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Federal Communications Commission
Office of Secretary

BY HAND DELIVERY

William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

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

Dear Mr. Caton:

Enclosed for filing are an original and eleven copies of the Comments of Circuit City Stores, Inc. regarding the above-captioned matter.

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,

Joni Lupovitz

Joni Lupovitz

Enclosures

cc: Barrett L. Brick, Cable Services Bureau
(w/encl. & diskette)
International Transcription Services, Inc.
(w/encl.)

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Federal Communications Commission
Office of Secretary

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

To: The Commission

COMMENTS OF CIRCUIT CITY STORES, INC.

Richard L. Sharp
Chairman & CEO

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Sr. Vice President & General Counsel

Circuit City Stores, Inc.
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May 16, 1997

TABLE OF CONTENTS

Page

SUMMARY iii

I. COMMERCIAL AVAILABILITY MEANS THAT CONSUMERS MUST BE ABLE TO OBTAIN NAVIGATION DEVICES THAT ARE NATIONALLY PORTABLE FROM INDEPENDENT MANUFACTURERS AND RETAILERS 4

II. THE PROCESS, AND USE OF PRIVATE SECTOR STANDARDS, BY WHICH THE COMMISSION DEREGULATED TELEPHONE CPE THREE DECADES AGO IS INSTRUCTIVE FOR THIS PROCEEDING 5

III. COMMISSION REGULATIONS SHOULD ENSURE THAT ALL MVPD SYSTEMS SUPPORT COMPETITIVE AVAILABILITY OF NATIONALLY PORTABLE NAVIGATION DEVICES 11

A. Commission Regulations Should Focus On MVPDs For Which Compatible Navigation Devices Are Unavailable From Independent Manufacturers And Retailers 13

B. Regulations Under Section 629 Should Address System Capability To Support Competitive Availability So That Any Device That Does Not Harm The Network May Be A Navigation Device . 15

1. Implementing regulations should not apply to devices, but to MVPD systems . 17

2. Competitive availability of cable modems requires only the disclosure and licensing aspects of system compliance . 18

C. The Commission Need Not Draw Any Arbitrary Lines As To How To Achieve "Commercial Availability" 19

1. Commercial availability principles for systems that do not support national portability imply that manufacturers and retailers that are not hand-picked by MVPDs should be able to offer compatible navigation devices 20

2. Disclosure requirements are needed to assure that manufacturers have timely access to standards and technical specifications for CPE interconnection . 21

3. The consumer's right to attach need be bounded only by harm to the network . . 22

D. The Definition Of Affiliate Under Section 3 Of The Act Should Apply To Section 629 . . . 24

E. Practical Availability Requires National Portability So CPE Is Operable On All MVPD Systems In The Same Industry, And Minimal Standards To Make This Possible 24

1. Optimum device configuration should be left to competitive manufacturers, based on adequate disclosure and reasonable and nondiscriminatory licensing terms . 25

2. The Commission should not engage in standard-setting beyond that necessary for MVPD systems to become capable of supporting competitive availability . . 26

3. To the extent standards are necessary, the Commission should adopt standards developed by private sector committees . 27

F. Necessary Proprietary Technologies Must Be Available On A Fair, Reasonable And Nondiscriminatory Basis 28

G. MVPD Security Functions Should Be Provided Separate From Operations Functions, Through A Common Interface 30

H. Section 629 Requirements For Subsidies, Developmental Waivers, And Sunset Of Regulations Should Be Strictly Construed . . 34

1. Equipment anti-subsidy provisions should apply to *all* MVPDs 34

2. Statutory provisions for developmental waivers should be narrowly construed . . 35

3. Statutory requirements for "sunset" of regulations ought not be diluted 36

IV. CONCLUSION 37

SUMMARY

Circuit City Stores, Inc. respectfully urges the expeditious enforcement of Congress's mandate in Section 629 of the Communications Act. The Commission should adopt regulations to assure that nationally portable navigation devices to access multichannel video programming and services are available from retailers and manufacturers unaffiliated with the service provider. As the nation's largest retailer of branded consumer electronics, Circuit City has a strong interest in achieving a competitive consumer market in such customer premises equipment ("CPE").

