

May 27, 2005

1200 EIGHTEENTH STREET, NW  
WASHINGTON, DC 20036

TEL 202.730.1300 FAX 202.730.1301  
WWW.HARRISWILTSHIRE.COM

ATTORNEYS AT LAW

**EX PARTE – Via Electronic Filing**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Re: *In re Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion To Digital Television, Children's Television Obligations of Digital Broadcasters*, MB Docket Nos. 03-15 and 00-167.

Dear Ms. Dortch:

The Coalition for Independent Ratings Services (“Coalition”) submits this written *ex parte* presentation to supplement the record with respect to the above-captioned dockets and the Coalition’s opposition to the Consumer Electronics Association’s (“CEA”) Petition seeking to restrict U.S. digital content advisories to only one additional regional ratings table.

During our April 7, 2005 meeting with officials in the Commission’s Media Bureau and Office of Engineering and Technology, the question arose of whether television ratings systems, such as the alternative ratings systems developed by Coalition members, are required to rate all available programming. There is no comprehensiveness requirement for content advisory systems in the law. Neither the statute nor the Commission’s rules require that television ratings systems be comprehensive.

Section 551(e) of the Telecommunications Act of 1996 required the FCC to determine, within one year of the Act’s passage, whether video programming distributors had established voluntary rules that were “acceptable to the Commission” for rating video programming containing sexual, violent or other indecent material.<sup>1</sup> In the Order approving the existing TV Parental Guidelines, the Commission interpreted the statute to mean that “the rating system is acceptable if it meets both the specific requirements of Section 551(e) and the overall goals of Congress in enacting Section 551.”<sup>2</sup> Specifically, the Commission explained that the ratings

---

<sup>1</sup> See Pub. Law 104-104, 110 Stat. 56, § 551(e)(1)(A), codified at 47 U.S.C. § 303(w).

<sup>2</sup> *Implementation of Section 551 of the Telecommunications Act of 1996, Video Programming Ratings*, Report and Order, 13 FCC Rcd 8232, 8241 (¶ 19) (1998). At that time, the Commission made no finding as to the acceptability of other ratings systems, but encouraged manufacturers to design technology to accommodate alternative systems. *Id.* at 8244 (¶ 25).

system must be “sufficient to advise parents of the appearance of sexual, violent, or indecent material in certain programming.”<sup>3</sup> Although the Commission at one point described the TV Parental Guidelines as a “comprehensive system,” nothing in the Order suggests that this was a prerequisite for finding the ratings acceptable. To the contrary, the Commission found the ratings acceptable after recognizing that the TV Parental Guidelines, themselves, were not comprehensive – they did not rate sports, news, commercials, or promotional programming,<sup>4</sup> and two program distributors, BET and NBC, elected not to participate in the TV Parental Guideline ratings system.<sup>5</sup>

Section 551(c)(4) of the Act did allow the Commission to approve blocking technology – other than the V-Chip – only so long as (among other things) it allowed “parents to block a broad range of programs on a multichannel system as effectively and as easily as technology that allows parents to block programming based on common ratings.”<sup>6</sup> For example, in the Order adopting the V-Chip technical requirements, the Commission found that date/time/channel blocking capability did not meet the requirements of section 551(d) because it would not block all programming as “effectively and easily” as the V-Chip.<sup>7</sup> But the statutory requirement for Commission approval of *alternative blocking technology* does not apply to *alternative ratings systems*. Moreover, members of the Coalition, as iterated in its comments opposing CEA’s Petition to limit the available ratings tables to just one additional table, RRT 0x5, plan to offer alternate ratings in conjunction with the V-Chip, not with alternative blocking technology other than the V-Chip.

Coalition members seek to provide interested consumers with alternative ratings for as broad a range of video programming as possible. But they must obtain prior access to programming for ratings purposes before it is exhibited to the public. As Coalition members successfully work with programmers to obtain this needed prior access, alternative ratings systems will become increasingly comprehensive. And as the Commission stated in its Children TV Obligations order, it encourages broadcasters, as well as cable companies and the motion picture industry, to consider various ways of improving V-Chip utility, and make ratings systems more accurate and easier to understand.<sup>8</sup>

### *Licensing Regime for V-Chip*

PSVratings, Inc. also discussed with FCC officials in the April 7<sup>th</sup> meeting the licensing regime for the intellectual property in the V-Chip. PSVratings’ understanding is that the royalty payable to Tri-Vision Inc. for each DTV receiver licensed under their patents is the same flat \$1.25 fee, regardless of how many regional ratings tables (RRTs) are defined. Therefore,

---

<sup>3</sup> *Id.* at 8242 (¶ 20).

