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October 7, 2003

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

Re: Written *Ex Parte* Presentation in MB Docket 02-230 (Digital Broadcast Copy Protection)

Dear Ms. Dortch:

Attached is a written *ex parte* presentation from Philips Electronics North America Corporation which concludes that the Commission lacks jurisdiction to impose on consumer electronics manufacturers an encryption technology mandate triggered by the broadcast flag.

- The proposed encryption technology mandate regulates consumer electronics equipment, not broadcasting, and therefore is not within the Commission's Title III authority or ancillary authority attached thereto.
- Section 336 is explicitly limited to regulation of broadcaster eligibility for DTV licenses, DTV signal quality, and DTV ancillary and supplementary services. No interpretation of this provision can be stretched to authorize imposition of an encryption mandate on consumer electronics manufacturers.
- No provision of the Communications Act provides the Commission with plenary authority over manufacturers of equipment, nor over protection of copyrights. FCC imposition of an encryption mandate on consumer equipment therefore would require Congressional action.
- There being no statutory basis for imposing an encryption technology mandate on consumer electronics equipment, there is no jurisdiction to which the Commission can apply its ancillary jurisdiction under Section 4(i).

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Even if, *arguendo*, the FCC could claim authority to impose an encryption mandate on consumer electronics equipment, it should refrain from doing so in the proposed manner. As explained in the record, the proposed encryption mandate would be totally ineffective in protecting high definition or any other content.

In accordance with Section 1.1206 of the Commission's Rules, 47 C.F.R. § 1206, one copy of this letter and the attachment are being filed electronically. Please direct any questions concerning this matter to the undersigned.

Respectfully submitted,

A handwritten signature in cursive script that reads "Lawrence R. Sidman".

Lawrence R. Sidman

Attachment