

RECEIVED

DOCKET FILE COPY ORIGINAL

JUN 23 1997

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)
)
Commercial Availability of)
Navigation Devices)
_____)

CS Docket No. 97-80

To: The Commission

**REPLY COMMENTS OF THE
NAVIGATION DEVICE COMPETITION COALITION**

These reply comments are filed by the newly formed Navigation Device Competition Coalition. Coalition members include information technology, consumer electronics and retail associations that united in the 104th Congress to support passage of Section 304 of the 1996 Telecommunications Act.^{1/}

The Navigation Device Competition Coalition was formed to underscore the consensus among electronics and information technology manufacturers, users, and sellers in favor of meaningful competition and consumer choice in the market for navigation devices. A few commenters in this proceeding have suggested that Congress, in passing Section 304, did not really intend to facilitate competition

No. of Copies rec'd 0411
List ABCDE

^{1/} Pub. L. No. 1104-104, 110 Stat. 56 (1996) (codified as Section 629 of the Communications Act, 47 U.S.C. § 549).

and choice.^{2/} Members of this Coalition, having worked long and hard to achieve these goals, must disagree.

On October 31, 1995, representatives of nine industry associations sent a letter to all Telecommunications Act conferees, announcing a broad industry consensus supporting (what became) section 304, subject to certain pending changes (all ultimately adopted by the conferees). That letter read in part (emphasis supplied):

The undersigned trade associations strongly urge you to support Section 203 of the House version of the telecommunications reform legislation ("Competitive Availability of Navigation Devices"), with some modifications to the House language. The undersigned include associations and companies that have supported Section 203 from the beginning, some that have supported it conditionally, and some that have opposed it until now.

Section 203 addresses the existing unavailability of converter boxes and similar devices from manufacturers, retailers, and other vendors not affiliated with video program subscription services. There is no longer any technical or legal justification for such a restriction on consumer choice. Section 203 would require that the Commission's regulations ensure the commercial availability of such devices, from independent manufacturers and retailers, provided that system security and the right to prevent theft of service are not impaired. Methods to achieve competitive availability without jeopardizing security have already been developed in the private sector.

* * *

Section 203, since originally introduced by Representatives Bliley and Markey as H.R. 1275, has benefited from addition of a sunset, and of provisions to protect system security and avoid redundant regulations. With these additional refinements as to

^{2/} See generally Comments of General Instrument Corporation, CS Docket No. 97-80 (May 16, 1997); Comments of Echelon Corporation, CS Docket No. 97-80 (May 16, 1997).

scope, operation and effect, it will enjoy consensus support in the computer hardware, computer software, consumer electronics manufacturing, consumer electronics retailing, and telecommunications equipment industries. *This is a very strong consensus in favor of competition, and choice for consumers.*^{3/}

Most commenters in this proceeding -- including the NCTA,^{4/} one of the largest MVPD and media companies in the world,^{5/} and one of the largest cable programmers and film studios^{6/} -- generally support competition and consumer choice as worthy Commission objectives for Section 629.^{7/} The dissenters, however, argue that the statutory mandate of "commercial availability" does not imply or require competition, or any consumer choice whatsoever. They argue that a simple agency arrangement, as to both manufacture and sale, would satisfy -- indeed, signify -- Congress's intention in enacting Section 304.

The Coalition and its members do not find it conceivable that Congress passed this measure out of any desire to preserve the noncompetitive *status quo*.

^{3/} The October 31, 1995 letter was signed by: Alliance to Promote Software Innovation (APSI); Business Software Alliance; Computer & Communications Industry Association; Consumer Electronics Retailers Coalition; Consumer Electronics Manufacturers Association; Information Technology Industry Council; International Mass Retail Association; National Retail Federation; and North American Retail Dealers Association.

^{4/} Comments of the National Cable Television Association, CS Docket No. 97-80 (May 16, 1997).

^{5/} Comments of Time Warner Entertainment Company, L.P., CS Docket No. 97-80 (May 16, 1997).

^{6/} Comments of Viacom, Inc., CS Docket No. 97-80 (May 16, 1997).

^{7/} As in the case of Coalition members, they differ as to the extent to which the Commission appropriately could or should mandate particular steps to achieve such an outcome.

The clear intention of the statute, supported by its title and legislative history, is to the contrary. In these Reply comments, Coalition members endorse the definition of commercial availability provided by the Business Software Alliance:

MVPD equipment should be deemed to be commercially available if consumers have the ability to choose from a variety of brands available from a variety of sources -- at least some of which are independent of the system operator. *System operators should not be allowed to satisfy their statutory requirement merely by distributing system-designated equipment through specified distributors.* Applying the test set forth above, personal computers, software, and telecommunication CPE are commercially available. Cable set-top boxes and cable modems, which are provided exclusively by cable system operators, plainly are not.^{8/}

The "agency" notion of commercial availability would do nothing to address the intention, stated in the Conference Report on Section 304, that "consumers are not forced to purchase or lease a specific, proprietary converter box, interactive device or other equipment."^{9/} Clearly Congress intended that the choice of devices be meaningful and useful to the consumer. The Coalition urges the Commission to join the Congress in declaring explicitly that consumer choice of navigation devices made and sold in a competitive market is the goal of this proceeding.

