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1850 K Street, N.W.
Washington, DC 20006-2296
202-887-8000
Facsimile 202-778-8087

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Robert S. Schwartz
Attorney at Law
202-778-8081

March 18, 1996

BY HAND DELIVERY

William F. Caton, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: CS Docket No. 95-184

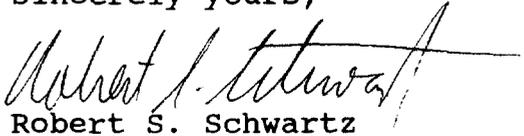
Dear Mr. Caton:

Enclosed for filing are an original and ten copies of the Comments of Circuit City Stores, Inc. on the Notice of Proposed Rulemaking (NPRM) in the Inside Wiring proceeding noted above.

An additional copy to be date stamped and returned with the messenger for our files is also enclosed.

Thank you for your assistance.

Sincerely yours,


Robert S. Schwartz

Enclosures

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MAR 18 1996

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)	
)	
Telecommunications Services)	
Inside Wiring)	CS Docket No. 95-184
)	
Customer Premises Equipment)	
)	

**COMMENTS OF
CIRCUIT CITY STORES, INC.**

Richard L. Sharp
Chairman, President
and CEO

W. Stephen Cannon
Senior Vice President
and General Counsel

Circuit City Stores, Inc.
9950 Mayland Drive
Richmond, VA 23233
(804) 527-4014

March 18, 1996

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SUMMARY

Circuit City Stores, Inc. supports the Commission's efforts to adopt a uniform regulatory structure applicable to inside wiring and customer premises equipment issues. As the nation's largest retailer of branded consumer electronics, Circuit City has a significant interest in this proceeding.

Circuit City urges the Commission, through this proceeding and others, to move expeditiously to comply with Section 304 of the Telecommunications Act of 1996, which mandates the competitive availability of customer premises equipment from manufacturers, retailers, and other vendors independent of system operators. In particular, the Commission should ensure that:

- (1) Any devices used to access any services of multichannel video program distributors will be subject to competitive, unbundled manufacture and sale;
- (2) Cable system operators should not be able to bundle non-security devices with their services; and
- (3) Competitive deregulation of both telephone and broadband CPE and inside wiring should be harmonized, to create a more competitive marketplace.

A competitive environment in all CPE, and with respect to inside wiring, will foster competition among service providers. The result will be lower prices, higher quality and more choices for America's consumers.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Telecommunications Services)
Inside Wiring) CS Docket No. 95-184
)
Customer Premises Equipment)
)

**COMMENTS OF
CIRCUIT CITY STORES, INC.**

Circuit City Stores, Inc. respectfully submits these comments in response to the Federal Communications Commission ("FCC" or "Commission") January 26, 1996 Notice of Proposed Rule Making ("Notice") in the above-captioned proceeding.^{1/} In particular, Circuit City applauds the Commission's recognition in this proceeding of the importance of consumers' rights to procure customer premises equipment, for both telephone and broadband services, on a fully competitive and unbundled basis. Indeed, had the Commission not set this course, it would be obliged to do so by section 304 of the Telecommunications Act of 1996.^{2/} The Commission's early recognition of this obligation provides a basis for expeditious and effective action in accordance with Congress's clear intention.

^{1/}Notice of Proposed Rule Making, CS Docket No. 95-184, FCC 95-504, released January 26, 1996.

^{2/}Telecommunications Act of 1996, Pub. L. No. 104-104, § 304 (1996).

As the nation's largest retailer of branded consumer electronics, Circuit City has a direct and immediate interest in competitive and unbundled markets for customer premises equipment of every type -- whether based on telephone, broadcast, cable, or satellite media and whether based on computer, television, or integrated or hybrid "set-top" technology. Based in Richmond, Virginia, Circuit City has approximately 400 retail outlets nationwide. In its last fiscal year, Circuit City sold over \$7 billion in merchandise, more than 80 percent of which was branded in consumer electronics, including video, audio, telecommunications, and personal computer equipment. We sell, to the general public, America's major brands of personal computers, including Apple, AST, Compaq, Hewlett Packard, IBM, Packard Bell, and others.

