

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

In the Matter of )
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)
EchoStar Technologies L.L.C. ) MB Docket No. 15-47
Funai Electric Co., Ltd. ) MB Docket No. 15-42
)
Petition for Waiver of Section 15.117(b) )
of the Commission’s Rules )
)

MEMORANDUM OPINION AND ORDER

Adopted: May 1, 2015

Released: May 4, 2015

By the Chief, Media Bureau:

I. INTRODUCTION

1. In this Order, we grant, subject to conditions, EchoStar Technologies L.L.C.’s (“EchoStar”) and Funai Electric Co., Ltd.’s (“Funai”) unopposed requests for waiver of Section 15.117(b) of our rules to allow: (1) EchoStar to import, market, and sell a new model of its “SlingLoaded” high-definition, Internet-enabled, digital video recorder (“the SlingLoaded DVR”) that does not include an analog tuner;<sup>1</sup> and (2) Funai to manufacture, import, market, and sell its next-generation hard disk drive/digital video disk (“HDD/DVD”) recorders that do not include analog tuners.<sup>2</sup> Section 15.117(b) of the Commission’s rules requires TV broadcast receivers to “be capable of adequately receiving all channels allocated by the Commission to the television broadcast service.”<sup>3</sup> We conclude that waiver is in the public interest because it will enhance consumer choice for retail equipment, offer consumers an additional way to access video programming, and reduce the cost and power consumption of the SlingLoaded DVR and HDD/DVD recorders. We note that, EchoStar and Funai have voluntarily committed to educate consumers and retailers on the capabilities and limitations of their equipment’s functionality to avoid possible confusion about the devices’ capabilities and limitations regarding the reception of over-the-air analog signals.<sup>4</sup>

<sup>1</sup> EchoStar Petition at 1.

<sup>2</sup> Funai Petition at 1.

<sup>3</sup> See 47 C.F.R. § 15.117(b). Pursuant to this provision, TV broadcast receivers must currently be capable of receiving both analog and digital broadcast signals. Low-power, Class A, and translator over-the-air stations (collectively, “low-power television stations”) that have not already gone all-digital are permitted to use the analog broadcasting standard.

<sup>4</sup> Funai Petition at 5; EchoStar Petition at 6-7.

## II. BACKGROUND

2. The All Channel Receiver Act of 1962 grants the Commission the “authority to require that apparatus designed to receive television pictures broadcast simultaneously with sound be capable of adequately receiving all frequencies allocated by the Commission to television broadcasting when such apparatus is shipped in interstate commerce, or is imported from any foreign country into the United States, for sale or resale to the public.”<sup>5</sup> The Commission first exercised this authority in 1962 by adopting Section 15.70(a) of the Commission’s rules.<sup>6</sup> The successor to this rule, now codified at Section 15.117(b), states that “TV broadcast receivers shall be capable of adequately receiving all channels allocated by the Commission to the television broadcast service.”<sup>7</sup> A “TV broadcast receiver” is defined as a “device designed to receive television pictures that are broadcast simultaneously with sound on the television channels authorized under part 73 of this chapter.”<sup>8</sup> For purposes of this rule, the term “TV broadcast receivers” includes “devices, such as TV interface devices and set-top devices that are intended to provide audio-video signals to a video monitor, that incorporate the tuner portion of a TV broadcast receiver and that are equipped with an antenna or antenna terminals that can be used for off-the-air reception of TV broadcast signals, as authorized under part 73 of this chapter.”<sup>9</sup> The purpose of this rule was to ensure that television broadcast receivers receive all television broadcast channels irrespective of the channel’s place in the broadcast spectrum.<sup>10</sup> In October 2014, the Commission simultaneously

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<sup>5</sup> 47 U.S.C. § 303(s); the All Channel Receiver Act of 1962, Pub. L. No. 87-529, 76 Stat. 150. *See also* S. Rep. 1526, 87<sup>th</sup> Cong., 2<sup>nd</sup> Sess. 1962 *reprinted at* 1962 U.S.C.C.A.N. 1873, 1875 (discussing “the relative scarcity of television receivers in the United States which are capable of receiving the signals of UHF stations” (only about 16%), which “prevents effective competition between UHF and VHF stations which operate in the same market”).

<sup>6</sup> All-Channel Television Broadcast Receivers, 27 Fed. Reg. 11,698, 11,700 (Nov. 28, 1962); 47 C.F.R. § 15.70(a) (1962) (current version at 47 C.F.R. § 15.117(b)) (“[a]ll television broadcast receivers manufactured after April 30, 1964, and shipped in interstate commerce or imported from any country into the United States, for sale or resale to the public, shall be capable of adequately receiving all channels allocated by the Commission to the television broadcast service.”).