Many of Circuit City's most innovative products exist only because in the 1970s the Commission deregulated the market for telephone CPE. Without this bold step, the thriving markets for computer modems, telephones, fax machines, and the products, uses and networks these products support, would not have been possible. Indeed, the process, and use of private sector standards, by which the Commission created a competitive market in telephone CPE two decades ago is an instructive model for this proceeding.

Today, the narrowband world of telephone CPE is becoming a mere adjunct to a broadband, multichannel world. The Multichannel Video Program Distributor ("MVPD") sits astride many of the gateways, providing networks of entertainment, information, and data, and receiving interactive messages back from consumers. Circuit City believes that the products now on its shelves, and several

in the wings--digital TVs and VCRs, computers and accessories--ought to be and are the broadband "navigation devices" of the future. Access to MVPD networks through standard consumer devices is long overdue.

In practical terms, "commercial availability" means that navigation devices must be nationally portable, either across a national MVPD system (*e.g.*, direct broadcast satellite or DBS) or across similar local MVPD systems (*e.g.*, cable-to-cable) nationwide. In the absence of such national portability, there will be little incentive for manufacturers to make, retailers to stock, or consumers to buy, devices designed to offer access to MVPD systems.

Circuit City believes that Section 629 is broad in terms of the MVPD entities and devices that are potentially covered, including cable television, DBS, wireless cable (MMDS), satellite master antenna systems (SMATVs), digital television broadcasters (if they offer multiple channels of programming on a paid basis), and the emerging Open Video System (OVS) industry.

For this proceeding to succeed, however, it must be focused. Most of the detailed questions in the Commission's Notice of Proposed Rulemaking are answered by application of three basic principles derived from the plain language of Section 629:

> (1) The proper scope of this proceeding should be determined according to whether an MVPD system supports the use of navigation devices that are nationally portable and are sourced from unaffiliated manufacturers and vendors.

(2) The only relevant question with respect to whether particular classes of devices are "covered" is whether the MVPD system is capable of supporting competitive availability, through: (a) a national security interface, (b) signal transmission specifications, and (c) network disclosure and licensing of system features. Once an MVPD system complies in this respect, any hardware or software product that is designed to be compatible with these features, and does not harm the system, can function as a "navigation device"--including computers, computer accessories, TVs, VCRs, modems, and various products and combinations not yet produced or imagined.

(3) Issues of competition from other MVPD systems have nothing to do with whether a particular system is capable of supporting national competitive availability.

Security Considerations: If system security requires the network operator to retain control over some circuitry (*e.g.*, certain circuitry presently embedded in addressable set-top boxes), then:

(a) the security circuitry should be minimized to the greatest extent possible, and isolated from all other circuitry so that it can be provided separately and directly by the network operator to the customer as part of the network; and

(b) a common interface for mating such security circuitry to other circuitry, including devices provided by system operators and competitive manufacturers and retailers, needs to be established.

In digital devices, a standard security interface, such as the National Renewable Security Standard, allows system operators to provide all security-related circuitry through a software carrier (e.g., a key or card) which controls subscriber access and signal decryption. For analog devices, compatibility between competitively procured CPE

and cable systems can be achieved through use of a standard Decoder Interface.

Standards Considerations: As a practical matter, to achieve a national commercial market in CPE for MVPD systems, a basic level of technical compatibility is necessary for security and transmission. Beyond this, the marketplace should be free to develop MVPD services and product functions and features. To the extent standards are necessary, the Commission should require the adaptation of standards developed by private sector committees, and require that noncompliant MVPD systems support particular technical performance goals by dates certain. The Commission should not have to engage in supervising the actual formulation of private sector standards, unless circumstances clearly warrant.

To build competitive devices, manufacturers must have timely access to the standards and technical specifications necessary to enable equipment interconnection. The Commission should adopt network disclosure requirements for MVPDs similar to Part 68, 47 C.F.R. § 68.110(b) and/or the information disclosure requirements imposed under 47 U.S.C. § 273(c). Moreover, unique and proprietary features of local systems need to be subject to fair, reasonable and nondiscriminatory licensing, so that manufacturers can address them in competitively offered devices.

