

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

CS Docket No. 97-80

FEDERAL COMMUNICATIONS
COMMISSION
OFFICE OF SECRETARY

RECEIVED
JUN 16 1997

REPLY COMMENTS OF GTE

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

I. Introduction

The vast majority of comments submitted in this proceeding were closely aligned with the positions espoused by GTE. In particular, commenting parties agree that Congress has presented the Commission a formidable rulemaking and implementation challenge. They concur that the goals of Section 629 concerning competition in the

¹ 47 U.S.C. § 549.

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availability of set-top boxes and other video customer premises equipment ("CPE") can best be met by the Commission adopting rules that will not conflict with multichannel video programming distributor ("MVPD") maintenance of system security nor inadvertently validate the manufacture and distribution of equipment intended for the unauthorized reception of services. In addition, commenters correctly maintain that while the development of industry standards are a necessity, such standards should be applicable only to digital devices, and that their creation is best accomplished voluntarily by private industry standard groups subject to Commission review.

II. Navigation device interface standards are necessary to achieve the goals of Section 629 and are best developed by the industry. Only digital equipment should be subject to Section 629 rules.

Most commenters assert that specific open standards are necessary in order to implement Section 629. They believe the Commission should not depart from its long-standing policy of deferring to industry-standard organizations and must refrain from setting such standards on its own. Commenters almost universally recommend that the Commission rely on voluntary industry efforts, observed by the Commission, to develop standards for the interface between video CPE and MVPD systems.² Standards should be published and an equipment registration process similar to that established by Part

² Americast at 4 and 7; Ameritech New Media, Inc. at 4; Bell Atlantic and NYNEX at 4; USWEST at 2; National Cable Television Association ("NCTA") at 38; Ad Hoc Computer and High-Technology Coalition at 3; Information Technology Industry Council and Computing Technology Industry Association ("ITA and CompTIA") at iv, v, and 14; Circuit City Stores at vi; Consumer Electronics Retailers Coalition at iii; Zenith Electronics at 5 and 8; Consumer Electronics Manufacturers Association at ii; Echelon Corporation at i; Motorola at 20 and 26; Scientific-Atlanta at 2 and 4; Telecommunications Industry Association ("TIA") at 2;

68 of the Commission's rules should be utilized to facilitate consumer attachment of CPE to MVPD systems.³ A process similar to Part 15 certification should be employed to assure that CPE does not cause harm to the MVPD network.⁴ Rules adopted should apply only to digital CPE;⁵ the current universe of deployed analog CPE should be excluded from any Section 629 rules.⁶ In fact, Scientific-Atlanta (at 2) accurately states retail sale of analog set-top boxes is not feasible technically, logistically, or economically.

GTE agrees that standards must be established in order to achieve the commercial availability envisioned by Section 629. These standards should be voluntary and can best be developed through industry-led efforts overseen by the Commission. GTE concurs that the Commission should focus any rules developed in this proceeding to address and encompass only digital CPE. It is not practical for the rules to cover analog equipment, due to the large embedded base of CPE operating within various proprietary systems.

³ ITA and CompTIA at 8 and 15; Circuit City Stores at vii; Zenith at 6; Consumer Electronics Manufacturers Association at ii; Uniden America at 3.

⁴ Circuit City Stores at vii; Commercial Engineering at 7; Uniden America at 4.

⁵ USWEST at 2; NCTA at 8.

⁶ Pacific Bell Video at 1; NCTA at 3; Viacom at i; Zenith at 4; Echelon Corporation at i.

III. System operators that face effective competition should be excluded from Section 629 rules, as should Open Video System ("OVS") systems and intermediate providers of transport.

GTE believes non-cable systems and cable operators that face effective competition should not be subject to Section 629 rules. This view is shared by several commenting parties. Ameritech New Media, Inc. (at 18) states that Congress did not intend that cable systems subject to effect competition should be bound by bundling and antisubsidization requirements in section 629(a). Pacific Bell Video (at 2) urges the Commission to not apply the cross-subsidy bar in Section 629 to systems facing effective competition. NCTA (at 4) argues that MVPDs facing effective competition need not be subject to anti-subsidy rules. ITA and CompTIA (at iv) believe that MVPDs subject to meaningful competition should not be subject to section 629 requirements and that when an MVPD currently not subject to effective competition does become subject, Section 629 rules should be lifted. General Instrument Corporation (at 12) maintains that the subsidy and bundling prohibitions of Section 629 should not apply to any MVPD who is not rate regulated. As GTE advanced its Comments, narrowly tailoring the rules needed to effectuate Section 629 to include only MVPDs that do not face "effective competition" is fully consistent with Congressional intent and will allow new entrants, with little, if any market power, to react quickly to market changes and challenges and allow them to provide innovative new service offerings to consumers quickly and effectively. GTE asserts that Commission regulation of the methods by which video CPE is deployed by new entrants makes little sense.