<sup>7</sup> *See Revision of Part 15 of the Rules regarding the operation of radio frequency devices without an individual license*, 4 FCC Rcd 3493, 3517, ¶ 139 (1989) (adopting 47 C.F.R. § 15.117(b)). A previous Commission statement could be interpreted to reflect some flexibility with respect to the application of this rule. *See Advanced Television Systems And Their Impact Upon The Existing Television Broadcast Service*, Fifth Report and Order, 12 FCC Rcd 12809, 12855-6 (1997) (“We do not believe that our goals would be advanced by mandating that all digital receivers receive and display NTSC signals and DTV signals, regardless of format, aspect ratio, or progressive or interlaced scanning, as broadcasters argue. We expect that equipment manufacturers will make available to consumers digital receivers that receive both NTSC and DTV signals. However, we will not preclude equipment manufacturers from designing digital receivers that do not receive NTSC signals.”). However, on its face, Section 15.117(b) of the rules requires a television broadcast receiver to be able to receive “all channels allocated by the Commission to the television broadcast service.” 47 C.F.R. § 15.117(b); *see also* Office of Engineering and Technology Laboratory Division Knowledge Database (available at <https://apps.fcc.gov/oetcf/kdb/forms/FTSSearchResultPage.cfm?switch=P&id=42863>), Publication Number 218634 (rel. Dec. 17, 2009) (confirming Section 15.117(b)’s dual ATSC/NTSC tuner requirement).

<sup>8</sup> 47 C.F.R. § 15.3(w).

<sup>9</sup> 47 C.F.R. § 15.117(a).

<sup>10</sup> All-Channel Television Broadcast Receivers, 27 Fed. Reg. 11,698 (Nov. 28, 1962). When the Commission defined a TV broadcast receiver to include “TV interface devices and set-top devices that are intended to provide audio-video signals to a video monitor,” it was focused on whether those devices should include digital broadcast receivers because of the impending DTV transition, rather than whether devices should include analog broadcast receivers. *See Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, 17

tentatively concluded that it should postpone the analog transition deadline for LPTV and TV translator stations in light of the upcoming incentive auction and sought comment on a proposal to nevertheless eliminate the analog tuner requirement.<sup>11</sup>

3. The Commission has previously granted waivers of the analog tuner requirement to EchoStar<sup>12</sup> and TiVo, Inc. (“TiVo”) based on similar circumstances.<sup>13</sup> On August 9, 2013, the Media Bureau granted TiVo’s unopposed request for waiver of both the broadcast and cable analog tuner rules,<sup>14</sup> and on September 30, 2013, the Media Bureau granted EchoStar’s unopposed request for waiver of the broadcast tuner rule. The Bureau concluded that waiver was in the public interest in these cases because it would reduce the cost and power consumption of the devices and provide consumers with less expensive choices.<sup>15</sup> With respect to the Section 15.117(b) analog broadcast tuner requirement, the Bureau concluded that the waiver would “cause minimal inconvenience and disruption to consumers” because all full-power television broadcast stations and many low-power stations stopped broadcasting analog signals more than five years ago.<sup>16</sup> The Bureau stated that the few consumers who still received analog signals could “rely on the analog tuning functionality required to be in the television sets they already owned to view analog low-power broadcast stations.”<sup>17</sup> The Bureau conditioned the waivers on TiVo and EchoStar’s voluntary consumer education campaigns,<sup>18</sup> which the Bureau concluded was necessary because a small subset of consumers continues to need to understand the limits of the devices.<sup>19</sup>

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FCC Rcd 15978, 15995-15999, ¶¶ 39-46 (2002) (“Consistent with the intent of Congress that we not use our authority under the ACRA to set broad standards for television receivers, we believe that the rules implementing the DTV tuner requirements should avoid imposing new performance standards on DTV except as necessary to ensure that receivers can adequately tune DTV signals on all of the television channels.”).

<sup>11</sup> *Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low-Power Television and Television Translator Stations; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions; Amendment of Part 15 of the Commission’s Rules to Eliminate the Analog Tuner Requirement*; Third Notice of Proposed Rulemaking, 29 FCC Rcd 12536, 12556-8, ¶¶ 54-58 (2014) (“*LPTV DTV Third Notice*”). This proceeding is pending.

