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September 3, 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:

On September 2-3, 2003, representatives of Public Knowledge, Consumers Union and Microsoft, and the undersigned as its counsel (collectively, "the parties"), met with a number of Commission staff and with Commissioners Adelstein and Copps to explain further the need for changes in the plug-and-play rules to ensure that personal computers (PCs) and other IT devices are eligible to be marketed under the Digital Cable Ready label. (Attachment A contains a list of meeting participants.) The parties discussed in detail the August 8 *ex parte* filing from Microsoft and Hewlett-Packard, the July 25 *ex parte* submission by Microsoft that reviewed both the *Proposal* and issues surrounding the "broadcast flag," as well as the August 11 *ex parte* letter from Public Knowledge, Consumers Union and Center for Democracy and Technology, which expressed general support for the Microsoft/H-P position. In addition, Microsoft conducted a demonstration of its Windows XP Media Center Edition, which represents the evolution of home PCs into digital media hubs. This device brings together entertainment choices and allows one to access them with a single remote control. Microsoft explained that with an MCE-PC, one can watch television using a cable or satellite set top box or an antenna; watch, pause, and control live television; access programming information through a electronic programming guide; watch DVDs and store and sort movies; store and listen to music; store and edit digital pictures into slide shows; and access the Internet.

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In the meetings, the parties highlighted the following points:

- Though the *Plug-and-Play Proposal* apparently was not intended to exclude PCs *per se*, the NCTA reply comments acknowledge that the compliance and robustness rules required of devices deploying PODs likely would have the effect of excluding many PCs.<sup>1</sup> The parties are not proposing a change in the substantive goals that the *Proposal* seeks to achieve – promoting the deployment of digital cable devices while protecting the security of *content* itself. Rather, the parties simply urged the Commission to not preclude the PC and other IT devices from playing a role in meeting those goals. Certainly, PCs have an open internal architecture through which content and unrelated data must be able to move freely, but that architecture alone does not render PCs *per se* unable to protect the security of content. Encrypted, copyrighted *content*, regardless of and independent of the connections (internal and external) or networks over which it is distributed, is routinely transmitted inside the PC and Internet architecture. In fact, consumers today can download legally music and video over the Internet and enjoy DVDs on their computer. In addition, the stunningly popular Wi-Fi technology for in-home connectivity is made possible because of encryption technology. The Commission's plug-and-play rules should not interfere with use of that output technology.
- The Commission should not ordain one particular type of content-protection technology. The current *Plug-and-Play Proposal* precludes PCs and other open-architecture technologies, and that puts the Commission in the misplaced position of choosing the method and technology for deploying and protecting content before the market has evolved and consumers have had an opportunity to choose from a variety of technological alternatives. To remedy this problem, the August 8 *ex parte* filing recommends changes to the plug-and-play rules to recognize devices with open architectures and alternate methods of content protection. Moreover, the Commission should not ordain one entity, CableLabs, as having the ability to define the Test Suite and conduct its test. Instead, the Commission should require a neutral certification process that is transparent, objective and efficient.
- The compliance and robustness rules in the DFAST License (which is required to deploy the POD/CableCARD needed to receive encrypted digital cable programming) currently do not allow for diverse and flexible network connections and content protection techniques. Such techniques include digital rights management (DRM) technologies that protect content wherever it travels by embedding and associating the appropriate usage rights policy with the content, independent of the underlying network technologies

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<sup>1</sup> NCTA Reply Comments at 31.

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through which it may pass. In the *Navigation Devices Declaratory Ruling*, the Commission recognized its authority to review and pass judgment on the terms of licensing agreements, and as was outlined in the August 8 *ex parte* filing and in a further submission filed today, there are numerous provisions in the DFAST License requiring modification and Commission guidance.

- Including PCs and other IT devices will hasten the DTV transition. All the affected industries – consumer electronic, cable, *and IT* – as well as consumers want to see the transition happen quickly and effectively. Leaving PCs out of the Digital Cable Ready devices regime, on the other hand, would undermine the Commission’s goal of speeding along the transition to DTV. And waiting until the industries have settled on a “bi-directional” plug-and-play standard is not satisfactory, given that would confuse consumers and marginalize the IT industry in the market for a period of years.

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If you have any questions, please contact the undersigned.

Sincerely,

*/s/ Gerard J. Waldron*

Gerard J. Waldron

cc: Chairman Michael K. Powell  
Commissioner Kathleen Q. Abernathy  
Commissioner Michael J. Copps  
Commissioner Kevin J. Martin  
Commissioner Jonathan S. Adelstein  
Mr. Paul Gallant  
Mr. Matt Brill  
Mr. Jordan Goldstein  
Mr. Anthony Dale  
Ms. Johanna Mikes  
Mr. Steve Broeckart  
Mr. Rick Chessen  
Mr. Patrick Donovan  
Ms. Alison Greenwald  
Mr. William Johnson  
Mr. Mike Lance  
Mr. Jonathan Levy

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Ms. Jane Mago

Ms. Amy Nathan

Ms. Maureen McLaughlin

Ms. Susan Mort

Ms. Mary Beth Murphy

Mr. Mike Perko

Mr. Alan Stillwell

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**ATTACHMENT A**

On September 2, 2003, Mike Godwin and Alex Curtis with Public Knowledge, Andy Moss and Paula Boyd of Microsoft Corporation and the undersigned, met with Commissioner Adelstein; Messrs. Godwin, Curtis, Moss, Waldron, Ms. Boyd and Kenneth DeGraff of Consumers Union met with Anthony Dale, Legal Advisor to Commissioner Martin; Messrs. Godwin, Curtis, Moss, DeGraff, Waldron, Ms. Boyd, Mary Newcomer Williams of Covington & Burling and Jan Hefmeyr of Microsoft met with Rick Chessen, Jamila Bess-Johnson, Bill Johnson, and Alison Greenwald with the Media Bureau, Jonathan Levy and Amy Nathan with OSP, and Toni McGowan, James Greening, Carl Heise, and Sandra Sims with ITC and Mr. Dale; Craig Mundie of Microsoft spoke with Chairman Powell; Messrs. Moss, Godwin, Curtis, DeGraff and Waldron met with Matt Brill, Legal Advisor to Commissioner Abernathy; and Messrs. Godwin and Curtis met with Jordan Goldstein, Legal Advisor to Commissioner Copps. On September 3, 2003, Messrs. Moss and Waldron and Ms. Boyd met with Commissioner Copps and Legal Advisor Jordan Goldstein.