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Via Electronic Filing

December 8, 2009

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 Twelfth St., SW
Washington, DC 20554

Re: Notice of ex parte presentation in MB Docket No. 08-82

Dear Ms. Dortch:

On December 8, 2009, Gary Shapiro, President and CEO, Consumer Electronics Association (CEA) and the undersigned met with Chairman Genachowski, Blair Levin, Colin Crowell and Shomik Dutta.

At the meeting, we repeated prior concerns related to the MPAA's petition to allow the use of Selectable Output Control ("SOC"), emphasizing that the petitioner has not offered any data to support its request. We noted that the MPAA's proposal would exclude over 20 million HD television sets, and an unknown number of related audio/video devices, from displaying SOC-encumbered content. There is no lawful way to make a converter box to accommodate these existing televisions and other home video equipment; in order to access the content, new televisions and equipment would have to be purchased by consumers.

In addition to harming existing equipment owners, SOC rules would make consumers uncertain about future purchases. They will worry that equipment they purchase today will be turned off by digital protection schemes implemented by content owners tomorrow. While consumers are prepared to accept that standard definition television sets are not capable of displaying high definition content, they should not be forced to worry that their television sets will be unable to display some subset of high value content because a content owner one day decides that the consumer's device does not include the MPAA's preferred protection scheme.

We also pointed out that MPAA member companies are demonstrating the lack of justification for their own petition. Warner Brothers Entertainment, Inc., one of the original signatories of the waiver petition, has begun offering films via VOD before the DVD release date – precisely the type of offering that the studios claimed “necessarily would require a higher level of protection against copyright theft than is currently permissible” in order to be implemented. The Independent Television and Film Association, whose members are responsible for more than 60% of Best Film Oscar Awards over the past 27 years, also

provided the Commission with a lengthy list of films released on VOD either prior to or simultaneously with theatrical or DVD release. These included box office hits like Superman Returns, Michael Clayton, The Bourne Ultimatum, State of Play, Away We Go, Dark Knight, and Observe and Report.¹

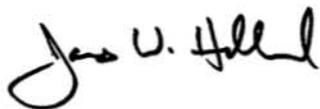
We also pointed out that grant of the MPAA waiver would unnecessarily upset the private negotiations that occur between representatives of consumer electronics manufacturers and content companies. Inter-industry cooperation has led to the DVD and Blu-Ray digital video formats and to secure digital interfaces that are in widespread use today, over cables and in wireless environments. Most recently, these discussions have led to the development of the Advanced Access Content System (AACS), the copy protection technology for high-value digital content for devices such as Blu-ray optical discs.

With AACS, a balanced outcome was reached in which major movie studios obtained the level of copy protection they desired, manufacturers obtained an implied guarantee that interfaces will work for the life of the product, and consumers were guaranteed the ability to make authorized copies of most movies and related content that are protected using AACS. If the FCC grants the MPAA waiver, it will tip the scales of future negotiations in favor of content companies, now armed with the knowledge that they can resort to the powers granted by the FCC to undo the results of private deals that they no longer like. This decision will effectively cede control to MPAA's members over which products get to market for use with MVPD networks, as well as over the feature sets of unrelated products or technologies.

Finally, parties raised a general concern with the number of waivers across many dockets currently being considered by the Commission. The large number of waiver requests suggests that policy would be better served by a formal rulemaking that brings together all of the issues surrounding set top boxes and addresses them in a holistic manner.

In accordance with the FCC's ex parte rules, this document is being electronically filed in the above-referenced docket today. Attached are two articles provided by parties in our meeting not already included in the public record.

Respectfully submitted,



James W. Hedlund
Vice President, Regulatory Affairs

cc: Blair Levin
Colin Crowell
Shomik Dutta

¹ Letter to Ms. Marlen Dortch, Secretary, Federal Communications Commission, from Elizabeth Sage, November 23, 2009 (attachment at 1-2).