

November 4, 2009

Chairman Julius Genachowski
Federal Communications Commission
445 12th St. SW
Washington, DC 20554

Re: MB Docket No. 08-82

Dear Chairman Genachowski:

The undersigned public interest groups write to you to urge the Media Bureau to deny the Motion Picture Association of America's petition for "Selectable Output Control" ("SOC"). You have pledged that the Commission will be committed to data-driven decision making. Your dedication to the FCC's regulatory process and rule of law is important in insuring that the Commission is accountable to the public, not just responsive to the whims of industry. Here, the big movie studios have asked for a waiver of a rule that bans certain unfriendly-to-consumer controls over consumer electronics. Our groups have filled the record with reasons why such a waiver would be detrimental to consumers. The MPAA has provided the Commission with *zero data* to support its request. Despite a dearth of evidence justifying this petition, the Media Bureau appears poised to grant the waiver as a special favor to the MPAA, contrary to the public interest.

The standard for granting waivers to Commission rules is meant to be high to maintain the integrity of the rule. The MPAA claims this waiver will enable the industry to experiment with a "new business model," even though some studios have already abandoned release windows. Such a major industry request would be addressed properly with an FCC rulemaking proceeding, not a waiver. Instead, the Media Bureau is signaling that it will waive rules for big industry at consumers' expense, which opens the floodgates to policy by waiver. The Media Bureau's actions here will render your commitment to accountability and the rule of law as mere rhetoric and signal to the public that this FCC is beholden to big industry.

As petitioner, the MPAA bears the burden of proof and must demonstrate that the waiver is warranted. Yet, over the past year, the MPAA has failed to provide a reason as to why the limited interests of its six member movie studios should be allowed to outweigh the interests of those consumers that will be forced to replace over 20 million television sets and countless other devices in order to view content that their current equipment is capable of displaying. Furthermore, granting the waiver effectively would allow MPAA member companies to control the types of connections and features offered to all U.S. consumers, forcing consumer electronics designers and manufacturers to agree to almost any consumer-unfriendly conditions just to display SOC content. Lastly, the MPAA has not presented a shred of relevant data in the record to support its claim that the ability to turn off video outputs on common consumer electronics could be used to effectively combat piracy. Instead, MPAA member studio Paramount undercut its own argument by presenting data that illustrates that infringing copies of movies are already widely available on the Internet on the day of a film's theatrical release – months before the

proposed home VoD release date. Granting this waiver would do *nothing* to limit the availability of these infringing copies.

The undersigned groups oppose the MPAA's petition for waiver. To grant a waiver request without evidence would erode the integrity of the Commission's rules and extend a blanket invitation for further unsupported waiver applications. If the Commission bows to the capricious desires of industry, it runs the risk of undermining its reputation as, according to Chairman Genachowski, a data driven agency. Worse, it creates uncertainty and acts as a deterrent to innovation, to the detriment of consumers. For all of the above reasons, the Commission should deny the petition.

Respectfully submitted,

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cc:

Commissioner Copps
Commissioner McDowell
Commissioner Clyburn
Commissioner Baker