumer-sourced equipment, the parties were departing from common reliance, in recognition of the fact that the available consumer-sourced navigation devices would be limited compared to the 2-way MSO-provided products.

¹ See *In the Matter of Nagra USA’s Request for Waiver of Sections 76.1204(a)(1) and 76.640(b)(4)(ii)(A) of the Commission’s Rules*, MB Dkt. No. 12-242, CS Dkt. No. 97-80, PP Dkt. No. 00-67, Comments of CEA, at 6 - 8 (Sept. 19, 2012).

The choice of the 1394 interface ultimately did not match the direction of private sector home network standards developments; nor to CEA's knowledge has the limited potential of this interface for two-way home network operation ever been usefully supported by any cable operator.² Accordingly, Intel, TiVo, and others petitioned the Commission to update this requirement, in applications that received broad, multi-industry support.³ On a provisional basis, the Commission granted a blanket waiver allowing use of IP-based interfaces, pending a review in its rulemaking. In its Third Report & Order on competitive availability of navigation devices, the Commission sunset its waiver and replaced the prior rule with the present text, requiring, *only for operator-provided, generally 2-way navigation devices:*

(iii) Effective December 1, 2012, ensure that the cable-operator-provided high definition set-top boxes, except unidirectional set-top boxes without recording functionality, shall comply with an open industry standard that provides for audiovisual communications including service discovery, video transport, and remote control command pass-through standards for home networking.

² "Current software in cable operator set-top boxes does not allow bi-directional functionality on the IEEE-1394 port." *In the Matter of 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, Texas Instruments Comments-Fourth Further Notice of Proposed Rulemaking, at 1-2 (June 14, 2012); *see also, In the Matter of A National Broadband Plan for Our Future, et al.*, GN Dkt. Nos. 09-47, 09-51, 09-137, and CS Dkt. No. 97-80, Letter from David Thompson, Sec., 1394 Trade Assoc. to Marlene H. Dortch, Sec., FCC (Dec. 21, 2009); *In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices*, CS Dkt. No. 97-80, *Ex Parte* Communication from James Snider, Exec. Dir. 1394 Trade Assoc. to Marlene H. Dortch, Sec., FCC (May 15, 2008).

³ *In the Matter of TiVo Inc. Petition for Waiver of 47 C.F.R. § 76.640(b)(4), Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices*, CS Dkt. No. 97-80, Petition of TiVo Inc. For Clarification or Waiver of 47 C.F.R. § 76.640(b)(4) (Nov. 6, 2009); *see also, In the Matter of Motorola Inc. Petition for Waiver of 47 C.F.R. § 76.640(b)(4), Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices*, CS Dkt. No. 97-80, Petition for Waiver (Nov. 25, 2009); *In the Matter of Intel Corporation Petition for Waiver of 47 C.F.R. § 76.640(b)(4), Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices*, CS Dkt. No. 97-80, CSR-8229-Z, Petition for Waiver (Oct. 7, 2009); *In the Matter of TiVo Inc. Petition for Waiver of 47 C.F.R. § 76.640(b)(4), Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices*, CS Dkt. No. 97-80, Comments of CEA (Feb. 2, 2010).

At the time this rule was released (October, 2010) it was not possible for the FCC to be more explicit about what “an open industry standard” providing this functionality would be.⁴ Much more is possible, and necessary by way of clarification, today.

II. Common Reliance Will Be Aided By The Relief That Is Sought.

As the FCC noted in its National Broadband Plan and in its navigation device Fourth NPRM, there is an ongoing transition from linear channel distribution to IP distribution. Ultimately MVPDs such as cable operators will be able to make this transition smoothly, connecting their IP-distributed services to IP-based home networks. This will be more of a challenge for consumer-sourced products, that lack direct access to the network. The 76.640(b)(4)(iii) interface, however, can – as it was originally envisaged – be an aid in leveling the playing field, by providing fully interactive and secure access to network programming and resources. *To the extent this interface is standards-based and fully interactive*, this rule will help establish “common reliance” at the home network level, and can be a step toward establishing common reliance at the navigation device level.

III. Divergent Implementations Would Undermine The Purpose of The Rule and Chill Innovation and Consumer Utility.

TiVo’s petition establishes why it would not be acceptable for a clarification to leave room for divergent and inconsistent implementations by cable operators. In addition to frustrating TiVo’s ability to sell its retail products *to* cable operators, this would also frustrate the ability of TiVo and other companies to compete *with* cable operators. As TiVo observed in its petition:

⁴ See, e.g., *In the Matter of 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, Comments of CEA and the Consumer Electronics Retailers Coalition (“CERC”) on the Fourth Further Notice of Proposed Rulemaking, at 19-21 (June 14, 2010).

If each cable operator deploys set-top devices based on its *own* understanding of “an” open industry standard, the result may be an outcome that, in terms of home network interoperability, is neither standard nor open.

The consequences of such loose management of the Commission’s responsibilities would extend far beyond the interface from operator-sourced devices to consumer-sourced devices. Such an outcome would also narrow or eliminate opportunities for competitive entrants to (1) make devices that can communicate seamlessly with *each other* as well as with the MVPD network, and (2) when a common interface is established at the navigation device level, communicate upstream on a nationally interoperable basis. Hence the Commission needs to devote the time and resources to finding a truly open and standard solution.

The Commission also needs to assure that the beneficial purpose of this rule is not undermined by proprietary overlays, requirements, or limitations imposed by cable operators. The Commission’s core rules implementing Section 629 limit such interference by the operator to avoiding (1) harm to the network and (2) theft of service.⁵ A rule or a clarification that abided additional limitations on secure, standard technologies would contravene core Commission rules and policy, and would undermine Section 629.

IV. An Open Industry Standard That Provides For Audiovisual Communications Including Service Discovery, Video Transport, And Remote Control Command Pass-Through Must Be Available and Maintained On A FRAND And Common Reliance Basis.

The Commission’s understanding of an “open” standard has always been one that embraced and required FRAND principles. Additionally, to preserve common reliance on a forward-looking basis it will not be sufficient for the Commission to refer to an industry standard if the standard does not enable bidirectional operation of consumer-sourced devices in all ways that are open to operator-sourced devices. As discussed above, this would diminish the utility of

⁵ 47 U.S.C. §§ 76.1201, 1203, 1205(a).

this standard interface for network operation, as well as for device-device operation. As CEA has discussed in other contexts, such operation must include the availability of data describing available programs and services, to support the ability of a device's own integrated program guide to be interactive with the network.⁶ The subscriber pays for the network data and for the guide, and is entitled for them to operate together for her benefit.

Respectfully submitted,

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⁶ See *In the Matter of Video Device Competition, 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. 10-91, CS Dkt. No. 97-80, PP Dkt. No. 00-67, Comments of CEA and CERC on Notice of Inquiry, at 13 (July 13, 2010); Reply Comments, at 6-8 (Aug. 12, 2012).