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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of )  
)  
Implementation of Section 304 )  
of the Telecommunications Act ) CS Docket No. 97-80  
of 1996 )  
)  
Commercial Availability of )  
Navigation Devices )

COMMENTS OF GATEWAY 2000, INC.

Gateway 2000, Inc. ("Gateway") respectfully submits these comments in response to the Commission's Notice of Proposed Rule Making in the above-captioned proceeding.<sup>1</sup> Gateway focuses on a single question raised in the Notice, namely whether "retail sale of CPE by means of a toll free telephone number constitutes [commercial] availability" under Section 629.<sup>2</sup> Gateway strongly believes that such an equipment distribution model satisfies the statutory standard. In fact, the benefits of the direct-to-the-consumer distribution model, and, more importantly, consumers' broad acceptance of this model, compel the Commission to include it in any definition of commercial availability.

<sup>1</sup> In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices, CS Docket No. 97-80, FCC 97-53 (released February 20, 1997) ("Notice").

<sup>2</sup> Notice at ¶ 23.

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## I. DESCRIPTION OF GATEWAY

Gateway was founded in 1985 and is the leading direct marketer of personal computers in the United States. The company develops, manufactures, markets, and supports a broad line of desktop and portable PCs used by businesses, individuals, families, government agencies, and educational institutions. Gateway's headquarters in North Sioux City, South Dakota is also home to its U.S. manufacturing operations and the majority of its U.S. sales and support staff. In addition, Gateway has opened several manufacturing facilities across the U.S. and has also begun operations overseas.

Gateway was formed with one goal in mind -- to offer PC buyers an alternative to the high markups, limited choices, and inadequate support typically found in traditional retail outlets. Because of Gateway's concentration on selling directly to end users rather than relying on dealers or distributors, it has developed and maintained a strong relationship with customers. Gateway representatives are constantly in touch with the people who buy and use our products.

As a result, Gateway continues to receive high marks for its customer service. For example, in 1996, Computer Shopper readers gave Gateway the "Best Service and Support" award. Also in 1996, BYTE magazine readers named Gateway as the "Company with the Best Service."

While Gateway's focus has traditionally been on the PC market, it recognizes that the convergence of the computer and entertainment industries will necessarily change the nature of consumer products, thereby creating new

market opportunities. Gateway believes that telephone-based, direct distribution is an efficient, consumer-friendly approach to this market. This is why Gateway introduced its Destination™ big screen PC/TV, which was the first convergence product in the industry, establishing a new category that combines the impact of high quality, big-screen television with the intelligence of a computer.

Similarly, while Gateway does not currently sell converter boxes for MVPD subscribers, we are closely examining this market and may decide to offer such equipment in the future. In particular, Gateway believes that certain types of MVPD navigation devices, such as cable modems and digital cable set-tops, may be well-suited to a direct distribution model.

As Gateway's success in the PC business demonstrates, consumers not only have grown accustomed to ordering equipment in this fashion, but millions have expressed a strong preference for the lower cost and superior quality it affords. As a result, Gateway urges the Commission to adopt policies in this proceeding that sustain and foster innovative ways -- including direct, telephone based distribution models -- for consumers to participate in this dynamic marketplace.

**II. THE FUNDAMENTAL CHANGE IN THE WAYS CONSUMERS PURCHASE PRODUCTS REQUIRES THE COMMISSION TO RECOGNIZE THAT DIRECT DISTRIBUTION OF EQUIPMENT SATISFIES THE "COMMERCIALY AVAILABLE" STANDARD.**

In the last decade, there has been a fundamental development in retail product distribution in this country. No longer is the local storefront the sole or, in

many cases, the predominant outlet through which consumers obtain products. Gateway's success in the PC marketplace clearly establishes that equipment offered to consumers using telephone-based (and increasingly Internet-based) direct distribution systems are not only commercially available but are often far more accessible than they are through traditional retail outlets.<sup>3</sup> The emergence and success of home shopping channels and infomercials, as well as the proliferation of sophisticated online ordering systems on the expanding Internet, further demonstrate that consumers have become accustomed to browsing for and purchasing items without ever having stepped foot into a local retail outlet.

