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Federal Communications Commission
Washington, DC 20554

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

COMMENTS OF GTE

GTE Service Corporation, on behalf of its affiliated domestic telephone operating and video companies ("GTE"), respectfully submits these comments in response to the Commission's Notice of Proposed Rulemaking ("NPRM") in CS Docket No. 97-80, FCC 97-53, released February 20, 1997. GTE's comments address some of the proposals to implement Section 629 of the Communications Act, denominated as "Competitive Availability of Navigation Devices."¹

GTE's video subsidiary, GTE Media Ventures Incorporated, is a partner in Corporate Media Partners d/b/a *americast*TM ("Americast"). Americast is separately submitting comments in this proceeding and GTE fully joins in and supports those comments. In addition, one of GTE's Americast partners, Southwestern Bell ("SWBT"), is separately submitting comments in this proceeding, which comments GTE also fully supports.

¹ 47 U.S.C. § 549. Section 629 was added to the Communications Act as part of the Telecommunications Act of 1996 (the "1996 Act"), Pub. L. 104-104, 110 Stat. 56 (1996).

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I. Introduction.

Section 629 instructs the Commission to adopt regulations that will assure commercial availability of equipment used to access services offered over multichannel video programming systems, from manufacturers, retailers, and other vendors not affiliated with any multichannel video programming distributor ("MVPD"). The statute directs that rules assuring commercial availability must be developed "in consultation with appropriate industry standard-setting organizations..." and such rules "shall not .. jeopardize security of ... services offered over multichannel video programming systems, or impede the legal rights of a provider of such services to prevent theft of service."² In addition, any rules adopted under Section 629 are intended to cease to apply when the Commission determines that the involved markets are competitive.³

The NPRM seeks comment on a number of proposals that incorporate the basic policies of Section 629. GTE believes Congress has presented the Commission with a formidable challenge in this proceeding and acknowledges that the implementation of Section 629 will be a complex undertaking. Therefore, while recognizing Section 629's goal to achieve competition in the availability of set-top boxes and other customer premises equipment ("CPE"), GTE believes that the Commission must remain primarily cognizant of the interests of MVPDs by adopting rules that will not conflict with the maintenance of system security nor inadvertently validate the manufacture and distribution of equipment intended for the unauthorized reception of services.

² 47 U.S.C. § 549(a), (b).

³ 47 U.S.C. § 549(e).

II. Existing equipment rate rules are adequate and authority should not be exercised over system operators that face effective competition.

The NPRM (at 76) states the tentative conclusion that existing equipment rate rules, which are applicable only to noncompetitive cable systems, properly address Section 629(a)'s requirement that MVPDs may offer CPE to consumers "if the system operator's charges to consumers for such devices and equipment are separately stated and not subsidized by charges for any such service." GTE concurs with the Commission's tentative conclusion: existing rules do properly address the requirements of Section 629. Therefore, GTE maintains the Commission should not exercise equipment rate rule authority over non-cable and cable operators that face effective competition.

GTE believes that prudent public policy dictates the adoption of rules in this proceeding that apply only to MVPDs that do not face "effective competition."⁴ Narrowly tailoring the rules needed to effectuate Section 629 in this manner would be fully consistent with Congressional intent and would permit new entrants to react quickly to a challenging and changing marketplace and provide innovative new service offerings to consumers quickly and effectively. By definition, new entrants will be subject to "effective competition" -- they will enter a market in which entrenched cable companies have a staggering lead in market power. New entrants, in contrast, will have little, if any, power in the markets for video programming and video CPE. Because new entrants and others subject to effective competition do not have the power to subject consumers to monopoly product offerings, the goals of Section 629 will be

⁴ See 47 C.F.R. § 76.905 (1996).

accomplished by the marketplace. Both Congress and the Commission already have found that there is no justification for rate regulation of new entrants and other carriers subject to "effective competition."⁵ If there is no reason for regulating the rates of these entities, which is surely the central concern of consumers, it is difficult to discern a rationale in favor of regulating the methods by which video CPE is deployed by these entities.

III. The Commission should define a multichannel video programming system broadly. The Commission should differentiate among various systems based on technology and competitiveness. Promulgated rules should apply to distributors and programmers.

