

creation of descrambler-only modules designed for the Decoder Interface. The Commission's orders in this proceeding, requiring cable system operators to provide descrambler-only modules, are absolutely necessary to achieving competitive availability not only of set-back feature circuitry, but also of set-top boxes and all other navigation devices for receiving analog signals from multichannel video program distributors.^{16/}

For section 304 of the '96 Act to have meaning with respect to analog cable signals, cable operators must be required to furnish such modules for use with both the "set-back" Decoder Interface, as well as the "set-top" box. To liberate a potentially huge market, one competitive at retail as required by the Act, all the Commission need do is require that the descrambling module and its interface be a part of any "set-top" box. Cable operators need not be precluded from offering the rest of the box on a non-bundled basis. They would, and should, however, face competition from competing boxes, and TV, VCR and computer circuitry, into which the descrambling module can be plugged. Thus, in order to comply with section 304, it is imperative that the Commission define and mandate the provision by system operators of descrambler-only modules, as it has done in this proceeding.

^{16/} Id., March 18 Circuit City filing at 8-9.

B. The House Commerce Committee Report makes absolutely clear that section 301(f) cannot be read as a limitation on Commission authority under section 304.

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 section 203 [now section 304] of this legislation.^{17/}

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].^{18/}

In originating both sections 301(f) and 304, the House Commerce Committee was well aware of the nature of its mandate to the Commission in section 304. That it placed this language discussing the potential interaction of these two provisions in each of these sections shows the degree of attention paid, and the unambiguity with which the desired outcome was expressed.

^{17/} House Report at 111.

^{18/} Id. at 113.

In considering the instant petitions for reconsideration, it is well to remember, as the joint petitioners have noted, that the Decoder Interface, as discussed in the Memorandum Opinion and Order, is not necessarily the same as IS-105 in its draft form. What matters is the intention of the Commission, not the present state of the private sector draft. Given the unfinished nature of the draft and the fact that the Commission has not yet commenced its inquiry as to enforcement of section 304, there is no basis for the Commission to make any determination, yet, that the Memorandum Opinion and Order is in conflict with section 301(f).

- C. Depending on final development of IS-105, and the Commission's determinations pursuant to section 304, it may be that the appropriate result would be to mandate a descrambler-only subset or derivative of IS-105.

As we discuss above, Circuit City is on record in this proceeding as supporting the "descrambler only" version of a Decoder Interface proposed by EIA/CEG (now CEMA) in February of 1995. The fact that such an interface has not been documented does not mean that it cannot, or should not, be documented. To the contrary, Circuit City is convinced that such an interface is feasible, and if implemented in accordance with appropriate policies pursuant to section

304, could achieve competitive availability of analog navigation devices in cable systems.^{19/}

In its Memorandum Opinion and Order, the Commission left considerable business in this proceeding unfinished. For example, in ¶ 39 it reserved for further consideration and proceedings the arguments of the Consumer Electronics Retailers Coalition (of which Circuit City is a member) that the requirement to furnish a descrambler-only module must extend to set-top, as well as set-back devices. As we argue above, this result seems clearly compelled by the passage of section 304.

Clearly, the remaining issues facing the Commission embrace concerns under section 304 as well as 301(f). If the Commission is to rule on petitions for reconsideration at this time, then it would need to consider every issue in light of section 304 concerns, and to give that section the priority assigned to it by the Congress. In light of the steps remaining in this proceeding, however, we think it would be sounder for the Commission to take further steps in close coordination with affirmative implementation of section 304 in its proposed rulemaking. This consideration underlines the necessity of moving expeditiously to launch and complete such a proceeding under section 304.

^{19/} Indeed, Circuit City believes that it (Patapsco and any other interested parties) could develop and provide to the Commission within 60 days a descrambling-only interface design utilizing the signal interface concepts in IS-105.1.

CONCLUSION

Circuit City views GI's request for "clarification" of the Commission's Memorandum Opinion and Order as seeking entirely to reverse the appropriate roles of the Commission and its advisory group. The portions of the Memorandum Opinion and Order challenged by GI are entirely lawful and appropriate; to the extent there is any failure of draft standards to comply, it is that failure that needs to be remedied. Those who persist in resisting compliance ought to be at risk when the Commission takes further steps to enforce section 304 of the 1996 Telecommunications Reform Act.

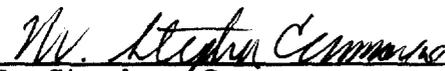
The joint petition for further reconsideration, based on the passage of the 1996 Act, urges action now pursuant to part of that Act. When all of the Act, including section 304, is considered, the Commission may indeed need to make changes as it moves to finalize a Decoder Interface. The Commission's toleration of cable system operators' providing devices that bundle security and other circuitry should not survive such a proceeding. These considerations underscore

why the Commission needs to begin, and complete
expeditiously, a proceeding to enforce section 304.

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


Miles M. Circo
General Manager

Patapsco Designs, Inc.
5350 Partners Court
Frederick, MD 21701
(301) 694-8744

Dated: July 5, 1996

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CERTIFICATE OF SERVICE

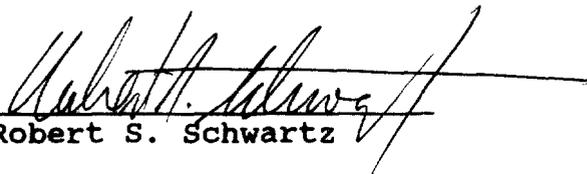
I, Robert S. Schwartz, hereby certify that I have caused a true and correct copy of the foregoing Response of Circuit City Stores, Inc. to Petitions for Reconsideration and Clarification to be served this 5th day of July, 1996 by first class mail to each of the following individuals:

Philip L. Verveer
Francis M. Buono
WILLKIE FARR & GALLAGHER
1155 21st Street, N.W.
Suite 600
Washington, D.C. 20036-3384

Attorneys for General
Instrument Corp.

Glenn B. Manishin
BLUMENFELD & COHEN -
TECHNOLOGY LAW GROUP
1615 M Street, N.W.
Suite 700
Washington, D.C. 20036

Attorney for Echelon
Corporation


Robert S. Schwartz