<sup>12</sup> On June 21, 2013, EchoStar requested a waiver of the “all channels” requirement in Section 15.117(b) of the Commission’s Rules, 47 C.F.R. §15.117(b), to permit the importation, marketing, and retail sale of two models of the Channel Master K77, high-definition, Internet-enabled, digital video recorders (“DVRs”) that could receive digital, over-the-air broadcast signals, but did not include an analog broadcast tuner.

<sup>13</sup> See, e.g., *EchoStar Technologies L.L.C. Petition for Waiver of Section 15.117(b) of the Commission’s Rules*, MB Docket No. 13-177, Memorandum Opinion and Order, 28 FCC Rcd 14000, 14004, ¶ 7 (2013) (“*EchoStar MO&O*”); *TiVo, Inc. Petition for Waiver of Sections 15.117(b), 15.118(b), 15.123(b)(1), 15.123(c), and 15.123(d) of the Commission’s Rules*, MB Docket No. 11-105, Memorandum Opinion and Order, 28 FCC Rcd 12181, 12181, ¶ 1 (2013) (“*TiVo MO&O*”).

<sup>14</sup> 47 C.F.R. § 15.117(b) (governing broadcast tuner requirements); 47 C.F.R. §15.118(b) (governing cable tuner requirements).

<sup>15</sup> *TiVo MO&O*, 28 FCC Rcd at 12181, 12185, ¶¶ 1, 6; *EchoStar MO&O*, 28 FCC Rcd at 14003-4, ¶ 6.

<sup>16</sup> *Id.*

<sup>17</sup> See 47 C.F.R. §§ 15.3(w); 15.117(a), (b); *TiVo MO&O*, 28 FCC Rcd at 12186, ¶ 8. See also *EchoStar MO&O*, 28 FCC Rcd at 14004-5, ¶ 7.

<sup>18</sup> *TiVo MO&O*, 28 FCC Rcd 12187, ¶ 9; *EchoStar MO&O*, 28 FCC Rcd at 14005-6, ¶ 8.

<sup>19</sup> *Id.*

4. On February 6, 2015, Funai filed a request for waiver of Section 15.117(b) of the Commission's rules with respect to its HDD/DVD devices.<sup>20</sup> On February 13, 2015, EchoStar filed a similar request with respect to its SlingLoaded DVR.<sup>21</sup> Funai and EchoStar emphasized that consumers who want to receive analog signals will continue to be able to do so via the tuners included in their televisions, since the SlingLoaded DVR and the HDD/DVD recorders are generally used in conjunction with a television set.<sup>22</sup> Funai and EchoStar voluntarily made several consumer education commitments to ensure that consumers and retailers are aware of the devices' capabilities and limitations.<sup>23</sup> No commenters filed in opposition to these waiver requests.

### III. DISCUSSION

5. We find good cause to grant EchoStar's and Funai's requests for waiver.<sup>24</sup> EchoStar and Funai present specific benefits to support their waiver requests, including promoting competition for retail devices, cost savings, and energy efficiency.

6. EchoStar and Funai claim that from a product development perspective, a digital-only device has several advantages over equipment using both analog and digital tuners: the digital-only models involve less design complexity, avoid substantial operating costs that are generally associated with additional hardware, software, and licensing fees, and consume less energy.<sup>25</sup> They maintain that these advantages will result in lower costs, which can be passed down to consumers and also promote a strong, competitive market.<sup>26</sup> Funai asserts that requiring an analog tuner would be burdensome and unnecessary as it would "increase the complexity of design which could delay market entry and augment product cost due to additionally required encoding hardware, intellectual property licensing, and analog licensing costs."<sup>27</sup> Further, EchoStar claims that insertion of an analog tuner would make the device "far more bulky and less appealing to consumers, adding significantly to its manufacturing costs, and ultimately, to the retail price."<sup>28</sup> EchoStar and Funai state that granting their requested waivers would have a minimal impact on consumers, for the vast majority of their target market (consumers who have cable subscriptions and set-top boxes, as well as consumers who use other devices, including television sets that already contain analog tuners) would be entirely unaffected by the elimination of an analog tuner from the SlingLoaded DVR and HDD/DVD recorders.<sup>29</sup> EchoStar and Funai claim that the insertion of an analog tuner in their equipment would not be necessary even for consumers who receive analog

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<sup>20</sup> Funai Petition at 1.

<sup>21</sup> EchoStar Petition at 1.

<sup>22</sup> Funai Petition at 3, 7-8; EchoStar Petition at 4-5.

<sup>23</sup> Funai Petition at 8-9; EchoStar Petition at 6-7.

<sup>24</sup> 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.

<sup>25</sup> Funai Petition at 3; EchoStar Petition at 5.

<sup>26</sup> Funai Petition at 4; EchoStar Petition at 5.

