

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

In the Matter of)
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)
Samsung Electronics America, Inc.) MB Docket No. 13-165
)
Petition for Waiver of Section 15.118(b))
of the Commission's Rules)
)
)

MEMORANDUM OPINION AND ORDER

Adopted: September 6, 2013

Released: September 6, 2013

By the Chief, Media Bureau:

I. INTRODUCTION

1. In this Order, we grant Samsung Electronics America, Inc.'s ("Samsung") unopposed request for waiver of the Federal Communications Commission's ("Commission") analog cable tuner requirements to allow Samsung to sell its Smart Media Player, which receives only digital cable service. Specifically, we waive the requirement in Section 15.118(b) of the Commission's rules that Samsung's Smart Media Player include tuners that are capable of receiving analog cable channels.1 We conclude that the waiver is in the public interest because it will reduce the cost and power consumption of the

1 See 47 C.F.R. § 15.118(b) (requiring cable ready equipment to "be capable of receiving all NTSC or similar video channels on channels 1 through 125"). NTSC refers to the National Television System Committee broadcasting standard, which is the standard used by cable systems and certain low-power, Class A, and translator over-the-air stations to transmit analog signals. In its petition, Samsung, "out of an abundance of caution," also seeks waiver of (1) Section 15.123(b)(1), which requires all unidirectional digital cable products to be capable of tuning NTSC channels transmitted in the clear; (2) Section 15.123(c), which outlines tests and standards that unidirectional digital cable products must satisfy before going to market; and (3) Section 15.123(d), which requires manufacturers and importers of unidirectional digital cable products to inform consumers that the device is "capable of receiving analog basic . . . cable television programming." Samsung Petition at 1, n.1. As we stated in the Public Notice in this proceeding, "the Bureau has previously acknowledged that the D.C. Circuit recently vacated Section 15.123; therefore, as we did in the context of another recent waiver request of Section 15.123, we consider that portion of Samsung's request moot, and seek comment only on Samsung's request for waiver of Section 15.118(b) of the Commission's rules." See TiVo, Inc. Petition for Waiver of Sections 15.117(b), 15.118(b), 12.123(b)(1), 15.123(c), and 15.123(d) of the Commission's Rules, MB Docket No. 11-105, Memorandum Opinion and Order, DA 13-1740, ¶ 1, n.2 (rel. Aug. 9, 2013) ("2013 TiVo Waiver Order"); see also Media Bureau Seeks Comment on Samsung's Petition for Waiver of Certain "Cable Ready" Requirements, Public Notice, 28 FCC Rcd 8977, n.2 (MB 2013) (citing EchoStar Satellite, L.L.C. v. FCC, 704 F.3d 992 (D.C. Cir. 2013)). Thus, this Order addresses only Samsung's request for waver of Section 15.118(b).

Smart Media Player and provide consumers with a retail set-top box option that can better compete with devices leased by cable operators, thus enhancing competition in the retail set-top box market. In addition, to avoid possible consumer confusion about the device's capabilities and limitations, we condition this waiver on Samsung's commitment to a labeling, marketing, and retailer education campaign to protect against the possibility of consumer confusion regarding the capabilities and limitations of the Smart Media Player due to the lack of an analog cable tuner.²

II. BACKGROUND

2. Section 624A of the Communications Act directs the Commission to adopt regulations to assure compatibility between consumer electronics devices and cable systems in order to make electronics equipment manufacturers more likely to offer innovative cable-ready devices for sale, and consumers more likely to purchase them.³ In May 1994, pursuant to the directive of Section 624A, the Commission adopted rules to encourage compatibility between consumer electronics devices and cable service.⁴ As part of those rules, the Commission adopted a requirement that "cable ready" receivers be able to tune analog cable channels up to channel 125.⁵ The Commission explained that this requirement was practical and inexpensive, as cable channel 125 corresponded with the highest UHF broadcast channel that TVs are required to tune, and that analog compatibility "will minimize the need to use set-top converters for tuning purposes."⁶ This rule, codified at Section 15.118(b) of the Commission's rules, ensures that devices marketed as "cable ready" for sale at retail are able to tune the overwhelming majority of cable channels transmitted in analog.⁷

3. On August 9, 2013, the Media Bureau granted TiVo Inc.'s ("TiVo") unopposed request

² *Infra*, ¶ 7; Letter from Natalie G. Roisman, Counsel to Samsung Electronics America, Inc., to Marlene H. Dortch, Secretary, FCC, MB Docket No. 13-165 (August 28, 2013) ("Aug. 28 *Ex Parte*").