As further evidence of this marketplace dynamic, consider the following:

- In 1996, Gateway shipped 1.9 million PC systems directly to consumers (up 43% from 1995), generating revenues over \$5 billion;
- Gateway's Internet Web site receives 1.3 million hits per day, and Gateway's web-based PC sales in 1996 reached \$100 million;
- Consumers use toll-free telephone services to order more than \$100 billion in goods and services each year.<sup>4</sup> Indeed, the percentage of those purchasing a PC through the direct channel increased from 17% to 24% in 1996.
- Worldwide sales resulting from broadcast infomercials in 1996 totaled over \$4 billion.<sup>5</sup>
- 19% of Internet users (approximately 6 million people) have already purchased something online; 59% say they will do so once Internet security systems develop to a more advanced stage.<sup>6</sup>

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<sup>3</sup> For example, Gateway's revenues went from \$1.5 million in 1987 to over \$5 billion in 1996 as the popularity of our direct marketing model increased.

<sup>4</sup> "Tech Talk: Stock Up Your Virtual 'Wallet' for a Private, Easy Shopping Spree Online," The Nashville Banner, April 16, 1997, at B5.

<sup>5</sup> Communications Daily, February 24, 1997 (citing NIMA International).

- Yankee Group estimates that consumer online purchases will total \$10 billion by the year 2000.<sup>7</sup>

In short, any definition of commercial availability that does not include telephone-based (and, indeed, online-based) direct distribution simply would not fully reflect marketplace realities because it would ignore the fact that consumers already have embraced this retail purchase model.

Gateway's 1-800 number provides consumers access to Gateway's fully trained and technology proficient sales and engineering staff who are able to provide end-users with all the information they need to make a purchasing decision, as well as to service and maintain the equipment thereafter.<sup>8</sup> Gateway supplements this staff with a sophisticated Internet Web page, Bulletin Board service, and an automated fax service to supply customers with documentation on over 150 technical subjects. For example, using Gateway's Internet Web page, a consumer can view our product lines and even design a PC to his/her own personal specifications. The network then calculates the price for the customized system, and an order form appears on the screen. The customer

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<sup>6</sup> See "Tech Talk: Stock Up Your Virtual 'Wallet' for a Private, Easy Shopping Spree Online," The Nashville Banner, April 16, 1997, at B5; "Customers on the Internet Still Nervous About Security," The Vancouver Sun, April 23, 1997, at D14.

<sup>7</sup> "Mecklermania Announces New Trade Show; Internet Shopper Expo to Debut in Boston," Business Wire, April 30, 1997.

<sup>8</sup> Gateway 2000 provides 24-hour, seven-day a week toll-free telephone technical support for the life of its systems, including phone assistance with installation and configuration problem resolutions. Our technical professionals are thoroughly versed on the latest technology.

enters shipping and billing information and then submits the order form. The form is sent electronically to a Gateway customer service representative who will call the customer within one hour to confirm the order and to answer any additional questions.

Combined, these resources have established Gateway as a vibrant competitor to traditional electronic retailers. In fact, numerous publications and industry studies have found that the direct marketing approach pioneered by Gateway has surpassed this traditional model in terms of consumer comfort, ease of use, and ultimate satisfaction:

The normal retail distribution channel for PC sales is losing market share to direct-channel sales from manufacturers like ... Gateway.<sup>9</sup>

Gateway's distribution model is particularly consumer-friendly, if not essential, to many Americans who live in rural areas or small towns without a nearby Circuit City, Radio Shack, or other electronic retailer. These same people use computers and subscribe to cable. Our 1-800 number and direct distribution model allows these consumers to purchase needed equipment and have it delivered to their doorstep for a very competitive price and with the full promise of an ongoing customer service and technical support relationship. Importantly, our distribution model allows us to accommodate both changing technology and regional differences in equipment or specifications. We can and

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<sup>9</sup> William Schaff, "Our Expert Says: PC Demand to Stay Strong," Information Week, March 3, 1997, at 38.

do ship different versions of products to different customers depending on the technology used by their local operators much easier than the indirect model.

