

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Implementation of Section 304)	CS Docket No. 97-80
of the Telecommunications Act of 1996)	
)	
Commercial Availability of Navigation Devices)	
)	
Compatibility Between Cable Systems)	PP Docket No. 00-67
and Consumer Electronics Equipment)	

**Written Ex Parte Presentation of CEA
on FCC Jurisdiction to Adopt the Proposed Encoding Rules
in the Plug and Play Agreement**

I. INTRODUCTION

Two sections of the Communications Act—Section 624A providing for compatibility between cable systems and consumer electronics equipment, and Section 629 requiring commercial availability of navigation devices—provide the FCC with jurisdiction to adopt the encoding rules proposed in the December 19, 2002, “Plug and Play” agreement.¹ Both provisions require the FCC to balance the interests of consumers and manufacturers in the competitive availability of cable-compatible electronics equipment,² with the interests of cable operators in

¹ See Letter from Carl E. Vogel, President and CEO, Charter Communications, et al., to FCC Chairman Michael K. Powell (Dec. 19, 2002); Memorandum of Understanding Among Cable MSOs and Consumer Electronics Manufacturers. The Commission put the agreement out for comment on January 10, 2003. See *In re* Implementation of Section 304 of the Telecommunications Act of 1996, CS Docket No. 97-80, *Notice of Proposed Rulemaking*, 18 FCC Rcd 518 (2003).

² 47 U.S.C. § 544a(b)(1); 47 U.S.C. § 549(a).

preventing “theft of service.”³ The FCC determined in its September 18, 2000, *Declaratory Ruling* in the navigation devices proceeding that copy protection measures are a permissible way to meet the statute’s direction to safeguard cable signal security.⁴

The proposed encoding rules accomplish the mandated statutory balance by setting copy-protection guidelines for licensing agreements. Ten years of FCC decisions construing sections 624A and 629 in separate proceedings demonstrate that the FCC has the requisite authority to adopt such rules in the multichannel video programming distribution (MVPD) context. With the Plug and Play agreement, these two streams are converging into a single river. That river can break the barriers to ubiquitous deployment of cable-compatible digital devices. The Motion Picture Association of America seeks to erect a dam, however, by challenging the FCC’s jurisdiction to approve the encoding rules.⁵ This represents a change in position for the MPAA, which until now had steadfastly and effectively argued that the Commission had authority to determine the extent to which licenses may impose copy-protection requirements in the MVPD context⁶—a position the FCC eventually adopted in the *Declaratory Ruling*.

The Plug and Play agreement is the culmination of years of work by the FCC, Congress and industry. The encoding rules are an indispensable part of that agreement, which cannot stand

³ 47 U.S.C. § 544a(b)(1); 47 U.S.C. § 549(b).

⁴ *In re* Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices, CS Docket No. 97-80, *Further Notice of Proposed Rulemaking and Declaratory Ruling*, 15 FCC Rcd 18199, 18209-11 (2000).

⁵ MPAA Comments in CS Docket No. 97-80, at 12-13 (Mar. 28, 2003); MPAA Reply Comments in CS Docket No. 97-80, at 8-10 (Apr. 28, 2003).

⁶ *See, e.g.*, MPAA Reply Comments in CS Docket No. 97-80, at 2 (Dec. 18, 2000) (stating that “the Commission explicitly reserved the possibility of reviewing a limited class of properly presented terms ‘involving finalized licenses’”).

without them. Were the FCC to conclude now that it lacks jurisdiction to approve the proposed rules, the FCC would spoil the best fruits of these labors, frustrate the congressional mandates of sections 624A and 629, and contradict the Commission's own precedent.

II. SECTION 624A AUTHORIZES THE FCC TO ADOPT THE PROPOSED ENCODING RULES

Section 624A requires the Commission to issue such regulations as are necessary to ensure:

compatibility between televisions and video cassette recorders and cable systems, consistent with the need to prevent theft of cable service, so that cable subscribers will be able to enjoy the full benefits of both the programming available on cable systems and the functions available on their televisions and video cassette recorders.⁷

In light of this statutory language, no one has seriously questioned the FCC's authority to adopt the proposed interoperability specifications and compatibility labeling rules in the Plug and Play agreement. What a few commenters apparently fail to comprehend, however, is that Section 624A requires the FCC to balance three interests: 1) the interest of equipment manufacturers in being able to design compatible devices; 2) the interest of cable operators and their vendors in preventing theft of cable service through measures that enhance secure delivery of signals; and 3) the interest of consumers in enjoying the full benefits of cable programming and the features of their televisions.⁸ Indeed, Section 624A provides that "cable operators should use technologies that will prevent signal thefts while permitting consumers to benefit from [new and innovative]

⁷ 47 U.S.C. § 544a(b)(1) (emphasis added).

