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

Dear Ms Dortch:

RE: In the Matter of MB Docket No. 02-230 Digital Broadcast Copy Protection

This is an *ex parte* refutation of the October 7 *ex parte* presentation by Philips Electronics North America Corporation. Philips presents jurisdictional arguments made to the Commission in numerous previous filings and compellingly refuted in numerous filings by MPAA and other parties to this proceeding. Nevertheless, in case there could be some worth to Philips' apparent belief that arguments become more credible with repetition, MPAA is providing this brief summary of why the arguments persistently presented by Philips are without merit, and why the Commission does, in fact, possess the requisite jurisdiction to implement the Broadcast Flag.

1. **The FCC has broad authority under Section 336 of the Act to take actions it deems appropriate to advance the public interest in the rapid deployment of digital broadcast television.**
 - Philips' focus on "prefatory language" ignores the plain meaning of Section 336, which delegates to the FCC as expert agency the power to regulate the digital transition "in the public interest."
 - Given the nascent stage of digital broadcasting in 1996, Congress understood and intended that the provisions of Section 336 would authorize the adoption of whatever rules were necessary for the digital rollout, including – as key members have recently reiterated - rules providing for digital redistribution protection.
2. **The adoption of a broadcast flag requirement would be – as the Supreme Court has stated – “reasonably ancillary to the effective performance of the FCC’s various responsibilities for the regulation of television broadcasting.”**

- According to Philips, the FCC may rely on the principle of ancillary jurisdiction only to carry out responsibilities that have been expressly delegated by Congress in the Act. But this argument is a perfect “Catch-22:” under Philips’ theory, the only circumstance in which the FCC would be permitted to assert its ancillary jurisdiction would be when it already had an express grant of jurisdiction.
- In *Southwestern Cable*, the Court sustained the FCC’s assertion of jurisdiction over an industry segment as to which the Act made no express delegation of authority.
- In fact, the public interest harm from unauthorized redistribution of digital content is indistinguishable from the harm the FCC identified in *Southwestern Cable* and is a sufficiently important governmental interest to justify the assertion of jurisdiction.
 - In *Southwestern Cable*, the FCC acted to protect the integrity of local television stations from the harm posed by cable systems’ importation of identical content on distant stations.
 - The rules at issue in *Southwestern Cable* were justified by concern that the actions of cable operators may “destroy or seriously degrade the service offered by a television broadcaster, and thus ultimately deprive the public of the various benefits of a system of local broadcasting stations.”
 - The protection of high value digital content likewise is essential to ensure that broadcast television stations are not disadvantaged vis-à-vis their MVPD competitors as a delivery platform for such content.
- The FCC relied on its ancillary jurisdiction over broadcasting in adopting the Subpart W encoding rules in the “Plug and Play” proceeding – rules which are arguably more intrusive than the broadcast flag proposal – and in the face of the arguably limiting effect of Section 544.

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

Sincerely,



cc: Paul Gallant
Stacy Robinson Fuller

cc: con't from pg.2
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