³ 47 U.S.C. § 544a.

⁴ *Implementation of Section 17 of the Cable Television Consumer Protection and Competition Act of 1992 Compatibility between Cable Systems and Consumer Electronics Equipment*, 9 FCC Rcd 1981 (1994) ("Analog Plug and Play Order"). The term "plug and play" refers to a device's ability to plug into a cable system and receive cable programming without a cable-operator provided set-top box.

⁵ *Id.* at 1995-7, ¶¶ 78-90 ("[W]e will require 'cable ready' TV receivers and VCRs to tune to cable channels specified by the EIA IS-132 standard up to a minimum frequency range of 806 MHz."). 806MHz corresponds to channel 125 on cable systems under the EIA IS-132 standard. See Electronic Industry Association's "Standard Cable Television Channel Identification Plan, IS-132, May 1994" (EIA IS-132).

⁶ *Analog Plug and Play Order*, 9 FCC Rcd at 1996, ¶ 89 ("Inasmuch as TV receivers normally incorporate a single tuner for both cable and broadcast channels and the appropriate upper range for cable is essentially the same as the existing broadcast tuning requirement, we believe it would be appropriate to adopt the minimum tuning range for broadcast channels as the upper cable channel tuning requirement for 'cable ready' equipment.").

⁷ This rule does not apply to set-top boxes that cable operators lease to their subscribers. The Commission adopted the rule pursuant to Section 624A, which was enacted to ensure that cable signal theft protection techniques do not interfere with the advanced functions of retail television equipment or inhibit future innovations applicable to retail devices. 47 U.S.C. § 544a; *Analog Plug and Play Order*, 9 FCC Rcd at 1981-1984, ¶¶ 1-16. As the Bureau has stated, "[d]evices that cable operators deploy directly to their subscribers are not subject to the requirement[] of Section 15.118(b) . . . as cable operators are familiar with the specific technical requirements for compatibility within each of their systems and subscribers do not expect those devices to receive over-the-air broadcast service." *TiVo, Inc. Request for Waiver of Sections 15.118(b), 15.123(b)(1), and 15.123(c) of the Commission's Rules*, 26 FCC Rcd 12743, 12745, n.16 (MB 2011) ("2011 TiVo Waiver Order").

for waiver of Section 15.118(b) with respect to all of its products to allow it to sell digital video recorders (“DVRs”) that receive only digital cable services.⁸ The Bureau concluded that the waiver “should provide TiVo’s devices regulatory parity with MVPD-leased set-top boxes with which they compete, reduce power consumption, and further the Congressional goal of assuring a retail market for devices that can access cable programming because this waiver will allow TiVo to offer a less expensive, digital cable-compatible DVR.”⁹ The Bureau conditioned the waiver on TiVo’s consumer education campaign,¹⁰ which the Bureau concluded was necessary because “there remains a small subset of consumers that will need to understand the limits” of these devices.¹¹

4. On May 21, 2013, Samsung filed a request for a waiver of Section 15.118(b) of the Commission’s rules with respect to its Smart Media Player, which it describes as a retail device that uses CableCARDS to access one-way cable content and includes Internet connectivity to access over-the-top services and a proprietary software guide.¹² The Smart Media Player will not include DVR functionality.¹³ Samsung requested expedited treatment of its Petition in order to be able to make the Smart Media Player available to consumers in time for the 2013 holiday season.¹⁴ To support its request, Samsung argues that the waiver would be beneficial to consumers and that most of the consumers that would be interested in purchasing a device like the Smart Media Player will have already embraced digital cable and would have no need for an analog cable tuner.¹⁵ Even so, Samsung voluntarily committed to a consumer education program to inform consumers and retailers about the capabilities and limitations of the Smart Media Player to mitigate potential consumer confusion.¹⁶ Samsung maintains that adding an analog tuner would substantially increase the production costs and retail price of the Smart Media Player to the point that Samsung “cannot offer the device at a market-appropriate price point if it were forced to include one or more analog tuners.”¹⁷ It states that the Smart Media Player has been designed to be consistent with industry-wide efforts to reduce the energy consumption of set-top boxes and that inclusion of an analog tuner would increase the energy consumption of the Smart Media Player, “further increasing consumer costs and undercutting energy conservation efforts.”¹⁸ Finally, Samsung