To assure that CPE does not cause harm to the MVPD network, the Commission should expand or replicate the

Part 68 standards and registration requirements and Part 15 certification provisions for CPE manufacturers. The marketplace should be given the opportunity to address signal quality issues without Commission-imposed standards. If these measures do not prove adequate, the Commission can later take other steps to prevent network harm.

Subsidization, Waiver and Sunset: Section 629 requirements for MVPD supply of equipment without subsidization, developmental waivers, and sunset of implementing regulations should be strictly construed. Consistent with the statutory condition on the ability of MVPD operators to offer devices directly to consumers, the FCC should apply anti-subsidy rules to *all* MVPDs, including non-cable MVPDs, cable companies that face effective competition, and OVS providers, with respect to devices they themselves offer directly to consumers.

Requests to waive Section 629 implementing regulations must be analyzed critically, to ensure a sufficient showing that a waiver is necessary to the development or introduction of a new or improved service, technology, or product. Finally, there should be no sunset of the regulations unless and until the MVPD market is fully competitive, the CPE market is fully competitive, and sunset would promote competition and the public interest. These statutory prerequisites must be met on a national basis, and ought not be diluted through creation of contrived product or geographic submarkets.

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

To: The Commission

COMMENTS OF CIRCUIT CITY STORES, INC.

Circuit City Stores, Inc. ("Circuit City") respectfully submits these comments in response to the February 20, 1997 Notice of Proposed Rule Making ("NPRM") issued by the Federal Communications Commission ("FCC" or "Commission") in the above-captioned proceeding. Circuit City is the nation's largest retailer of branded consumer electronics, accounting for more than $7.5 billion in retail sales in 1996. Circuit City sells consumer electronics products such as TVs, VCRs, direct broadcast satellite ("DBS") and audio systems, telephone products, and personal computers and related software and accessories.

Many of Circuit City's most innovative products, and the services they support, exist only because in the 1970s the Commission deregulated the market for telephone customer premises equipment ("CPE"). Without the Commission having taken this bold step, the thriving markets for computer modems, telephones, fax machines, and the products, uses and

networks these products support, would not have been possible.

Today, the deregulated narrowband world of telephone CPE is becoming a mere adjunct to a broadband, multichannel world. The Multichannel Video Program Distributor ("MVPD") sits astride many of the gateways to this world, providing networks of entertainment, information, and data, and receiving interactive messages back from consumers. But a comparable revolution in the deregulation of gateway navigation devices for these networks has yet to occur.

Circuit City believes that the products now on its shelves, and several in the wings--digital video disk ("DVD") players, digital TVs and VCRs, computers and accessories--ought to be and are the broadband "navigation devices" of the future. Access to networks through standard consumer devices, similar to that which followed telephone CPE deregulation, is long overdue. Therefore, Circuit City was an early and avid supporter of Section 304 of the Telecommunications Act of 1996,[1/] codified as Section 629 of the Communications Act, 47 U.S.C. § 549 (hereinafter, "Section 629"), which clearly and unambiguously instructs the Commission to open the broadband gateway to competition. Circuit City has also been an active commenter in prior Commission proceedings which explored issues pertaining to achieving competitive availability of navigation devices.

[1/] Pub. L. 1104-104, 110 Stat. 56 (1996).

Circuit City is a member of the Consumer Electronics Retailers Coalition ("CERC"), which has addressed these issues for several years on behalf of major retailers of consumer electronics and computers. Circuit City contributed to and supports the filing made today by CERC in the above-captioned proceeding (the "CERC Comments"). For purposes of brevity, we ask that the CERC Comments be considered by the Commission as incorporated herein by reference.

