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August 11, 2006

EX PARTE, VIA ECFS

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

**Re: CSR-7012-Z, CS Docket No. 97-80
In the Matter of Comcast Corporation's Request for Waiver of 47 C.F.R.
76.1204(a)(1)**

Dear Ms. Dortch:

Sony Electronics Inc. submits this ex parte filing on the Comcast Corporation ("Comcast") Request for Waiver of Section 76.1204(a)(1) of the Commission's rules.¹ In support of the Waiver Request, Comcast recently submitted the "Economic Analysis" of Professor Michael Katz.² Professor Katz' analysis betrays a remarkably limited understanding of the market for digital-cable-ready devices, and the impact that grant of the Waiver Request would have on that market. Most of his assertions and conclusions merely parrot claims made by Comcast in the Waiver Request and in subsequent filings, which Sony Electronics and other commenters have rebutted. One point, however, goes to the heart of Comcast's argument, and demands additional comment.

Perhaps the most egregious claim made by Comcast and Professor Katz is that "consumer electronics equipment manufacturers do not want to serve the low-cost, limited-capability segment of the marketplace, whether or not cable companies offer low-cost, limited-capability integrated boxes."³ In a previous ex parte filing, Sony Electronics stated that it "sees a substantial competitive opportunity" in this market segment.⁴ To clarify and avoid any doubt, SEL wants to serve all segments of the cable compatible device marketplace, including the low-cost, low capability segment. Although SEL purports to speak only for

¹ *In the Matter of Comcast Corporation's Request for Waiver of 47 C.F.R. § 76.1204(a)(1)*, Comcast Request for Waiver, CSR-7012-Z, CS Dkt. No. 97-80 (April 19, 2006)(" Waiver Request").

² Letter from Jonathan Friedman, Counsel for Comcast Corp., to Marlene Dortch, Secretary, Federal Communications Commission (August 1, 2006).

³ *Id.* at 3-4.

⁴ Letter from Jim Morgan, Director and Counsel, Government and Industry Affairs, Sony Electronics Inc., to Marlene Dortch, Secretary, Federal Communications Commission, at 7 (August 4, 2006).

itself in this regard, it believes that much of the consumer electronics industry shares this sentiment.

In the context of analog cable services, SEL and other CE manufacturers have served the low-cost, low-capability market segment for years. Today, every SEL television and VCR, as well as many other devices, includes the hardware necessary for a consumer to receive a full compliment of analog cable by simply connecting a cord directly from the device to the wall plug -- no extra box, and no extra remote control required. This functionality has proven over the years to be a tremendous consumer value proposition, and a substantial number of analog cable subscribers access their service in this fashion today. It is this value that SEL and others have sought to replicate in the digital era.

Three factors have limited the inclusion of unidirectional digital cable compatibility technology (i.e. CableCARD) in lower-end televisions and other consumer electronics devices. First, in the consumer electronics industry, as in many others, new technologies get introduced in high-end products first. These technologies then filter down into lower-cost devices as manufacturers realize economies of scope and scale. In the case of CableCARD, these economies of scope and scale have not yet been realized. Second, as the Consumer Electronics Association and its members have made clear in this docket, MSO support for CableCARD has been less than enthusiastic. It is difficult for a consumer electronics manufacturer to deploy a technology in a mass-market product until that technology is mature and robust. CE manufacturers can handle, and have handled, dozens or hundreds of CableCARD-related service calls. They cannot handle thousands or tens of thousands. Third, the grant of multiple extensions of the common reliance deadline, and the offer to entertain requests for waiver of the common reliance requirement, have raised significant questions in the minds of manufacturers about the Commission's commitment to digital cable compatibility.

More importantly, the suggestion that SEL and other CE manufacturers do not want to serve the low-cost, low-capability device market segment implies that they are permitted to do so in the first place. This, simply, is not the case. As it has stated before, SEL cannot offer an integrated retail product equivalent to the DCT-700, Explorer-940, and Pace Chicago set-top boxes -- non-OCAP devices with limited, "two-way" capability, and the devices for which Comcast has requested a waiver. SEL cannot make or sell an equivalent device under the DFAST license or the CHILA license, and there is little hope for success in the negotiations between CEA and NCTA aimed at devising a less onerous and more consumer friendly licensing structure.

In the Waiver Request, Comcast suggests a device market in which CE manufacturers make set-top boxes for Comcast on an OEM basis, or even for retail sale by private agreement.⁵ Putting aside the question of whether this is the competitive navigation device market envisioned by Congress in enacting Section 629 of the Communications Act, this

⁵ See Waiver Request at 18; see also *In the Matter of Comcast Corporation's Request for Waiver of 47 C.F.R. § 76.1204(a)(1)*, Reply of Comcast Corporation, CSR-7012-Z, CS Dkt. No. 97-80, at 11-12 (June 30, 2006).

Ms. Marlene H. Dortch

August 11, 2006

Page 3

version of the digital future represents the worst case for consumers and device manufacturers. Consumers lose the benefit of simple device-to-wall connectivity that they have traditionally enjoyed in the analog world. They must put an additional and unnecessary box next to their television, and must add a remote control to their collection. Device manufacturers place their business future at the whim and mercy of the MSOs, who, at best, have proven reluctant to embrace device competition.

For these reasons, SEL reiterates its call for the Commission to deny the Waiver Request. Alternatively, if the Commission decides that the public interest would be served by the grant of some limited waiver, it should do so only for cable-provided digital-to-analog converter devices that offer functionality identical to that available at retail today through the unidirectional CableCARD.

Respectfully Submitted,

/s/ Jim Morgan

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