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FEDERAL COMMUNICATIONS COMMISSION  
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May 16, 1997

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
Mail Stop 1170  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

Dear Mr. Caton:

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

On behalf of Pacific Bell Video Services, please find enclosed an original and 6 copies of its "Comments" in the above proceeding.

Please stamp and return the provided copy to confirm your receipt. Please contact me should you have any questions or require additional information concerning this matter.

Sincerely,

*Gina Hamison (JJB)*

Enclosures

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Before the  
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Washington, D.C. 20554

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In the Matter of

Implementation of Section 304 of the  
Telecommunications Act of 1996

Commercial Availability of Navigation Devices

CC Docket No. 97-80

**COMMENTS OF PACIFIC BELL VIDEO SERVICES**

I. **INTRODUCTION**

Pacific Bell Video Services, a subsidiary of SBC Communications, hereby comments on the FCC's 47 U.S.C. Section 629 rulemaking regarding the commercial availability of navigation devices.

We make the following points:

- The FCC's navigational devices rules should not apply to analog systems, whose importance is diminishing in an era of digital TV;
- Specialized electronic program guides, navigational menus, remote controls and other interactive or custom features will be a significant means for a provider to distinguish itself from the competition. The FCC should not require the commercial availability of the hardware and software that create the distinctive "look and feel" of a provider's system;
- Portions of a wireless cable system such as MMDS that require fine-tuned calibration -- such as MMDS antennas and downconverters -- should only be required to be commercially available via vendors licensed by the provider. MMDS antenna placement is dependent on many variables, and therefore signal quality will only be adequate if providers knowledgeable about

their installation serve customers. In the alternative, and for the same reasons, the FCC should exclude MMDS antennas and downconverters from the commercial availability rules;

- The navigation devices rules should apply only to the provider with a direct relationship to video end-users, and not to intermediate providers of transport or other transmission facilities;
- The Commission should not apply the cross-subsidy bar in Section 629(a) to systems facing effective competition; and
- If the Commission appoints any standards-setting body to work on navigation devices standards, we would support DAVIC (the Digital Audio-Visual Council) as a leader of such an effort.

## II. THE RULES SHOULD NOT APPLY TO ANALOG SYSTEMS

With the advent of digital TV, the presence of analog systems will begin to diminish, and Section 629 rules therefore should not apply to such analog systems. Indeed, the Commission's recent ATV order<sup>1</sup> contemplates a gradual disappearance of analog programming over the next 9 years, with complete elimination of analog systems thereafter. Because analog systems ultimately will disappear, there is no justification for forcing the video industry to incur the significant development and production costs necessary to develop standardized, commercially available navigation devices for analog systems. Instead, the FCC should allow the market to develop interim solutions to customers' needs for navigation devices for analog systems.

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<sup>1</sup> *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, MM Docket No. 87-268, *Fifth Report and Order*, FCC 97-116, ¶ 56 (rel. April 12, 1997).

III. THE FCC SHOULD NOT REQUIRE THE COMMERCIAL AVAILABILITY OF HARDWARE AND SOFTWARE THAT CREATES THE "LOOK AND FEEL" OF A VIDEO PROVIDER'S SYSTEM (¶¶ 16-19, 69)

New video providers hope to distinguish their products from the competition largely through specialized electronic program guides, navigational menus, remote controls or other interactive or custom enhancements that create a "look and feel" unique to their systems. If the FCC requires the features to be standardized and commercially available to a variety of vendors, it will eliminate much of the new providers' competitive edge. Therefore, the FCC's rules should not require providers to standardize and make commercially available to a variety of vendors hardware and software that is instrumental in creating the "look and feel" of a video system.

This "look and feel" can be created with the use of specialized "smart cards" -- a form of hardware -- and proprietary operating system and applications software programs. Thus, smart cards and proprietary software programs should not be commercially available. Any requirement that such items be standardized or made available to competitors through a commercial availability rule will rob video providers of the huge investment they have made to create unique systems that appeal to end-users. Such a requirement would do no less than effect an unconstitutional taking of a provider's intellectual property and other tangible assets.

On the other hand, we agree that universal boxes and network interface modules should be commercially available, so long as these items do not include the proprietary smart cards and software we describe above. Moreover, it is important that commercially available hardware that accepts smart cards, other proprietary hardware, and applications software, not preclude the use of any operating system a video provider might choose.

IV. PORTIONS OF A VIDEO SYSTEM THAT CANNOT REASONABLY BE CONTROLLED BY END-USERS SHOULD ONLY BE COMMERCIALY AVAILABLE VIA VENDORS LICENSED BY THE SERVICE PROVIDER, OR, ALTERNATIVELY, SHOULD BE EXCLUDED FROM THE SECTION 629 RULES (§ 16, 55, 62)

Certain video provider equipment, such as MMDS antennas and downconverters, requires fine-tuned calibration not necessary for other video systems, even DBS. We are concerned that if MMDS providers do not retain some control over the qualifications of the vendors who install MMDS antennas and downconverters, signal quality will suffer and customers will not be satisfied with the service. Therefore, we propose that “commercial availability” in the context of MMDS/wireless cable antennas and downconverters be construed to mean that antennas should be available from vendors licensed by the MMDS provider. If the MMDS provider licenses vendors, it can ensure these vendors have the training and qualifications to perform the fine-tuned calibration that is essential to receiving a proper MMDS signal. If the FCC does not grant MMDS providers this control, we would propose that MMDS antennas and downconverters be excluded altogether from the Section 629 rules.