Circuit City views the enactment of section 304 of the Telecommunications Act of 1996 as the magna carta for unbundled competition in broadband devices. While the Commission has in its own proceedings taken important steps toward this objective as a matter of sound policy,^{3/} it is now under an explicit mandate to achieve this objective, in its regulations, with respect to any service offered by a Multichannel Video Program Distributor. As a company that

^{3/}See In the Matter of Implementation of Section 17 of the Cable TV Consumer Protection and Competition Act of 1992: Compatibility Between Cable Systems and Consumer Electronics Equipment, First Report and Order, ET Docket No. 93-7 (rel. May 4, 1994).

very actively voiced its support for the passage of section 304, Circuit City is committed to active participation in any and all proceedings through which the Commission can fulfill its mandate.

We agree with the Commission's premise, in this Notice, that the issues of competitive availability of telephone CPE and of cable and other broadband equipment are closely linked, and should be resolved consistently and in favor of competition. While we see the enactment of section 304, subsequent to this Notice, as adding force and urgency to the Commission's task, we do not think it should be seen as imposing any new procedural requirements. Section 304 requires the Commission to achieve competitive availability **in its regulations**. Accordingly, the Commission should proceed through this and other appropriate pending proceedings, as well as new ones to the extent necessary, to comply with the congressional mandate as fully and quickly as is possible.

As set forth more fully below, we believe the challenges that lie ahead for the Commission in complying with Congress's mandate will require several basic rules relevant to this proceeding:

- Any device used to access any services of multichannel video program distributors must be subject to competitive, unbundled manufacture and sale;
- Any exception to the requirement for all consumer equipment to be available competitively must be based strictly on a need for the physical carriers of security

information and functions to be controlled by system operators;

- Equipment availability on the model of telephone customer premises equipment should be the rule, subject to strictly limited exceptions compelled only by security concerns; and
- To promote competition and consumer choice, the Commission should harmonize the telephone and broadband inside wiring rules.

Given the primacy of Circuit City's interest in competition in the market for broadband, as well as narrowband, customer premises equipment, we will address these issues, posed in ¶¶ 65 - 76 of the Notice, first. We will then comment, in light of these considerations, on the other questions raised by the Commission.

I. Section 304 of the Telecommunications Act of 1996 Requires the Commission to Make Any Devices Used to Access Any Services of Multichannel Video Program Distributors Subject to Competitive, Unbundled Manufacture and Sale.

Section 304 of the 1996 Telecommunications Act mandates the "commercial availability ... of equipment used by consumers to access multichannel video programming and other services offered over multichannel video programming systems, from manufacturers, retailers, and other vendors not affiliated with any multichannel video programming distributor."

47 U.S.C. § 522(12) defines a "multichannel video programming distributor" as:

a person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, or a television receive-only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming.

The equipment covered by section 304, then, is, simply, **any device used by consumers to access video programming or any other service offered over a multichannel video programming system.**^{4/}

Section 304 requires that equipment be available "from **manufacturers**, retailers, and other vendors not affiliated with any multichannel video programming distributor." Thus, except for a narrow range of exceptions compelled by security concerns, the equipment covered by section 304 must, like telephone equipment, be available from manufacturers other than those chosen by the system operator. As the House Commerce Committee observed in its report, at 112:

Competition in the manufacturing and distribution of consumer devices has always led to innovation, lower prices and higher quality. Clearly, consumers will benefit from having more choices among telecommunications subscription services arriving by various distribution sources. A competitive market in navigation devices and equipment will allow common circuitry to be built into a single box or, eventually, into televisions, video recorders, etc.^{5/}

^{4/}The Conference Report, confirms this interpretation, describing the scope of the regulations as covering "equipment used to access services provided by multichannel video programming distributors." H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess. 181 (1996).

^{5/}H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess. 181 (1996).

These objectives could not be achieved through mere distribution at retail of devices selected by system operators, any more than CPE would have been deregulated by putting Bell System dial telephones on retail shelves. The efficiencies and innovations wrought by competition require that manufacturers be free to innovate and integrate functions in the equipment that is offered competitively to consumers.

