cable

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

Re: **<u>CS Docket No. 97-80; PP Docket No. 00-67</u>**

Dear Ms. Dortch:

On October 30, 2007, Sony Electronics filed an *ex parte* letter in the above-captioned proceeding. That submission repeats arguments Sony and the Consumer Electronics Association ("CEA") have previously made. NCTA and others have already refuted those arguments in numerous filings in these dockets and demonstrated that, if the Commission implements any cable-centric "two-way" plug and play solution, it should endorse the OpenCable Platform approach rather than CEA's flawed DCR+ approach.[1] Rather than repeat those arguments again, I am attaching a document entitled "CEA's Recipe for Stagnation: Myths and Realities of DCR+" which addresses and refutes six of the main assertions CEA and Sony have raised in defense of the DCR+ proposal.

If you have any questions, please contact the undersigned.

Respectfully submitted,

/s/ Neal M. Goldberg
Neal M. Goldberg

cc: Michelle Carey
Rick Chessen
Rudy Brioché
Amy Blankenship
Cristina Pauzé
Catherine Bohigian
Monica Desai
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Attachment

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[1] *See, e.g.*, Letter from Neal M. Goldberg, NCTA, to Marlene H. Dortch, FCC (October 30, 2007). *See also* Letter from Peter M. Fannon, Panasonic Corporation of North America, to Marlene H. Dortch, FCC (October 30, 2007); Letter from John M. Godfrey, Samsung Information Systems America, to Marlene H. Dortch (October 25, 2007).

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CEA's Recipe for Stagnation: Myths & Realities of DCR+

Myth: DCR+ is Easily Achievable

Reality: DCR+ is Years Away From Deployment, Relying on Standards That Must Be Developed and Intellectual Property Rights for Which CE Companies Don't Have Clearance

CEA's proposal relies on numerous technical standards that would have to be invented or substantially revised. CEA concedes that at least six standards referenced in its proposed rules would need to be revised through a new joint agreement between the cable and CE industries, and memorialized in an open standards body (which would include cable competitors). CEA completely omits numerous other standards, including multi-stream CableCARD support and crucial cable modem security standards (which if omitted would open the device to hacking and invite use of the network for anonymous crimes). Experience shows that the process of inventing complex technical standards usually requires years of development and negotiation. Even after the standards are agreed upon, intellectual property issues would need to be addressed, which can take years. Once the standards work and IP clearances are done, CE manufacturers will need time to develop and build DCR+ products, which CEA has repeatedly said takes a minimum of 12-18 months. CEA's proposal would require cable operators to make major and expensive network architecture changes and to redesign the CableCARD. And it would require these massive upfront investments to create an entirely new redundant platform to support devices that *no consumer electronics manufacturer has committed to build*.

Myth: DCR+ Can Aid the Broadcast Digital Transition

Reality: At a Minimum, It Would Take 18 Months for Development of the Currently Non-Existent DCR+ Device – Too Late for the February 2009 Digital Transition

Even if someone waved a magic wand and finalized DCR+ standards today, manufacturers would need another year and a half to design, build, and ship products. So any DCR+ products (assuming any CE manufacturer makes them) would not arrive in time for the February 2009 broadcast digital transition. By contrast, the OpenCable devices that are already under development will be available for the transition – including the two-way DTVs that Panasonic will bring to retail in 2008 and the DTVs that Samsung and LG have already had certified for retail manufacture. This is why Panasonic told the FCC that OpenCable "provides the best near-term solution" and why Samsung said that "[w]hatever else the Commission does in this proceeding, it should rapidly" ensure the rollout of OpenCable by cable operators in advance of the broadcast digital transition.

Myth: OpenCable is too Complex and Not Available Now

Reality: OpenCable is Already Being Implemented in the Marketplace

OpenCable works. It is a proven technology already supported by leading digital TV manufacturers (Samsung, LG, and Panasonic) who together account for more than 50% of the US digital television market share; information technology companies such as Intel (which is including OpenCable in its "system-on-a-chip" technology); and major content providers (MPAA, motion picture studios, and cable program networks). OpenCable set-top boxes by Samsung are being deployed today in Time Warner systems and Panasonic has announced its OpenCable-enabled digital TV sets will be available in time for the digital transition. OpenCable has been adopted by standards bodies for use in the United States and internationally. OpenCable invites innovation and competition by retail manufacturers. The FCC should favor supporting effective market-developed solutions over imposing pervasive and intrusive new regulations on technology. In fact, this approach would be consistent with the congressional directive that the FCC must not chill innovation with its equipment regulations.

