

July 19, 2002

The Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Dear Chairman Powell:

As you know, both Houses of Congress have been actively working on the transition to digital television ("DTV"). The Senate Commerce Committee and the House Committee on Energy and Commerce have held hearings on various issues related to the transition, and have been involved in numerous industry discussions to resolve outstanding issues. While we had hoped that the industry players would achieve a meeting of the minds on these critical issues voluntarily, unfortunately no comprehensive agreement has been obtained to date.

Due to the exigency in removing remaining obstacles to the DTV transition, we believe it is now time for the Government to assert its jurisdiction in these matters. Accordingly, this week we announced our intention to draft legislation that will address the remaining key issues: over-the-air DTV tuners; DTV cable carriage limitations; DTV set-top-box compatibility; pass through of high definition programming by broadcast network affiliates; and content protections for digital video programming.

At the same time, the Federal Communications Commission ("FCC" or "Commission") has ample authority to address these issues independently of the Congress. In fact, the FCC has worked on many of these issues for quite some time. We want to emphasize that our legislative agenda in no way relieves the Commission of its obligation and responsibility to continue to work diligently to resolve these issues expeditiously, and fully expect the agency to do so in close consultation with our Committee.

To that end, we are writing to urge that you also begin working to implement a 'broadcast flag' solution to protect digital content delivered over the broadcast airwaves. The FCC currently possesses the authority to act now under the statutory provisions in the Communications Act. For example, 47 U.S.C. § 336(b)(4) authorizes the FCC to "adopt such technical and other requirements as may be necessary or appropriate to assure the quality of the

signal used to provide advanced television services.” In addition, 47 U.S.C. § 336(b)(5) grants the FCC the authority to prescribe regulations relating to advanced television services “as may be necessary for the protection of the public interest, convenience, and necessity.” And lastly, Title I of the Communications Act provides jurisdiction that is “reasonably ancillary” to its specific grants of authority over telecommunications issues. 47 U.S.C. § 154(i).

Furthermore, the Commission has several proceedings outstanding that we believe are central to expediting the transition to digital television. Specifically, the FCC has before it the issue of determining the extent to which digital television sets must be capable of receiving over-the-air broadcasts of high definition television programming; the issue of addressing dual must-carry and multicast must-carry requirements; and the issue of ensuring equipment functionality and interoperability for all digital cable systems. We strongly urge the Agency to complete its work in these open proceedings without delay.

Given that a legislative solution would necessarily involve FCC implementation, we believe matters can be best expedited if the agency steps up its efforts immediately. Of course, we fully expect the agency to work closely with us as it moves forward on the details of these critical issues. As the Commission implements the broadcast flag solution, it is essential that the views of all interested parties, including high tech and consumer groups, be afforded careful review and consideration. Any solution must strike an appropriate balance between the need to protect digital content from piracy while, at the same time, continuing to stimulate technological innovation and maintain reasonable consumer expectations.

Thank you for your attention to this important matter. We look forward to working together with the Commission, as well as our counterparts in the Senate, to ensure the DTV transition is successful.

W.J. “Billy” Tauzin
Chairman
House Committee on Energy
and Commerce

John D. Dingell
Ranking Member
House Committee on Energy
and Commerce

cc: The Honorable Ernest F. Hollings, Chairman, Senate Committee on Commerce
Science, and Transportation
The Honorable John McCain, Ranking Member, Senate Committee on
Commerce, Science and Transportation
The Honorable Daniel K. Inouye, Chairman, Senate Committee on
Communications
The Honorable Conrad Burns, Ranking Member, Senate Committee on
Communications
The Honorable Fred Upton, Chairman, House Subcommittee on
Telecommunications and the Internet

The Honorable Edward J. Markey, Ranking Member, House Subcommittee on
Telecommunications and in the Internet
The Honorable Kathleen Q. Abernathy, Commissioner, Federal Communications
Commission
The Honorable Commissioner Michael J. Copps, Commissioner, Federal
Communications Commission
The Honorable Commissioner Kevin J. Martin, Commissioner, Federal
Communications Commission