Section 304 also requires that system operators refrain from bundling. This is consistent with Section 64.702(e) of the Commission's Rules, which states:

[T]he carrier provision of CPE used in conjunction with the interstate telecommunications network shall be separate and distinct from provision of common carrier services and not offered on a tariffed basis.^{6/}

Allowing cable operators to bundle equipment with services would only encourage monopolistic behavior that runs contrary to Congressional intent in the current deregulatory environment.^{7/}

^{6/}47 C.F.R. § 64.702(e).

^{7/}However, the narrow exceptions to the competitive availability requirement discussed below should apply also to the prohibition on bundling, as these exceptions should be limited to modules and software-IC carriers that are not available from any competitive seller.

II. Any Exception to the Requirement For All Consumer Equipment To Be Available Competitively Must Be Based Strictly On A Need For Security Information Carriers and Functions to be Controlled by System Operators.

Subsection (b) of section 304 cautions the Commission not to prescribe regulations "which would jeopardize security of multichannel video programming and other services ... or impede the rights of a provider of such services to prevent theft of service." Accordingly, exceptions will be necessary to allow cable television systems through existing or improved methods to protect signals from theft. However, Congress made no exception for any other purpose or policy. Accordingly, the Commission may not, and should not, impose any other exceptions, so as to allow system operators to offer products that are not available from independent manufacturers and retailers.

A. The Commission should allow existing analog converter boxes, as to which there is no interface between the security element and its other features, to remain in distribution for a limited phaseout period.

Existing analog cable converter boxes contain competitive features that could easily be supplied in TVs, computers and other devices, as well as security functions that must be controlled by the system operator. However, fairness requires a phaseout of nonconforming devices, rather than an immediate end to their distribution. But, operator-supplied analog equipment not already in distribution that lacks a modular interface between the

security functions and other features should not be allowed to enter distribution.

- B. As to new analog converter boxes put into distribution, system operators should be allowed to distribute exclusively a module consisting of the security element only.**

In analog cable equipment, the processing of security information must be done in a hardware module. In order to allow the system operator to control the processing of security information, the operator must be allowed to be the exclusive distributor of a **security module**. Such a module, however, is only a relatively minor element, in size and value added, of a converter box. **There is no reason -- indeed it would be contrary to the statute -- to grant an exception to maintain a system operator monopoly over more than the necessary security module.**

An interface for a security module has been defined, as a part of a draft industry standard, pursuant to ET Docket 93-7. Moreover, the Commission has already declared, in its Report and Order of April 4, 1994 in that proceeding, that to promote competition, the security function and other features must be separated in **both** future "set-back" (§ 42) and "set-top" (§ 29) boxes. To implement the necessary security exception, the Commission needs to:

- (a) define an interface for analog security modules and other devices,
- (b) require after a date certain that any new converter box put into distribution by a system operator consist of either a security module only, or a security module mated to some other device through the defined interface, and

(c) require that a system operator must make a security module available for use with any competitively procured equipment containing the defined interface.^{8/}

In the analog context, these requirements are the precise analogy to the standardization of the telephone RJ-11 interface, which has made possible the blooming competitive market in devices usable over telephone systems.^{9/}

C. **As to new digital equipment, system operators should be allowed to distribute exclusively only a software and IC carrier containing security circuitry only.**

In the digital signal environment, it is possible to place all security-related circuitry on a software carrier (e.g., a card). Security against theft of signal is actually improved, in this implementation, compared to security fixed in the box.^{10/} Accordingly, it is not necessary to grant an exception from the requirements of section 304 for **any** device. The only item over which the

^{8/}As we indicate above, there is no need to subject such system-operator-supplied security-only components to any unbundling rule, as they are not competitively supplied equipment. Indeed, as they are functionally part of the network, the Commission could require that they not be subject to any separate charge to consumers.

^{9/}Some analog systems may operate by means of traps or employ multichannel descrambling accomplished at the demarcation point. In such cases, no security module should be necessary; a competitively procured converter should function without any security module inserted.