In the instant filing, Circuit City elaborates on particular issues, and responds to specific questions posed by the Commission in its NPRM. Part I provides an overview of Circuit City's key objectives in this proceeding. Part II briefly outlines the process and means the Commission used to establish a competitive market in the telephone CPE industry, as a useful model for this proceeding. Finally, Part III responds to the specific questions in the NPRM. Circuit City is committed to active participation in any and all Commission proceedings bearing on the successful implementation of Section 629 in particular, and the creation of a competitive CPE market in general.[2/]

[2/] Circuit City also has participated in Commission proceedings on: Advanced Television Systems, MM Docket 87-268; Compatibility Between Cable Systems and Consumer Electronics Equipment, ET Docket 93-7; and Telecommunications Services Inside Wiring, CS Docket 95-184. Indeed, the Commission cited the Reply Comments of Circuit City (filed Aug. 19, 1996) in CS Docket 96-133, 11 F.C.C. Rec. 7413 (1996), at NPRM p. 33 n.87. Circuit City respectfully requests that its Comments in those proceedings (continued...)

I. COMMERCIAL AVAILABILITY MEANS THAT CONSUMERS MUST BE ABLE TO OBTAIN NAVIGATION DEVICES THAT ARE NATIONALLY PORTABLE FROM INDEPENDENT MANUFACTURERS AND RETAILERS

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 from retailers and manufacturers who are not affiliated with any MVPD.[3/] Consumers must be assured a national competitive market in CPE used with broadband multichannel video programming services--just as there is a national competitive market for devices to access the narrowband telephone system available from a variety of manufacturers and retailers.

In practical terms, "commercial availability" means that navigation devices must be nationally portable, either across a national MVPD system (*e.g.*, DBS) or across similar local MVPD systems (*e.g.*, cable-to-cable) nationwide. In the absence of such national portability, there will be little incentive for manufacturers to make, retailers to stock, or consumers to buy, devices designed to offer access to MVPD systems. This result, in addition to being contrary to Congress's intention, would also be unnecessarily wasteful for consumers, because new generations of consumer electronics and computer devices will contain most of the

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[2/](...continued)
be incorporated by reference and considered part of the record in the above-captioned proceeding.

[3/] 47 U.S.C. § 549(a).

hardware and software necessary to function also as navigation devices.

As the CERC Comments discuss, to assure such commercial availability, the Commission must first assure that MVPD systems are ***capable*** of supporting national portability and competitive supply of navigation devices. Where MVPD systems do not presently support national competitive availability, three major obstacles must be overcome:

(1) Security--The MVPD system needs to support a national security interface;

(2) Digital Transmission--Sufficient commonality must be achieved among varying digital transmission systems; and

(3) Proprietary Technologies--Unique and proprietary features of local systems need to be subject to disclosure and, if necessary, fair, reasonable and nondiscriminatory licensing, so that manufacturers can address them in competitively offered devices.

Circuit City fully supports the discussion in the CERC Comments as to the means, and the schedule, by which the Commission should assure the achievement of these results.

II. THE PROCESS, AND USE OF PRIVATE SECTOR STANDARDS, BY WHICH THE COMMISSION DEREGULATED TELEPHONE CPE THREE DECADES AGO IS INSTRUCTIVE FOR THIS PROCEEDING

In this proceeding the Commission resumes its policy of fostering competition in CPE, which originated nearly thirty years ago with the Commission's 1968 Carterfone decision.[4/] Carterfone and its tariff and rulemaking progeny opened the

[4/] Carterfone, 13 F.C.C. 2d 420, recon. denied, 14 F.C.C. 2d 571 (1968).

door to connecting competitive business and consumer products to the telephone system. The process, and use of private sector standards, by which the Commission created a competitive market in telephone CPE two decades ago is an instructive model for this proceeding.

In 1975, the Commission adopted new Part 68 regulations to foster the competitive market in telephone CPE and to provide uniform standards to protect the telephone networks from potential harm from connection of terminal equipment.[5/] Part 68 established such technical standards, network disclosure requirements, and a registration program as were necessary for independent manufacturers to have an incentive to offer terminal equipment and protective circuitry capable of being connected to the telephone network.

Section 68.104, as enacted, required that the network allow connection of all terminal equipment through standard plugs and jacks (except for telephone company-provided ringers). Section 68.110(a) required telephone companies to provide, upon request, technical information concerning interface parameters not specified in Part 68, which is needed to permit terminal equipment to operate in a manner compatible with telephone company communications facilities. Section 68.110(b) further required telephone companies to

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[5/] In re Proposals for New or Revised Classes of Interstate and Foreign Message Toll Telephone Service (MTS) and Wide Area Telephone Service (WATS), First Report and Order, 56 F.C.C. 2d 593 (1975).

provide adequate notice if changes in communications facilities, equipment, operations or procedures could be reasonably expected to render any customer's terminal equipment incompatible with telephone company communications facilities, require modification or alteration of such CPE, or otherwise materially affect its use or performance.