The NPRM (at 14) seeks comment on whether a multichannel video programming system is a system operated by an MVPD. GTE believes the definition of a multichannel video programming system should include other systems besides just those operated by an MVPD. As the NPRM notes, Section 629 is broad in terms of the entities to which it applies and should include equipment that accesses a wide range of video systems. GTE believes that these systems should include cable television, direct broadcast satellite ("DBS"), satellite service, satellite master antenna systems, wireless cable, instructional television fixed service, local multipoint distribution service, and multichannel digital television broadcast stations.

Notwithstanding this definition, GTE believes the Commission properly has discretion and may differentiate among various systems based on the technologies used, the competitiveness of specific markets, and the maturity of the technology employed. The overall goal of the Commission should be to promote effective

⁵ 47 U.S.C. § 543(a)(2); 47 C.F.R. § 76.905 (1996).

competition. GTE maintains that new entrants to a market that seek to advance alternative technologies should not be subject to restrictions that are rightfully applicable to cable providers not subject to effective competition.

Rules promulgated to meet the requirements of Section 629 should apply to distributors and programmers equally.⁶ This is the only way in which sufficient leverage can be brought to bear on manufacturers of consumer electronics, facility owners, and entities creating programming. GTE believes it is critical that the entities that control the rights to programming be held to the same standards established for distributors. Such application of the rules will ensure that all content/media is created under the same set of standards. These standards will, in turn, drive CPE manufacturing standards. Differentiating between the owner of programming and the distributor of programming places all the burden for complying with rules on the distributor. This burden should be equalized between programmers and distributors.

IV. Existing analog equipment should not be subject to Section 629 rules, while digital equipment should be subject to the rules. The term "access" includes functions such as receiving, decoding, tuning, control, signal integrity, and signal theft.

The NPRM (at 16) states that Section 629 by its terms applies to "converter boxes, interactive communications equipment, and other equipment used by consumers to access multichannel video programming and other services offered over video programming systems...."⁷ Coverage is deemed broad in terms of kinds of

⁶ However, such rules should not apply to simply providers of transport, *e.g.*, a local exchange carrier providing video signal transport pursuant to a channel service arrangement. See also Comments of SWBT, Part VI.

⁷ 47 U.S.C. § 549(a).

equipment applicable and comment is sought on issues associated with the scope of equipment covered.⁸

GTE believes it is not practical for the rules to cover analog equipment, due to the large embedded base of CPE operating within various proprietary systems. The Commission's Section 629 rules should, however, cover receiving, decoding, and tuning functions of digital equipment.

The NPRM seeks to define "access" programming and other services. GTE believes the term should include the functions described in the previous paragraph as well as control and the ability for distributors to protect the integrity of the signals transmitted to the customer as well as protect the distributor and programmer against theft. The term should not include graphical user interfaces and other such "look and feel" elements of programming distribution. Such elements form the basis for product differentiation in the marketplace and if such elements were standardized it might eliminate basis for entry and thwart effective competition.⁹

V. Equipment rules must recognize the need to protect MVPD rights and capabilities to maintain security of distribution system. Proper balance of system security rights and "commercial availability" can only be achieved in a digital environment. A standard security interface is required.

The NPRM (at 71-75) recognizes the need to protect an MVPD's capabilities and equipment options for maintaining security of its distribution system. The NPRM properly acknowledges Section 629 cannot be implemented in a manner that would appear to "authorize" the manufacture or sale of equipment capable of pirating signals or of decoding or decrypting signals without an MVPD's express permission.

⁸ See also Comments of SWBT, Part II.

The issue of system security is complex and the Commission is correct in recognizing the need to protect MVPD rights and capabilities in this area. Most agreements between programmers and MVPDs make it the responsibility of the MVPD to secure the programmers signal. Failure to secure content usually results in removal of such content from the MVPDs system. Programmers have little, if any, responsibility for solving a breach of system security. GTE believes that the rules adopted by the Commission should attempt to better balance system security between the MVPDs and programmers.

