

August 11, 2003

**VIA ELECTRONIC FILING**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

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

Dear Ms. Dortch:

The undersigned consumer and public-interest organizations are writing this letter to express our concern about aspects of the Commission's ongoing cable compatibility "digital plug and play" proposal (CS Docket No. 97-80, PP Docket No. 00-67, Dec. 19, 2002, hereafter "*Plug-and-Play Proposal*." ) We note that there are many consumer-friendly elements in the *Plug-and-Play Proposal*, and we applaud the efforts of the cable and consumer electronics industries to reach an agreement that will lead to new, more cost-effective digital cable and television products. At the same time we are concerned that a critical aspect of the proposal would enshrine a copy protection technology that would prevent the use of computers — and many other future digital devices and services — with the cable television system. This flaw must be remedied before the Commission moves forward with the proposal.

Many similar concerns have been raised in an ex-parte letter that the Microsoft Corporation and Hewlett-Packard Corp. filed August 8 with the Commission regarding the proposal. While our organizations do not necessarily endorse every particular of the Microsoft/HP filing, we believe it accurately expresses the extent to which the *Plug-and-Play Proposal* locks out the use of computers and computer technologies from interoperability with the cable-television system.

In particular, we wish to raise the following concerns about the *Plug-and-Play Proposal*:

- The Plug-and-Play Proposal excludes personal computers and other information-technology devices.
- Personal computers and other information-technology devices will increasingly be central to the consumer experience of digital content.

- A wide range of important networking technologies, ranging from WiFi (802.11x) to USB to the Internet Protocol, are plainly and unnecessarily excluded from the Plug-and-Play Proposal.
- If the Commission chooses to adopt some or all of the Plug-and-Play proposal, it must revise the proposed regulations to include PCs and other digital technologies as potential platforms for cable content, and it must furthermore ensure that the DFAST license allows for a diversity of content-protection technologies and schemes, and not just the limited technologies contemplated by the original proposal.
- Procedures for testing and certifying “digital-cable-ready” and content-protection technologies must be neutral and transparent and based on objective criteria, and should be administered, to the extent administration is necessary, by a more neutral authority than CableLabs.
- The approval of copy-protection technologies and schemes for “digital cable ready” devices should be based on an objective process that accounts for consumer and public interests, and that permits a diversity of schemes that could support a wide variety of consumer uses, distribution models, and technologies.

We believe that the Plug-and-Play Proposal misconceives the capabilities of personal computers to protect content (even when distributed over WiFi or the Internet). The “open architectures” of PCs and the Internet do not make the distribution of content through those architectures inherently insecure. Moreover, highly effective digital protection schemes now exist and continue to be developed that prevent third-party interception of content that is transmitted through open architectures.

Furthermore, while we are hesitant to agree that content protection must be as far-reaching as some parties would insist, we note that protection schemes based on encryption, perhaps combined with rights-expression languages such as XrML, provide more opportunities for flexible content protection and for new business models than does the limited scheme outlined in the Plug-and-Play Proposal. At the same time, such schemes also can protect content owners who wish to rely on established business models.

In closing, we wish to remind the Commission of the policy it articulated in its Fourth Report and Order on ATSC standard-setting:

“In particular, we conclude that our decision not to specify video formats will result in greater choice and diversity of equipment, allow computer equipment and software firms more opportunity to compete by promoting interoperability, and result in greater consumer benefits by allowing an increase in the availability of new products and services.... Thus, we avoid the possibility that we could inhibit development of services which might, in fact, draw consumers more readily to embrace digital broadcasting and thus, hasten its adoption. By not

specifying video formats in this respect we foster competition among those aspects of the technology where we are least able to predict the outcome, choosing instead to rely upon the market and consumer demand.”

*Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, Fourth Report and Order*, MM Docket No. 87-268, 11 FCC Rcd 17,771, 17,789 (1996).

We believe the Commission had the right vision in 1996 when it determined that unleashing the creative power of the computer hardware and software sectors would be the best road to accomplishing the DTV transition. We believe this vision is applicable both to DTV broadcasting and to DTV transmission over the cable infrastructure — both media are critical avenues to the ultimate transition to digital television. We urge that the Commission give careful consideration these concerns and to those expressed in the Microsoft and Hewlett-Packard letter of August 8, which underscores the extent to which the *Plug-and-Play Proposal* may take us down a more problematic and less successful road. The Commission has the power to steer us back onto the better road — one that would support innovation and growth in digital content delivery products and services. We urge the Commission to do so.

Respectfully submitted,

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