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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )  
 )  
Implementation of Section 304 )  
of the Telecommunications Act )  
of 1996 -- Commercial Availability )  
of Navigation Devices )

CS Docket 97-80

TO: The Commission

**COMMENTS OF AMERICAST**

***Introduction***

Corporate Media Partners d/b/a/ *americast*<sup>TM</sup> ("Americast") is a new venture owned by subsidiaries of Ameritech Corporation, BellSouth Corporation, GTE Corporation, SBC Communications Inc., Southern New England Telecommunications Corporation and The Walt Disney Company. The Americast venture was formed to acquire, package, develop and market programs, programming services, and other forms of content for distribution by its telephone company partners over multichannel video distribution systems – hardwire or wireless – that they are constructing and operating.

The systems that are and will be operated by Americast's partners will be, in virtually all cases, the first full-service multichannel video systems to compete head-to-head with entrenched cable television systems in terms of offering both local and national programming. As the Commission recently has found, the video programming marketplace

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still is dominated by franchised cable operators that face no direct competition.<sup>1</sup> The Commission also has noted the difficulties of initiating competition in markets where entrenched cable operators already serve the majority of video households.<sup>2</sup> In addition to this lack of competition, the current video programming marketplace is characterized by dynamic and rapid advances and changes in technology.

In its *Notice*, the Commission seeks comments on proposals to implement regulations required by Section 629 of the Telecommunications Act of 1996 (the "Act") for the commercial availability of basic hardware used to access multichannel video programming. In addition, the Commission seeks comment on whether regulations should be adopted to extend the application of Section 629 beyond such basic hardware to include other hardware and software technology. The Commission has recognized a number of important public interest goals in this proceeding, including: (1) maximization of consumer choice resulting from competitive availability of equipment; (2) stimulation and promotion of equipment innovation, with the expectation that this will result ultimately in lower costs for consumers; and (3) minimizing governmental intrusion in the equipment design and installation process to the extent feasible.<sup>3</sup> In addition, as the Commission has noted, Section 629 should be

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<sup>1</sup> See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, CS Docket No. 96-133, slip op. at 66 (Jan. 2, 1997) ("[i]n all but a few local markets for the delivery of video programming, the vast majority of consumers still subscribe to the service of a single incumbent cable operator").

<sup>2</sup> See *id.* at 65 (a new entrant may "(1) incur significant sunk costs, (2) have to obtain a license or certification from federal authorities or a franchise from local authorities, (3) face resistance at the local level from governmental agencies or bodies, and (4) face incumbent-generated regulatory or litigation challenges").

<sup>3</sup> *Notice*, ¶ 83.

construed in a pro-competitive manner so as to further the goals of the Act to eliminate market entry barriers.<sup>4</sup>

In these comments, we urge the Commission to be guided by the need to support new entrants in the video marketplace. It is a competitive necessity for new entrants tackling a daunting marketplace to have the freedom to differentiate their services to respond to innovative products and marketing strategies as well as consumer demand. Among the most important strategies new entrants can use to enter this challenging marketplace is that of differentiating their product by offering unique, value-added content and services. These services may include navigational tools, interactive entertainment and transactional services, enhanced security and Internet-related services. Americast, like other new entrants to the marketplace, is pursuing a number of these strategies to differentiate its product and services to benefit consumers. Through the use of such innovative and differentiated offerings, new entrants are able to compete with incumbent cable operators in the market for video programming.

In order to support the Commission's stated goal of promoting competition within this challenging environment, the Commission should tailor any rules implementing Section 629 to avoid "freezing or chilling the development of new technologies and services."<sup>5</sup> We agree with the Commission that preliminary to developing a regulatory framework, it is imperative to analyze the current market data with respect to video customer premises

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<sup>4</sup> *Id.*, ¶ 84.

<sup>5</sup> Joint Explanatory Statement of the Committee of Conference, Telecommunications Act of 1996, 104<sup>th</sup> Cong., 2d Sess. 181 (the "Conference Agreement").

equipment (“CPE”),<sup>6</sup> and we encourage the Commission to undertake such analysis as a precursor to adopting any regulations in this proceeding. We believe that the Commission’s factual analysis will confirm its existing view that the present video programming market is characterized by a lack of competition and, at the same time, by dynamic technological changes and advances. Furthermore, in order to fulfill the Congressional mandate that the scope of regulations be “narrowed to include only equipment used to access services provided by multichannel video programming distributors,”<sup>7</sup> we propose that the Commission establish an industry standards board to determine specific standards for the implementation of Section 629 based on open standards.

#### I.

#### ***The Commission Should Implement Section 629 in a Manner That Fosters Competition.***

Section 629 of the Act expresses a commonsense competitive goal: a service provider with market power should not use that power to make American consumers captive to a single vendor for video CPE. In implementing this goal, therefore, the Commission must recognize that it is squarely in the interest of video competition for new entrants to continue to be permitted to differentiate their services by, for example, offering unique tools employing newly developed technology to create a graphical user interface and other innovative services that allow competitors to convey their own “look and feel” to consumers.

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<sup>6</sup> Notice, ¶ 12.

<sup>7</sup> See Conference Agreement.

The Commission can most effectively serve both its competitive policies and the goals of Section 629 by adopting rules in this proceeding that would allow consumers to benefit from the changing marketplace and innovative new service offerings. To the extent that the Commission decides to promulgate regulations under Section 629, it should be guided by the general principles set out below.

