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April 17, 1996

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FEDERAL
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BY HAND DELIVERY

William F. Caton, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
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DOCKET FILE COPY ORIGINAL

Re: CS Docket No. 95-184

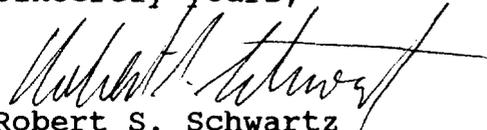
Dear Mr. Caton:

Enclosed for filing are an original and ten copies of the Reply 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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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FED. COMM. COMM.

In the Matter of)
)
Telecommunications Services)
Inside Wiring)
)
Customer Premises Equipment)
)

CS Docket No. 95-184

DOCKET FILE COPY ORIGINAL

REPLY COMMENTS OF
CIRCUIT CITY STORES, INC.

Richard L. Sharp
Chairman, President
and CEO

W. Stephen Cannon
Senior Vice President
and General Counsel

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April 17, 1996

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SUMMARY

Circuit City agrees with the many commenters who emphasize the importance of Section 304 of the Telecommunications Act of 1996 in mandating Commission action to make equipment to access services of multichannel video program systems available to consumers, and to guarantee its use without discrimination or disadvantage. We disagree with those who deny such a congressional intention or ask the Commission to disregard it or assign it a low priority.

Circuit City agrees with those who support the Commission in finding, in this inside wiring proceeding, an important link between the competitive availability of CPE and that of equipment to access newer broadband services. We agree with those who call on the Commission to:

- (a) affirm a right to nondiscriminatory interconnection; and
- (b) extend its Part 68 Registration Program to the equipment covered by Section 304 of the 1996 Act.

Those opposed to breaking down the current regulated monopoly in cable access equipment cite essentially irrelevant distinctions between CPE and telephone service, on the one hand, and broadband equipment and cable service on the other. In the view of Circuit City, these arguments -- that some elements of cable equipment are in fact network devices, and that intellectual property claims of some system operators will apply to equipment -- in fact tend to support our arguments, and those of other commenters, that the Commission must define a clear interface between

security circuitry (part of the network) and other functions and features (subject to competition and not to be bundled); and that a registration system in aid of compatibility is necessary. Nor are the expressed concerns about network security relevant to the technologies available in the private sector today.

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

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APR 17 1996

FEDERAL COMMUNICATIONS COMMISSION

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

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

Circuit City Stores, Inc. respectfully submits these reply comments with respect to the Federal Communications Commission ("FCC" or "Commission") January 26, 1996 Notice of Proposed Rule Making ("Notice") in the above-captioned proceeding.^{1/} In its main filing, Circuit City applauded 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. We pointed out that had the Commission not set this course, it would be obliged to do so by section 304 of the Telecommunications Act of 1996.^{2/} We agree with the many other commenters who made the same or similar points. Some commenters, however, while acknowledging other portions of the 1996 Act, seem oblivious to section 304 and the clear and resounding congressional

^{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).

policy, in favor of competition at both the manufacturing and retail levels, that it represents.

- I. Circuit City agrees with those commenters that supported the Commission's premise 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.**

In our own comments, we argued that in section 304 Congress clearly expects the Commission, with respect to all equipment used to receive any service offered by a multichannel video programming distributor, to achieve the following competitive ends:

- 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.

Other commenters proposed consistent, more specific implementations of these requirements, with which we agree.

- A. The Commission should affirm a right to nondiscriminatory interconnection.**

We agree with those commenters -- the Independent Data Communications Manufacturers Association, the Information

Technology Industry Council, Compaq Computer Corporation, and Tandy Corporation -- who pointed out that a clear consumer right of nondiscriminatory interconnection and an extension of the Part 68 registration program are essential to compliance with Congress's intentions as expressed in section 304 of the '96 Act.

While Circuit City also argued for the need for a clear consumer right to interconnection, other comments are more specific as to the need for the Commission to prevent system operators from saddling those consumers choosing competitively provided equipment with extra subscriber charges, inferior service, or operator-provided interface devices. These commenters noted that, in the past, the Commission has found such requirements to be unreasonable and discriminatory impositions. It is, unfortunately, apparent from some other filings, discussed below, that certain system operators and their favored suppliers seek to enlist the Commission in protecting the status quo by allowing them to impose unnecessary and discriminatory requirements on consumers. Clearly, then, it is not sufficient for the Commission simply to create conditions for competitive products to be offered; it must also zealously affirm and protect consumers' rights to connect these products without these sorts of impositions.