An MMDS system requires a line of sight, and hence fine calibration, in order to receive an adequate signal. This calibration is significantly more complicated than that required for DBS. In a specific city or market area, only one directional adjustment for DBS is necessary, since the antenna is pointed at a stationary satellite.

In contrast to DBS, the terrestrial nature of MMDS delivery systems causes a number of factors to affect the placement of an MMDS antenna. These factors include the location of the main transmitter and of boosters and repeaters, the polarization of the transmitted signal, and selection of the proper antenna type to maximize reception of the desired signal. In addition, two-way systems introduce an increased level of sophistication by requiring a signal to be transmitted back to the MMDS network. Each of these factors will vary not only between MMDS providers but also within one MMDS provider’s own service area.

A do-it-yourself approach to installation of MMDS antennas and downconverters will result in poor signal quality, turning customers off to MMDS and hurting us in the marketplace.

Therefore, we propose that where wireless cable antennas and downconverters are concerned, the term “commercially available” be construed to mean that such items are available via a vendor licensed by or otherwise selected by the MMDS provider. In this way, the MMDS provider will retain the ability to guarantee the performance of its network. In the alternative, and for the same reasons, we propose that the FCC exclude MMDS antennas and downconverters from the Section 629 rules.

V. THE FCC SHOULD APPLY ITS RULES TO THE ENTITY WITH A DIRECT RELATIONSHIP TO END-USER CUSTOMERS, NOT TO PROVIDERS OF SIMPLE TRANSPORT (¶¶ 14-15, 55)

The FCC should not apply its Section 629 rules to providers of simple transport. Rather, the rules should only bind the provider with a direct relationship to end-user customers. If a third party video provider purchases transport from a LEC, only the video provider, and not the LEC, should be bound by the rules. The transport provider has no control over or involvement in development of the components of the video system. To impose Section 629 regulatory burdens on that provider of transport will create responsibilities that are impossible for the transport provider to meet.

In this regard, we agree with the FCC that Open Video System (“OVS”) operators should not be bound by the Section 629 rules. ¶ 15. As the Commission aptly observes, OVS is not a Title VI service, whereas Section 629 is part of Title VI.

VI. THE FCC SHOULD NOT APPLY THE SECTION 629(a) SUBSIDIZATION RULES TO PROVIDERS FACING EFFECTIVE COMPETITION

The bar on cross-subsidies in the portion of Section 629(a) that allows a video provider to “offer[ ] converter boxes, interactive communications equipment, and other equipment used by consumers to access multichannel video programming” should not apply to providers facing effective competition. That provision -- which allows a provider to bundle set top boxes and other equipment to customers -- states that such equipment may not be “subsidized by charges for any [services offered over multichannel video programming systems.]” 47 U.S.C. § 629(a). However, rules barring cross

subsidies are highly regulatory provisions that generally do not apply in a competitive marketplace.<sup>2</sup> Once an MVPD faces effective competition, such rules should not apply. Pursuant to 47 U.S.C. Section 10, the FCC should forebear from applying the cross-subsidy provision where effective competition exists.

VII. DAVIC WOULD BE THE APPROPRIATE BODY TO BE INVOLVED IN STANDARDS-SETTING ACTIVITIES (¶ 12)

Should the FCC deem it wise to involve a standards-setting body in the process of implementing the Section 629 rules, we would support DAVIC (the Digital Audio-Visual Council) as a leader of such an effort.

VIII. CONCLUSION

New video providers will rely heavily on features that create a unique “look and feel” to distinguish their product offerings from those of the competition. If the FCC takes away providers’ distinctive features -- such as specialized electronic program guides, navigational menus, remote controls and other interactive features -- by requiring that they be commercially available, it will strip these providers of their key competitive edge. Thus, the FCC must not mandate the commercial availability of specialized hardware and proprietary operating system and applications software programs that distinguish a provider’s system from the competition.

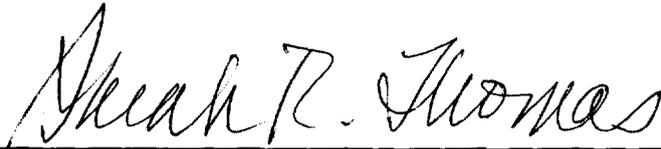
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<sup>2</sup> See *Separation of Costs of Regulated Telephone Service From Costs of Nonregulated Service, Amendment of Part 31, the Uniform System of Accounts for Class A and Class B Telephone Companies to Provide For Nonregulated Activities and to Provide for Transactions Between Telephone Companies and Their Affiliates, Report and Order*, 2 FCC Rcd 1298, ¶¶ 115, 117 (1977) (“ratepayers do not benefit from additional revenues which might be produced by offering a nonregulated service at a lower price, since the nonregulated sector is not bound to an authorized rate of return and any revenues in excess of those needed to cover the costs of that service can be expected to be distributed to shareholders, reinvested in the nonregulated business, or used to offset the overheads which are not covered by other nonregulated services.”).

The FCC should also refrain from applying Section 629 rules to 1) analog systems, 2) entities (such as transport providers) without a direct relationship with end-users, or 3) with respect to the Section 629(a) cross-subsidy rules, systems facing effective competition. Finally, the FCC should construe "commercial availability" in the context of MMDS antennas and downconverters to mean availability via a vendor licensed by the wireless cable provider, so that signal quality is maintained at an appropriate high standard. In the alternative, the FCC should exclude MMDS antennas and downconverters from coverage by the Section 629 rules.

Respectfully submitted,

PACIFIC BELL VIDEO SERVICES

A handwritten signature in cursive script that reads "Sarah R. Thomas". The signature is written in black ink and is positioned above a horizontal line.

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