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March 15, 2001

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

BY HAND

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

Re: Written *Ex Parte* Submission; 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 is to notify the Office of the Secretary that the Digital Transmission Licensing Administrator, LLC ("DTLA") made a written *ex parte* presentation to Chairman Powell and the parties listed below. A copy of the written presentation is attached.

In accordance with Section 1.1206 of the Federal Communications Commission rules, this letter is being provided to your office. A copy of this notice also has been sent to Chairman Powell and the parties listed below.

Respectfully submitted,



Seth D. Greenstein

cc: Commissioner Furchtgott-Roth  
Commissioner Ness

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OE

March 15, 2001

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Commissioner Tristani  
Steven Broeckaert  
Bruce Franca  
Thomas Horan  
William Johnson  
Deborah Klein  
Jonathan Levy  
Amy Nathan  
Robert Pepper  
Alan Stillwell  
John Wong

**MCDERMOTT, WILL & EMERY**

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**MAR 14 2001**

**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY**

March 14, 2001

**Via Messenger**

The Honorable Michael Powell  
Chairman  
Federal Communications Commission  
445 12th Street, SW.  
Washington, D.C. 20554

Dear Chairman Powell:

On behalf of the Digital Transmission Licensing Administrator, LLC ("DTLA"), I am responding to a letter sent to you on March 2, 2001, by several distinguished Senators and Representatives expressing concern about the possible impact of content protection technology offered by the DTLA upon digital broadcast television. You may be familiar with the DTLA's "5C DTCP" technology, inasmuch as it is incorporated in the specification for the CableLabs POD-Host Interface License Agreement and has been mentioned in various documents of the Commission as essential to copy protection in the transition to the DTV environment. We believe that it would be useful to explain the history behind 5C DTCP and the limits of what DTLA and 5C DTCP can protect as a matter of technology and law. For this purpose, we have attached a brief background note on DTLA, 5C DTCP and the current issues related to broadcast content.

With regard to the March 2 letter itself, DTLA has several key concerns. First, the letter does not recognize the contributions of the DTLA and the five major technology companies (Intel, Hitachi, Matsushita, Sony and Toshiba) that are promoting 5C DTCP to protect content. Nor does it take adequate account of the initiatives and responsibility of the motion picture industry in defining the requirements that the 5C DTCP technology was designed to meet. The DTLA built a technology pursuant to an inter-industry process, to satisfy the technical parameters approved by the motion picture industry. We have continued to meet additional parameters as requested by the motion picture industry. Over the last several years, DTLA and its five proponents have expended millions of dollars and tens of thousands of work-hours to solve copy protection challenges for the video industry, and to promote that copy protection solution, essentially on no better than a cost recovery basis. Importantly, we have told the studios that we remain willing to continue working with them to address protection concerns, within the confines of the law and technological

feasibility. We submit, therefore, that DTLA should not be blamed when certain studios belatedly add new technical requirements that the technologies were not intended to perform, and insist that DTLA modify its licenses in ways that potentially could run afoul of antitrust and unfair competition law.

In that regard, despite our efforts, there are technological and legal limits upon the protection that DTLA can afford over-the-air, unencrypted television broadcasts. Simply put, we know of no technology that can guarantee airtight protection to broadcast television programming delivered to the public in-the-clear. 5C DTCP does offer protection against Internet retransmission of such programming when delivered through a cable or satellite service (i.e., to approximately 85 percent of households in the United States). But, as a matter of law, DTLA cannot compel devices (such as television receivers and general purpose computers) to include 5C DTCP protection or to route content through the 5C DTCP output, rather than another analog or digital output that might not provide the same degree of protection.

Second, rejecting 5C DTCP would deny consumers the benefits of digital quality throughout the home. At present, licenses for DVD players do not permit digital outputs, pending acceptance of a copy protection system such as 5C DTCP. Similarly, consumers' ability and right to make digital time-shift copies of video programming on new generation products such as D-VHS VCRs and DVD recorders depends upon adoption of a protection system such as 5C DTCP. Thus, rapid adoption of 5C DTCP will speed the adoption of digital playback and recording technology by the home consumer, thereby fueling consumer desire to acquire DTV monitors and receivers.

