



WILTSHIRE  
& GRANNIS LLP

September 29, 2009

**Ex Parte – Via Electronic Filing**

Ms. Marlene Dortch  
Secretary  
Federal Communications Commission  
The Portals  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

Re: MB Docket No. 09-23

Dear Ms. Dortch:

On behalf of the Coalition United to Terminate Financial Abuses of the Television Transition, Paul Margie and I, along with Sherwin Siy from Public Knowledge, met with Media Bureau Chief Bill Lake and Bob Ratcliffe, Eloise Gore, Mary Beth Murphy, Steven Broeckaert, Alison Neplokh, and Brendan Murray on September 28, 2009.

We emphasized that the record in this proceeding shows that patent holders are charging \$20 to \$30 more per set for licenses to build digital televisions in the United States than are charged for licenses to build digital televisions in Europe and Japan. We stated that, contrary to the arguments of the patent holders, that large disparity could not be explained by the purported superiority of the ATSC standard. Rather, the disparity shows that the Commission should examine the rates demanded by patent holders to determine whether they are reasonable and nondiscriminatory.

We also noted that there is unrebutted evidence in the record showing that patent holders engage in unreasonable or discriminatory practices such as requiring manufacturers to purchase licenses needed to build analog sets as a condition of buying licenses needed to build digital sets. We added, in response to a question, that such practices violated the standard for unlawful tying arrangements set forth in *Eastman Kodak Co. v. Image Technical Services, Inc.*, 504 U.S. 451, 461-63 (1992), that the availability of an antitrust remedy should not stop the Commission from giving meaning to the reasonable and nondiscriminatory standard it established in 1996.

Therefore, the Commission should require the patent holder to answer questions such as those suggested in our reply comments in order to determine whether the patent holders are abiding by their promises to license patents on reasonable and nondiscriminatory terms.

Sincerely,

/s/

Christopher J. Wright  
*Counsel for CUT FATT*

cc: Bill Lake  
Bob Ratcliffe  
Eloise Gore  
Mary Beth Murphy  
Steven Broeckhart  
Alison Neplokh  
Brendan Murray