



# PUBLIC NOTICE

Federal Communications Commission  
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## MEDIA BUREAU SEEKS COMMENT ON TiVo PETITION FOR RULEMAKING TO REINSTATE THE COMMISSION'S SECOND REPORT AND ORDER IMPLEMENTING SECTION 629 OF THE ACT AND ASSOCIATED RULES

CS Docket No. 97-80; PP Docket No. 00-67

**Comment Date: September 16, 2013**

**Reply Comment Date: October 9, 2013**

By this Public Notice, the Media Bureau (“Bureau”) seeks comment on a petition for rulemaking filed by TiVo Inc. (“TiVo”).<sup>1</sup> In its petition, TiVo asks the Commission to commence a rulemaking proceeding to reinstate its 2003 *Second Report and Order*<sup>2</sup> and related rules implementing Section 629 of the Communications Act of 1934, as amended (“the Act”), except for those “encoding” rules that apply to DBS providers. The U.S. Court of Appeals for the D.C. Circuit, in *EchoStar Satellite L.L.C. v. FCC*,<sup>3</sup> vacated the entire *Second Report and Order* and a related *Order on Reconsideration*<sup>4</sup> on the grounds that the Commission lacked authority under Sections 629 and 624A of the Act<sup>5</sup> to adopt encoding rules applicable to all multichannel video programming distributors, including direct broadcast satellite (“DBS”) providers.

In its petition, TiVo asserts that the *EchoStar* decision has led to uncertainty in the market for competitive, retail navigation devices that harms innovation, competition and settled consumer expectations.<sup>6</sup> In particular, TiVo argues that the rules vacated in *EchoStar*, which include standards for

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<sup>1</sup> See *Petition for Rulemaking*, CS Docket No. 97-80, PP Docket No. 00-67 (filed July 16, 2013) (“Petition”).

<sup>2</sup> See *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices; Compatibility Between Cable Systems and Consumer Electronics Equipment*, Second Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 20885 (2003).

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

<sup>4</sup> See *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, Order on Reconsideration, 18 FCC Rcd 27059 (2003).

<sup>5</sup> See 47 U.S.C. §§ 549(a), 544a(b).

<sup>6</sup> See *Petition* at i. Navigation devices are defined as “converter boxes, interactive equipment and other equipment used by consumers within their premises to receive multichannel video programming and other services offered over multichannel video programming systems.” 47 C.F.R. § 76.1200(c).

encoding of signals and conditional access that cable operators, content providers, equipment manufacturers and consumers have relied upon for years, remain important to assure the competitive availability of navigation devices pursuant to Section 629 of the Act.<sup>7</sup> TiVo asserts that the *EchoStar* decision made no adverse findings with regard to any rules other than encoding provisions imposed on DBS providers; thus, the Commission can and should reinstate those rules as applied to cable operators.<sup>8</sup> TiVo asserts that doing so will not adversely affect interested parties or consumers and is necessary to ensure that the existing CableCARD standard works effectively pending the availability of a successor technology.<sup>9</sup>

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12<sup>th</sup> St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12<sup>th</sup> Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

The proceeding this Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.<sup>10</sup> Persons making *ex parte* presentations must file a

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<sup>7</sup> See Petition at 10-15.

<sup>8</sup> See *id.* at 10, 15-17.

<sup>9</sup> See *id.* at 17-21, 24.

<sup>10</sup> 47 C.F.R. §§ 1.1200 *et seq.*

copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

For further information, please contact Raelynn Remy, Policy Division, Media Bureau at (202) 418-2936. Press contact: Janice Wise, (202) 418-8165.