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Federal Communications Commission  
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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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

COMMENTS OF PRIMESTAR PARTNERS L.P.

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May 16, 1997

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## SUMMARY

There is substantial competition among Ku-band direct broadcast satellite/direct-to-home ("DBS/DTH") multichannel video program distributors ("MVPDs") and between DBS/DTH providers and local MVPDs. The presence of this heated competition has resulted in a variety of means by which DBS/DTH customers have access to navigation equipment used to receive DBS/DTH services. Because of this competition, and the wide availability of DBS/DTH equipment, PRIMESTAR Partners L.P. ("PRIMESTAR") submits that it is unnecessary, and would be counterproductive, for the Commission to impose upon DBS/DTH providers equipment navigation rules adopted to implement Section 629 of the Communications Act.

In particular, rules precluding MVPDs from offering equipment/program service packages, or from subsidizing the purchase of navigation equipment, would be detrimental to DBS/DTH customers. Equally detrimental would be rules requiring DBS/DTH equipment to be compatible with all DBS/DTH systems and/or with the systems of other MVPDs.

If the Commission is compelled to apply its navigation equipment rules to DBS/DTH providers, it should grandfather the existing DBS/DTH participants. Moreover, any rules that are adopted and applied to DBS/DTH providers should be nondiscriminatory among DBS/DTH providers and limited to what

is necessary to fulfill the command of Section 629 of the Communications Act. That Section requires only that navigation equipment be "commercially available" from sources "unaffiliated with" an MVPD. Accordingly, rules mandating a certain method of implementing security or a certain number of manufacturers or vendors of navigation equipment, should be rejected as overbroad and unnecessary to meet the standards of Section 629.

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**COMMENTS OF PRIMESTAR PARTNERS L.P.**

PRIMESTAR Partners L.P. ("PRIMESTAR"), by its attorneys, hereby submits its comments in response to the Commission's Notice of Proposed Rulemaking ("Notice"), released in the above-captioned proceeding on February 20, 1997.<sup>1</sup> By the Notice, the Commission seeks to adopt rules to implement Section 629 of the Communications Act of 1934, as amended (47 U.S.C. § 549). Section 629 directs the Commission to

adopt regulations to assure the commercial availability, to consumers . . . of . . . equipment used . . . 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.

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<sup>1</sup> FCC 97-53, released February 20, 1997.

## I. INTEREST OF PRIMESTAR

PRIMESTAR is one of five entities currently providing nationwide direct-to-home ("DTH") satellite services via Ku-band satellites employing small consumer receive-only antennas. PRIMESTAR offers its services over the GE-2 medium power fixed satellite.<sup>2</sup> PRIMESTAR currently delivers 150 programming screens (and will shortly add 10 others) to its 1.8 million subscribers.

PRIMESTAR does not currently offer its multichannel programming services and related reception equipment directly to consumers. Rather, the programming services and equipment are made available to consumers by PRIMESTAR's distributors, who are responsible for determining the retail price of the programming and the various arrangements pursuant to which consumers obtain the equipment (satellite antenna, dual polarized low noise block converter ("DPLNB") and integrated receiver/decoder ("IRD")) necessary to receive the PRIMESTAR service. It is the availability of this equipment that is the subject matter of the Commission's Notice.

The consumer equipment used for PRIMESTAR's service was developed and is made available as follows. First, in order to obtain appropriate digital transmission equipment that

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<sup>2</sup> One other provider, AlphaStar, also uses a medium power Ku-band fixed satellite for its service. The other three providers, DirecTV, USSB and EchoStar, use high power direct broadcast satellites ("DBS") to deliver their programming to somewhat smaller antennas than those used by PRIMESTAR.

would meet the quality, security, reliability and consumer features that PRIMESTAR believed would be most beneficial for its service, in 1993, PRIMESTAR contracted with a subsidiary of General Instrument ("GI") pursuant to which GI would develop (to PRIMESTAR's specifications) and manufacture, DigiCipher™ equipment. The DigiCipher™ equipment consists of digital compression/encryption equipment purchased by PRIMESTAR and deployed at its programming uplink sites, and IRDs deployed at subscribers' premises.

PRIMESTAR also entered into arrangements with other third parties for the supply of consumer reception antennas and DPLNBs. Under these various arrangements, the purchases of IRDs, antennas and DPLNBs are made directly by PRIMESTAR's distributors who are responsible for providing the equipment to consumers along with the PRIMESTAR programming services.

