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March 24, 2003

Ms. Marlene H. Dortch
Federal Communications Commission
Office of the Secretary
445 12th Street, N.W.
Washington, DC 20554

Re: *Ex Parte Presentation*. 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. Dortch:

On March 21, 2003, the undersigned on behalf of Thomson Inc., met with Catherine Bohigian, Legal Advisor to Commissioner Martin, to discuss Thomson's concern about possible Commission action to eliminate or stay the January 1, 2005 deadline prohibiting cable companies from offering integrated cable set-top boxes pursuant to 47 C.F.R. § 76.1204(a)(1).

I expressed both procedural and substantive concerns in this regard. After noting the extraordinary escalation in the number of ex parte presentations on the January 1, 2005 deadline over the past several weeks, I suggested that the Commission should take no action regarding this deadline until after the Commission has entered an Order regarding the CE-Cable DTV Compatibility Agreement ("CE-Cable Agreement") that is now pending before the Commission in this docket and PP Docket No. 00-67. One of the central arguments advanced by representatives of the cable industry in its various recent presentations to Commission staff and Commissioners is that the CE-Cable Agreement makes the January 1, 2005 deadline unnecessary. Representatives of the consumer electronics industry have disputed this contention. What is uncontested, however, and clear on the face of the CE-Cable Agreement is that its various components are interrelated and depend upon implementation by the Commission of certain recommended regulations. That being the case, I suggested that it would be inappropriate for the Commission to eliminate or amend the deadline without first acting upon the proposed rules upon which the entire CE-Cable Agreement is contingent. To do otherwise would be to remove the regulatory prod for development of a competitive cable set-top box marketplace without any assurance that the CE-Cable Agreement takes effect. That would be a classic case of putting the cart before the horse. I further suggested that subsequent to issuance of a Commission Order on the CE-Cable Agreement, it might be appropriate to issue an FNPRM inviting comment on the impact of that Agreement, if any, on the January 1, 2005 deadline, as well as comment on a variety of cost, technical and manufacturing scheduling issues that are in dispute in the record developed through

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multiple ex parte presentations over the last several months but on which formal comment has not been solicited by the Commission.

Such a process should not prejudice cable MSOs because they have been on notice for almost five years since adoption of 47 C.F.R. § 76.1204(a)(1) that they would be prohibited from offering integrated cable set-top boxes, bundling security and navigation functions, after January 1, 2005. Moreover, that process is consistent with Section 76.1208 which envisions sunset of these regulations after both the MVPD and the STB markets are "fully competitive" if such sunset would promote competition in the public interest. By eliminating or staying the January 1, 2005 deadline at this time, the Commission, in essence, would be sunsetting the regulations before either market was "fully competitive" and, indeed, before there was even one fully functional POD available to consumers to enable them to purchase at retail converter boxes which separate navigation from conditional access or security functions. In short, at this juncture, there is no retail market, much less a "fully competitive" retail market for navigation devices as required by Section 629 of the Communications Act

To the extent that the Commission may be concerned about any potential prejudice to the cable industry in the very near term because of the need to place manufacturing orders for cable set-top boxes, I suggested that it would be far preferable to simply extend the current January 1, 2005 date by six months to July 1, 2005, but leave this more relaxed deadline in place as opposed to staying it indefinitely. That approach would advance the DTV transition by underscoring the need for swift Commission approval of the CE-Cable Agreement and providing appropriate incentives to both the CE and cable industries to accelerate completion of a bidirectional compatibility agreement. Conversely, merely staying the effective date, in essence creating an open-ended extension likely would set in motion a regressive chain of events, not the least of which would be manufacturing decisions that would tend to keep the costs of POD enabled cable set-top boxes artificially high by suppressing the volume of such STBs and perpetuating competitive disadvantages experienced by CE manufacturers aspiring to be suppliers to a competitive, retail STB marketplace.

Finally, during the meetings, we discussed the competing data in various ex parte submissions relating to the additional costs of devices where navigation and security functions were unbundled versus costs of integrated set-top boxes. I expressed significant skepticism regarding the alleged costs reflected in various ex parte submissions made by representatives of the cable industry and Motorola and made the point that, to the extent there was a potential differential that could affect consumers, it was largely attributable to

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the noncompetitive nature of the cable set-top box market, the precise problem that Section 629 sought to rectify.

Respectfully submitted,

Lawrence R. Sidman

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Counsel to Thomson Inc.

LRS/paw

cc: Catherine Bohigian, Legal Advisor to Commissioner Martin
Rick Chessen, Associate Bureau Chief, Media Bureau