^{10/}Encryption can be customized for small areas without any modification to the box, greatly diminishing the incentive to attack it. If the security is compromised, only the card -- not the entire box -- need be replaced.

system operator could justifiably maintain a monopoly is the software carrier itself. Pursuant to this exception the Commission needs only to:

(a) define a **standard interface** for reading digital software carriers,

(b) require that with respect to any digital transmission of a signal by a multichannel video program system operator as to which security encoding or means of access control is applied, the customer premises circuitry governing access must be **furnished to subscribers by means of a software carrier compatible with the defined interface** (whether the consumer's device has been obtained from the system operator or a competitive supplier), and

(c) adopt a standard, or family of standards, for the digital transmission itself, so that receiving devices need not be specific to particular systems.

These tasks may be readily accomplished with existing technology and pending technical standards. An Electronic Industries Association draft standard for a National Renewable Security System defines a standard interface meeting the requirements set forth above. And the Commission has already stated, in its April 4, 1994 Report and Order in ET Docket 93-7, that it intends to require a standard for digital transmission, for the competitive purposes that have now been stated so much more forcefully by section 304.

D. Integrated Devices Are Not Exceptions Based on Security

Congress left no room or rationale for the Commission to fashion any exception -- beyond a phaseout of existing inventory -- for operator-provided devices that integrate security functions with other features. To do so would flatly contradict the congressional intention to make all devices, except those strictly necessary for security, subject to competition.

Some cable operators and industry suppliers, in opposing section 304 in the legislative arena, attempted to justify continuation of their monopoly by claiming economics of "integration." Whether or not any such short-term efficiencies might exist, in the long term such an approach clearly would be **the opposite** of functional integration, and would be obviously inefficient: **every device element integrated into a security module is unavailable for efficient integration into the customer's own equipment.** As quoted above, the House Commerce Committee observed:

A competitive market in navigation devices and equipment will allow common circuitry to be built into a single box or, eventually, into televisions, video recorders, etc.^{11/}

An exception, not based on security, for integrated devices provided only by system operators would discourage, rather than encourage, the integration of features in devices that are competitively sold. It would also

^{11/}H.R. Rep. No. 204, 104th Cong., 1st Sess., pt. 1.

encourage system operators to give their "own" integrated features priority, in system operation, over those provided in competitive products. It would thus defeat another purpose of the Committee:

Clearly, consumers will benefit from having more choices among telecommunications subscription services arriving by various distribution sources.^{12/}

An exception allowing integration of the service features with security would tend to tie consumers to a single service, rather than promote competition among services.

It should be noted that no exception, based on security, is necessary for devices such as cable modems. Any security element pertaining to a signal acquired by means of a cable modem is addressed to the circuitry or software of the consumer's personal computer or other access device. As there is no security access interest of the system provider, this exception cannot prevent the distribution of cable modems from being fully subject to section 304. Accordingly, the Commission needs to ascertain the existing obstacles, related to standardization, to competitive manufacture and retail distribution of cable modems, and address these as necessary.

^{12/}H.R. Rep. No. 204, at 112.

III. To Foster an Environment of Regulatory Parity Between Telephone and Cable Inside Wiring Rules, the Commission Should Harmonize Such Rules, Which Will Eliminate Inconsistent and Unnecessary Requirements.

Circuit City strongly supports the Commission's movement toward harmonizing regulations that deal with inside wiring of telephone and cable system networks. Traditionally, local exchange carriers ("LECs") have been regulated as common carriers under Title II of the 1934 Communications Act.^{13/} As programming content providers, cable operators have been subject to Title VI requirements.^{14/} However, with the recent passage of the Telecommunications Act of 1996, the regulations that govern both telephone and cable networks will become virtually interchangeable as the technology used to deliver both voice and data information resemble each other.

The Telecommunications Act of 1996 allows LECs to use their existing networks to provide multichannel video programming to subscribers within their service territory.^{15/} Additionally, cable operators may use their networks to deliver voice and data information. With the opportunity of the telephone and cable industries' abilities to enter each others' markets, the convergence of the rules that govern both are consistent with the emerging marketplace.

