

Exhibit D

Licensing Terms and Conditions for New DTV Technologies

In the Further Notice of Proposed Rulemaking in both the Plug & Play and Broadcast Flag proceedings, the Commission has asked for comments on “objective criteria” and “procedures” that should be employed when evaluating new DTV technologies. The Commission has also said that where new DTV technologies require the licensing of patents, the terms and conditions must be reasonable and non-discriminatory. Following are terms and conditions which currently appear (or fail to appear) in the DVI and HDMI licenses which render them unreasonable and/or discriminatory. This list should serve as a partial guide for future review of DTV technology licenses.

1. Field of use restrictions. The DVI Adopters Agreement, which purports to be royalty free, contains a “small print” condition that restricts the license to computer/display interfaces only. Television displays and consumer electronics products -- which are the focus of the Plug & Play and Broadcast Flag proceedings -- are not covered by the DVI license. Separate and undisclosed patent licenses must be obtained to compete in these markets. The Commission must ensure that field of use restrictions are not used for anti-competitive gain.

2. Patent disclosures. Neither the DVI nor HDMI Adopters Agreement discloses the patents, pending patents or “necessary claims” which read on these technologies. The Commission must ensure that all patents and claims are fully disclosed publicly prior to adoption of a new DTV technology.

3. Grant back and non-assert conditions. The HDMI Agreement prohibits a licensee from asserting any of its own patents against the HDMI founders or adopters. The agreement also provides that if a patent or “necessary claim” is challenged by a licensee, such patent or claim is automatically excluded from the license. These conditions are anti-competitive, unlawful and should not be allowed under Commission policies.

4. Burden of proof. The HDMI Agreement places the burden of proving which (undisclosed) patent claims are necessary to implement the HDMI specification on the shoulders of the licensee. The Commission must not allow licensees to be put at risk of patent infringement in such an arbitrary and potentially abusive manner.

5. Certification of products. The HDMI Agreement requires the certification of compliant products to ensure that they meet the specification. Unchecked, certification can also be used as a means of evaluating infringement claims by the HDMI founders before new products come to market. The Commission should place the burden of proving why product certification is necessary on the standards group which promotes such activity. Where it can be shown that certification is necessary, it should be conducted by an independent entity with no stake in the specification or the patents claiming the specification.

6. Reasonable royalties, terms and conditions. Patent licenses for DTV technologies that are adopted by the Commission must be reasonable and non-discriminatory. Unfortunately, there are no guidelines or standards for determining what is reasonable or unreasonable and what is discriminatory or non-discriminatory when it comes to patent licensing. The only way for the Commission to ensure that licensees are treated fairly and equitably is to require public disclosure of all license terms and conditions. In addition, such terms and conditions should be disclosed prior to the adoption of any new DTV technology.