Myth: DCR+ Promotes Consumer Choice

Reality: DCR+ is a Consumer "Bait and Switch" That Would Strip Away Services Consumers Want and Expect

DCR+ would confuse and frustrate consumers by blocking their ability to receive programming and features that they have paid for. DCR+ devices should be labeled "buyer beware" rather than "digital cable-ready" since such devices wouldn't even support many two-way cable services available today and would not support future innovative cable services. Digital televisions labeled as "cable ready" under the CEA proposal would strip away cable services, features, parental controls, privacy profiles, interactive programming, and more – and each television would do so in different ways. *Consumers would have no assurance that they would receive the same services from the same cable subscription on different models of televisions.* DCR+ would also hurt cable customers by denying them access to early-release, high-value video programming. DCR+ would introduce severe content vulnerabilities into cable systems. That's why movie studios have said that deployment of DCR+ devices would make them very reluctant to provide early-release movies to *any* cable customers.

The FCC's approach should be guided by practical lessons from the CE's industry's failed experiment with one-way digital "cable ready" products, which are not able to receive interactive cable services like video-on-demand (VOD) and electronic program guide (EPGs) without a cable set-top box. In 2002, CE companies insisted that consumers would want such a one-way plug-and-play TV, but one-way sets failed in the market because consumers wanted interactive services like VOD and EPGs.

Myth: DCR+ Would Promote Innovation

Reality: DCR+ Rules Would Stifle Innovation and Hurt Cable Customers

DCR+ would combine bureaucratic micromanagement of cable technology with a freeze on cable innovation. As a result, innovation and new consumer choices would be stifled. It would standardize cable service at a "lowest common denominator" level, slow the launch of new interactive services, permit a CE manufacturer veto on changes in the OpenCable Platform, impede the deployment of a manufacturer's first two-way digital cable ready device, and give every CE company a "consequential voice" in approving home networking solutions requiring a new output or content protection technology – even if proposed by a competing CE company. It would also dictate which set-top boxes operators could use and force changes in the CableCARD and other technologies. For example, the DCR+ rules would require 20 percent of cable customers to limit reception of their service to what a DCR+ can do – which is less than cable's current set-top boxes can do – then forbid them from upgrading their set-tops or utilizing existing features of set-tops as technology advances.

Myth: Cable is Standing in the Way of "Competition"

Reality: Competition in the Video Marketplace is Intense, but DCR+ Would Burden Only Traditional Cable Operators and Not Their DBS, Telco, Wireless or Internet Competitors

CEA makes its same old argument that cable operators want to stifle the retail CE market to protect profits allegedly made from leasing set-top boxes. The fact is that cable operators make their profits from services, not from leasing equipment. Cable companies need to buy set-tops from third parties and the prices at which they lease them to consumers are strictly limited by FCC rules. Cable providers are fighting for consumer loyalty, and part of winning that loyalty is ensuring that they can use any certified equipment, retail or leased, that would encourage them to subscribe to cable services.

Cable has done more than any other industry to encourage the development of retail devices, starting with the cable modem, through the development of the CableCARD and OpenCable, to the active support for development and testing of retail devices (including cable for PCs), and numerous other initiatives. The reality is that the highly-competitive free market is already offering consumers numerous choices for video services that they did not have in 1996 and the competition among video providers requires that they offer consumers as many options – including the retail option – to obtain equipment which can access their services. Government-imposed technology mandates are no longer necessary to ensure consumer choice.

In light of intense MVPD competition, CEA's proposal is contrary to the federal policy of technological and competitive neutrality because it would apply burdensome and highly intrusive new regulations on cable but not on its DBS, telco, and other competitors, which represent nearly one-third of the MVPD marketplace. None of cable's competitors support application of DCR+ mandates to their own networks.