⁸ See *In re* Implementation of Section 17 of the Cable Television Consumer Protection and Competition Act of 1992, Compatibility Between Cable Systems and Consumer Electronics Equipment, ET Docket No. 93-7, *First Report and Order*, 9 FCC Rcd 1981, at ¶ 17 (1994), *Memorandum Opinion and Order*, 11 FCC Rcd 4121 (1996).

features and functions in ... receivers and recorders.”⁹ To accomplish that balancing act, Section 624A directs the FCC to “determine whether and, if so, under what circumstances to permit cable systems to scramble or encrypt signals or to restrict cable systems in the manner in which they encrypt or scramble signals.”¹⁰

The FCC also has found that Section 624A gives it continuing oversight to update its rules as developments in technology raise new issues. Specifically, the FCC stated in its 1994 *First Report and Order* in ET Docket No. 93-7 on cable compatibility that “Section 624(d) requires the Commission to review periodically and, if necessary, modify the regulations issued pursuant to this section in light of actions taken in response to the regulations and to changes in cable systems, TV receivers, VCRs and related technology.”¹¹ As industry has reacted to the regulations and technology has evolved, issues surrounding digital, cable-ready receivers have increasingly focused on protection of content. So much so, in fact, that the FCC was squarely confronted with issues of copy protection in its 2000 *Declaratory Ruling* in CS Docket No. 97-80 on commercial availability of navigation devices. There it held that copy protection is a species of system security, as our discussion of Section 629 explains in further depth, below.

Although most of the FCC’s copy-protection discussions regarding digital equipment have come in the context of Section 629, the need for those discussions is an outgrowth of the “theft of service” language common to both statutory sections.¹² Indeed, the FCC has recognized

⁹ 47 U.S.C. § 544a(a)(3).

¹⁰ 47 U.S.C. § 544a(b)(2) (emphasis added).

¹¹ *In re* Implementation of Section 17 of the Cable Television Consumer Protection and Competition Act of 1992, Compatibility Between Cable Systems and Consumer Electronics Equipment, ET Docket No. 93-7, *First Report and Order*, 9 FCC Rcd 1981, at ¶ 12 (1994).

¹² 47 U.S.C. § 544a(b)(1); 47 U.S.C. § 549(b).

that Section 624A cable compatibility raises copy-protection concerns, but has generally chosen to address the matter in the broader Section 629 context, which applies to all MVPDs.¹³ Nor was the impact of system security on the ability of cable subscribers to use their consumer electronics devices a new issue in 2000. As far back as its 1994 cable compatibility *First Report and Order*, the FCC observed that it had authority under Section 624A to issue rules addressing consumers' expectations to be able to use the premium features of their devices, such as the ability to record programming.¹⁴ In that order, the FCC adopted regulations prohibiting cable operators from scrambling signals they carry on their basic service tier.¹⁵ The FCC also noted at the time that the consumer electronics and cable industries were developing a standard decoder interface in "cable ready" consumer TV equipment and associated component descrambler/decoder devices to address scrambling issues.¹⁶ The FCC chose not to act at the time because the parties were still in the process of developing standards. The Commission recognized, nonetheless, its authority to "develop rules establishing a standard for a Decoder Interface connector and requirements for its use."¹⁷

As these types of issues continued to evolve, they increasingly began to implicate copy protection. Indeed, by the FCC's 2000 *Report and Order* in PP Docket No. 00-67 on cable compatibility, the Commission was faced with arguments by the MPAA that any receiver labeled

¹³ See, e.g., *In re Compatibility Between Cable Systems and Consumer Electronics Equipment*, PP Docket No. 00-67, *Report and Order*, 15 FCC Rcd 17568, ¶¶ 1, 3, 15 (2000).

¹⁴ *In re Implementation of Section 17 of the Cable Television Consumer Protection and Competition Act of 1992, Compatibility Between Cable Systems and Consumer Electronics Equipment*, ET Docket No. 93-7, *First Report and Order*, 9 FCC Rcd 1981, at ¶ 7 (1994).

