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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

February 6, 2001

Chairman Michael K. Powell
Federal Communications Commission
445 12th Street, S.W.
Room 8-B201
Washington, D.C. 20554

**Re: Compatibility Between Cable Systems and Consumer Electronics
Equipment (PP Docket No. 00-67) and Commercial Availability of Navigation
Devices (CS Docket No. 97-80)**

Dear Chairman Powell:

As you know, in a September 18, 2000 Declaratory Ruling, the Commission concluded that some measure of anti-copying encryption technology located within a host navigation device as required by the CableLabs' DFAST License Agreement (now "PHILA") is consistent with the Commission's Navigation Device Rules. In that proceeding, the cable industry argued that, without such copy protection capability in cable set-top boxes, content providers would likely withhold high-quality digital content from cable operators. We also observed that they might also favor cable's competitors, like DBS, who are not encumbered by the FCC's separate security requirement and therefore can impose copy protection and other requirements on their receiver manufacturers without being subject to FCC review.

A recent Communications Daily article confirms our position. The January 29, 2001 article described how DirecTV has agreed with the manufacturers of its receivers to include in its receivers the capability to "downgrade [an] HDTV signal to 480i at the request of content owners fearful of unauthorized copying..." – the same type of requirement at issue in the Declaratory Ruling proceeding involving our DFAST license. The article quoted equipment manufacturers as saying that the "DirecTV downgrade function was [the] only copy protection method available that could allay content owners' fears, and thereby obtain HD programming for DirecTV."

Given the topicality of this copy protection issue, I thought it would be useful to provide you with a brief summary of the key points about the CableLabs license needed by manufacturers to build OpenCable-compliant set-top boxes. That license agreement, which we submitted to the FCC on December 15, 2000, has been the subject of a considerable amount of confusion. I hope that this letter will help to clarify the situation.

400 Centennial Parkway
Louisville, Colorado 80027-1266
Phone: 303.661.9100
Fax: 303.661.9199
<http://www.cablelabs.com>

First, the CableLabs' DFAST license agreement is now called PHILA which stands for "POD-Host Interface License Agreement." It is the license necessary to obtain the rights to encryption technology which protects digital signals from being pirated. That technology is used by all OpenCable-compliant set-top boxes (or "hosts") which require a separate security – or "Point-of-Deployment" ("POD") – module provided by the cable operator to receive "scrambled" programming. Any manufacturer wishing to build an OpenCable-compliant set-top box for use on cable systems in North America must obtain the PHILA license. The only cost is a reasonable fee for administrative processing.

As part of the license agreement, manufacturers are required to provide in the set-top box the controls necessary to manage the digital rights of content owners. These are hardware and software tools that must be built into the set-top box. The CableLabs license does not require or compel that these copy control mechanisms be used by the cable operator. Rather, this technology is included in the boxes to provide the capability to reasonably protect high quality digital content from piracy based upon whatever commercial arrangements have been agreed upon between the cable operator and the content provider. If these protections were not available, cable customers would be disadvantaged as the highest value programming and content would not be made available to them. As noted above, similar digital rights management tools have been included in the DirectTV receivers without, of course, any calls for FCC involvement.

Second, the PHILA license concerns only digital technology. It addresses only television content transmitted digitally. This in no way interferes with present day analog VCRs or programs transmitted on cable systems. A customer can continue to make an analog copy of cable programs (analog or digital) without restriction. Also, the license makes provision for analog recording of digital HDTV programs on existing VCRs. To do so, the resolution will be reduced so that it is compatible with existing recorders. However, as noted above, the license does require inclusion in OpenCable-compliant boxes of the capability to manage digital recording of digital programs which can be invoked upon agreement between content owners and the cable operator. The cable industry strongly supports customers' desires to record programs for various purposes including time-shifting. However, in the digital world, copies are technically perfect and can be transmitted instantly around the world without restriction. Therefore a copyright holder must have the technical capability available to insure that digital copies are made and used responsibly.

Finally some consumer electronics equipment manufacturers (and their trade association) have taken issue with the copy protection terms in CableLabs' PHILA license. We find their position difficult to understand since many of the same manufacturers routinely execute similar but confidential licenses to build competitive direct-to-home satellite set-tops and receivers, as is evidenced by the Communications Daily article referenced above.

Chairman Powell
February 6, 2001
Page 3

However, other manufacturers have executed a PHILA license and CableLabs stands ready to work with any manufacturers to negotiate the terms of this license to provide a trustworthy cable delivery system for digital content.

While we appreciate your continuing interest in these issues, we believe the Commission made the correct call when it determined that copy protection requirements imposed on cable set-top box manufacturers do not run afoul of FCC Navigation Device Rules. The recent developments concerning DirecTV's agreement with manufacturers of its receivers demonstrate the wisdom of the Commission's decision to abstain from involvement in copy protection matters which could have significant ramifications in the competitive marketplace.

If you have any further questions, please do not hesitate to contact me.

Sincerely,



Richard R. Green, Ph.D.
President and Chief Executive Officer

cc: Magalie R. Salas (for inclusion in PP Docket No. 00-67 and CS Docket No. 97-80)
Honorable Susan Ness
Honorable Gloria Tristani
Honorable Harold Furchtgott-Roth
Deborah Lathen, Chief, Cable Services Bureau
William Johnson, Deputy Chief, Cable Services Bureau
Deborah Klein, Division Chief, Consumer Protection & Competition Division
Bruce Franca, Acting Chief, Office of Engineering & Technology
Robert M. Pepper, Chief, Office of Plans & Policy
Jonathan Levy, Economist, Office of Plans & Policy
Amy Nathan, Senior Legal Counsel, Office of Plans & Policy