⁸ *2013 TiVo Waiver Order*. In 2011, the Media Bureau granted TiVo a waiver of Section 15.118(b) for its Premiere Elite product line, allowing it to market and sell Premiere Elite DVRs that have only digital cable tuners. *2011 TiVo Waiver Order*, 26 FCC Rcd at 12743, ¶ 1.

⁹ *2013 TiVo Waiver Order* ¶ 6.

¹⁰ *Id.* ¶¶ 1, 9; *2011 TiVo Waiver Order* ¶ 1.

¹¹ *2013 TiVo Waiver Order* ¶ 9.

¹² Samsung Petition at 7.

¹³ *Id.* at 4, n.7.

¹⁴ *Id.* at 2-3. Samsung also requests that the Media Bureau streamline analog tuner waiver requests generally, or that the Bureau grant TiVo’s 2013 waiver request more broadly to include all CableCARD-enabled devices with the “same functionality” as TiVo’s DVRs and Samsung’s Smart Media Player. We note that the latter option is now moot because the Bureau has already granted TiVo’s waiver request without broadening the scope. We decline at this time to establish a streamlined process for future waiver requests because we find that the existing process will adequately and timely resolve such requests.

¹⁵ *Id.* at 8.

¹⁶ *Id.* at 6.

¹⁷ *Id.* at 9.

¹⁸ *Id.* (citing *Voluntary Agreement for Ongoing Improvement to the Energy Efficiency of Set-Top Boxes*, Dec. 6, 2012, available at <http://i.ncta.com/VoluntaryAgreement-EnergyEfficiencyofSetTopBoxes.pdf>).

argues that a grant of its waiver request will advance the Commission's goals of increased competition in the market for consumer navigation devices and promote the transition to digital cable.¹⁹ On June 21, 2013, the Media Bureau released a Public Notice seeking comment on Samsung's request for waiver. No parties opposed Samsung's request.²⁰

III. DISCUSSION

5. We find good cause to grant Samsung's request for waiver of Section 15.118(b) of the Commission's rules, subject to the conditions described below.²¹ Samsung has demonstrated specific and distinct benefits to support its waiver request. Waiver in this case will provide regulatory parity between the Smart Media Player and non-DVR cable-leased set-top boxes. We also find that a waiver will allow Samsung to offer several types of cost savings to consumers. First, Samsung will be able to sell the Smart Media Player at a lower cost than it would if it had to include an analog cable tuner.²² Second, Samsung estimates that the addition of an analog tuner would increase the power consumption of the device by 1.2W, which would further increase consumer costs in addition to frustrating industry efforts to reduce the energy consumption of set-top boxes.²³ Third, the Smart Media Player would save consumers the cost of a monthly set-top box rental fee.²⁴ We believe that the benefits of the costs savings offered to consumers, together with the consumer education conditions, outweigh the potential burden on a small number of consumers who subscribe to analog-only cable services.²⁵

¹⁹ *Id.* at 10-11.

²⁰ The only response to the Public Notice was a filing entitled "Reply Comments" that Samsung filed on July 22, 2013 to reiterate its arguments and to highlight that no parties filed in opposition to its request. The only other filing in this docket is a Notice of Ex Parte Presentation filed by Samsung on August 8, 2013. Letter from Natalie G. Roisman, Counsel to Samsung Electronics America, Inc., to Marlene H. Dortch, Secretary, FCC, MB Docket No. 13-165 (Aug. 8, 2013) ("*Aug. 8 Ex Parte*").