The PRIMESTAR business plan, from the outset, has been different from the four other DBS/DTH providers. Specifically, rather than require consumers to (i) buy expensive reception equipment from one source (retail outlet), (ii) install the equipment themselves or arrange for installation, and (iii) purchase programming from a separate entity (the DBS/DTH provider), PRIMESTAR opted for a "one-stop-shopping" approach whereby the consumer acquires equipment, installation and programming from a single distributor as part of an overall equipment/service offering. In almost all cases, the distributors retain ownership of the equipment used by the

PRIMESTAR subscribers, and the distributors, accordingly, are responsible for equipment maintenance.

The PRIMESTAR business model provides consumers with a low cost, risk free, entry solution. It also offers consumers maximum flexibility. With no upfront investment in hardware, and with the ability to cancel the PRIMESTAR service without penalty, consumers have total freedom to obtain the services of competing multichannel video programming distributors ("MVPDs") if they are not satisfied with the PRIMESTAR brand. PRIMESTAR, and its distributors, have found this "nothing to buy" equipment/service arrangement to be highly attractive to consumers, resulting in PRIMESTAR being the second largest DBS/DTH provider, even though PRIMESTAR may have some disadvantage with some consumers vis-à-vis its DBS competitors due to its somewhat larger medium power antennas.

Although the PRIMESTAR service is marketed as outlined above and the vast majority of PRIMESTAR's customers choose the all-inclusive equipment/service combination, PRIMESTAR's distributors, nonetheless, will make and have made the equipment available for purchase should the consumer, in the end, elect to do so. In addition, to increase the commercial/retail availability of its service, PRIMESTAR has entered into an arrangement with Radio Shack to market PRIMESTAR equipment/services. Under this arrangement, there are PRIMESTAR displays (including reception equipment) in approximately 6,800 Radio Shack retail stores nationwide. Consumers may use these outlets to sample the PRIMESTAR

service and learn of its details. If, upon a visit to Radio Shack, a consumer expresses an interest in becoming a PRIMESTAR customer, the Radio Shack store will arrange with PRIMESTAR for the customer to have reception equipment installed, and receive service from, the appropriate PRIMESTAR distributor.

Under the arrangements outlined above, the consumer has total flexibility to obtain the reception equipment associated with PRIMESTAR's services. The consumer may take advantage of the all-inclusive equipment/service combination (with no assumption of hardware risk), or the consumer may purchase equipment should he or she prefer to do so. Moreover, because most consumers choose the equipment/service option, they retain the flexibility to seek service and/or equipment from other MVPDs, since they have no investment in expensive reception devices. No other DBS or DTH provider allows the consumer as much flexibility; the PRIMESTAR model, particularly in the Radio Shack retail environment, fulfills a competitive marketplace need. In fact, Radio Shack distributes both the PRIMESTAR and DirecTV/USSB DSS equipment in competition with each other on the retail floor. Accordingly, as discussed below, in implementing Section 629 of the Communications Act and to achieve the fundamental objectives of the statute, there is no justification for the Commission to require any changes in PRIMESTAR's or its

distributors' business arrangements, or in the business arrangements of any of the other existing DBS/DTH providers.<sup>3</sup>

**II. THE COMMISSION SHOULD FORBEAR FROM APPLYING ANY REGULATIONS DEVELOPED HEREIN TO DBS/DTH SERVICES**

Section 629(e) of the Communications Act provides that Commission regulations to promote the commercial availability of navigation equipment shall end: (1) when the relevant market for the multichannel video programming distributors is fully competitive; (2) when the market for converter boxes and interactive communications equipment used in conjunction with the service is fully competitive; and (3) when elimination of the regulation would promote competition and the public interest.

In the Notice, the Commission notes that "[a]lthough Section 629(e) speaks of ceasing to apply existing regulations, it would also appear broad enough, in appropriate circumstances, to suggest that regulations for certain types of equipment need not be adopted in the first instance." Notice at ¶ 51. PRIMESTAR strongly endorses the Commission's sensible instinct to avoid unnecessary regulation. As the Commission recognizes and as demonstrated herein, DBS/DTH represents the perfect example of a service for which such regulation is not required, and forbearance is well justified.

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<sup>3</sup> PRIMESTAR offers no comment on how the regulations should be structured or implemented with respect to MVPDs other than existing DBS/DTH providers.