An appropriate balance between MVPD system security rights and "commercial availability" of CPE can be achieved in a digital environment – albeit not in an analog environment -- if MVPDs are permitted to provide security equipment on a split basis, that is, defining a commercially available device as containing a tuner module and a conditional access ("CA") control module. This would necessitate the creation of standard security interfaces for devices to work with multiple service providers. It is both feasible and advisable to have a standard interface. GTE maintains that MPEG-2 systems layer 2 provides multiple ways for an MVPD to support more than one CA system within a digital channel. This would permit devices using different CA systems to gain legitimate access to the same services without requiring an MVPD to simulcast the MPEG-2 content. The MVPD must simulcast the CA key and entitlement delivery information as overhead in the MPEG-2 stream. Trade press indicates industry agreement has been reached on some major elements of such an interoperable digital

⁹ See *also* Comments of Americast, Part I.A; Comments of SBC, Part III.

platform. Agreement appears to be based on existing DES encryption and MPEG-2 systems layers and defines the minimum intersection of multiple CA systems.

VI. Availability is achieved if CPE is available to consumers at retail outlets not affiliated with an MVPD and at a price unbundled from other MVPD services.

The Commission asks if "commercial availability" requires CPE be made available by retailers or manufacturers not selected by MVPDs. GTE maintains "commercial availability" will be achieved as long as CPE is available to consumers at retail outlets not affiliated with the MVPD and at a price that is unbundled from the MVPDs services. GTE believes that it is not necessary to require that CPE be made available by retailers or manufacturers not selected by MVPDs in order to achieve "commercial availability."

VII. Necessary standards do not exist to facilitate portability and interoperability.

The NPRM (at 64-68) proposes that there be some degree of standardization for CPE so that customers can enjoy the benefits of device portability and interoperability among MVPDs. The NPRM asks if it is advisable to require CPE to be portable and/or interoperable and whether this question should be evaluated in terms of cost, technical feasibility, the need for standards, and impact on "commercial availability." GTE believes it is almost impossible to evaluate this question in terms of cost. Cost are unknown because standards do not exist and have not been defined. As the Commission knows, it took approximately 50 years for the telecommunications industry to establish similar standards that proved necessary to make universal service a viable and working reality. The MVPD environment has no such standards. Currently MVPD standards are being developed that will deliver digital content/media to the customer,

however encryption and conditional access systems that are necessary to communicate with CPE are extremely proprietary. This is a significant hurdle that must be overcome if CPE is to achieve the interoperability and portability envisioned by Congress and the Commission

VIII. If the Section 3 definition of affiliate is applicable to Section 629, it should not prohibit exclusive agreements between MVPDs and manufacturers and/or resellers.

The NPRM (at 25-27) seeks to define the term "affiliate" and the meaning of "not affiliated with" in terms of the relationship between an MVPD and manufacturers or resellers. The Commission tentatively concludes that the Section 3 definition of affiliate should be applicable to Section 629. GTE believes application of the Section 3 definition of affiliate does not prohibit, nor should it preclude, the existence or development of exclusive agreements between MVPDs and manufacturers and/or resellers. "Commercial availability" should not require that CPE must be made available through parties not selected or affiliated with an MVPD. Such a requirement would prevent customers and MVPDs from realizing any benefits that legitimately arise out of exclusive contracts between manufacturers and MVPDs or resellers and MVPDs. As long as CPE is available to customers at retail outlets not affiliated with an MVPD, "commercial availability" will be achieved.

IX. Section 629 Regulation Should Sunset With The Advent of Effective Competition.

Section 629 provides explicitly that the regulations to be adopted by the Commission should end when the market for MVPDs and video CPE is competitive.¹⁰ GTE agrees with the Commission's tentative conclusion to read this section "as flexibly

as possible" to "avoid unnecessary regulation."¹¹ In addition, however, GTE believes that the Commission should determine now the conditions that it will consider sufficient to sunset its regulations.

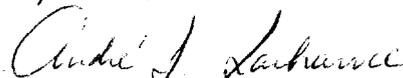
In the context of cable competition, the Commission already has established a detailed determination of when "effective competition" exists sufficient to permit rate regulation of entrenched cable systems to be ended. The consumer interest in fair cable rates is likely to be substantially more important to subscribers than the interest in a one-time purchase of video CPE. Accordingly, we believe the Commission's test for "effective competition" in the rate regulation context provides an effective analogy for the competitiveness findings that will be appropriate to sunset regulations under Section 629.

Respectfully submitted,

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¹⁰ 47 U.S.C. § 549(e).

¹¹ See NPRM, at ¶ 82.