Third, rejection of 5C DTCP could harm the market for OpenCable set top boxes. The OpenCable specification, as you know, has adopted 5C DTCP as a protection mechanism for digital video output. Delays in adoption of 5C DTCP will delay the market for new pay-per-view, video-on-demand, and subscription on demand services, and will deprive subscription channels such as HBO of their right to protect the content that they license from motion picture companies.

Finally, the DTLA and the 5C companies remain willing, collectively and individually, to assist the five studios in attaining additional protections for their content. Unfortunately, the "broadcast watermark" solution the studios suggest is merely a concept on paper. Optimistically, it could be several years before a broadcast watermark technology would be fully evaluated, tested and ready for implementation. Thus, insistence on watermark protection for broadcast content will postpone deployment of digital television in the United States -- playing into the hands of those who seek to delay DTV for other, unrelated reasons.

We hope, Mr. Chairman, that you will continue the Commission's dedication to the rapid deployment of digital broadcast television, and that you will closely examine any assertion that the roll-out of digital television should be delayed or forestalled. Should you

Chairman Powell  
March 14, 2001  
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wish any further information regarding the DTLA and the status of the 5C DTCP technology, please feel free to contact me at your convenience.

Respectfully submitted,



Seth D. Greenstein  
Chairman, DTLA Policy Committee

cc: Representative Dingell  
Representative Markey  
Representative Pickering  
Representative Stearns  
Representative Tauzin  
Representative Towns  
Representative Upton  
Senator Boxer  
Senator Breaux  
Senator Burns  
Senator Hollings  
Senator Stevens  
Commissioner Furchtgott-Roth  
Commissioner Ness  
Commissioner Tristani  
Steven Broeckaert  
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## **Background on DTLA, 5C DTCP and the Current Issues over Broadcast Content**

5C DTCP emerged from a series of inter-industry discussions relating to digital video protection that began in mid-1996. Members of the motion picture industry, consumer electronics industry, information technology industry, cable and satellite delivery industry and the recording industry convened these discussions to examine legal and technological means for content protection. Among the first projects undertaken by this group was the development of protection for digital video signals transmitted along digital home networks (such as IEEE 1394 or USB). This inter-industry group defined the elements of a protection system that would meet the motion picture industry's needs. A public "call for proposals" was issued. From among the many respondents, five companies -- Intel Corporation, Hitachi, Ltd., Matsushita Electric Industrial Co., Ltd., Sony Corporation, and Toshiba Corporation -- eventually merged their proposals into a "best of breed" solution and formed the DTLA to license the 5C DTCP technology to content owners and device manufacturers.

In early 1998, DTLA presented this 5C DTCP technology to the motion picture industry. The motion picture companies accepted 5C DTCP as satisfying the technical requirements for content protection that they had set forth in the call for proposals. DTLA promptly obtained necessary export approvals and began licensing its technology to semiconductor, consumer electronics and information technology manufacturers. By summer 1998, DTLA had engaged the Motion Picture Association of America and its seven member studios in collective negotiations over the terms and conditions for licenses for those who wished to invoke the use of 5C DTCP to protect their motion pictures.

From the very start, in accordance with the technical specifications defined through the inter-industry discussions and the call for proposals, it was clearly understood that the 5C DTCP technology would apply protection only to content that was delivered to the consumer in a protected form. Thus, DTCP would carry forward protection for DVD discs encrypted by the studios using the CSS technology, and for motion pictures and television programming delivered via encrypted cable and satellite services. Importantly, it also was understood by all motion picture studios that 5C DTCP only can provide protection for content delivered to an output enabled with the 5C DTCP technology. As a matter of antitrust and intellectual property licensing law, the DTLA cannot impose requirements on devices or signals "upstream" in a source device, or "horizontally" upon other outputs of a source device.

DTLA has expanded the capabilities of the 5C DTCP technology in response to requests by the motion picture industry. As one example, approximately one year ago, several motion picture companies requested that 5C DTCP include the capability to prevent Internet retransmission of broadcast programming received via cable and satellite services. In addition, DTLA has agreed to give the motion picture companies the right to trigger 5C DTCP without paying any license fees, and the right to invoke a process to prevent DTLA from changing its technology or license terms to the material detriment of the motion picture companies' interests.

