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September 7, 2000

BY HAND

Ms. Magalie R. Salas
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

Re: Oral *Ex Parte* Meeting: In the Matter of Compatibility Between Cable Systems and Consumer Electronics Equipment; PP Docket No. 00-67; In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices; CS Docket No: 97-80

Dear Ms. Salas:

This letter summarizes the presentation made on September 6, 2000, to Amy Nathan of the Office of Plans & Policy, William Johnson, Deborah Klein, Steven Broeckaert, Thomas Horan and John Wong of the Cable Services Bureau, and Alan Stillwell of the Office of Engineering by the following representatives from several of the five companies that comprise the "5C" Digital Transmission Licensing Administrator: Peter Pitsch on behalf of Intel Corporation, Sandra Aistars on behalf of Matsushita Electric Industrial Co., Ltd., Christopher Basile on behalf of Toshiba Corporation, and Seth Greenstein on behalf of Hitachi, Ltd. During the presentation, the 5C representatives made the points described below.

In 1998, the 5C companies developed a technology that protects digital transmissions made across a high-speed bidirectional digital home network such as IEEE 1394. This 5C Digital Transmission Content Protection ("DTCP") technology complies with or surpasses system specifications created in an open multi-industry process including motion picture companies, consumer electronics manufacturers and information technology companies. Motion picture companies have stated that the 5C DTCP system is technologically sound and acceptable for the protection of high value

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video content transmitted along a home network. The OpenCable DFAST License requires use of 5C DTCP as the protection means for high value content signals delivered over an IEEE 1394 digital output from an OpenCable Host Device.

The 5C believe that copy protection technologies must reflect a balance between protections for copyright owners and reasonable privileges for consumers to record and view content that they lawfully have acquired. Over the past few months, discussions with motion picture companies have accelerated concerning the terms and conditions of licenses to use the 5C DTCP technology, but several key issues remain unresolved. Although the 5C and the motion picture companies have made great strides toward reaching a consensus that would protect, in many circumstances, the ability of consumers to enjoy reasonable and customary recording practices with respect to different types of transmitted content (the "Encoding Rules"), several issues relating to the Encoding Rules nonetheless remain unresolved. Among other essential issues that are still the subject of ongoing discussion is how consumers will be able to view content in high definition quality using today's television receivers that lack digital inputs ("Analog High Definition Output Rules").

The 5C representatives noted that these and other important unresolved issues also are addressed in the "Draft Compliance Rules" set forth as Exhibit C in the last draft of the proposed DFAST License. The attached document, presented to the FCC representatives, summarizes the 5C positions concerning several of these unresolved terms, and the less favorable treatment that would be accorded to consumers and manufacturers with respect to these issues under the current draft DFAST License.

The DFAST License explicitly states that the proposed Exhibit C Compliance Rules are only a draft; that the rules were proposed to Cable Labs by the motion picture industry and modified by Cable Labs; that issues addressed by these rules are under negotiation among interested parties; and that, once consensus is reached among the affected industries, such consensus would be reflected in revised DFAST Compliance Rules. Consequently, adoption of the Compliance Rules set forth in the current DFAST License could prejudice the pro-consumer positions that the 5C is attempting to secure in the ongoing negotiations.

The 5C representatives therefore stated their preference for the Commission not to adopt the copy protection "Compliance Rules" set forth in the DFAST License, but instead to follow consensus among the affected parties and, as appropriate, to assist the parties in attaining that consensus.

The 5C representatives also responded to several questions concerning the DVI interface and the ability of IEEE 1394 to handle HDTV signals. In this regard 5C representatives noted that 5C has consistently stated that it takes no position with respect to whether the IEEE 1394 interface should be afforded special status for purposes of

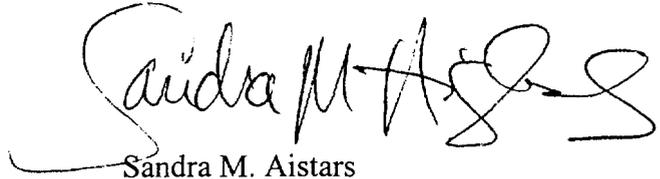
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OpenCable specifications and has, in fact, advocated that a variety of home interfaces should be enabled to receive HDTV content. 5C representatives further stated that they are not aware of any technical impediments to using the IEEE 1394 interface to carry HDTV signals. Specifically, IEEE 1394 has sufficient bandwidth to support DTV and HDTV signals, it can be used with recording devices (i.e. it supports rewinding and enables customary consumer recording practices) and can support Electronic Program Guide ("EPG") display.

In accordance with Section 1.1206 of the Federal Communications Commission rules, this letter and the attachment are being provided to your office. A copy of this notice has been delivered to the parties listed above, and additionally to the parties listed below.

