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April 1, 2004

APR 06 2004

Ms. Marlene H. Dortch
Federal Communications Commission
Office of the Secretary
445 12th Street SW
Washington, D.C. 20554

Re: *Ex Parte* Presentations in Docket MB 04-64, In the Matter of Digital Output Protection Technology and Recording Method Certifications: Digital Transmission Content Protection

Dear Ms. Dortch:

This is to notify the office of the Secretary that on March 31, 2004, Michael Ayers of Toshiba America, Jennifer Coplan of the law firm of Debevoise and Plimpton representing Sony Corporation, Michael Ripley of Intel Corporation, Bruce Turnbull of the law firm of Weil, Gotshal and Manges representing Matsushita Electric Industrial Co., and the undersigned representing Hitachi, Ltd., held an *ex parte* meeting with the following:

Media Bureau

Steven Broekaert, Rick Chessen, John Gabrysch, Alison Greenwald, Mike Lange, Susan Mort, Mary Beth Murphy and Jeff Neumann

Office of Strategic Planning and Policy Analysis

Jonathan Levy and Amy Nathan

Office of Engineering and Technology

Alan Stillwell

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The meeting covered the matters set forth in the Certification submitted by Digital Transmission Licensing Administrator in the above-captioned proceeding and material set forth in the attached presentation.

In accordance with Section 1.1206 of the Commission rules, this original and one copy are being provided to your office, and a copy of this notice is being delivered to those named above.

Very truly yours,

Seth D. Greenstein

Enclosure

The 5C License Framework and Terms are Pro-Competitive

The DTCP licenses follow a well-established model that minimizes the cost of content protection for consumers and reduces the risk for licensees of litigation or excessive royalty costs. All licensees obtain a low-cost technology solution, on reasonable terms administered in a fair, transparent and nondiscriminatory manner. This model has been adopted by DVD CCA (for CSS), 4C Entity (for CPRM), Digital Content Protection LLC (for HDCP) and others. Key points about the 5C license agreements include:

-- DTCP is licensed on a nondiscriminatory basis, *i.e.*, upon the same terms and conditions to all similarly situated parties. Any more favorable terms that may be agreed to in a later license will be extended to all prior licensees as well.

-- The Adopter Agreement and Content Participant Agreements are posted publicly to the DTLA website. Non-confidential versions of the DTCP Specifications also are posted publicly to the DTLA website.

-- No content owner is required to license DTCP. Under the DTLA "IP Statement" posted on the DTLA website, any content owner can use or require use of DTCP if it follows the relevant encoding rules.

-- License fees are based on the costs of administering the licensing and key generation functions of DTCP, and are not typical commercial royalty rates. Therefore, DTLA has adopted a license model and terms that help to lower the risks to DTLA and the licensees, and the costs of administration.

-- Licensees obtain all IP owned or controlled by the 5C Companies that is necessary for the use of the Specification in implementing DTCP. Licensees obtain the rights they need, and are not required to license any IP they do not want.

-- All licensees covenant, on a non-exclusive basis, not to sue any other licensee under any IP that they own or control that is necessary for the use of the Specification in implementing DTCP. Licensees remain free to exploit their own IP for any and all other purposes (including to create competing technologies).

-- Mandatory changes to the DTCP Specifications are narrow in scope and, per the express terms of the licenses, are limited, to non-material changes, corrections and clarifications.

-- Adopters have the ability to review and comment upon any proposed Specification changes before they become final. Content Participants have the right to object to any change that would materially and adversely affect the protections afforded by DTCP or their rights under the agreement. Mandatory specification changes are not required to be implemented until 18 months after becoming final.

"5C" Digital Transmission Content Protection
Overview and Update

- Created in 1998, as a collaboration among companies that had responded to a Call for Proposals from a Copy Protection Technical Working Group subgroup
- More than 80 licensees, including manufacturers of DTVs, set top boxes, DVD players, digital video recorders, semiconductors, PC cards and peripherals, and two major motion picture studios
- Implemented in products sold in the US, Japan and Europe
- Uses well-known encryption and authentication methods to secure content during transfer between and among digital devices in home and personal networks against unauthorized interception and retransmission
- Networking protocols that can be protected using DTCP include:
  - Internet Protocol (*e.g.*, wireless over 802.11 and wired Ethernet)
  - IEEE 1394 (also known as "Firewire" or "iLink")
  - USB
  - MOST (for mobile environments)
  - Bluetooth
- Currently interoperable with protection systems used for
  - DVI and HDMI
  - POD-HOST interface (DFAST Conditional Access)
  - Japanese Digital Broadcasting (ARIB)
  - D-VHS
  - DVD-R, -RAM and -RW recordable discs
  - Flash Memory Cards (SD, Secure Compact Flash and Micro Drive Cards)
  - Blu-Ray recordable discs
  - Others pending
- Submitted Certification to FCC to protect content marked with "Broadcast Flag"
- Specifications and licensing information at http://www.dtcp.com

Summary of DTLA Policy Views on Broadcast Flag Certification Process

-- Commission rules and processes should enable speedy approval of multiple protection technologies, from which the market may elect.

-- Inasmuch as the purpose of the systems are to protect broadcast video content, there is no reason to not approve technologies that supported by content owners, so long as there are effective alternative methods to obtain approval without content owner support.

-- DTLA supports use of "market-based" criteria, so long as there is an independent road to certification based on the attributes of a system either being "as effective as" others approved in the market, or meeting functional criteria.

-- Functional Criteria as the sole means of certification are not preferable, since they may not fully comprehend all elements (including technology and enforcement) that could make a particular technology "effective" for redistribution control.

-- Certifications should be permitted for technologies that protect more than broadcast content, or that provide more (or more restrictive) protections than required by Commission regulation.

-- Interoperability is desirable, but should be left to the market and not mandated or regulated.

-- The Commission should narrowly circumscribe its interest in terms and conditions of technology licenses, and should avoid mandating or precluding particular license terms.

o Licenses involve numerous obligations, risks and benefits for the licensors as well as the licensees. Prescribing what terms are "pro-competitive" inherently alters this balance, and would likely reduce competition on license terms, to the detriment of the licensees and consumers.

o Any license that is anticompetitive (*i.e.*, unlawful) can be remedied under the antitrust laws by the agencies entrusted with competition enforcement, or by private actions before the federal courts.

-- The Commission should ensure that technology certifications are not delayed by objections raised by competitors, particularly where there has been no showing by content owners that the proposed technology does not provide effective redistribution control.