September 10, 2013

The Honorable Greg Walden
Chairman
Subcommittee on Communications and Technology
2182 Rayburn Building
Washington, DC 20515

The Honorable Anna Eshoo
Ranking Member
Subcommittee on Communications and Technology
241 Cannon Building
Washington, DC 20515

Dear Chairman Walden and Ranking Member Eshoo:

I understand the Subcommittee on Communications and Technology has scheduled a hearing for September 11, 2013 to hear from witnesses on innovation versus regulation in the video marketplace. Although TiVo has not been invited to testify at the hearing, we are a leading innovator in the video device space and are very concerned that the hearing presents Members with a false choice: ***either*** regulation ***or*** innovation. I think it is important for us to share our views with you on the critical role that the FCC has played to facilitate a competitive set-top box industry as directed by you and your Congressional colleagues in the 1996 Telecommunications Act, since these efforts are currently under attack.

In 1996 Congresswoman Eshoo, along with Congressmen Ed Markey (D-MA) and Tom Bliley (R-VA), proposed language that would do for video devices what the FCC's *Carterfone* decision did for telephones: give consumers, who do not have much choice among network providers, more choice in selecting the devices they use to connect to the network.

To implement this section, Section 629 of the 1996 Act, the FCC urged cable operators to reach agreement with the consumer electronics industry. Cable operators came forward with a standard CableCARD interface for national access by competitive entrant devices but did not promise to rely on this technology in their own devices. The FCC accepted this offer *provided* that cable operators (1) make CableCARDs available by July 1, 2000, and (2) rely on the CableCARD interface in their own newly fielded devices by January 1, 2005. The FCC determined that only by requiring "common reliance" by retail devices and operator-leased devices on the same security technology would retail devices receive the support necessary to attain the goals of Section 629. The first CableCARD-reliant products – televisions with CableCARD slots – came to market in 2003 – 2004 but in the absence of common reliance received poor or nonexistent support from cable operators (documented in FCC and court decisions). That lack of support finally led the FCC to implement common reliance (also known as the "integration ban") as of July 1, 2007. By this time, while CableCARD televisions were disappearing from the market due to lack of cable operator support, the emergence of High Definition

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Television and the impending digital transition encouraged TiVo and others to begin selling HD CableCARD DVRs.

However, retail CableCARD devices were still being disadvantaged by cable operators. This prompted the FCC in 2010 to strengthen its CableCARD regulations to deal directly with cable operators' evasion of CableCARD requirements, by providing for consumer self-installation of CableCARDs, access to switched digital programming, and ending economic discrimination against competitive products. While CableCARD success has been hobbled by the cable industry's lack of support and refusal to allow retail devices to have access to two-way services like Video On Demand, CableCARD is a fully realized solution being used by over 600,000 consumers and growing.

In the name of eliminating unnecessary and burdensome regulation, the cable industry is proposing now to eliminate the FCC's integration ban. They are circulating legislation that would end common reliance and allow operators to lock out competitive devices, by – as they did before the "integration ban" became effective – offering superior access to programming and functions to their own devices, and inferior and faulty access to competitive devices. This can include not only renewed discrimination against existing CableCARD-reliant devices, but also unequal implementation of new, IP-based technologies. The proposed legislation would remove from the FCC a critical tool to redress such discrimination against competition and implement a successor solution to CableCARD.

Until common reliance became the rule and cable operators began relying on CableCARDs themselves, the technology defied Moore's Law – it remained generationally frozen and needlessly expensive, while similar technologies became cheaper, faster, and more reliable. Only common reliance has brought the cost down and brought a moderate level of support for retail devices. An end to common reliance would freeze this progress on CableCARDs, allow cable operators to exclude CableCARDs from future product plans, and eliminate any incentive for the industry to help develop a successor solution for retail devices.

Despite the challenges, TiVo has been able to provide consumers with a choice of set-top boxes rather than having to rely on an operator-supplied box. As a company whose business depends on providing consumers with superior set-top boxes than their cable-provided options, TiVo has furthered the goals of Section 629 by being a leader in innovation in video devices. For example, TiVo was the first company to introduce the Digital Video Recorder as well as the first to make services like Amazon video rentals available on the television. TiVo also pioneered the ability to transfer cable television shows from a DVR to computers and mobile devices, and the integration of traditional television and over-the-top content into a seamless integrated user interface. TiVo's latest set-top box, called Roamio, has been heralded as "the Holy Grail of Set-Top Boxes" (Wall Street Journal), "the best TV viewing experience that money can buy" (VentureBeat), "the ultimate cable TV viewing experience" (Mashable) and "a big step up for cable TV subscribers" (TechHive).

Outside of video device industry, the explosion in innovation around communications devices is staggering. Today consumers can choose from a vast array of mobile and computing devices: smart phones, computers, lap tops, tablets, e-book readers, netbooks and other devices that easily connect to the wireless communications networks and the internet. This increased competition has led to lower prices, innovation and, lots of choice which has benefitted consumers.

Admittedly, set-top boxes represent an exception to this otherwise thriving marketplace of devices, because of the impediments discussed above. Still, the benefits of retail competition and greater consumer choice are clear. Congress should not undermine the limited choice consumers have today and remove tools the FCC has to increase consumer choice in the future until the consumer choice envisioned by Section 629 is fully realized.

Thank you for your continued support of consumers and innovative technology companies.

Sincerely,

Matthew Zinn
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Chief Privacy Officer
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