In short, the direct distribution model under which Gateway and other businesses operate has become a well-accepted paradigm for product distribution in the United States, and, increasingly, worldwide. In light of these marketplace developments, the Commission must make clear in its rules that if consumers, using a telephone or online-based ordering system can obtain an MVPD navigation device directly from a vendor that is unaffiliated with the MVPD, then that navigation device satisfies Section 629's "commercially available" standard.

**III. A DETERMINATION THAT DIRECT DISTRIBUTION OF EQUIPMENT CONSTITUTES COMMERCIAL AVAILABILITY IS FULLY CONSISTENT WITH CONGRESSIONAL INTENT.**

In addition to being compelled by marketplace realities, a Commission finding that direct distribution of equipment (for example, through a toll free number) constitutes commercial availability is fully consistent with congressional intent. A central purpose of Section 629 is to ensure that consumers do not have to purchase or lease a converter box through their network operator, but are free to purchase equipment from an unaffiliated vendor.<sup>10</sup> In other words, Congress wanted to be sure that consumers had an alternative source for their MVPD navigation devices other than the MVPD provider itself. Thus, if a vendor such as Gateway provides navigation devices that are compatible with an

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<sup>10</sup> See H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess. 181 (1996)

MVPD's network and is not affiliated<sup>11</sup> with the MVPD, then the second source intent of Congress is fulfilled and the commercial availability standard satisfied.

In fact, as noted above, direct distribution operations such as Gateway actually exceed what is required by the statute. First, they allow consumers to easily inquire about and order products from the comfort of their home. Second, Gateway does not simply sell equipment to its customers. Rather, it establishes a long-term relationship with them under which Gateway offers significant added value in terms of technical support and ongoing equipment maintenance. There is no legal or public policy reason why such a consumer-friendly distribution model would not be deemed to satisfy the commercially available standard under Section 629.

### **III. A DIRECT DISTRIBUTION MODEL COULD ALSO MINIMIZE SECURITY RISKS.**

In addition to the ease of selecting and ordering equipment that Gateway would bring to MVPD subscribers, Gateway could afford an added level of security to MVPD providers. The concept of retail sale of converter boxes has raised significant security concerns for MVPDs. The viability of their business is based on ensuring that only those who subscribe to their service receive their signals. A direct distribution model could help eliminate some of the MVPD's security concerns. For example, an MVPD might wish to enter a distribution arrangement with Gateway under which Gateway sells integrated digital cable

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<sup>11</sup> Gateway supports the Commission's tentative conclusion to use the new definition of "affiliate" in Section 3 of the 1996 Act for these purposes. Thus, unless the

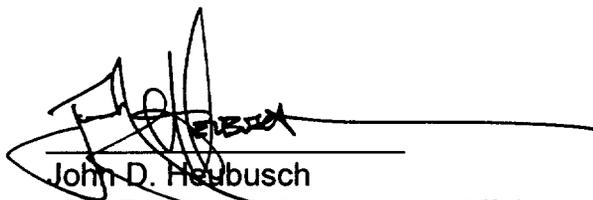
boxes (including a security component) to cable subscribers. Since Gateway is a national provider, the MVPD will have satisfied the commercial availability standard for the digital box (provided of course, there is no affiliation involved), and yet the MVPD will also be able to more efficiently manage any potential security risks since it will have to deal only with one distributor rather than several hundred local retailers.

### CONCLUSION

For the foregoing reasons, Gateway respectfully urges the Commission to find that sale of MVPD navigation devices under a direct, telephone or online-based distribution model constitutes commercial availability under Section 629.

Respectfully submitted,

**GATEWAY 2000, INC.**

A handwritten signature in black ink, appearing to read 'John D. Heubusch', is written over a horizontal line. The signature is stylized and extends to the right.

John D. Heubusch  
Vice President, Government Affairs  
707 D Street, N.W.  
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May 13, 1997

MVPD has a 10% equity (or equivalent) ownership interest in the vendor, or is shown to control the vendor's business, affiliation is not triggered under Section 629.