¹⁵ *Id.* at ¶ 2.

¹⁶ *Id.* at ¶ 3.

¹⁷ *Id.* (emphasis added)

“cable-ready” must contain copy-protection measures.¹⁸ Heeding these arguments, the FCC required digital receivers that connect directly to a cable system to incorporate a POD, and the FCC designed its labeling requirements accordingly.¹⁹ Those labeling requirements distinguish between unidirectional equipment that can only receive one-way services from the cable system, and bidirectional equipment that can also communicate back to the cable system to access advanced services.²⁰ Because industry had reached agreement in principle regarding certain technical specifications but not yet completed the specifications themselves, the FCC kept the docket open and required periodic reports from the cable and consumer electronics industries.²¹ Significantly, this reflected the FCC’s view that it could adopt regulations based on industry proposals. Indeed, the FCC stated that “[b]y keeping [the compatibility] docket open and imposing these reporting requirements, we preserve the option of incorporating into our rules the formal standards that we expect will result from continuing industry efforts to implement the February 22, 2000, agreements and to develop specifications for a bidirectional direct connection digital television receiver.”²²

The recent Plug and Play agreement represents just such “continuing industry efforts” to comply with FCC oversight, and develop standards and proposals for the Commission to “incorporate into” its rules. Although the agreement only addresses issues surrounding

¹⁸ *In re Compatibility Between Cable Systems and Consumer Electronics Equipment*, PP Docket No. 00-67, *Report and Order*, 15 FCC Rcd 17568, 17573 ¶ 15 (2000) (addressing MPAA Comments in PP Docket No. 00-67, at 4-5 (May 24, 2000)).

¹⁹ *Id.*.

²⁰ *Id.* at ¶¶ 17-20.

²¹ *Id.* at ¶ 21.

²² *Id.*

unidirectional devices, work on bidirectional issues has already begun. To date, ironing out terms in licensing agreements has been the main impediment to compatibility. The focus of the debate in congressional and FCC roundtables, as well as among the parties, has been parity between direct broadcast satellite and cable, and the need for “rules” governing any copy-protection “tools.” The proposed encoding regulations are these very rules, and the FCC’s Section 624A authority to set guidelines regarding compatible cable signal security allows the Commission to approve them. The proposed encoding rules are the embodiment of the Section 624A authority the Commission described in 1994 to address consumer recording expectations in the cable services context.

III. SECTION 629 PROVIDES A CLEAR BASIS FOR THE FCC TO ADOPT THE PROPOSED ENCODING RULES

Section 629 is even broader than Section 624A. Section 629(a) directs the FCC to “adopt regulations to assure the commercial availability, to consumers of multichannel video programming and other services offered over multichannel video programming systems, of converter boxes, interactive communications equipment, and other equipment used by consumers to access multichannel video programming and other services offered over multichannel video programming systems.”²³ At the same time, Section 629(b) prohibits the Commission from adopting regulations that “would jeopardize security of multichannel video programming and other services offered over multichannel video programming systems, or impede the legal rights

²³ 47 U.S.C. § 549(a).

of a provider of such services to prevent theft of service,”²⁴ much as Section 624A does. Thus, Section 629 requires the FCC to ensure the competitive availability of consumer electronics devices for MVPD systems, such as cable and direct broadcast satellite, without impeding the ability of MVPD providers to prevent “theft of service.” In fact, the FCC has specifically stated that “Section 629(b) requires the Commission to adopt regulations that promote commercial availability while protecting system security.”²⁵

Congress also directed the FCC to incorporate industry proposals as a means of accomplishing its navigation devices mandate. Indeed, Section 629 specifically instructs the FCC to adopt navigation devices rules “in consultation with appropriate industry standard-setting organizations.”²⁶ The FCC determined that meeting the requirements of Section 629 would require separation of security from non-security functions in navigation devices.²⁷ Consistent with the direction of Section 629 to work with industry groups, the FCC chose to accomplish this

²⁴ 47 U.S.C. § 549(b) (emphasis added).

²⁵ *In re* Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices, CS Docket No. 97-80, *Order on Reconsideration*, 14 FCC Rcd 7596, 7608 ¶ 27 (1999), *aff’d*, *General Instrument Corp. v. FCC*, 213 F.3d 724 (D.C. Cir. 2000).