B. The Commission should extend the Part 68 Registration Program.

Other commenters also argue more specifically that, to effectuate the congressional mandate, the Commission must

extend the Part 68 registration program to the equipment covered by section 304 of the '96 Act. In particular, Circuit City endorses the points made by Compaq Computer and IDCMA with respect to network disclosure. It is clear, already, that some cable operators and their favored providers will make the bootstrap argument that since they are free of network disclosure requirements, cable systems are different from telephone systems, so interconnection of competitive devices is just not feasible.

The operators' argument proves the point made in the IDCMA and Compaq filings: without network disclosure requirements, some system operators will seek to avoid compliance with Congress's strong and clear intention in enacting section 304. Accordingly, in this or another appropriate proceeding, the Commission should assign a high priority to extending network disclosure requirements coextensively with section 304 of the '96 Act.

We agree with CEMA that the application of interconnection and interoperability requirements is not the same thing as imposing performance standards for CPE. For example, it is sufficient to adopt a standard for digital transmission of cable signals (as the Commission has recently affirmed its intention to do in its disposition of motions for reconsideration in ET Docket 93-7) without mandating the means of reception used in devices.

C. Support from Bell Operating Companies and consumer organizations is significant.

Circuit City is pleased to note the support expressed by prominent Bell Operating Companies and consumer advocacy organizations for early compliance with section 304's congressional mandate. We welcome the comments of Nynex Telephone Companies and U.S. West Inc., and the joint comments of the Media Access Project and the Consumer Federation of America.

II. The Arguments Against Compliance With the Congressional Mandate Expressed in Section 304 Are Based on Circular or Obsolete Objections to Implementing the Congressional Purpose.

At least one commenter manages to discuss the issue of competitive availability of equipment without once mentioning or otherwise acknowledging the existence of section 304 of the '96 Act.^{3/} Others acknowledge the congressional intention, but seek to interpose reasons why cable systems should be treated differently from CPE, and should be immune from the new legal provisions that so clearly and directly apply to them. These arguments are either makeweights, based on ignoring what is now standard technology, or amount simply to saying that cable systems should be regulated differently in the future because they are regulated differently now.

^{3/}Comments of General Instrument Corporation.

A. Cable and favored supplier commenters are incorrect in asserting that Congress did not intend the immediate and effective achievement of competition in all equipment used to access services of multichannel video program distributors.

Congress's intent in passing the Telecommunications Act of 1996 is clear. Section 304 of the 1996 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."^{4/} The House Commerce Committee noted 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/}

While those attempting to preserve monopolies will try to find inferences to the contrary, clearly Congress wanted consumers to enjoy the benefits of open competition, wherever possible, with respect to telecommunications services and equipment. Only in limited circumstances does the 1996 Act contain deferred timetables with regard to the immediate and effective achievement of competition (i.e.,

^{4/}Telecommunications Act of 1996, § 304 (1996).

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

RBOC entry into alarm monitoring services^{6/}). Nowhere in the 1996 Act or in its legislative history is it suggested that less competition in the manufacture and sale of devices to gain access to multichannel video distribution program services would be a good thing.

B. The argument that customer equipment with a transmission capability is not CPE is substantially incorrect and misleading and the conclusion essentially circular.

General Instrument argues (p.11) that even if the analogy of cable equipment to CPE is valid, Part 68 still should not apply because it does not apply to "network transmission equipment located at customers' premises," because "much" of "cable system in-home hardware" is transmission equipment. This argument is substantially wrong and misleading.

First, the great preponderance of consumer telephone equipment consists of transmit/receive devices clearly covered by Part 68 as CPE. Most set-top box equipment now in homes is receive-only or is interactive on a basis much more limited than that of the covered CPE. To the extent that these devices are to become more interactive, they will be no more so than the telephones, fax machines and modems that are subject to Part 68 and are part of a thriving competitive market.

Second, as we argued in our main comments, the extent to which elements on the customer premises deal with network security helps define the limited exceptions to the

^{6/}Telecommunications Act of 1996, § 275 (1996).

prospective rule treating broadband equipment as CPE; it would be contrary to Congress's clear intention for such elements to swallow the rule itself. More specifically, we noted that necessary regard for the protection of system security will require standard interfaces to allow the security element on the customer premises to be isolated into a module (in an analog system) or an IC carrier card (digital system), in each case with a standard interface. Standardizing the interface allows the security element to be isolated and treated not as CPE, but as part of the network (see our comments, p. 9, n. 8). Conversely, it allows the rest of the equipment, whether transmit or receive, to be treated as CPE.

