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August 27, 2003

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

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

**EX PARTE**

Dear Ms. Dortch:

This letter serves to notify the Commission that on August 26, 2003, David Murray, Vice President, Government Affairs, and the undersigned met with Jordan Goldstein, Senior Legal Advisor, Office of Commissioner Copps, to discuss the views of SBCA on the issues presented in the above-referenced proceedings. These issues include the adoption of the Memorandum of Understanding agreed to by cable providers and the consumer electronics industry in December 2002. The position of SBCA is summarized in the attached materials, which were distributed at the meetings. The discussion also reflected comments submitted to the Commission by SBCA in the above-referenced dockets on March 28, 2003.

Please contact me if there are any questions about these issues.

Sincerely,

A handwritten signature in black ink that reads "Joy O'Brien". The signature is written in a cursive, slightly slanted style.

Joy O'Brien  
Manager, Government Affairs  
SBCA

cc: Jordan Goldstein



### **SBCA OPPOSES PLUG AND PLAY MOU**

- As the trade organization representing several key players in the digital television transition, SBCA supports the FCC in its efforts to advance digital television. We also have a significant interest in and a critical voice to raise in response to the proposed Memorandum of Understanding (MOU) process.
- Unfortunately, the MOU failed to reflect the views of a collective market-based solution because it excluded several major industry parties such as SBCA, Direct Broadcast Satellite (DBS) and the content providers from its negotiation and drafting process.
- DBS providers were the first multichannel video program distributors (MVPDs) to broadcast television in digital format, and they continue to be the leaders in the distribution of digital and high definition (HD) television content and the offering of advanced and interactive television services to consumers. America's two largest DBS operators, DIRECTV and EchoStar, members of SBCA, have led the nation in delivering all-digital television programming and have led the MVPD industry in offering nationally distributed HD programming.
- The Commission should not undertake any action or regulation resulting from the MOU until it takes into consideration the diverse interests, including DBS, and the repercussions to those interests involved in such regulation.
- Efforts by the FCC to advance digital and HD television and any resulting regulations must respect consumer choice and fair use rights, and should be narrowly crafted to permit free-market competition in the consumer electronics and MVPD industries as a whole.
- Though the MOU proposes that the FCC adopt new regulations that would impose new business models and technical standards, crafted, certified and enforced by the cable industry it represents only a consensus of those members of the cable industry and the consumer electronics (CE) manufacturers that participated in its drafting.
- The MOU is not subject to revision or modification and does not allow for other parties to comment or respond to its content. In fact, it allows parties to *withdraw* from its effect if any changes or deletions are made to the MOU. This precludes meaningful participation by other key participants, including the satellite industry, content providers and consumers, and demonstrates the exclusionary nature of the MOU process.

- The exclusion of the SBCA and its member companies from the MOU process resulted in a proposal that would limit all players in the MVPD market to a lower cable standard, instead of raising the standards and quality of cable to those of the best MVPD – the DBS industry. The MOU is yet another effort by the cable industry to protect its monopoly by attempting to limit competition.
- It would be much more beneficial to consumers if the market is left free so competitors can offer new and dynamic services and television programming in a higher quality state – digital. Therefore, the Commission, through this rulemaking process, should ensure that the provisions of the MOU that unfairly discriminate against DBS and all excluded stakeholders are rectified.
- In the event that the Commission decides to impose regulations as a result of the MOU, such regulations should be limited to affect the essential elements of the “plug and play” requirements, and should be limited solely to the CE and cable interests that reached agreement to the terms of the MOU.
- The stated purpose of the MOU is to provide for “cable ready” digital televisions and that is all the Commission should address in any rulemaking. The Commission should seek to separate the consumer recording rights implications of the MOU from the compatibility of unidirectional cable systems and digital televisions.