The general requirement for standard plugs and jacks was based on a desire for consumers to be able to plug in telephone equipment without special installation instructions or training. Then, as now, the Commission was loathe to prescribe more standardization than necessary. Initially, the Commission "purposefully declined to prescribe specific standard plugs and jacks . . . in the belief that acceptable designs will be voluntarily arrived at by cooperative action between the carriers and the terminal equipment industry."[6/] The Commission cautioned, however, that if jointly sponsored designs for standard plugs and jacks were not expeditiously achieved, the FCC would prescribe specific designs. The Commission did require that any entity be permitted to manufacture and supply standard plugs for use with registered terminal equipment and registered protective circuitry, without being subject to licensing by a telephone company and without telco-imposed restrictions.[7/]

[6/] Id. at 611, ¶ 49.

[7/] Id.

Although the Commission expected that mutually acceptable designs would be voluntarily achieved by cooperative action of the telephone carrier and equipment manufacturers without Commission involvement, industry confusion and numerous inquiries to the Commission followed. Consequently, the Commission issued a Public Notice inviting interested parties to meet with the Commission. After consulting with the industry, the FCC issued a notice of proposed rulemaking and subsequently issued specifications for standard plugs and jacks.[8/]

Ultimately, the Commission adopted AT&T-sponsored plug/jack designs, which were subject to licensing by Western Electric Company. Because the Commission was concerned that telephone company licensure could be used as a discriminatory and anti-competitive tool to thwart sales of competitors' equipment, it prescribed standard unilateral and bilateral licensing agreements and uniform standard royalties.[9/] The Commission further required AT&T to make available, without charge, adequate product information to assure that the standard plugs, jacks, and cords designed by AT&T could be produced by a competent manufacturer.[10/]

[8/] National Telephone Network Standard Plugs and Jacks, 41 Fed. Reg. 28694 (July 12, 1976) (codified at Part 68).

[9/] Id. at 28695, ¶¶ 7-8 (originally codified at 47 C.F.R. Part 68, App. B; currently at 47 C.F.R. § 68.504).

[10/] Id.

Subsequently, the Commission also adopted a set of nonstructural safeguards to help ensure that telephone carriers would not use their market power in basic services to discriminate against other vendors' products and services or to shift costs improperly from unregulated to regulated activities.[11] The Commission's initiatives for Bell Operating Companies ("BOCs") included:

- network disclosure provisions, which required BOCs to disclose market and technical network information relating to new or modified network service that would affect the interconnection of CPE;[12]

- customer proprietary network information ("CPNI") provisions, which required, upon the (business) customer's request, that CPNI must be available to competing CPE vendors on the same terms and conditions as available to BOCs, to enable independent suppliers

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[11] In re Furnishing of Customer Premises Equipment by the Bell Operating Telephone Companies and the Independent Telephone Companies, 2 F.C.C. Rec. 143 (1987).

[12] The Commission established two sets of requirements, depending on whether the BOC engages in CPE research, development, or design. First, a BOC that certifies that it will not engage in CPE research, development, or design, may not disclose information about new or modified network services to any unaffiliated entities that will engage in CPE research, development, design or manufacture unless the BOC makes the information available to its CPE competitors at the same time and on the same terms and conditions. In any event, certifying BOCs must make such information available reasonably in advance of implementation of the new or modified network service. Id. at 151, ¶ 53.