Respectfully submitted,



Sandra M. Aistars

cc: Chairman Kennard
Commissioner Furchtgott-Roth
Commissioner Ness
Commissioner Powell
Commissioner Tristani
William J. Friedman IV
David Goodfriend
Paul Jackson
Karen Edwards Onyeije
Mark Schneider
Helgi Walker
Steven Broeckaert
Thomas Horan
William Johnson
Deborah Klein
Amy Nathan
Robert Pepper
Alan Stillwell
John Wong

Intersecting Disputed Issues in the DTCP and DFAST Draft Licenses

The DFAST license borrows much from the structure and substance of the Adopter Agreement first promulgated by the 5C Digital Transmission Licensing Administrator. Thus, it is not surprising that several critical aspects of the DTCP license intersect with those in the DFAST license. According to the DFAST License, the current "Draft" Compliance Rules will be renegotiated once greater consensus is achieved. Nevertheless, the 5C remain concerned that several provisions of the July 17 draft of the DFAST license, identified below, would jeopardize or unravel key pro-consumer protections that 5C seeks to secure in its Adopter Agreement.

1. Need for Content Encoding Rules

Essential to the 5C DTCP Adopter Agreement and Content Participant Agreement are the Encoding Rules that define limits on copyright owners' ability to prevent copying of particular content. Section 1201(k) of Title 17 mandates such limits for video signals protected by analog copy protection, such that Pay-Per-View and Video-On-Demand may be encoded "copy never"; Pay TV may be encoded as "copy one generation"; and all other content must be encoded as "copy freely." Content owners have not agreed to these Encoding Rules for DTCP, and have not accepted alternative proposals put forward by 5C.

Section 8.2(c)(i)(1) and (ii) of the DFAST License require the Licensee to covenant that the Host Device contains no device that enables recording of content except as permitted by the Compliance Rules, and that the Host Device maintains control of content copies consistent with any copy control instructions in the signals ("CCI"). However, the DFAST License includes no Encoding Rules limiting what CCI content owners may apply to particular signals. Section 1.1 of the Compliance Rules defines "High Value Content" as having CCI other than zero (in 5C CCI terms, content that is not "copy freely"). However, nothing in the Compliance Rules prevents content owners from setting any and all content as other than zero or requires content owners to set non-"High Value Content" as zero.

2. Interface with Host Devices having Built-In Recording Capability

The absence of Encoding Rules in the DFAST License attains deeper significance when Host Devices, such as set-top boxes, incorporate recording capabilities, such as a hard disk drive-based "personal video recorder" ("PVR"). Section 3.5 of the DFAST Compliance Rules requires that Licensed Products may only record a single copy of High Value Content marked as "copy one generation," which copy then shall be remarked as "copy no more" (Section 3.5) -- provided, inter alia, that the copy is "uniquely bound" to the recording device.

By contrast, the 5C DTCP Compliance Rules permit consumers to make a "copy one generation" copy on removable media for repeated viewing on various machines (as has been customary for consumers over the last nearly 25 years). Such copying would be thwarted by the DFAST Compliance Rules, since the content recorded on a PVR would reach an external recorder marked as "copy no more." Moreover, 5C notes that this provision effectively precludes a typical VCR, which uses standard media not "uniquely bound" to that VCR, from receiving an Open Cable POD and serving as a navigation device.

3. Constraints on Analog High Definition Signals

Section 2.3 of the DFAST Compliance Rules prevents the output of High Value Content in High Definition Analog Form unless constrained to no more than 600 lines of vertical resolution. The 5C license approach differs from the DFAST rule in four fundamental ways:

a. The DFAST constraint applies to all "High Value Content," whereas the 5C proposal would permit the constraint only for Pay TV, Pay-Per-View and Video-On-Demand.

b. The DFAST constraint is mandatory, whereas 5C proposes that this constraint would be optionally triggered by content owners.

c. The DFAST requirement begins immediately, whereas 5C proposes a phase-in period so that consumers can timely acquire converter boxes for legacy devices.

d. The DFAST constraint continues in force, whereas 5C would remove the constraint when an alternative protection technology is implemented.

4. Watermark Integrity

At present, various watermark technologies have been proposed for video but none has been adopted. Section 2.6 of the DFAST Compliance Rules, concerning non-interference with watermarks, imposes constraints on the design and manufacture of devices that differ from the 5C approach in several pertinent ways:

a. The DFAST rules apply the "non-interference" provision to "any OpenCable-recognized watermark," whereas 5C takes the position that any watermark should be adopted by a consensus among all of the affected industries.

b. The DFAST rules apparently apply this requirement immediately, whereas the 5C wish to protect its Adopters with a reasonable phase-in and sell-off period.

c. The DFAST rules require the use of "reasonable equivalent alternatives" if such alternatives exist for implementations that interfere with the preservation or effectiveness of the OpenCable recognized watermark, but lack any provisions as to what constitutes a "reasonable equivalent alternative" or how a licensee is deemed to have knowledge of the existence of such alternatives, whereas the 5C require greater protections for its Adopters.

5. Robustness Rules

Robustness Rules are under intensive discussion between 5C and the motion picture content owners. The 5C believes that the Robustness Rules should balance the need to reasonably protect against hacking with requirements that are technically and economically feasible. The DFAST license includes Robustness Rules that are more stringent than those in the 5C license and which 5C believes cannot realistically be achieved in practice.