

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. 16-329
)
Hauppauge Computer Works, Inc.) MB Docket No. 16-360
)
Petitions for Waiver of Section 15.117(b) of the)
Commission’s Rules)

MEMORANDUM OPINION AND ORDER

Adopted: December 1, 2016

Released: December 1, 2016

By the Chief, Media Bureau:

I. INTRODUCTION

1. In this Order, we grant EchoStar Technologies L.L.C.’s (“EchoStar”) and Hauppauge Computer Works Inc.’s (“Hauppauge”) unopposed requests for waiver of Section 15.117(b) of our rules to allow EchoStar to import, market, and sell an Internet-enabled set-top box (the “AirTV”) and Hauppauge to import, market, and sell a USB component television tuner component product (the “WinTV-dualHD”). These devices, therefore, will not be required to include tuners that can receive analog broadcast signals.1 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.”2 Pursuant to this provision, TV broadcast receivers must be capable of receiving both analog and digital broadcast signals until August 31, 2017.3 We conclude that waiver of this rule for the AirTV and WinTV-dualHD devices is in the public interest because waiver should enhance consumer choice for video equipment, offer consumers additional options for accessing video programming, and reduce cost and power consumption.

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

1 EchoStar Petition at 1.

2 See 47 C.F.R. § 15.117(b).

3 Id. Low-power 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.

apparatus is shipped in interstate commerce, or is imported from any foreign country into the United States, for sale or resale to the public.”⁴ The Commission first exercised this authority in 1962 by adopting Section 15.70(a) of the Commission’s rules.⁵ 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.”⁶ 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”⁷ and 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.”⁸ The purpose of this rule is to ensure that television broadcast receivers receive all

⁴ 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, 87th Cong., 2nd 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”).

⁵ 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.”).

⁶ *See Revision of Part 15 of the Rules regarding the operation of radio frequency devices without an individual license*, 4 FCC Rcd 3493, 3517, para. 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).

⁷ 47 C.F.R. § 15.3(w).

⁸ 47 C.F.R. § 15.117(a).

television broadcast channels irrespective of the channel's place in the broadcast spectrum.⁹ In December 2015, the Commission amended the rule to sunset the analog tuner requirement on August 31, 2017.¹⁰

3. The Bureau has previously granted waivers of the analog tuner requirement to EchoStar¹¹ and TiVo, Inc. based on similar circumstances.¹² On October 7, 2016, EchoStar filed a request with respect to its AirTV device, and on October 24, 2016 Hauppauge filed a request with respect to its WinTV-dualHD device.¹³ No commenters filed in opposition to either of the requests for waiver.

III. DISCUSSION

4. We find good cause to grant the requests for waiver.¹⁴ Specifically, we find that grant of this waiver should yield distinct public interest benefits. As EchoStar and Hauppauge point out, 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 and software, and consume less energy.¹⁵ These advantages should result in lower costs, which can be passed on to consumers and also promote a strong, competitive marketplace.¹⁶

⁹ 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 FCC Rcd 15978, 15995-15999, paras. 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.").

¹⁰ *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations*, 30 FCC Rcd 14927, 14947-9, paras. 44-46 (2015); 47 C.F.R. § 15.117(b).

¹¹ 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. On February 13, 2015, EchoStar filed a similar request with respect to its SlingLoaded DVR.

¹² On August 9, 2013, the Media Bureau granted TiVo's unopposed request for waiver of both the broadcast and cable analog tuner rules, and on September 30, 2013 and May 1, 2015 the Media Bureau granted EchoStar's unopposed requests for waiver of the broadcast tuner rule. See *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, para. 7 (2013); *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, para. 1 (2013) (granting waiver of 47 C.F.R. § 15.117(b), which governs broadcast tuner requirements and 47 C.F.R. §15.118(b), which governs cable tuner requirements).

¹³ EchoStar Petition at 1.

¹⁴ 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.

¹⁵ EchoStar Petition at 3-4; Hauppauge Petition at 2.

¹⁶ EchoStar Petition at 3; Hauppauge Petition at 2 ("the addition of two analog TV tuners could cost consumers an additional \$25-\$50 per device – almost doubling the product's purchase price").

Further, EchoStar claims that insertion of an analog tuner would make the device “far more bulky, less energy efficient, and less appealing to consumers.”¹⁷ Importantly, the parties state that granting their requested waivers would have a minimal impact on consumers because (1) the devices will be able to access “all full-power and Class A television stations, as well as most LPTV stations and TV translators,”¹⁸ and (2) devices with analog tuners will continue to be made available for retail sale to consumers.¹⁹

5. Based on these representations, we find that granting the requests for waiver is in the public interest. To require an analog broadcast tuner in the AirTV or the WinTV-dualHD device as required by Section 15.117(b) would increase the cost, size, and energy consumption of the device, without any countervailing benefit to consumers. Although we recognize that a de minimis number of consumers may watch analog LPTV stations, the overwhelming majority of broadcast viewers currently view only digital broadcast signals.²⁰ Moreover, we note that analog tuner requirement is scheduled to sunset in less than a year. Given this, the public interest benefits, and the lack of opposition, we conclude that the grant of EchoStar and Hauppauge’s petitions is warranted.

IV. ORDERING CLAUSES

6. 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 Hauppauge Computer Works Inc. **ARE GRANTED**.

7. 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

¹⁷ EchoStar Petition at 5.

¹⁸ EchoStar Petition at 5.

¹⁹ Hauppauge Petition at 2 (“Hauppauge pledges that a USB plug-in component tuner product containing an NTSC tuner as well as an ATSC tuner will remain in its product line at least through the phaseout of the Commission’s rule in August, 2017.”).

²⁰ This waiver will only affect broadcast television viewers, not cable or satellite viewers.