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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Inquiry Into Encryption) PP Docket No. 92-234
Technology for Satellite)
Cable Programming)

TO: The Commission

REPLY COMMENTS OF NETLINK USA

Netlink USA ("Netlink"), by its counsel, hereby replies to the Comments filed in the above-captioned proceeding. Netlink's fundamental position is that competition and technological innovation are working to address the Commission's concerns. Government intervention at this time would, therefore, be unwise and potentially detrimental.

Netlink distributes the signals of the "Denver Five" to both the home satellite dish ("HSD") and cable markets.¹ It operates as a "satellite carrier" under the Satellite Home Viewer Act of 1988 ("SHVA"), serving approximately 300,000 HSD subscribers. It also operates as a "passive carrier" under Section 111(a)(3) of the Copyright Act of 1976, 17 U.S.C. § 111(a)(3), in serving almost 500,000 cable subscribers. Netlink

¹ Netlink distributes the signals of the three network affiliates, KCNC-TV (NBC), KMGH-TV (CBS), and KUSA-TV (ABC), as well as an independent or superstation, KWGN-TV, and a public broadcasting affiliate, KRMA-TV, all of which are licensed to Denver, Colorado.

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is one of five satellite carriers, providing service via C-Band satellite, and has been in the business since late 1987.

Since its inception, Netlink has utilized the Videocipher technology developed and deployed by General Instrument Corporation ("GIC") and its predecessors. As the Commission has recognized, that technology has evolved as the de facto industry standard. Along with the rest of the industry, Netlink has suffered with each break of the Videocipher technology. Piracy has been rampant and has caused devastating losses both by reducing the market for legitimate customers and requiring expensive countermeasures. Nonetheless, as documented in various of the Comments filed in this proceeding, it appears that the advent of a security system, likely based on replacable "smart cards," may have finally yielded a fundamentally sound encryption system that will hopefully defeat the efforts of would-be pirates and permit the industry to realize its full potential.

Netlink submits that there are four factors that militate against the need for governmental intervention at this time or in the foreseeable future: intra-system competition; inter-system competition; the development of additional authorization centers; and the deployment of digital technology.

As GIC states in its Comments in this proceeding, as a result of its policy of "second sourcing" modules and IRDs, competition already exists in descramble manufacturing. GIC

Comments at 2. That competition can only be expected to increase, especially in light of recently announced developments in the industry. For example, Tele-Communications, Inc. ("TCI"), the corporate parent of Netlink and one of the most vocal critics of the Videocipher, and Home Box Office ("HBO") announced their plans to use a digital compression system developed by AT&T and GIC. A key provision in the letter of intent that the parties signed was a requirement that GIC license its technology to other manufacturers. Such licensing requirements will mean that anyone serious about competing will be able to. The resulting competition will ultimately drive the costs of components, and thus modules, down -- to the benefit of consumers.

Inter-system competition will have a similar impact. As HBO points out in its Comments, rather than focus on competition within the C-Band analog system, the Commission should recognize that meaningful inter-system competition will soon be a reality. HBO Comments, at 3. High powered DBS systems, using Ku-Band satellites, with less expensive consumer equipment, will soon be available to American consumers. For example, the Hughes/Hubbard system, DirecTv, will employ the VideoCrypt system developed by News Datacom. Since those new services will generally deliver programming similar to that delivered by existing services, the competitive pressures from such alternative systems will be felt most acutely in the equipment market, further spurring cost reductions.

Another competitive realm will be in the area of authorization centers. At present, GIC operates, on a shared-cost basis, the DBS Authorization Center in San Diego. However, several key players, including DirecTv and TCI, have announced plans to have their own authorization centers. Again, the impact of competition in this new arena should redound to the benefit of the consumer.

The single most significant development in video program delivery will, however, be the digital revolution. The range of video services and equipment available to the consumer will literally explode. Digitalization will be the engine that will drive future developments in the video distribution marketplace. Two key issues arise from digitalization. One has to do with competition. The digital equipment marketplace will be a highly competitive one. In addition to GIC/AT&T, others such as News Datacom, Scientific Atlanta, Philips, and Thomson, are already competing to sell their technologies. The requirement in the TCI agreement with GIC/AT&T that the vendors cross-license their technologies and license competitive manufacturers, could be a model for future agreements. It is clear that no one manufacturer could possibly dominate the digital marketplace in the way that the analog market may have been in the past. Thus governmental intervention is not necessary to ensure competition.

Second, the transition from analog to digital could

raise concerns for consumers who have already invested in analog equipment. However, as the Commission stated in initiating this proceeding that transition is likely to be a lengthy one. Notice of Inquiry in PP Docket 92-234, FCC 92-468, ¶ 24 (November 4, 1992). Netlink and the other suppliers of programming have substantial subscriber bases. Rather than abandon or alienate their subscribers, those suppliers can be expected to protect their established subscribers and to ensure that any new systems are compatible with the old ones. Furthermore, the industry has already demonstrated its abilities to act cooperatively, for example in the development of the MPEG II digital compression standard. Thus the transition will be an orderly one that does not require governmental oversight.

In conclusion, Netlink submits that, as the initial commenters generally recognize, competition and technology, particularly digitalization, will alleviate the concerns raised by the original petition to the Commission. Regulation or other governmental intervention in this marketplace is simply not necessary.

Respectfully submitted,

NETLINK USA

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