

October 28, 2008

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

Re: Notice of *ex parte* presentation in: MB Docket No. 08-82
CS Docket No. 97-80

Dear Ms. Dortch:

On October 27, 2008, Gigi Sohn, Alex Curtis, Jef Pearlman, and Michael Weinberg of Public Knowledge met with Chairman Kevin Martin and Daniel Gonzalez, his Chief of Staff, regarding the above-referenced dockets.

In the meeting, Public Knowledge discussed the reasons that the proposed waiver to the existing ban on Selectable Output Control (“SOC”) was unnecessary and undesirable. We argued that SOC was harmful to consumer expectations because it cuts off millions of High Definition Television (“HDTV”) early adopters merely by changing a release date. Further, MPAA members could change their release schedules *today* even without SOC, as other studios have already done. Additionally, infringing copies of movies are currently found on the Internet long before the current or proposed release windows, indicating that home release is not the source of this infringement. We also pointed out that the video outputs targeted by SOC were the source of recent innovations in the consumer electronics (“CE”) area, and that allowing SOC would hinder future innovation and give content producers the ability to control the design of CE devices.

We also examined the link between Plug-and-Play, SOC and the tru2way (formerly OCAP) standard for two-way cable services. We discussed the harm that the tru2way standard causes to innovation by constraining the design of new devices, including restricting the way CE manufacturers can integrate cable and Internet content. We also pointed out the parallels between the way in which cable’s licensing scheme allows MVPDs to control design and restrict innovation in the CE field and the way in which SOC would give content producers a similar power over CE design. Both license regimes and their effect on the CE market demonstrate the omnipresent threat of regulating current technology in a manner that inhibits future innovations in unforeseen ways. Likewise, the control over device design that is enabled by tru2way licensing and would be enabled by SOC serves to undermine the interoperability and innovation which was the primary purpose of the Plug-and-Play proceeding.

The remainder of the discussion is contained in our earlier filings in the above-referenced dockets. In accordance with the FCC's *ex parte* rules, this document is being electronically filed in the above-referenced dockets today.

Respectfully submitted,

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

Jef Pearlman
Equal Justice Works Fellow and Staff Attorney

CC:
Chairman Kevin J. Martin
Daniel Gonzales