In November 2000, DTLA reached an agreement in principle with three motion picture companies -- Warner Bros., Sony Pictures Entertainment and The Walt Disney Company -- that would augment the 5C DTCP technology to provide several new capabilities, including protection against Internet retransmission. Although programming delivered over free terrestrial unencrypted broadcast television could not be protected by 5C DTCP, as currently designed, DTLA informed those companies that we remained willing to find alternative solutions using 5C DTCP or other technologies.

To date, approximately 50 technology companies have licensed 5C DTCP for inclusion in their products. In mid-December 2000, DTLA executed a Memorandum of Understanding with Warner Bros. and Sony Pictures Entertainment for the use of 5C DTCP to protect their motion pictures and television programming. We anticipate that DTLA and those two studios soon will conclude formal license agreements.

In mid-December 2000, the motion picture studios first requested that DTLA consider "mandatory watermark detection and response at the 5C interface in 5C source devices for: (a) enabling protection from Internet retransmission for previously-excluded over-the-air broadcast television; and (b) triggering a down-resolution or re-protection obligation for previously-excluded high definition content, including over-the-air broadcast television." In effect, these studios were asking DTLA to apply protection to content that the studios themselves deliver "in the clear" to the public at large.

By letter of December 28, 2000, DTLA asked several fundamental questions about these two proposals. For example: What constituted this "broadcast watermark" (since, at present, there has been no inter-industry consensus around any of several proposed video watermark technologies)? What devices might be expected to incorporate watermark detectors? And, whether the studios had presented such proposals to the manufacturers of source devices; and, if so, whether such manufacturers were willing to incorporate the detectors in their devices? This last requirement was particularly important since, as noted above, DTLA licenses cannot legally impose such requirements "upstream" in source devices, before the signals are directed to a digital output protected with 5C DTCP.

Five studios (i.e., all other than Warner Bros. and Sony Pictures Entertainment) responded by letter dated January 5, 2001. DTLA met with the five studios' representatives on January 11 to obtain answers to numerous remaining questions concerning the studios' requests, and to discuss whether and how these requests might be accommodated by license or by technology. Listening to the explanations given at the January 11 meeting, it became clear that we, DTLA, had not correctly understood the requests made in either the "short-form" December 13 letter or the more detailed letter of January 5. Of particular concern was that the request, as it was explained to us, could not be fully implemented as a matter of technology or license. DTLA could see no legal or technological means to compel upstream source devices to (a) include a watermark detector, and (b) ensure that all video content was channeled to the 5C DTCP module. DTLA demonstrated to the five studios why this was particularly true with respect to over-the-air reception of broadcast television in the personal computer environment. A consumer, for example, could obtain add-in tuner cards and software from separate sources

in the after-market, and DTLA could not assure either that any of these discrete elements would protect the video content, or that such devices would incorporate the 5C DTCP technology.

On January 25, 2001, the DTLA sent a detailed explanation of the legal constraints on DTLA and the technological limitations of PC architecture that hampered DTLA's ability to satisfy all of the studios' requests. We specifically noted that, although DTLA could not mandate by license the inclusion of a watermark detector upstream in source devices, we would be willing to explore the use of DTCP to protect terrestrial broadcasts where the source devices did incorporate watermark detection. Finally, we asked for the studios' commitment to negotiate with us. DTLA stated, however, that we were unwilling to engage the studios in negotiations if the studios would not commit to accept the negotiated result. We observed that several studios had recently expressed their desire to obtain harsher restrictions on consumer recording, through regulation or legislation, over and above the requests made in the studios' letters. Given our available resources, DTLA wrote that although we were prepared to continue our negotiations, we were unwilling to negotiate over some issues if we later would be compelled to fight additional, more contentious disputes before Congress or the FCC.

More than a month later, the five studios responded. By letter on February 27, 2001, the five studios claimed that DTLA again had "misperceived" their positions expressed in the January 5 letter and the January 11 meeting. Notwithstanding, the studios' letter did not explain the nature of such misperceptions. Instead, the letter requested that the DTLA commit to fully addressing "broadcast television's copy protection problem" by licensing, legislation, voluntary agreement, or a combination of such approaches. From the DTLA's perspective, and according to a fundamental principle underlying the inter-industry discussions, it is necessary to define the technological solution before creating the legal means to implement it. The first step is to determine what level of protection is technologically feasible. But to take that first step, the DTLA needs to understand, precisely, the nature of the protection that these studios seek. We hope that the five studios remain willing to engage DTLA in that dialogue.