#### ***A. Scope of Equipment Covered***

We believe that fostering unique and highly valued services by all MVPDs is consistent with the Commission's goal of implementing Section 629. The *Notice* raises an important question regarding the extent to which Section 629 will be applied, *if at all*, beyond basic consumer hardware to the interface between a multichannel video distribution system and its subscriber. We strongly believe that the balance must be struck in favor of permitting MVPDs to use video CPE to differentiate themselves effectively from other competitors; accordingly, MVPDs must be permitted to maintain proprietary technology. The basic receiver and its most elementary features (generally, those now found in typical cable set-top boxes) may be subject to some type of regulation under Section 629, but the unique, proprietary value-added hardware and software that individual MVPDs may add to that receiver in competition with one another must not be subject to Section 629. In other words, unique features provided by the MVPD – such as the particular graphical-user interface, subscriber security and service features, and the like – must not be regulated by the Commission so that new entrants, such as Americast, can differentiate themselves in the marketplace, thus permitting consumers to have the benefit of competitive value-added products offered by MVPDs.

Section 629 applies to basic video CPE needed to receive programming from MVPDs such as "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."<sup>8</sup> On its face, Section 629 does not apply to the *services* that are offered by the MVPDs. Nor does Section 629 require MVPDs to give up the unique intellectual property they dedicate to creating the hardware and software interface between the viewer and the programming service or constrain an MVPD's ability to offer other unique services. Accordingly, Section 629 should not be construed to apply to the unique look-and-feel crafted by innovative MVPDs seeking to differentiate their program offerings. Therefore, we urge that any regulations promulgated by the Commission should be narrowly tailored so that they do not interfere with the development of enhanced services provided by the MVPD to differentiate its product and benefit consumers.

### ***B. Cognizance of the Current Market***

The Congressional mandate to the Commission in implementing Section 629 was clear: "the Commission should take cognizance of the current state of the marketplace and consider the results of private standards setting activities."<sup>9</sup> The *Notice* acknowledges this Congressional directive and seeks information regarding the current state of the market for video CPE.<sup>10</sup> Video CPE – especially for digital transmission – is a relatively new industry and is characterized by rapid and dynamic technological changes. Innovative advances in

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<sup>8</sup> 47 U.S.C. § 549(a).

<sup>9</sup> *See* Conference Agreement.

<sup>10</sup> *Notice*, ¶ 12.

technology present opportunities for market participants to offer new and exciting products and video services to consumers. However, the market for video CPE is a submarket of the multichannel video programming market and, as the Commission has previously determined, this broader market is dominated by franchised cable operators that face no direct competition.<sup>11</sup> Given the lack of competition in this broader market and the evolving nature of the video CPE submarket, it is essential that prior to adopting any regulations the Commission “consult with private standard-setting organizations, such as IEEE, DAVIC (Digital Audio Video Council), MPEG, ANSI and other appropriate bodies.”<sup>12</sup> Such discussions will assist the Commission in defining the scope and magnitude of the issues presented, and ultimately to be addressed, by Section 629. We believe that such an approach is a constructive and necessary first step in considering regulations to fulfill the Commission’s goal of fostering competition to benefit consumers.

## II.

### *The Commission Should Establish An Industry Board to Develop Appropriate Standards for the Commission’s Rules.*

In view of the myriad applications that will be implemented by MVPDs, we believe that, at the appropriate time, it may be most sensible for the Commission to empower an industry standards board to develop standards to implement the distinction between basic hardware that may be subject to Section 629 and unique hardware and software interfaces and other services that must not be subject to Section 629 to further the Commission’s

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<sup>11</sup> See *supra* n. 1 and accompanying text.

<sup>12</sup> See Conference Agreement.

competitive goals. This industry standards board would establish the particular features that should be considered within the parameters of the basic reception equipment that should be subject to Section 629; it also would develop, in detail, the standards and protocols used to facilitate the commercial availability of such features based on open standards. The findings and standards developed by this industry standards board would then be presented to the Commission for adoption as regulations. In this manner, the Commission would fulfill the mandate of Section 629(a) which requires that regulations be adopted after “consultation with industry standard-setting organizations.”

If the Commission establishes such an industry standards board, we would suggest that (1) the Commission set out with specificity the issues and parameters that the board should consider; (2) the Commission establish a schedule under which the board would be required to submit its findings to ensure that the board completes its work within a reasonable time frame; (3) the Commission ensure that new entrants to the MVPD market are adequately represented on the board; and (4) the Commission determine to adopt the board’s findings as regulations after public comment.

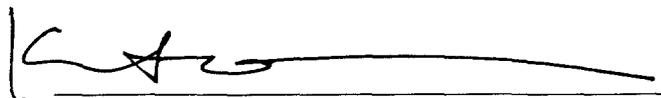
### *Conclusion*

The Commission must balance two goals in this proceeding – the primary goal of encouraging vibrant competition in the marketplace for video programming services and the goal of commercial availability of video CPE. We urge the Commission to recognize that actions that would require new entrants to lose the valuable competitive edge contained in the

unique hardware and software they have developed to compete with entrenched cable providers would only increase the burdens new entrants face in entering this difficult market.

Respectfully submitted,

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