Second, non-certifying BOCs must notify the CPE industry that a new or modified network service is under development when they reach the "make or buy" decision point on any product whose design affects or relies on the network interface. Non-certifying BOCs must also publicly disclose technical network information and market information relating to new or modified network service twelve months before its introduction. Id. at 151, ¶ 54.

to design a communications system or submit a competing bid for the customer's CPE needs;[13]

- nondiscrimination provisions, requiring BOCs to file nondiscrimination compliance plans detailing the specific procedures they propose to use to ensure that they will not discriminate in their provision of basic network services, including installation and maintenance, to customers with non-BOC-supplied CPE;[14] and

- independent CPE vendor joint marketing provisions, to provide independent vendors with a meaningful opportunity to market their CPE jointly with network services through sales agency plans or other functionally equivalent means.[15]

The Telecommunications Act of 1996 enacted similar statutory requirements for manufacturing BOCs.[16] The Act requires disclosure of information about BOC protocols and technical requirements for interconnecting CPE. Specifically:

> Each [BOC] shall, in accordance with regulations prescribed by the Commission, maintain and file with the Commission full and complete information with respect to the protocols and technical requirements for connection with and use of its telephone exchange service facilities. Each such company shall report promptly to the Commission any material changes or planned changes to such protocols and requirements, and the schedule for implementation of such changes or planned changes.[17]

The statute permits the Commission to prescribe additional regulations to ensure that manufacturers have access to this

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[13] Id. at 153, ¶ 70.

[14] Id. at 155, ¶¶ 83-84.

[15] Id. at 156, ¶¶ 89-94.

[16] These measures are codified at 47 U.S.C. § 273.

[17] Id. § 273(c)(1).

information for connection with and use of telephone exchange service facilities that a BOC makes available to any affiliated or unaffiliated manufacturer.[18]

In addition to disclosure requirements, the Act requires BOCs that certify telecommunications equipment or CPE manufactured by an unaffiliated entity to manufacture the same class of equipment or CPE through a separate manufacturing affiliate.[19] The Act also sets forth nondiscrimination standards for BOC equipment procurement and sales.[20]

III. COMMISSION REGULATIONS SHOULD ENSURE THAT ALL MVPD SYSTEMS SUPPORT COMPETITIVE AVAILABILITY OF NATIONALLY PORTABLE NAVIGATION DEVICES

The Commission asks commenters on its NPRM to address a series of questions concerning the potential scope and application of its regulations, with respect to both the MVPD systems to which the regulations should apply, and the nature of the devices that should be "covered" as "navigation devices." At the same time, the Commission asks a number of questions about whether some notion of the system's exposure to competition from other MVPD systems ought to be used as a basis for exclusion from regulation,

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[18] Id. § 273(c)(3). The statute prohibits BOCs from disclosing any covered information that has not been filed promptly, as required. Id. § 273(c)(2).

[19] Id. § 273(d)(3).

[20] Id. § 273(e).

either as a question of scope or as some "sunset" doctrine less exacting than that spelled out in Section 629(e).

Circuit City believes that most of the Commission's detailed questions are answered by application of three basic principles derived from the plain language of Section 629, and the premise that, to assure commercial availability of navigation devices, the Commission must first assure that MVPD systems are capable of supporting national competitive availability:

> (1) The proper scope of this proceeding should be determined according to whether an MVPD system supports the use of navigation devices that are nationally portable and are sourced from unaffiliated manufacturers and vendors.
>
> (2) The <u>only</u> relevant question with respect to whether particular classes of devices are "covered" is whether the <u>MVPD system</u> is capable of supporting competitive availability, through: (a) a national security interface, (b) signal transmission specifications, and (c) disclosure and licensing of system features. Once an MVPD system is compliant in this respect, <u>any</u> hardware or software product that is designed to be compatible with these features, and does not harm the system, can function as a "navigation device"--including computers, computer accessories, TVs, VCRs, modems, combinations of any of the above, and various products not yet produced or imagined.
>
> (3) Issues of competition from other MVPD systems have nothing to do with whether a particular system is capable of supporting national competitive availability. Nor are such issues more than <u>one of</u> the factors mentioned in Section 629's very specific sunset provision, subsection (e). Hence, such issues are relevant only as a component in the broader sunset analysis under Section 629(e).

Circuit City answers the Commission's particular questions in accordance with these principles.

