

December 4, 2009

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> St. SW  
Washington, DC 20554

RE: Notice of *Ex Parte* presentation in: MB Docket No. 08-82  
GN Docket Nos. 09-47, 09-51, 09-137  
CS Docket No. 97-80

Dear Ms. Dortch:

On December 4, 2009, Gigi Sohn, Michael Weinberg, Jef Pearlman, and John Bergmayer of Public Knowledge (PK) met with Joshua Cinelli, media adviser to Commissioner Copps, and Jamila Bess Johnson, interim media advisor to the Commissioner.

After introducing itself, its history, and its general policy goals, PK presented its views on three topics: Section 629 of the Telecommunications Act of 1996 (Competitive Availability of Navigation Devices), the Motion Picture Association of America's (MPAA) Selectable Output control (SOC) petition, and possible anticompetitive effects of the proposed NBC Universal/Comcast merger.

As to Section 629, PK described the general policy impetus of Section 629, and how that policy has not been fulfilled by the Commission's current rules. PK described its dissatisfaction with cable-centric rules and the procedural shortcomings of the current Section 629 implementation, particularly the frequent granting of waivers of the Commission's integration ban rules. PK related how the principles behind the *Carterfone* decision and the Commission's Part 68 rules, as applied to video services, would be likely to lead to innovation, competition, and consumer control. PK feels that its policy goal of promoting competition in the video devices market could be broadly shared by many industries, including cable, content, and consumer electronics, even if those industries may disagree with PK as to specifics. With this background, PK looks forward to responding to the Video Device Innovation Public Notice, DA 09-2519, that was released yesterday as part of the National Broadband Plan effort.

In outlining its views on the MPAA SOC waiver petition, PK stressed its view that Hollywood has long wanted to close the so-called "analog hole." It argued that MPAA's argument that SOC is necessary for MPAA member studios to change the release window of video-on-demand movies was contradicted by the existence of studios proceeding to so

release movies without SOC, and that MPAA's concerns about preventing the unlawful distribution of movies was unsupported by the evidence.

PK concluded by presenting its thoughts on the proposed NBC Universal/Comcast merger. In its view, vertical integration between content producers and distribution channels presents particular anticompetitive problems. In particular, PK is worried that the merged company could use its market power to discriminate in favor of its own content and foreclose new forms of competition, such as Internet streaming (over-the-top) video. PK has already argued that Comcast's "TV Everywhere" approach, whereby over-the-top video would only be available to subscribers to Comcast cable services, presented anticompetitive difficulties and could limit innovation in Internet video. A merged company pursuing such an approach could limit innovation and consumer choice even further. The 5-page letter that Comcast circulated that attempts to quiet public interest concerns does not even address these and similar competition concerns raised by PK and many others. Generally speaking, an extension of program access rules to clarify that they apply to all providers of video programming, and not just facilities-based multi-channel video providers, could help promote innovation in video services.

The attached Appendix contains literature PK distributed.

Sincerely,

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/s/

John Bergmayer  
Staff Attorney  
Public Knowledge

CC: Joshua Cinelli  
Jamila Bess Johnson