²⁶ 47 U.S.C. § 549(a).

²⁷ *In re* Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices, CS Docket No. 97-80, *Report and Order*, 13 FCC Rcd 14775, ¶ 62 (1998), *Order on Reconsideration*, 14 FCC Rcd 7596 (1999), *aff’d*, *General Instrument Corp. v. FCC*, 213 F.3d 724 (D.C. Cir. 2000).

by accepting the cable industry's offer to devise standards through CableLabs' OpenCable initiative, subject to continued FCC oversight.²⁸

As now, the core impasse was copy protection. The MPAA feared that the security interfaces would allow digitally compressed content to pass through unencrypted. The solution the industry developed to resolve MPAA's concerns was to use Motorola's patented DFAST encryption technology, which would be licensed by CableLabs. The copy-protection (and some other) provisions of the proffered license drafts, however, raised concerns among consumer electronics manufacturers and retailers. They argued that the provisions would violate FCC regulations limiting licensing restrictions to those that protect the network from harm and preserve cable operators' conditional access rights. Thus, they suggested that additional FCC regulations would be necessary if the licensing provisions were to pass muster.

The FCC resolved this issue in its September 18, 2000, *Declaratory Ruling* in CS Docket No. 97-80 on commercial availability of navigation devices. The Commission determined that copy protection is a species of system security. As a result, the FCC concluded that it could and should determine whether copy-protection-related licensing provisions are consistent with the Commission's regulations confining licensing restrictions to "security" issues. The Commission observed that:

[c]opy protection for digital video content in its current formulation and in a very broad sense, involves techniques of encoding content as it crosses interfaces and of establishing two-way communication paths and protocols across these interfaces so that video content is only released after the receiving device is

²⁸ *In re* Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices, CS Docket No. 97-80, *Report and Order*, 13 FCC Rcd 14775, ¶ 81 (1998).

queried by the sending device and confirms that it is an eligible content recipient.²⁹

Thus, the FCC held that “[s]ome measure of anti-copying encryption is ... consistent with the intent of the rules,” and so could be incorporated into license agreements.³⁰ The FCC acknowledged that, unlike in the strict “security” case, in a copy protection regime a measured balance must be struck. It observed that “content providers [were] seeking copy protection licensing terms that limit consumers to making a single copy of some high quality digital content, that is not otherwise subject to additional restrictions (such as is the case with pay-per-view or video-on-demand programming).”³¹ The FCC clarified that although “the inclusion of some amount of copy protection within a host device does not automatically violate the separation requirement of the navigation devices rules,” the FCC did not intend “to signal that any terms or technology associated with such licenses and designated for copy protection purposes are consistent with [the] rules.”³² The FCC concluded “that such issues are best resolved if specific concerns involving finalized licenses that implicate [the] navigation devices rules are presented to the Commission.”³³

The ruling that some, but not all, copy protection measures would pass muster, effectively resolved, in 2000, the question of whether the FCC could and would impose or require

²⁹ *In re* Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices, CS Docket No. 97-80, *Further Notice of Proposed Rulemaking and Declaratory Ruling*, 15 FCC Rcd 18199, 18209-10 ¶ 27 (2000) (emphasis added).

³⁰ *Id.* at ¶ 28 (emphasis added).

³¹ *Id.*

³² *Id.* at ¶ 29 (emphasis added).

³³ *Id.* (emphasis added).

limitations on the use of copy protection encoding. The FCC review of copy-protection provisions necessarily means that the FCC recognized its authority to determine whether specific copy-protection provisions are appropriately tailored so as to accomplish the right “measure” and “amount” of anti-copying, and to approve, modify, or reject such provisions, accordingly. The FCC also warned that “[s]hould additional evidence indicate that content providers are requiring disparate measures of copy protection from different industry segments, the Commission will take appropriate action.”³⁴ Thus, almost three years ago, the FCC expressly recognized its jurisdiction to address issues of copy-protection parity across sectors of the industry.