**A. DBS/DTH Is A Highly Competitive Service**

In implementing Section 629(e), the Commission seeks comment on whether any regulatory forbearance under the statute should be applied to all MVPDs as a group, or whether individual MVPD services should be examined separately. PRIMESTAR submits, at a minimum, that, owing to industry's particular technological characteristics and competitive status, the DBS/DTH industry should be treated independently, and the Commission should refrain from examining individual MVPD models within the already fully competitive DBS/DTH industry.

There are at least five national providers of DBS/DTH services, each of which competes not only with the other DBS/DTH providers, but with local cable, wireless cable, telephone company and other providers of multichannel video services. Even more DBS/DTH providers are expected to enter into the service soon, including MCI Telecommunications Corporation (through a possible merger with British Telecom and arrangements with The News Corp. Ltd.). As the Commission itself notes, there can be no real question that DBS/DTH is a vibrantly competitive service and shows every sign of remaining so. Notice at ¶¶ 42, 51, 53.

**B. Consumers Have Numerous Competitive Opportunities To Obtain DBS/DTH Navigation Equipment**

Many of the aspects of DBS/DTH which make it a highly competitive service also have resulted in maximum competition in the consumer equipment arena, thus further warranting

forbearance from application of the Commission's proposed navigation equipment rules to DBS/DTH providers.

Four of the five DBS/DTH providers use a different digital technology, requiring a different type of consumer reception unit.<sup>4</sup> The proprietary digital delivery systems developed by each of the providers represent an important component of such provider's service offerings. As the Commission recognizes, the provision of equipment necessary to receive a given DBS or DTH signal has become an important part of the marketing strategy used by providers to attract customers to their services. Notice at ¶¶ 21, 53.

DBS/DTH providers have entered into a wide variety of equipment sales and lease arrangements in order to entice as many subscribers to their systems as possible. As noted above, PRIMESTAR subscribers may obtain their equipment as part of an overall service offering, may purchase it directly from a distributor, or may secure the service (inclusive of equipment) on a retail basis through Radio Shack retail outlets. Other DBS/DTH providers likewise supply equipment in numerous ways. Some have negotiated to have multiple manufacturers make their equipment and distribute it through standard consumer electronics distribution chains. Some offer price subsidies to defray some of the upfront consumer costs

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<sup>4</sup> DirectTV and USSB, of course, share a common digital technology because they likewise share a common satellite system.

of becoming a DBS subscriber. Some couple the equipment subsidies with consumer commitments to an annual program service subscription.

Thus, by its very nature, the marketing of navigation equipment used to receive DBS/DTH service is as competitive as the service itself. The integral relationship between service and proprietary delivery system among DBS/DTH providers ensures that the level of competition for the provision of such equipment remains intense. As a result, DBS/DTH consumers already benefit in the manner that Congress sought in promulgating Section 629 of the Communications Act. Additional regulation of this service, therefore, is not required.

**C. The Public Interest Would Be Served By Forbearance From DBS/DTH Navigation Equipment Rules**

Under Section 629(e) the third factor to be considered in determining whether to eliminate (or forbear from adopting) navigation equipment regulations is whether such action would promote competition and serve the public interest. As shown above, competition among DBS/DTH service and equipment providers is already alive and well. Forbearance from the application of the proposed regulations will aid such competition and serve the public interest, since it will allow consumers to continue to enjoy the maximum benefits of lower prices, technological development and creative marketing of DBS/DTH services.

On the other hand, imposition of navigation equipment regulations on DBS/DTH equipment would be contrary to the public interest. The Commission has proposed a number of rules regarding standardization of technology and the manipulation of distribution systems which, if applied to DBS/DTH, would cause massive disruption of service to current customers, as well as damage to the ability of each DBS/DTH provider to compete for new customers. Because the technical characteristics and marketing arrangements of each DBS/DTH system are substantially different and crucial to competitive viability, any effort to apply requirements of uniformity or standardization would strike directly at the core of DBS/DTH, causing harm not only to the current service providers, but also to the very public such regulation is designed to benefit. Finally, any navigation equipment rules that would impose different levels of obligations on the various DBS/DTH providers would disrupt an already competitive marketplace and could lead to substantial competitive disparities among DBS/DTH providers. Thus, there is no conceivable public interest advantage to applying navigation equipment regulations to DBS/DTH, and the public interest would best be served through forbearance from such regulation.