As we argued in our comments (pp, 11 - 12), the necessity to isolate and treat the security elements as not part of the CPE is a compelling reason not to allow system operators to bundle other functionality or features into these modules or cards. Everything on the security side of the interface can be treated as not CPE, and properly may be bundled with system services or given away for the convenience of the consumer. Congress has mandated that everything on the CPE side must be subject to competition and may not be bundled. Thus, it is imperative that the Commission draw clear, standard lines and prevent system operators from defeating Congress's intention by combining CPE with the modules or cards containing the essential network security components.

C. Citations to "technical differences" between telephone and cable systems to resist the congressional mandate fail to identify any that would justify resistance to the congressional mandate; the status quo is cited as sufficient reason to resist change.

Those who urge the Commission to ignore the congressional mandate of section 304 argue essentially that cable systems are "different" from telephone systems, so, notwithstanding any functional convergence, available technology, or policy decisions already made by the Congress and the Commission, should be insulated from rules requiring competition to replace regulated monopoly. This is akin to observing that the rich are different from the poor because "they have more money." Even in the literary world, such a flat statement was no more than a witticism.

Of course cable and other broadband systems are different from the old Bell telephone system, but not in any way that argues against competition. It is true, as GI argues (page 16), that the old Bell system was largely standardized, whereas cable systems generally are not. It is also irrelevant. As CEMA's comments point out, achieving competition in system access equipment will NOT require standardization of the devices themselves -- if it did, the computer industry would not be united in favoring such competition (see, e.g., comments of Compaq, IDCMA and ITI). Rather, as we and others have argued, competition requires merely the standardization of certain key interfaces with respect to security, and the achievement of a standard means of digital transmission (not a standard means of reception).

The former can be accomplished with technology that is already "on the shelf" thanks to ongoing industry standard proceedings; the latter has already, in ET Docket 93-7, been stated and recently restated as a goal of the Commission.

D. The argument that disclosure of interface specifications would harm security is false and transparently ignores industry standard, private sector technology available today.

Our own comments and those of CEMA and IDCMA have demonstrated conclusively that concern over security is NOT a reason to refrain from implementing section 304. Indeed, such obsolete concerns were voiced to the Congress while this provision was under consideration.

As we point out at p. 9, n. 10, standardization of a security interface should actually bolster protection of signals from theft, as it allows for non-standard application of security techniques so as to reduce incentives for signal theft and allow system operators to implement changes in security without making any changes to the devices themselves. Accordingly, the distinctions based on the switched nature of telephone systems versus the protected nature of cable systems drawn by those who enjoy the present monopoly in customer access equipment are, like the other distinctions they would interpose, irrelevant. Indeed, some of the companies that would draw such distinctions here have distinguished themselves by their contributions to developing renewable approaches to security interfaces in private sector standards proceedings.

In both digital and analog environments, security is no longer an obstacle to competitive availability. In each case, there are means that have been developed in the private sector for security elements to be isolated and to remain in the exclusive control of the network system operator, essentially as network equipment. With the approval of standard interfaces, all other equipment can and should be subject to competition and consumer choice. Under such circumstances the protection of system security, while always subject to improvement, will, as Congress requires, not have been reduced by the achievement of competitive availability.

E. The citation of proprietary technology as an obstacle to competitive availability helps establish the need for a registration system similar to that which applies to CPE.

Finally, those opposed to relinquishing the monopoly on broadband equipment argue that the existence of propriety rights over security and other functions should preclude the introduction of competition to the markets for broadband equipment. This is another essentially irrelevant argument. The prodigiousness of Bell Labs in procuring patents did not forestall later competition in CPE, nor has intellectual property prevented the ubiquitous use of proprietary standards developed in the private sector.

As in other cases, the cries of the opponents actually lend weight to the specific proposals made by the commenters in favor of competition. The existence of proprietary

control over technology lends weight to the arguments of Compaq and IDCMA with respect to network disclosure. There is ample precedent, with respect to CPE, for the Commission to deal fairly with the rights of monopolists who heretofore have developed intellectual property in an environment shielded from competition. This is an item for more specific comment as the Commission proceeds with its task under Section 304, and a factor of which the Congress surely was aware. It is not a reason for the Commission to belay implementation of its own policies or to flout congressional intention.

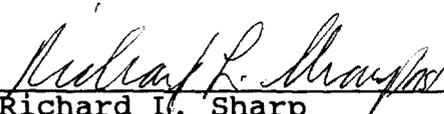
CONCLUSION

This Commission proceeding is consistent with the clear Congressional intentions underlying the 1996 Act. The Commission is right in believing that in the inside wiring context, as in other contexts, competition in access equipment is possible, desirable, and mandated by law.

Respectfully submitted,

CIRCUIT CITY STORES, INC.

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Dated: April 17, 1996