²¹ Section 1.3 of the Commission's rules states that "[t]he provisions of this chapter may be suspended, revoked, amended, or waived for good cause shown, in whole or in part, at any time by the Commission, subject to the provisions of the Administrative Procedure Act and the provisions of this chapter. Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown." 47 C.F.R. § 1.3.

²² Samsung Petition at 9. While Samsung does not estimate the effect of including an analog cable tuner on the retail price, it states that "the base analog tuner would cost approximately \$10 each, and, including design and production costs, would increase the final retail price of the Smart Media Player significantly more." Samsung asserts that it would not be able to offer the Smart Media Player at an appropriate price point if it were forced to include an analog cable tuner. *Id.*

²³ *Id.*

²⁴ *Id.* at 5; *Aug. 8 Ex Parte* at 1 (stating that "[b]y eliminating both the equipment rental fee and a monthly guide charge, Samsung expects that the [Smart Media Player] will pay for itself from the consumer's perspective well within the product's expected life cycle"). Purchasers of the Smart Media Player will be responsible for the monthly lease of a CableCARD from their cable operator.

²⁵ There remain only a small number of analog-only cable systems and that number continues to decrease. According to Samsung, 81.3 percent of cable subscribers now subscribe to digital cable services. Samsung Petition at 11 (citing Pete Putnam, *TV, Over The Air and Everywhere*, HDTV Magazine (May 10, 2013), available at <http://www.hdtvmagazine.com/columns/2013/05/hdtv-expert-tv-over-the-air-and-everywhere.php>). Further, the Commission recently found that "No cable systems with more than 20,000 subscribers remain all analog." *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 12-203, Fifteenth Report, FCC 13-99, ¶ 88 (rel. July 22, 2013) ("*15th Video Competition Report*"). We also find convincing Samsung's argument that "the type of customers who are likely to buy an Internet-connected, retail set-

6. In addition to cost savings, the availability of the Smart Media Player will increase choices for consumers in the retail marketplace for navigation devices, providing another alternative to leasing devices from MVPDs.²⁶ The Smart Media Player will merge Internet-delivered content with digital cable service in a single retail non-DVR set-top box option, which is unique in the retail market.²⁷ Further, the Smart Media Player is not subject to up-front or monthly service fees for guide data.²⁸ We also agree with Samsung that the availability of this retail device will promote the transition to digital cable by increasing the options available to consumers for accessing digital cable services and lowering the cost of the equipment, which could help fuel demand for digital services.²⁹ Given this evidence, it is clear that the benefits that will result from waiver establish that deviation from the general rule will serve the public interest better than strict adherence to it.³⁰ When viewed in light of Samsung's education and marketing commitments that we discuss below, we conclude that these tangible consumer benefits will be realized with *de minimis* burden to consumers.

7. As discussed above, the Commission adopted Section 15.118(b) to promote compatibility between retail electronics equipment and cable services. Although the cable industry has increased the penetration of digital service significantly over the past decade, some cable systems continue to carry channels solely in analog and some consumers continue to rely on analog cable service.³¹ Accordingly, while we expect this waiver to cause minimal inconvenience and disruption,³² we recognize that there

top box" are unlikely to view analog functionality to be "a must-have feature." Samsung Petition at 6. Thus, we believe that the number of consumers likely impacted by this waiver is further reduced by the fact that analog customers for the most part will not be interested in purchasing a retail set-top box. Samsung also notes that consumers will continue to be able to access analog cable signals through a wide range of existing devices. *Id.* at 8.

²⁶ *Id.* at 10-11; *see also* 15th Video Competition Report, ¶ 362 (describing consumer adoption of retail navigation devices as not matching the Commission's expectations).

²⁷ Samsung Petition at 4; *see also* Nate Anderson, *The Case of the Missing CableCARD-ready Set-top Box*, ARS TECHNICA, Oct. 17, 2007, <http://arstechnica.com/features/2007/10/missing-cablecard-set-top-box/2/> ("Despite our failure to obtain a traditional set-top box, consumers do have several navigation options if they want to drop more cash and add features. The most accessible method of picking up a third-party CableCARD-equipped tuner at this point is by snagging a TiVo Series 3 [DVR] or a TiVo HD [DVR], but these are certainly no direct substitute for simple set-top boxes."). We note that the percentage of television households is fairly evenly split between DVR and non-DVR households, indicating ongoing consumer interest in non-DVR options. *See* 15th Video Competition Report, ¶¶ 7, 190 (finding that, as of 2012, 50.3 million households, or 43.8 percent of all television households, have DVRs).