**III. EXISTING DBS/DTH PROVIDERS SHOULD BE GRANDFATHERED UNDER THE RULES**

As discussed in the preceding section, PRIMESTAR submits that the record more than justifies a complete forbearance from imposing on DBS/DTH providers any regulation of

navigation equipment developed under this proceeding. However, in the event the Commission rejects PRIMESTAR's position, PRIMESTAR urges that existing providers of DBS/DTH service be grandfathered from the application of any navigation equipment rules. Each current DBS/DTH provider, including PRIMESTAR, has made substantial commitments to specific designs of technology and hardware manufacturers and distribution systems that they believed were most conducive to attracting customers to their respective services and achieving their business plans. Business relationships have been forged and contracts are in existence to implement each DBS/DTH provider's preferred equipment distribution system. Imposition of navigation equipment rules would have a tremendous and potentially ruinous effect on such systems. Most importantly, without grandfathering, existing DBS/DTH providers would incur extreme and undue hardship by being forced to restructure their equipment and service relationships and, more drastically, to retrofit their entire existing installed base of millions of customers. Therefore, to the extent the Commission adopts and applies to DBS/DTH any navigation equipment rules, PRIMESTAR seeks grandfathered status for all existing DBS/DTH providers.

**A. At A Minimum, The Commission Should Forbear From Imposing Antisubsidy and Interoperability Rules On All DBS/DTH Providers Or Grandfather Existing Providers**

The state of DBS/DTH competitiveness supports a general forbearance from applying any rules promulgated under this

proceeding to any DBS/DTH providers or at least the grandfathering of existing providers. However, if the Commission feels compelled to apply some navigation equipment regulations to DBS/DTH providers, it should at least forbear from application of, or grandfather existing DBS/DTH providers with respect to, those parts of its regulations which would be most iniquitous to DBS/DTH consumers, namely regulations pertaining to equipment subsidization and the requirement that equipment be interoperable with multiple MVPD systems.

**B. Antisubsidy Provisions**

As described above, DBS/DTH providers offer a variety of options to help consumers defray the upfront costs of becoming DBS/DTH customers. PRIMESTAR's customers may avoid high upfront equipment purchase costs by leasing equipment as part of their service. Other DBS/DTH providers offer direct subsidies against the costs of equipment purchases. All of these arrangements are pro-consumer and should be encouraged. Nevertheless, Section 629(a) of the Act directs the Commission to adopt rules which permit MVPDs to offer navigation equipment to their customers only if the charges for such devices and equipment are separately stated and not subsidized by charges for any programming service. The strict application of these rules to all MVPDs would preclude the types of beneficial arrangements that are prevalent in the DBS/DTH service.

In recognition of this issue, the Commission seeks comment on the extent to which it might forbear from applying antisubsidy rules to certain MVPDs. The Commission has tentatively concluded that,

the markets in which DBS operators participate appear to be highly competitive both because there are a number of DBS providers that are competitive with each other and because DBS faces competition from cable services. Thus, it appears that DBS providers are in the same category as cable systems facing effective competition and that there is thus no Congressional grant of authority for antisubsidy rules with respect to DBS providers. Notice at ¶ 42.

PRIMESTAR agrees with the Commission's assessment. The antisubsidy rule is premised on situations where an MVPD to which the rule applies lacks any effective competition for its program services, leading to lessened marketplace competition and reduced consumer choices. As demonstrated above and noted by the Commission, the DBS/DTH marketplace is extremely robust with multiple consumer alternatives to obtain DBS/DTH services and opportunities to choose between DBS/DTH services and services offered by local cable, MMDS and other MVPD operators. Thus, the necessary predicate for application of antisubsidy rules to DBS/DTH does not exist, and such application is not warranted.

**C. Interoperability**

In pursuit of the goal of maximum commercial availability of navigation equipment, the Commission seeks comment on the extent to which it should impose equipment standards that would enable manufacturers to produce, and consumers to

acquire, navigation equipment that would be widely usable on a variety of MVPD systems throughout the country. PRIMESTAR submits that any such interoperability or portability requirements imposed on DBS/DTH MVPDs would be burdensome, unworkable and counterproductive.

By its very nature, DBS/DTH navigation equipment already is geographically portable. Reception equipment used for a DBS/DTH system generally may receive programming anywhere within the footprint of the relevant satellite. Therefore, a consumer is free to move across the country, take any DBS/DTH equipment he owns with him and continue to enjoy his chosen DBS/DTH service at the new location.