A. Commission Regulations Should Focus On MVPDs For Which Compatible Navigation Devices Are Unavailable From Independent Manufacturers And Retailers

In NPRM ¶¶ 14-15, the Commission seeks comment on: (1) whether a multichannel video programming system is a system operated by a MVPD; (2) whether the Commission has discretion to differentiate among the various systems for providing multichannel video programming; (3) whether rules should apply only to the entity that has a direct relationship with the ultimate consumer; and (4) whether Section 629 requirements should apply to open video system ("OVS") operators. In light of the principles set forth above, Circuit City answers:

- A multichannel video programming system is a system operated by an MVPD, as defined by the Act.[21]
- The Commission has "discretion" to choose which MVPD systems should be subject to certain regulations in this proceeding to the extent that MVPD systems may already comply with the essential elements of competitive availability and national portability.
- Regulations should be applied to the entity in direct contact with the consumer, assuming this is sufficient to make an MVPD system capable of compliance with competitive availability of nationally portable navigation devices.

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[21] Section 602(13) of the Communications Act, 47 U.S.C. § 522(13), defines a "multichannel video programming distributor" as:

> a person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, or a television receive-only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming[.]

- OVS systems are MVPD operators subject to the same policy and competitive concerns as other MVPD operators.

Circuit City agrees with the Commission's conclusion at NPRM ¶ 55 that Section 629 is broad in terms of the types of MVPDs that are potentially covered, including cable television, DBS, wireless cable (multichannel multipoint distribution service or MMDS) and satellite master antenna systems (SMATVs). To the extent that digital television broadcasters will offer multiple channels of video programming on a paid basis, they will become MVPDs, as well. Moreover, the Commission should exercise its authority and expressly clarify that Section 629's requirements for commercial availability apply to the emerging OVS industry, as well. Technical regulatory distinctions should not provide a basis for disparate treatment of MVPDs.[22/]

Cable system operators generally retain a monopoly on set-top equipment due to security constraints, unique system features, and powerful market position. Cable CPE generally is not available on the competitive retail market and, even if it were, there is no assurance that a set-top box purchased for one cable system would work with another. To the extent wired cable services do not support national portability of devices obtained from independent manufacturers and vendors, they should be required through

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[22/] See discussion in CERC Comments, pp. 13-15.

this proceeding to achieve this degree of competitive availability.

Likewise, to the extent MMDS, SMATV and OVS systems do not support national portability of devices obtained from independent manufacturers and vendors, regulations developed in this proceeding to achieve competitive availability should apply to them as well.

Most DBS systems are nationally portable by nature. Some DBS systems already implement a security interface and support devices that are made by manufacturers and sold by vendors not affiliated with the MVPD distributor. The DBS systems that comply with the mandate of national commercial availability need not be subject to certain regulations in this proceeding--not as a matter of "exemption" or "sunset" based on competition or other tangential factors, but rather as recognition that these systems at present are doing that which the statute seeks them to do.

B. Regulations Under Section 629 Should Address System Capability To Support Competitive Availability So That Any Device That Does Not Harm The Network May Be A Navigation Device

Section 629(a) directs the Commission to assure to consumers the commercial availability of "converter boxes, interactive communications equipment, and other equipment used by consumers to access multichannel video programming

and other services offered over multichannel video programming systems."[23]

At NPRM ¶¶ 16-19, the Commission seeks comments on: (1) the equipment to which any rules should apply; (2) what it means to "access" programming and other services; (3) whether to distinguish between reception and display devices, access control and security devices, and upstream transmission devices, and first address those devices presenting the least difficult security and standardization problems; and (4) whether the FCC first should address emergent markets such as cable modems, in which a significant embedded base of equipment does not yet exist.[24]

At NPRM ¶ 55, the Commission tentatively concludes that Section 629 is broad in terms of the type of equipment covered, including not just equipment used to receive video programming, but also equipment used to access other services offered by MVPDs over their systems. The Commission suggests, however, that some equipment, such as basic television receivers, VCRs, or personal computers, are

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[23] 47 U.S.C. § 549(a).

[24] Section III.A., above, addresses questions as to whether the Commission has discretion to limit the application of any rules to certain types of equipment or to establish priorities as to how regulation can best be applied; whether the Commission should address devices used in DBS and cable television industries first because they constitute the largest market involved; and whether different types of MVPDs (i.e., cable and DBS) should be examined separately.