



November 26, 2008

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

Re: *Ex Parte* Presentation, MB Docket No. 08-82

Dear Ms. Dortch:

On November 25, 2008 Michael O’Leary, Frank Cavaliere of the Motion Picture Association of America, Inc. (“MPAA”) and Eddie Fritts of The Fritts Group met with Commissioner Jonathan Adelstein and Rudy Brioché, Legal Advisor to Commissioner Adelstein. We discussed the November 18, 2008, *ex parte* notice filed by the Consumer Electronics Association (“CEA”), which purports to provide a justification to deny MPAA’s waiver request¹. As MPAA has demonstrated repeatedly in this proceeding, grant of the MPAA’s waiver petition will provide millions of consumers with new and exciting program options that are not now and never have been available to multichannel video program distributor (“MVPD”) subscribers.

The MPAA’s advocacy on this issue has consistently reflected our desire to strike the appropriate balance between consumer accessibility and content security. Contrary to what CEA maintains, the MPAA is not requesting the ability to “disable more than 20 million HDTV sets”.² MPAA’s member studios seek the ability to offer consumers who own the 60 plus million HDTV sets compelling new video services that use secure digital interfaces to protect against indiscriminate reproduction and redistribution of its most valuable content while avoiding consumer confusion or frustrating consumer expectations. Enabling the use of selectable output control (“SOC”) here will allow movie studios to offer their theatrically released films earlier than they are currently being made available to consumers in their homes; a clear benefit to consumers because they will be receiving titles that they otherwise could not receive today.

¹ See *in re Motion Picture Association of America, Inc. (“MPAA”), Petition for Waiver of 47 C.F.R. § 76.1903*, MB Docket No. 08-82, CSR-7947-Z.

² CEA *ex parte* notice 11-18-08.

The MPAA does not deny that some high-definition television sets may not be capable of receiving these new service offerings,³ however, that does not mean these television sets would “no longer function as they did when originally purchased” as CEA maintains. In fact, television sets without secure digital interfaces will function exactly as they do today and consumers will see absolutely no difference in any of their existing services. To be clear, the MPAA’s waiver would not affect the continuity of consumers’ existing services or their ability to view and record any program presently available for recording. Rather, grant of the waiver will provide consumers with entirely new home viewing options without affecting by one iota any of the other programming options they currently enjoy.

At its core, the position of CEA is that technology should be frozen in time, and any new services that require advanced technology should be banned. This position is quite astonishing, coming from an organization that in the past has advocated in favor of technological innovation. Studios and consumer electronics manufacturers (who are not subject to the SOC ban) are already permitted to strike deals to securely provide movies to the home over the Internet while the movies are still in theater, without the need of an SOC waiver. However, the mechanism for the secure delivery of these movies requires consumers to have both a high-speed Internet connection and a specialized device (e.g., AppleTV, Xbox 360 or PlayStation3), thus leaving out the tens of millions of Americans who do not have both of these component pieces. By contrast, 60 million plus consumers do have the necessary connections and equipment by virtue of their MVPD subscriptions for the new service for which we are seeking the waiver. This competitive disadvantage for MVPDs and their customers can be eliminated if the waiver is granted.

A decade ago, CEA was a principal proponent of the DVD, which required tens of millions of consumers to set aside their VCRs and purchase a new DVD player in order to access movies in a superior and more convenient format. At that time, there was no concern expressed by CEA that “lawfully purchased” VCRs would be “disabled.” Nor did Public Knowledge suggest then that VCRs would “be effectively turned off.”⁴

MPAA member companies seek the ability to offer new movie services to the tens of millions of consumers that already have, and the tens of millions more who are willing to purchase, devices capable of receiving the new services. Existing devices will receive existing services exactly as they do today. No device will be “disabled” or “turned off.” The only change any consumer will experience will be that they will have a new,

³ HDTVs that only display HD content through inputs via composite or component video (analog) connections will not be capable of receiving this service. However, CEA’s own figures show that the number of HD sets with only component video connections represent a minority of HD sets consumers currently own. Based on CEA’s own numbers, virtually all HD sets manufactured and sold since 2007 contain the secure digital interfaces necessary to receive this new service offering. Also, we note that all TV sets with a screen size of 10” or more qualify by the CEA definition as “HDTVs” and we are therefore concerned that CEA’s numbers may include large numbers of small HDTV’s (i.e. those with a screen size under 42”) which we have never expected would be used by consumers to enjoy such a premium product. These small TV sets are typically in locations such as kitchens and other utility rooms that are not conducive to the enjoyment of long-form scripted content such as the new services contemplated by the MPAA petition.

⁴ Notice of *ex parte* presentation in MB Docket No. 08-82, CS Docket No. 97-80, November 18, 2008.

improved viewing opportunity, should they have the equipment that can take advantage of it.

Over the decades, as technology advanced to bring consumers color TV, UHF, VCRs, DVDs and now DTV, the FCC has been an agent of technological innovation, despite the fact that each of these technological advances could not be enjoyed on legacy devices. Consumers have long accepted the fact that improved viewing options often require an investment in new devices. In the case at hand, the new viewing options being proposed by MPAA member companies will be available on virtually every display device on the market today.

The MPAA respectfully urges the Commission to continue to be an agent of change; to support technological innovation; to look forward, not backward; to enable rather than disable consumer choices; and to accomplish all of the above by granting the requested waiver.

Respectfully submitted,

**MOTION PICTURE ASSOCIATION OF
AMERICA, INC.**

By: /s/ Michael P. O'Leary

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cc: Commissioner Jonathan Adelstein
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