The encoding rules that the cable and consumer electronics industries propose in the Plug and-Play agreement are just such copy-protection provisions in a finalized license agreement intended to accomplish the appropriate, balanced measures of anti-copying and parity. To minimize the burden of having to approve licensing provisions seriatim, and in an effort to achieve a certain amount of stability in an otherwise rapidly evolving industry, the consumer electronics manufacturers and cable operators have presented the Commission with a standard form of license. The proposed encoding rule regulations that accompany this license are the only practical, effective, and enforceable means available to provide the balanced system security that the FCC said it would look for in examining licenses. The proposed encoding rule regulations also address the vital issue of parity between cable and DBS, something both the FCC and the MPAA have identified as essential. None of this could readily be accomplished with piecemeal licensing agreements. Consequently, the encoding rules are fundamental to the Plug and Play agreement and to the licensing regime that the FCC envisioned. They are not severable from the

³⁴ *Id.* at ¶ 31.

rest of the agreement. Thus, FCC review and approval of the proposed encoding rules is entirely consistent with its September 18, 2000 *Declaratory Ruling*.

IV. INCONSISTENCIES IN THE MPAA'S ADVOCACY

The MPAA argues now that the FCC does not have authority to implement the proposed encoding rules because they bear on copy protection,³⁵ yet, as discussed above, much of the September 18, 2000, *Declaratory Ruling* arose from previous MPAA arguments that copy protection is integral to conditional access, and that uniform standards are essential to the licensing of content for multichannel video programming distribution. Indeed, the MPAA argued a mere twelve days before the FCC's declaratory ruling that:

[i]f the DFAST license does not include copy management obligations, consumers who purchase retail devices without copy management will not receive secure content. There is no middle ground here, or gray area. Either devices will respond to copy management instructions, or they won't. If they won't, they cannot receive high-value, copy protected content. This is why the DFAST license must include copy management requirements. Without them, consumers will be adrift in a sea of uncertainty as to whether they will be able to receive high value content.³⁶

Less than two weeks later, the FCC concluded that licensing agreements necessary to ensure cable-DTV receiver interoperability and separated system security could include copy-protection provisions. For the FCC to reverse itself now and determine that it does not have authority to approve copy-protection-related encoding rules would call into question the validity of the FCC's earlier determinations in the navigation devices proceeding, and leave the Commission with no viable path for complying with Congress' statutory mandates. The FCC

³⁵ MPAA Reply Comments in CS Docket No. 97-80, at 8 (Apr. 28, 2003).

³⁶ Letter from Fritz E. Attaway, Senior Vice-President, Government Relations, MPAA, to Magalie R. Salas, PP Docket No. 00-67, attach. at 1 (Sept. 6, 2000, emphasis added).

jurisdiction that particular statutory provisions confer cannot be turned on and off like a spigot, depending upon what suits one party in interest at a particular period in time.

The inconsistency in the positions adopted by the MPAA regarding the FCC's jurisdiction to require copy protection or content management mechanisms in licenses is not limited to its past versus its present advocacy concerning Section 629. It is evident, perhaps even more strikingly, in its insistence today that the FCC lacks jurisdiction to adopt the proposed encoding rules essential to implementation of the Plug and Play agreement while simultaneously arguing that the FCC possesses the authority to impose a twenty page regulation prescribing specific digital content protection technologies and rules to implement its Broadcast Flag proposal.³⁷ To reach this conclusion, the MPAA dismisses the statutory bases of jurisdiction in Sections 624A and 629 which deal explicitly with theft of service and MVPD signal security, while creating out of whole cloth jurisdictional arguments based on Section 336 which has nothing to do with safeguarding the security of content. The MPAA's advocacy in favor of FCC jurisdiction to impose Broadcast Flag related regulation dramatically undermines its contention that the FCC lacks jurisdiction to adopt the proposed encoding rules at issue here.

MPAA also argues that the encoding rules limit the ability of distributors to implement protection technologies. MPAA contends, therefore, that their approval by the FCC would violate the Section 629(b) prohibition against FCC regulations that “jeopardize security of multichannel

³⁷ Letter from Bruce E. Boyden, Attorney, Proskauer Rose LLP, in MB Docket No. 02-230, to Marlene H. Dortch, FCC Secretary, Attach. at n.20 (June 24, 2003). In this filing the MPAA labors, unsuccessfully, to carve out the “Plug & Play” proceeding from an otherwise expansive view of FCC jurisdiction.