<sup>27</sup> Funai Petition at 6.

<sup>28</sup> EchoStar Petition at 5.

<sup>29</sup> Funai Petition at 4, 7; EchoStar Petition at 6.

signals, considering that their products are ordinarily used in conjunction with a television set, which is already required to include analog tuners.<sup>30</sup>

7. Based on the record, we find that the retail availability of the SlingLoaded DVR and the HDD/DVD recorders would enhance consumer choice and that granting EchoStar's and Funai's requests for waiver is in the public interest. We are also persuaded that the required addition of an analog broadcast tuner in strict compliance with Section 15.117(b) would increase the cost, size, and energy consumption of the devices, potentially delaying market entry and undermining the policy of the rule.<sup>31</sup> As CEA stated in its comments, waiver is consistent with Bureau precedent and will result in the same "cost, weight, energy, and environmental savings" that the Bureau based previous waivers on.<sup>32</sup>

8. In addition to finding that the inclusion of an analog tuner would unduly add to the cost, size, and energy consumption of the devices, we also find that waiving the analog broadcast tuner requirements will have a *de minimis* effect on consumers. As discussed above, the Commission adopted Section 15.117(b) to ensure that television broadcast receivers are "capable of adequately receiving all channels allocated by the Commission to the television broadcast service."<sup>33</sup> All full-power television is now broadcast in digital and Class A broadcast stations must cease analog broadcasting by September 1, 2015.<sup>34</sup> And, notwithstanding the fact that the Commission has suspended the DTV conversion deadline for LPTV and TV translator station in light of the upcoming incentive auction, 56% of LPTV and 80% of TV translator stations have completed their conversion to digital.<sup>35</sup> Therefore, the overwhelming majority of broadcast viewers currently view only digital broadcast signals.<sup>36</sup> After the low-power digital transition, broadcast viewers will receive only digital broadcast signals. In light of this fact, the Commission sought comment on eliminating the analog tuner requirement in advance of the termination of all analog broadcasts.<sup>37</sup>

9. We believe that any potential inconvenience this waiver may cause will be outweighed by the benefits of granting it, especially in light of EchoStar and Funai's consumer and retailer education commitments. EchoStar and Funai made voluntary commitments to educate consumers and retailers about the capabilities and limitations of the SlingLoaded DVR and the HDD/DVD recorders. Each company commits to (i) provide retailers with an in-store product information data sheet and consumer education materials describing their respective devices' functionality; (ii) clearly disclose in product guides that their devices lack the ability to receive over-the-air analog signals; and (iii) offer a program allowing free 30-day return or exchange if the customer purchased a HDD/DVD recorder or SlingLoaded DVR with the

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<sup>30</sup> Funai Petition at 7; EchoStar Petition at 6.

<sup>31</sup> Funai Petition at 6-7; EchoStar Petition at 5.

<sup>32</sup> Consumer Electronics Association Comments at 2.

<sup>33</sup> 47 C.F.R. § 15.117(b).

<sup>34</sup> *LPTV DTV Third Notice*, 29 FCC Rcd at 12539, ¶ 5. *But see Suspension of September 1, 2015 Digital Transition Date for Low Power Television and TV Translator Stations*, Public Notice, DA 15-486 (MB rel. April 24, 2015).

<sup>35</sup> *Id.* at 12557, ¶ 54.

<sup>36</sup> This waiver will only affect broadcast television viewers, not cable or satellite viewers.

<sup>37</sup> *LPTV DTV Third Notice*, 29 FCC Rcd at 12556-7, ¶ 54.

mistaken belief that it receives analog services.<sup>38</sup> We believe that these commitments will adequately protect any consumers that this waiver will affect.<sup>39</sup>

#### IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to Section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, the requests for waiver of Section 15.117(b) of the Commission's rules, 47 C.F.R. §15.117(b), filed by EchoStar Technologies L.L.C. and Funai Electric Co., Ltd. **ARE GRANTED**.

11. 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

William T. Lake  
Chief, Media Bureau

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<sup>38</sup> EchoStar Petition at 6-7; Funai Petition at 8-9. *See also EchoStar Technologies L.L.C. Petition for Waiver of Section 15.117(b) of the Commission's Rules*, MB Docket No. 13-177, Memorandum Opinion and Order, 28 FCC Rcd 14000, 14005, ¶ 8 (2013) ("*EchoStar MO&O*")

<sup>39</sup> As EchoStar requests, these obligations will be lifted "if the Commission in the pending rulemaking proceeding declines . . . to impose consumer protection or education measures." EchoStar Petition at 7.