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July 27, 2004

ORIGINAL

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

Re: *Ex Parte* Presentation 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 July 26, 2004, Jeffrey Lawrence of Intel Corporation, Paul Schomburg of Matsushita Electric Co. of America., Jennifer Coplan of Debevoise & Plimpton representing Sony Corporation and the undersigned representing Hitachi, Ltd., held an *ex parte* meeting with Commissioner Kevin Martin and Catherine Bohigian.

The meeting covered matters set forth in the Certification and Reply submitted by Digital Transmission Licensing Administrator in the above-captioned proceeding, and in the materials submitted herewith, specifically relating to a description of the structure and provisions of the agreements by which DTLA licenses the DTCP Specification, and the reasons why the agreements are reasonable and nondiscriminatory.

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 (without attachments) is being delivered by mail to those named above.

Very truly yours,

Seth D. Greenstein

Enclosure

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## The Commission Should Not Impose Philips's Conditions on the Licensing of DTCP

### DTCP LICENSES ARE REASONABLE AND NONDISCRIMINATORY

- Low cost – Pricing based on maintenance, development and administration, not commercial IP royalties
- Same license terms offered to all similarly situated parties
- Accepted by 90+ licensees, including Philips
- Applies to multiple digital video services, not just terrestrial broadcast

### NON-ASSERTION COVENANT IS NOT UNFAIR DISCRIMINATION

- Necessary Claims/Non-assertion Covenant structure reduces IP risks for all licensees
- Enables low cost licensing, which promotes competition and consumer benefit
- Pro-competitive – Promotes competition for digital video products
- Every licensee knows the scope of the nonassert before accepting it

### PHILIPS ARGUMENTS ARE WRONG BECAUSE:

- No Standard Setting Body defines license terms that are or are not "reasonable and nondiscriminatory"
- No Standard Setting body holds that non-assertion covenants are not "reasonable and nondiscriminatory"
- DTLA cannot "take" a licensee's technology – the DTCP agreements preclude material changes to the Specification and, therefore, to the non-assertion covenant
- Starkly different Rule of Reason analysis in *U.S. v. Microsoft*
- Patent disclosure is unnecessary, expensive and risky for both licensee and licensor
- Licensees can challenge any changes that violate license
- "Mandatory" downstream approvals could create disincentives for pro-consumer uses of EPN

**It would be unfair to overturn the bargained-for expectations of more than 90 licensees in an inexpensive, procompetitive licensing model. without any evidence of harm to competition.**