^{13/}47 U.S.C. § 201-228.

^{14/}47 U.S.C. § 521-613.

^{15/}See Telecommunications Act of 1996, § 302 (1996).

- A. Cable inside wiring rules should provide the customer with flexibility regarding their own inside wiring.**

Historically, the Commission's policies allowed telephone customers to maintain their own inside wiring. This included the right to provide and install their own wiring on their own or through a third-party contractor. Cable customers did not have this option. They were required to accept their cable inside wiring from their cable service provider.

Allowing cable customers the right to maintain their own inside wiring is clearly in the public interest. As the market expands to accommodate additional telecommunications service providers, consumers will benefit if they are afforded with the flexibility to maintain their wiring system as they desire. In order to avoid signal leakage problems that may develop, the Commission should promulgate rules as to the minimum standards regarding the quality of wiring that may be sold to the public. The Commission could also set mandatory labeling requirements and installation instructions for the requisite connectors.

- B. The Commission should establish a common demarcation point for all wireline communications networks.**

Establishing a common demarcation point for all wireline communications networks is consistent with promoting competition in the multichannel video programming marketplace. Setting a common demarcation point would avoid

confusion among consumers, property owners and service providers.

For single dwelling units, Circuit City believes that the cable demarcation point of approximately 12 inches outside of the point where the cable wire enters the customer's property should apply to all wireline services.^{16/} Harmonization of this demarcation point would promote competition as the technology used to employ telecommunications services converges.

For multiple dwelling units, Circuit City believes that competition would be enhanced if the demarcation point is set at a minimum point of entry where all service providers could connect. This point of entry will avoid confusion that is likely to occur if the demarcation point were set "at the point at which the broadband or narrowband line becomes dedicated to an individual subscriber's use."^{17/}

IV. To Comply With Section 304 As Expeditiously As Possible, The Commission Should Use Every Available Proceeding and Adapt Any Tool Developed In Any Pending Proceeding.

The Commission need not fulfill section 304's mandate through a separate or unique proceeding. Competitive availability issues are already posed, appropriately, in the Notice in this proceeding. Necessary tools may also be available in other pending proceedings.

^{16/}See 47 C.F.R. § 76.5(mm).

^{17/}Notice, ¶ 16.

An interface for a descrambler-only module has been defined as a part of the draft EIA IS-105 standard. Such an interface, or a similar interface, may be used to define a multi-purpose analog security module that could be provided by system operators to enable the operation of competitively procured converter boxes, TVs, VCRs, and computers and accessories. If in so doing the Commission made use of the standards work done in the private sector pursuant to ET Docket 93-7, this need in no way entail any judgment, decision, or action as to that proceeding, or other issues or elements of draft standards that may relate to it.

While Docket 93-7 itself must be considered in light of section 301(f) of the Telecommunications Act of 1996 (the "Eshoo" amendment),^{18/} which potentially limits the tools available to comply with the "compatibility" requirements of the 1992 Cable Act, there is no limitation on the tools available to the Commission for compliance with section 304. To the contrary, **congressional intent is clear, specific and explicit that section 301(f) not be read as denying to the Commission any tool necessary for compliance with section 304.** The House Commerce Committee report on (what is now) 301(f) says:

Subsection [202](1) [now subsection 301(f)] is not intended to restrict the Commission's authority to promote the competitive availability of converter boxes, interactive communications devices, and other customer premises equipment as required by

^{18/}Telecommunications Act at § 301(f). H.R. Rep. No. 204, at 111.

section 203 [now section 304] of this legislation.^{19/}

Conversely, the House Report states in regard to section 203 [now section 304]:

[T]he Committee does not intend that section 202(1) [now 301(f)] in any way limits or circumscribes Commission authority under section 203 [now 304].^{20/}

Circuit City believes that there is not, and need not be, any inherent conflict between complying with Section 304 expeditiously and complying with Section 301(f).^{21/}

However, to the extent any such conflict may be supposed, it could not be any clearer that, irrespective of any constraints imposed by 301(f) with respect to any other provision or proceeding, the Commission has full authority to use any available tool for the purpose of complying with section 304.

