



# PUBLIC NOTICE

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## MEDIA BUREAU ACTION

### MEDIA BUREAU SEEKS COMMENT ON ECHOSTAR'S PETITION FOR WAIVER OF OVER-THE-AIR ANALOG TUNER REQUIREMENTS

MB Docket No. 13-177

**Comment Date: July 30, 2013**

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

EchoStar Technologies L.L.C. (“EchoStar”) has filed a petition<sup>1</sup> requesting that the Commission waive Section 15.117(b) of the Commission’s rules. 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>2</sup> EchoStar seeks a waiver of Section 15.117(b) in order to import, market, and sell two models of the Channel Master K77, a high-definition (“HD”), Internet-enabled, digital video recorder (“DVR”) that does not include an analog broadcast tuner.<sup>3</sup>

Section 15.117 of the Commission’s rules generally ensures that TV broadcast receivers, including devices such as the Channel Master K77, are capable of receiving all of the channels allocated by the Commission to the broadcast television service, including channels in both analog and digital formats.<sup>4</sup>

<sup>1</sup> EchoStar Petition at 1 (filed June 21, 2013).

<sup>2</sup> 47 C.F.R. § 15.117(b).

<sup>3</sup> EchoStar Petition at 1. EchoStar seeks a waiver for two variants of the K77 device. Model CM-7500GB16 is Flash memory-based with 16 gigabytes (“GB”) of memory, but no internal hard drive. DVR capability can be added through the attachment of an external USB hard drive. Model CM-7500GB320 includes a 320 GB hard drive.

<sup>4</sup> 47 C.F.R. § 15.117; *Dell Inc. and LG Electronics USA, Inc. Request for Waiver of Section 15.117 of the Commission’s Rules*, MB Docket No. 10-111, Order, 25 FCC Rcd 9172-73 ¶ 2 (MB 2010). Section 15.117 stems from the All Channel Receiver Act of 1962, which 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.” All Channel Receiver Act of 1962, Pub. L. No. 87-529, 76 Stat. 150, codified at 47 U.S.C. § 303(s). Many low-power television, TV translators, and Class A television stations continue to operate in analog mode and are permitted to do so until September 1, 2015, the date set for the termination of all analog low-power television service and the completion of the digital transition. See 47 C.F.R. 74.731(l); *Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, MB Docket No. 03-185, Second Report and Order, 26 FCC Rcd 10732, 10733 ¶ 2 (2011). Thus, absent a waiver of Section 15.117(b), TV broadcast receivers must be

EchoStar states that the Channel Master K77 models will combine access to broadcast programming with over-the-top and DVR functionalities, promoting consumer choice in both retail equipment and in services for households seeking a non-MVPD option for video programming.<sup>5</sup> EchoStar maintains that requiring an analog tuner “would dramatically increase the device’s cost, size, and energy consumption without any countervailing benefits to consumers.”<sup>6</sup> Further, EchoStar claims that consumers who purchase the device would still be able to access analog signals through their television tuners.<sup>7</sup> We seek comment on EchoStar’s request for waiver of Section 15.117(b) with respect to its Channel Master K77 models.<sup>8</sup> We note that, unlike recent similar petitioners,<sup>9</sup> EchoStar did not voluntarily commit to educating consumers about the functionality of the K77 devices. Accordingly, we seek comment on whether EchoStar should be required to undertake similar consumer education efforts as a condition of any potential waiver relief.

This proceeding will be treated as “permit but disclose” for purposes of the Commission’s *ex parte* rules. See 47 C.F.R. § 1.1200, 1.1206. As a result of the permit-but-disclose status of this proceeding, *ex parte* presentations will be governed by the procedures set forth in Section 1.1206 of the Commission’s rules applicable to non-restricted proceedings.<sup>10</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).

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capable of receiving both analog and digital broadcast channels. See 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) (providing guidance that Section 15.117 requires TV broadcast receiver to include both ATSC and NTSC tuners if it includes either).

<sup>5</sup> EchoStar Petition at 4-5.

<sup>6</sup> *Id.* at 3.

<sup>7</sup> *Id.* at 4, 8.

<sup>8</sup> A copy of EchoStar’s Petition may be obtained from MB Docket No. 13-177 in the Commission’s Electronic Comment Filing System (ECFS).

<sup>9</sup> For example, TiVo recently committed to providing the same consumer disclosures and retail point-of-sale materials for all of its DVR devices that were required by the Commission’s *2011 TiVo Waiver Order* waiving a similar set of rules for its Premier Elite DVR. See 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, at 12 (filed Feb. 4, 2013); *TiVo, Inc. Request for Waiver of Sections 15.118(b), 15.123(b)(1), and 15.123(c) of the Commission’s Rules*, MB Docket 11-105, Memorandum Opinion and Order, 26 FCC Rcd 12743, App. A (MB 2011) (“*2011 TiVo Waiver Order*”). Specifically, the *2011 TiVo Waiver Order* required TiVo to inform consumers that its Premiere Elite DVR could not receive analog programming and make disclosures on the in-store product information, information booklets, and the Quick Start Guide. *2011 TiVo Waiver Order*, App. A. Similarly, Samsung committed to a “labeling, marketing, and retail education program that informs consumers and retailers about the capabilities and limitations” of its device. Samsung Electronics America, Inc. Petition for Waiver of Section 15.118(b) of the Commission’s Rules, at 5-6 (filed May 21, 2013).

<sup>10</sup> 47 C.F.R. § 1.1206.

- 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.

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Documents in **MB Docket No. 13-177** are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th St., S.W., Room CYA257, Washington, DC 20554, telephone (202) 418-0270. They may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., telephone (202) 488-5300, facsimile (202) 488-5563, or via email at [fcc@bcpiweb.com](mailto:fcc@bcpiweb.com). For further information, contact Mary Margaret Jackson, [MaryMargaret.Jackson@fcc.gov](mailto:MaryMargaret.Jackson@fcc.gov) or (202) 418-3641. Press inquiries should be directed to Janice Wise, (202) 418-8165.

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