With respect to interoperability, PRIMESTAR believes that any rules which would require such interoperability among DBS/DTH systems or between such systems and other MVPD technologies would be particularly burdensome and impractical, ultimately causing harm to customer services. Moreover, such rules are completely unwarranted by the statutory directive.

A major obstacle to interoperability among DBS/DTH systems lies in the large installed base of existing DBS/DTH subscribers and their equipment. As noted previously, four of the five DBS/DTH providers use digital technologies that possess substantial technical differences (e.g., different audio formats, different forward error correction parameters, etc.). Any devices designed to be interoperable among all four technologies would have to incorporate the capabilities of each of the four and interoperability would require the

complete retrofit of the existing DBS/DTH providers' hardware distribution systems at enormous cost.

Furthermore, there is no statutory support for mandated interoperability standards. The stated intent of Section 629 is to provide for the "commercial availability" of navigation equipment to consumers. Nothing in the plain language of the statute, or its legislative history, directs the Commission to adopt a particular course of action to meet this goal, let alone one so extreme as requiring interoperability.

Finally, as the Commission itself must surely recognize, the standardization of navigation equipment is completely antithetical to the history and development of the DBS/DTH service. Unlike the telephone network, for example, where customer premise equipment interoperability has been possible, DBS/DTH systems share very little common technology.<sup>5</sup> The sheer weight of the myriad of system requirements specific to the various DBS/DTH and other MVPD services, together with the enormous cost which parties would incur in their efforts to

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<sup>5</sup> Achieving interoperability of telephone customer premises equipment, even with homogenous technical standards then prevalent in the nationwide telephone network, was not without difficulty. The Commission ultimately spent more than seven years debating and considering the inter-connection and interface requirements of Part 68 of the Rules including such issues as equipment and system design, system installation, standard means of connecting equipment to the telephone network (plugs and jacks), and connection between various non-system telephone equipment components. See, e.g., First Report & Order, Docket No. 19528, 56 FCC 2d 593 (1975); see also Memorandum Opinion & Order, Docket Nos. 19528, 20774, 21182, 70 FCC 2d 1800 (1979).

incorporate such requirements, militate in the extreme against any effort to impose an interoperability requirement.<sup>6</sup> Therefore, in the event that the Commission imposes some degree of interoperability requirement on navigation equipment, PRIMESTAR urges it to exempt DBS/DTH providers from such rules, where the marketplace has already assured competitive equipment supply.

#### **IV. APPLICATION OF THE RULES**

PRIMESTAR has demonstrated above that there is neither a statutory mandate nor a practical reason to apply the rules promulgated under this proceeding to DBS/DTH providers, especially those currently providing DBS/DTH service. In the event the Commission decides to do so anyway, PRIMESTAR submits the following comments on the ways in which such rules should be structured. PRIMESTAR in no way intends by offering these suggestions to dilute its position that any application of the rules to DBS/DTH providers is totally unwarranted.

##### **A. Equipment To Be Covered**

The Commission seeks comment on the types of equipment to which the regulations should apply, tentatively concluding that they should be applied to the equipment unit normally

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<sup>6</sup> Such a burden also would discourage the development of new technology, since the architect of a new delivery system presumably would be forced to design a system that would accommodate all existing navigation equipment in order to meet the interoperability requirement.

associated with the reception of the service. PRIMESTAR agrees with this conclusion. In PRIMESTAR's case, such equipment consists of an antenna, DPLNB, wiring from the antenna to the household, and the IRD.

As the Commission notes, display and other devices (television sets, VCRs) are commercially available from independent sources, and need not be subject to navigation equipment regulations. Notice at ¶ 17. In this vein, PRIMESTAR notes also that inside wiring is available commercially. Although PRIMESTAR distributors offer inside wiring as part of their installation service, consumers can readily purchase inside wiring from numerous other sources. In these situations where it is evident that elements of equipment or wiring are widely available, the navigation equipment rules should not apply.

**B. Definition of Commercial Availability**

According to Section 629, commercial availability as required thereunder means that equipment must be available from "manufacturers, retailers and other vendors not affiliated with any MVPD." 47 U.S.C. § 549(a). The Commission seeks comment on the proper scope and application of this definition.

