



The American Antitrust Institute

January 13, 2009

The Honorable William E. Kovacic, Chairman  
The Honorable Pamela Jones Harbour, Commissioner  
The Honorable Jon Leibowitz, Commissioner  
The Honorable J. Thomas Rosch, Commissioner  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

Re: Patent Holdups and the Conversion to DTV

Dear Commissioners:

On March 26, 2008, the American Antitrust Institute petitioned the Federal Trade Commission to investigate the patent holdup conduct of Rembrandt, Inc. in connection with the FCC-mandated ATSC standard for digital television conversion (see attachment A). As set forth therein, Rembrandt has repudiated the RAND commitment made to the ATSC standards group by the original owner of the patent at issue, demanding dramatically anticompetitive license terms from numerous equipment and network providers that are locked into the DTV conversion process. This conduct threatens serious injury to competition and consumers in much the same way as the conceptually similar conduct that the Commission challenged in its N-Data complaint and consent order last year. AAI has yet to receive a response to its petition.

On January 2, 2009, an organization called the “Coalition United to Terminate Financial Abuses of the Television Transition LLC” petitioned the Federal Communications Commission to take action against numerous parties holding patents believed to be essential to implementing the ATSC standard (see attachment B). The petition describes a situation in which many of these parties are blatantly disregarding their RAND commitments to the ATSC standards group and similarly disregarding the FCC’s own RAND licensing requirement in connection with its adoption of the ATSC standard. In short, it places our Rembrandt concerns within a broader context of multiple wrongdoers, an industry wide pattern of patent holdup conduct that cumulatively threatens enormous injury to competition, to consumers and to the entire DTV conversion process.

This broader picture, along with the fact that the deadline for the DTV conversion is (unless extended) now little more than one month away, underlines the urgency of FTC intervention with regard to the Rembrandt situation. Based on representations in the January 2 FCC petition, the FTC may also want to investigate the circumstances surrounding several other DTV-related patent owners that have allegedly repudiated their own prior RAND commitments to the ATSC standards group.

Throughout the past 15 years, this Commission has been in the forefront of protecting open standards processes from a proliferating array of anticompetitive patent holdup practices and, as one recent report calls it, “predatory patenting and patent assertions.”<sup>1</sup> It has thus developed competition law and policy in this area in ways that have fostered robust competition and innovation throughout the information technology and communications sectors. The reported current multitude of abusive patent enforcement practices in connection with the DTV conversion, as delineated in the attached two petitions, underscores the need for this Commission to continue and indeed deepen its commitment to protecting consumer interests in open standards generally.

Sincerely,

A handwritten signature in black ink that reads "Albert Foer". The signature is written in a cursive, flowing style.

Albert Foer  
President

cc: Melanie Sabo, Esq.  
Patrick J. Roach, Esq.  
Abbott P. McCartney, Esq.

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<sup>1</sup> CCIA’s “Tech Policy Recommendations for the Obama Administration” at 7 (Jan. 7, 2009).