V. The Ultimate Objectives of the Commission Pursuant to Section 304 Should Be Availability On the Model of Telephone Customer Premises Equipment, Subject to Strictly Limited Exceptions Compelled by Security Concerns.

^{19/}Id., at 111.

^{20/}Id. at 111.

^{21/}The decoder/descrambler module need not be relevant to the standardization questions, with respect to home automation and computer networks, addressed by 301(f) -- they are a separate interface element in no way implicated by the standardization of a security module and interface. So even if it were not for the clear legislative priority of 304 over 301(f), 301(f) clearly would be no bar to use by the Commission of only the standards developed for a security module and interface, in ET Docket 93-7 or in this inside wiring proceeding, in order to comply with Section 304.

Circuit City believes that both section 304 and the objectives stated by the Commission in ¶¶ 70 and 72 of the Notice require the same result as has been achieved with respect to telephone customer premises equipment -- that, except for security modules or carriers that are functionally parts of the network and may be bundled as such, no equipment should be available only from a system operator. Beyond this narrow exception, any sort of customer premises equipment, broadband or narrowband, telephone or otherwise, capable of distribution by a system operator should be subject to independent, competitive manufacture and sale.

A. New products should become available to consumers as a result of Commission action.

Ultimately, proceedings by the Commission to implement Section 304 should result in the following competitive products entering the marketplace:

- (1) modular **analog cable** set-top and set-back boxes, of which all but a cable-provided "descrambler module" should be a retail product;
- (2) **TVs, VCRs, and PCs** ported to accept cable-provided descrambler modules, so can handle all other features, menu presentations, programming, and switching internally;
- (3) **Digital set-top boxes**, either specialized for particular cable, DSS or MMDS services or integrated for several services, that can be entirely retailed because,
 - (a) they will contain a **standardized security interface** (e.g., NRSS) to read software carriers that contain all conditional access and decryption circuitry, and

(b) the means of **digital transmission** will be sufficiently standardized (MPEGII variants) that all can be decoded by a standard box (with appropriate converters for differences in modulation techniques used by different services);

(4) **TVs, VCRs, PCs, recordable DVDs, etc.** as to which the "box" circuitry described in (3) is **functionally integrated** or modular; and

(5) **Cable modems** conforming to national standard.

B. Adoption of and enforcement of technical standards by the Commission will be a necessary component of action in this proceeding and pursuant to section 304.

Section 304 recognizes explicitly that the Commission will be engaging in standard-setting to comply with the law. The respects in which standards, that have originated in the private sector, must be selected or approved would be only a few. These are:

(1) for analog audiovisual equipment, a standard interface for a plug-in security module;

(2) for digital devices (including TVs, VCRs, computer accessories), (A) a standard security interface (NRSS) and (B) a digital TV transmission standard or family of standards that could be received by a standard receiver; and

(3) for cable modems, sufficient standardization to allow competitive manufacture and sale (there is no security interface consideration).

With respect to each product category, it will also be necessary for the Commission to address the compliance practices of system operators, including informing subscribers of the legality and availability competitively procured devices, similar to requirements in Parts 64 and 68.

CONCLUSION

Circuit City supports the Commission's intentions and efforts in this proceeding. We believe that Congress's mandate in the Telecommunications Act of 1996 can best be achieved by: (a) making any equipment used to access any services of multichannel video program distributors subject to competitive, unbundled manufacture and sale; (b) strictly limiting the circumstances in which a cable operator may integrate security-related equipment with their service; and (c) harmonizing the rules that govern the inside wiring of telephone and broadband networks. Circuit City respectfully requests that the Commission use the most expeditious means and procedures available to accomplish these objectives in its regulations.

Respectfully submitted,
CIRCUIT CITY STORES, INC.

By:


Richard L. Sharp
Chairman, President
and CEO


W. Stephen Cannon
Senior Vice President
and General Counsel

Circuit City Stores, Inc.
9950 Mayland Drive
Richmond, VA 23233
(804) 527-4014

Dated: March 18, 1996