**1. Affiliation**

First, the Commission seeks guidance on what constitutes "affiliation" under Section 629. Notice at ¶ 25. As an initial matter, the Commission looks to the statutory

definition generally applicable to Title VI.<sup>7</sup> It also examines a slightly different definition found in the Telecommunications Act of 1996 ("1996 Act"), which includes language indicating that a 10% or greater equity ownership interest between an MVPD and an equipment manufacturer/vendor would be sufficient to demonstrate affiliation. While the Commission acknowledges that the 1996 Act definition does not specifically apply to Section 629, it tentatively concludes it has the discretion to adopt this definition. Notice at ¶ 27.

PRIMESTAR does not oppose the Commission's tentative decision to apply the 10% equity standard. The statutory language, whether it be that of Title VI or of the 1996 Act, clearly states that the indices of affiliation are ownership or control. The 10% equity minimum suggested by the Commission is consistent with other "affiliation" or "attribution" concepts in Commission rules and would give added clarity by providing a bright line, below which any ownership interest would be considered de minimis.

The Commission also asks whether the fact that an MVPD controls the technology employed in its service or has selected a single manufacturer or distributor to produce or distribute such technology should raise an affiliation issue. Notice at ¶ 27. Neither the 1996 Act nor the Title VI

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<sup>7</sup> "[T]he term 'affiliate,' when used in relation to any person, means another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person . . ." 47 U.S.C. § 522(2).

definition suggests that an exclusive manufacturing or distribution arrangement between independent contracting parties amounts to affiliation. Instead, these statutes are concerned with common ownership or control interests between the parties themselves. There is no evidence that Congress intended the definition of affiliation to reach so far afield as to cover instances where the parties to a manufacturing or distribution contract share no common ownership or control above the benchmark.<sup>8</sup>

## 2. Points of Manufacture and Distribution

The Commission also asks for comment regarding the relationship between commercial availability and the number and type of manufacturing points and distribution outlets through which navigation equipment should be available. Notice at ¶ 20. It asks if multiple manufacturers or retailers would be necessary to satisfy the statutory standard. In addition, it seeks comment on the type of distribution system which would suffice (for instance, whether an MVPD would satisfy the standard by providing the consumer with a toll-free telephone number to use to order equipment from an unaffiliated distributor.)

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<sup>8</sup> The Commission's suggestion that exclusive control of proprietary technology might give rise to an affiliation issue also raises concerns regarding patent and trademark rights protection. In the absence of any evidence that Congress had such control in mind in drafting its definitions of affiliation, the Commission has no basis to pursue this issue.

Widespread licensing of equipment manufacturers by the owners of the underlying technology, and the resulting competition, clearly results in consumer benefits such as lower prices and innovation. Nevertheless, there is no indication that Congress intended to mandate forced licensing here or to require technology owners and manufacturers to have distribution arrangements with all who might seek them.

Rather the mandate of Section 629 is to assure that consumers have a choice of supply of navigation equipment to be used with the MVPD system selected by them. Thus, the Commission need only adopt a requirement that the MVPD not be the sole available source of its navigation equipment in order to satisfy the mandate of the statute. The Commission should resist the temptation to adopt and apply to all MVPD navigation equipment a rigid definition of commercial availability based on formulaic relationships between an MVPD and a specific number of manufacturers or retailers.

The Commission's record will amply demonstrate the variety and complexity of current manufacturing and distribution arrangements which have evolved in the DBS/DTH service and presumably other MVPD services. With respect to DBS/DTH, these arrangements include combined equipment/service offerings, full market retail purchases, subsidized purchases and retailer referral arrangements. Any one of these distribution systems is sufficient to meet the statutory mandate, as would the Commission-postulated 800 number

scenario. In each case, the consumer has the option to obtain access to navigation equipment through one or more sources not affiliated with the DBS/DTH entity. The number and types of relationships which develop in response would be best determined by the individual parties.

**C. Security Implications**

Section 629(b) directs the Commission not to jeopardize MVPD system security through promulgation of its navigation equipment rules. The Commission suggests that one way to ensure that MVPDs can retain control over their systems would be to require such MVPDs to provide system security technology on a separated or unbundled basis. Notice at ¶ 34. It seeks comment or suggestion on ways in which security components could be separately made available by MVPDs and either inserted into a commercially available set top device, or else attached through a common "security interface" to a commercially available set top device from some other supplier.

There is no doubt that security is of major importance to MVPDs. However, the text of Section 629(b) suggests that this concern for security should act as a limit on the Commission's power to develop rules regarding commercial availability, not as a separate mandate to impose new technical standards for customer premises equipment security.

Simply put, Section 629 mandates commercial availability of navigation devices -- nothing more. This requirement may