video programming.”³⁸ As the above history indicates, the MPAA has this exactly backwards. The encoding rules protect MVPD service and content by ensuring that digital consumer electronics devices can connect to MVPD services over encrypted interfaces in the balanced fashion that the FCC contemplated. Both the Commission and the courts have recognized that a content provider’s interest in copy protection is important, but not absolute.³⁹ The Commission has also made clear that “Section 629(b) does not ... require the Commission to abandon its obligation to ensure commercial availability of navigation devices in any situation that could raise a security concern.”⁴⁰ The U.S. Court of Appeals for the D.C. Circuit has taken the same view, holding that the “premise that any Commission action that (even slightly) increases security risk ‘jeopardizes’ cable programming is wrong. To place something in ‘jeopardy’ [under Section 629] means to subject it to *serious* or *significant* danger.”⁴¹ The cable industry would not have signed on to the agreement if it posed such a risk.

The MPAA’s claims that the encoding rules impermissibly interfere with property interests in copyright are unfounded.⁴² Copyright law does not give a holder the right to use, or to prevent the use, of any particular output. Rather than grant unlimited “property rights,” copyright law confers particular rights limited in time and scope as circumscribed by statute. As the Supreme Court explained in *Twentieth Century Music Corp. v. Aiken*:

³⁸ MPAA Reply Comments in CS Docket No. 97-80, at 9 (April 28, 2003) (citing 47 U.S.C. § 549(b)).

³⁹ *See Sony Corp. v. Universal City Studios*, 464 U.S. 417 (1984).

⁴⁰ *In re* Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices, CS Docket No. 97-80, *Order on Reconsideration*, 14 FCC Rcd 7596, 7608 ¶ 27 (1999).

⁴¹ *General Instrument Corp. v. FCC*, 213 F.3d 724, 731 (D.C. Cir. 2000).

⁴² MPAA Comments in CS Docket No. 97-80, at 12 (Mar. 28, 2003).

The limited scope of the copyright holder's statutory monopoly, like the limited copyright duration required by the Constitution, reflects a balance of competing claims upon the public interest: Creative work is to be encouraged and rewarded, but private motivation must ultimately serve the cause of promoting broad public availability of literature, music, and the other arts.⁴³

The copyright law does not convey a right to exclude all uses; nor are the rights it does convey immune to other public policy considerations.⁴⁴ Rather, the copyright law sets forth certain exclusive rights in reproduction and distribution, tempered by provisions regarding the rights of users.⁴⁵ The law, as the Commission is well aware, also acknowledges several compulsory licenses. It does so, ultimately, as a means of encouraging innovation for the benefit of the public, not exclusively for the benefit of the copyright holder. The proposed encoding rules do not govern a program provider's actions or even the content owner's rights under copyright law. Those rights, and what constitutes their infringement, continue to be determined by statute and judicial interpretation. Content owners remain free to assert those rights.

V. CONCLUSION

At their core, the MPAA's concerns seem to be addressed to matters other than FCC jurisdiction. Indeed, the MPAA has argued in the navigation devices proceeding that FCC-approved licenses must contain copy-protection provisions, as discussed above, and has argued recently that the FCC has copy-protection jurisdiction to implement the broadcast flag. The

⁴³ 422 U.S. 151, 156 (1975).

⁴⁴ *Computer Associates Int'l v. Altai*, 982 F.2d 693, 711-12 (2d Cir. 1992).

⁴⁵ *See, e.g.*, 17 U.S.C. §§ 107 ("fair use") and 109 ("first sale").

MPAA, as a co-author or proponent of prior enactments and licenses that form the bases for these proposed encoding rules, appears to be seeking leverage with respect to other concerns.⁴⁶

The FCC has ruled that copy protection is a species of MVPD system security, and that the Commission will review copy-protection provisions in finalized licensing agreements. The proposed encoding rules in the plug-and-play agreement are essential to any such copy-protection provisions. Together with the proposed interoperability and labeling rules, they represent the only feasible way to enable manufacturers to design and market digital consumer electronics devices that are compatible with MVPD service, but also respect the need for balanced copy protection as a species of system security. Consequently, the FCC may—indeed must—approve the rules under sections 624A and 629. To rule otherwise would contradict congressional mandate and FCC precedent, and would call into question the validity of the FCC’s previous determinations in the cable compatibility and navigation devices proceedings.

⁴⁶ For example, the MPAA would like the cooperation of other industries in achieving a legislative solution to “analog hole” issues.

Respectfully Submitted,

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July 25, 2003

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