Multiple commenters maintain that OVS operators and intermediate providers of

transport should not be subject to eventual Section 629 rules. Bell Atlantic and NYNEX (at 5) state that OVS operators are expressly exempted from the requirements of Section 629. Pacific Bell Video (at 2 and 5) advises that navigational device 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. These commenters believe if a third party video provider purchases transport from a local exchange carrier ("LEC"), only the video provider, not the LEC, should be bound by the rules. They also agree that OVS operators should not be bound by Section 629 rules. General Instrument Corporation (at 11) believes the rules should not apply to OVS operators/packagegers. GTE maintains that OVS systems and providers of transport are subject to effective competition and, therefore, should not be included among parties subject to Section 629 rules. GTE concurs in these positions.

IV. Section 629 rules must recognize the need to protect MVPD rights and capabilities to maintain security of its system. Provision of security equipment on a split basis will achieve an appropriate balance between MVPD security rights and Commission goals for commercial availability.

Several commenters recognize the importance and complexity of balancing the system security issue with commercial availability of CPE goals. USWEST (at 7) asserts that the security functions/components of commercially available CPE must be totally separated from operational components and controlled only by the MVPD. NCTA (at 3 and 26) requests that the Commission facilitate the separation of security and non-security functions in CPE such that CPE with non-security functions is made commercially available, but permit MVPDs to provide integrated CPE that includes both

security and non-security functions. NCTA maintains that an appropriate balance can be struck by separating security functions from non-security functions and include only the latter in commercially available CPE. Time Warner Entertainment Company (at i) asks the Commission to first take care to ensure that navigation devices which are to be made commercially available are not defined to include equipment which performs security functions. Viacom (at i) insists navigation devices must have a separated security system that is not commercially available at retail but whose distribution and inventory is controlled by the MVPD. Zenith Electronics (at 9) believes it is important to isolate the ownership and control of the security function from the consumer and maintain the control with the distribution system. Scientific-Atlanta (at 3) asserts the Commission should not require security functions, the network interface or access control and encryption to be retail available.

GTE maintains an appropriate balance between MVPD system security rights and commercial availability of CPE can only be achieved in a digital environment and only if MVPDs are permitted to provide security equipment on a split basis. Commercially available devices should be defined as containing a tuner module and a conditional access control module. Such a definition would necessitate the creation of standard security interfaces so that the devices would be able to work with multiple service providers. Control of the security function should be maintained by the MVPD.

V. Cable modems should not be addressed as an emergent market to ensure commercial availability. Market forces and technological developments will do so.

Motorola (at 14-15) addresses a question posed in the NPRM (at 19) of whether the Commission should tailor its commercial availability requirements based upon the state of competition within a particular MVPD market or particular product. The NPRM cites the market for cable modems as an "emergent market" and opines that perhaps the Commission should address the commercial availability of such markets first because "a significant embedded base of equipment does not yet exist."

Motorola urges the Commission to not take any regulatory action with respect to cable modems other than establishing a general "right to attach." Motorola believes that any attempt to "address" emerging markets through regulation will only serve to forestall the development of a truly competitive market. Regulation of cable modems is deemed unnecessary and would only decrease the availability of such devices in light of ongoing efforts to develop necessary, consensus-based industry standards.

Motorola fears that Commission action would negatively impact efforts of industry groups that are already working vigorously on voluntary standards and specifications that seek to promote interoperability between cable modem platforms by establishing certain technical and operational parameters and making these standards widely available. Motorola requests the Commission not take any regulatory action concerning cable modems so that industry developments are promoted rather than thwarted.

GTE agrees with Motorola and urges the Commission to exclude cable modems from the scope of any Section 629 rules. GTE currently offers a data service offering

that requires cable modems in its Clearwater, Florida area system and expects to offer similar service within the next few months in a California system. Currently, there are approximately six manufacturers of cable modems. To sensibly enter and profitably sustain this business, GTE must "standardize" on a specific manufacturer's product for headend and end-user operation. This is because there are no existing national standards for cable modem equipment and signal protocols and no interoperability between cable modem platforms. Without national standards and interoperability between cable modem platforms, commercial availability is not achievable. GTE's cable data service offering will compete head-to-head with cable data service offerings of incumbent cable system operators. Thus, this service is subject to effective competition and should be excluded from Section 629 requirements. GTE joins Motorola in requesting that the Commission not take any regulatory action with respect to cable modems at this time. Rather, GTE believes that marketing forces and technological developments will ensure the commercial availability of cable modems much more expeditiously than any Commission rules enacted in this proceeding.

VI. Conclusion

GTE believes navigation device interface standards are necessary to achieve the goals of Section 629 and are best developed by the industry. Only digital equipment should be subject to Section 629 rules. System operators that face effective competition should be excluded from Section 629 rules, as should Open Video System ("OVS") systems and intermediate providers of transport. Section 629 rules must recognize the need to protect MVPD rights and capabilities to maintain security of its

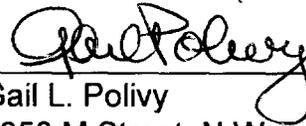
system. Provision of security equipment on a split basis will achieve an appropriate balance between MVPD security rights and Commission goals for commercial availability. Cable modems should not be addressed as an emergent market to ensure commercial availability. Market forces and technological developments on their own will ensure commercial availability.

Respectfully submitted,

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June 16, 1997

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Certificate of Service

I, Ann D. Berkowitz, hereby certify that copies of the foregoing "Reply Comments of GTE" have been mailed by first class United States mail, postage prepaid, on June 16, 1997 to all parties on the attached list.



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