²⁸ *Aug. 8 Ex Parte* at 1. TiVo's products require a monthly service plan that starts at \$14.99 per month. *See* How do I buy a TiVo Premier series DVR? TiVo Inc., <http://www.tivo.com/products/tivo-walkthrough/how-to-buy-tivo/> (visited Aug. 8, 2013).

²⁹ *Samsung Petition* at 1, 11-13; *see Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules*, CS Docket No. 98-120, Order, 27 FCC Rcd 10217, 10229, ¶ 24 (2012) (explaining that each channel "carried in analog occupies 6 MHz of bandwidth that the cable operator could otherwise use for 10-12 standard definition ("SD") digital streams, 2-3 HD video streams, or significant broadband capacity.").

³⁰ *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) ("[W]aiver is appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.").

³¹ Toni Lenoir, *SNL Kagan Q4'12 Top MSO Table*, MULTICHANNEL MARKET TRENDS (SNL Kagan, Charlottesville, VA), March 12, 2013, *available at* <http://www.snl.com/interactivex/article.aspx?ID=17175069> ("The migration toward digital continues with our group of 60 operators averaging a digital penetration of basic subs of 84.3%.").

³² As described above, we note that the vast majority of consumers now have access to digital cable services and that only a small percentage of consumers rely on analog cable services. It is this small percentage of consumers for

remains a small subset of consumers that will need to understand the limits of the Samsung player. Therefore, we conclude that it is important to condition this waiver on Samsung's voluntary commitment to a labeling, marketing, and retail education program that informs consumers and retailers about the capabilities and limitations of the Smart Media Player.³³ Samsung is required to (i) provide retailers with an in-store product information data sheet and/or display and product-specific training; (ii) market primarily to consumers who receive the services that the Smart Media Player can access; (iii) develop clear and easily understood point-of-sale disclosures that inform consumers that the product may not work if they move or change service providers; and (iv) allow free returns and exchanges if the customer purchased the device with the mistaken belief that it receives analog services.³⁴ Given the pro-consumer benefits of the availability of Samsung's product, together with the consumer education conditions we impose to help minimize any disruption or inconvenience to consumers, we believe that there is good cause to grant Samsung's waiver request.

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to Section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, the request for waiver of Section 15.118(b) of the Commission's rules, 47 C.F.R. § 15.118(b), filed by Samsung Electronics America, Inc. **IS GRANTED** subject to the conditions described above.

9. **IT IS FURTHER ORDERED** that the request for waiver of Sections 15.123(b)(1), 15.123(c), and 15.123(d) of the Commission's rules, 47 C.F.R. §§ 15.123(b)(1), 15.123(c) & 15.123(d), is **DISMISSED AS MOOT**.³⁵

10. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules, 47 C.F.R. § 0.283.

FEDERAL COMMUNICATIONS COMMISSION

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whom the Smart Media Player would be incompatible with their cable services. *See supra*, ¶ 5, n.25. However, these consumers will still be able to access their analog cable services by switching between their digital and analog inputs, causing only minimal inconvenience and disruption. *See 2013 TiVo Waiver Order*, ¶ 8, n. 40 ("We recognize that a consumer will need to select a different input on his or her television set to change from the TiVo input to the antenna input. Because this can be performed with the click of a single button on the TiVo remote, we believe that the inconvenience and disruption to consumers will be minimal.")

³³ *See* Samsung Petition at 2, 6; *Aug. 28 Ex Parte* at 2.

³⁴ With respect to returns and exchanges, Samsung committed to a 30-day refund policy for purchases from its website, and to working with retailers to ensure that in each case a refund or exchange is available for a period of no less than 30 days following purchase. *Aug. 28 Ex Parte* at 2.

³⁵ *Supra*, ¶ 1, n.1.