<sup>4</sup> *Id.* at 8242-43 (¶ 21).

<sup>5</sup> *Id.* at 8245-46 (¶¶ 28-31).

<sup>6</sup> Codified at 47 U.S.C. § 330(c)(4).

<sup>7</sup> *Technical Requirements to Enable Blocking of Video Programming Based on Program Ratings*, 13 FCC Rcd 11248, 11253-54 (¶ 13) (1998).

<sup>8</sup> *See In the Matter of Children’s Television Obligations of Digital Television Broadcasters*, Report and Order and Further Notice of Proposed Rule Making, 19 FCC Rcd. 22943 at paragraphs 63-64 (2004).

maintaining the intended open architecture of the V-Chip to define up to 256 RRTs, which would permit up to 8 different ratings systems per program, would not result in more licensing fees or revenue to Tri-Vision than if the FCC granted CEA's Petition to limit the alternative RRT to just one additional table – 0x05. Tri-Vision's patents cover the receipt and process of ratings whether there is 1, 2 or 256 RRTs in use.

As noted in the meeting, Tri-Vision has stated that on the record<sup>9</sup> that it will abide by the Commission's long-standing non-discrimination policies for licensing technology that is incorporated in an FCC standard.<sup>10</sup> Tri-Vision reports that it offers the same royalty of \$1.25 on a non-exclusive and non-discriminatory basis to every manufacturer, which license includes access to all of Tri-Vision's intellectual property, patents, algorithms, and software and hardware reference designs. Thus far, Tri-Vision has 23 licensees using its technology in the Canadian market and 13 licensees in the U.S. market. See [http://www.tri-vision.ca/news\\_room/news\\_room.html](http://www.tri-vision.ca/news_room/news_room.html).

Incidentally, the idea behind the RRT construct was never to have to define any rating system(s) in advance. ATSC envisioned that several RRTs would be used in any multi-region DTV system, and that each RRT would always be capable of adapting to changes and/or additions to rating systems in each region. If a receiver is built consistent with the ATSC standard, as now required through the Commission's 2004 adoption, then that receiver should be able to recognize the codes for any of the RRTs.

#### *ATSC Code Point Registry*

The Coalition also discussed the ATSC registration process for the assignment of a rating region field with a PSIP Rating Region Table. CEA is the most recent entity to successfully request assignment, when rating region value 0x05 was added March 17, 2005.<sup>11</sup> ATSC's *Code Point Registry* explanatory document notes that any author or user of MPEG-2 standards may request the ATSC President to assign a rating region value. The President notifies the Board of the request, and if there is no objection, after 14 days, the proposed assignment becomes official.<sup>12</sup>

---

<sup>9</sup> See *Violent Television Programming And its Impact on Children*, MB Docket No. 04-261, Response to Reply Comments by the CEA by Mr. Tim Collings and Tri-Vision International, Ltd. At 2.

<sup>10</sup> *Revised Patent Procedures of the Federal Communications Commission*, Public Notice (December 1961), reprinted at 3 F.C.C. 2d 26 (1966) (establishing that "the availability of . . . equipment meeting performance standards established by the Commission's rules and regulations will not be prejudiced by unreasonable royalty or licensing policies of patent holders."). Consistent with this policy, the Commission can monitor V-chip licensing agreements to ensure that the technology is licensed on reasonable, non-discriminatory terms. See e.g., *Digital Audio Broadcasting Systems And Their Impact on the Terrestrial Radio Broadcast Service*, First Report and Order, 17 F.C.C. Rcd 19990, 20002 (¶ 34) (2002) (Commission would monitor patent holders' licensing agreements of digital terrestrial radio technology); cf. 47 C.F.R. § 73.9008(a)(4) (requiring that proponents of digital output protection technology offered to the public must certify a copy of its licensing terms and evidence that it will be "licensed on a reasonable, non-discriminatory basis.")

<sup>11</sup> See *id.*

<sup>12</sup> See *Code Point Registry*, Advanced Television Systems Committee at 26 (March 28, 2005), available at <http://www.atsc.org/standards.html>.

The Coalition notes that CEA has an official who is a Member of ATSC's Board. The National Association of Broadcasters also has a Board Member, as do the National Cable Television Association, and several individual broadcasters, such as NBC, CBS and ABC.

In accordance with FCC rules, we ask that a copy of this letter be filed in the above-captioned docket.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Patricia Paoletta', with a long horizontal flourish extending to the right.

Patricia Paoletta  
*Counsel to PSVratings, Inc.*

cc: Bill Johnson  
Rick Chessen  
Mary Jo Murphy  
Hugh Van Tuyl