^{8/} Comments of the Business Software Alliance, CS Docket No. 97-80, at p. 2 (May 16, 1997) (emphasis added).

^{9/} S. Conf. Rep. 104-230, 104th Cong., 2d Sess. 181 (1996).

Respectfully submitted,

NAVIGATION DEVICE COMPETITION COALITION

Business Software Alliance

Computer & Communications Industry Association

Computing Technology Industry Association

Consumer Electronics Manufacturers Association

Consumer Electronics Retailers Coalition

Home Recording Rights Coalition

Information Technology Industry Council

International Mass Retail Association

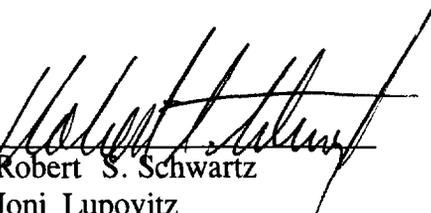
National Retail Federation

North American Retail Dealers Association

Of Counsel:


J.D. Marple
Manager, Legislative Policy
Business Software Alliance
1150 18th Street, N.W.
Suite 700
Washington, D.C. 20036
(202) 872-5500


Fiona J. Branton
Director, Government
Relations and
Regulatory Counsel
Information Technology
Industry Council
1250 Eye St., N.W., Suite 200
Washington, D.C. 20005
(202) 626-5751


Robert S. Schwartz
Joni Lupovitz
McDermott, Will & Emery
Suite 450
1850 K Street, N.W.
Washington, D.C. 20006
(202) 887-8000
(Consumer Electronics
Retailers Coalition)


Gary S. Klein
Vice President, Government
and Legal Affairs
Consumer Electronics
Manufacturers Association
2500 Wilson Boulevard
Arlington, Virginia 22201
(703) 907-7600

Dated: June 23, 1997

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the Reply Comments of Navigation Device Competition Coalition has been served on the parties listed below on this 23rd day of June, 1997.

SERVICE BY HAND:

William F. Caton, Acting
Secretary
Federal Communications
Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554
(original & 11 copies)

Barrett Brick
Cable Services Bureau
Federal Communications
Commission
2033 M St., NW Room 700
Washington, D.C. 20554
(hard copy & diskette)

International Transcription
Services, Inc.
2100 M Street, N.W., Suite 140
Washington, D.C. 20037

Blair Levin
Chief of Staff
Office of Chairman Reed Hundt
Federal Communications
Commission
1919 M St., N.W., Room 814
Washington, D.C. 20554

Jackie Chorney
Legal Advisor to Chairman
Hundt
Federal Communications
Commission
1919 M St., N.W., Room 814
Washington, D.C. 20554

Rudolfo M. Baca
Legal Advisor to Commissioner
Quello
Federal Communications
Commission
1919 M St., N.W., Room 802
Washington, D.C. 20554

David R. Siddal
Legal Advisor to Commissioner
Ness
Federal Communications
Commission
1919 M St., N.W., Room 832
Washington, D.C. 20554

Jane Mago
Sr. Advisor to Comm. Chong
Federal Communications
Commission
1919 M St., N.W., Room 844
Washington, D.C. 20554

Suzanne Toller
Legal Advisor to Commissioner
Chong
Federal Communications
Commission
1919 M St., N.W., Room 844
Washington, D.C. 20554

Dr. Robert M. Pepper
Chief
Office of Plans & Policy
Federal Communications
Commission
1919 M St., N.W., Room 822
Washington, D.C. 20554

Meredith Jones
Chief, Cable Services Bureau
Federal Communications
Commission
2033 M St., NW Room 700
Washington, D.C. 20554

SERVICE BY FIRST-CLASS MAIL,
POSTAGE PREPAID:

Becca Gould
J.D. Marple
The Business Software Alliance
1150 18th St., NW, Suite 700
Washington, D.C. 20036

Leslie A. Vial, Esq.
Bell Atlantic & Bell
Atlantic Video Services Co.
1320 North Courthouse Road
8th Floor
Arlington, VA 22201

Richard G. Warren, Esq.
NYNEX Telephone Companies
1095 Avenue of the Americas
Room 3831
New York, NY 10036

Craig A. Newman
Bruce D. Gellman
Corporate Media Partners
10880 Wilshire Blvd.
Suite 1750
Los Angeles, CA 90024

Jonathan D. Blake
Kurt A. Wimmer
Erin M. Egan
Covington & Burling
1201 Pennsylvania Ave., NW
Washington, D.C. 20004-7566

Deborah H. Morris
George D. Callard
Ameritech New Media, Inc.
300 S. Riverside Plaza
Suite 1800 North
Chicago, IL 60606

Marlin D. Ard
Sarah R. Thomas
Pacific Bell Video Services
140 New Montgomery St.
Room 1522A
San Francisco, CA 94105

Margaret E. Garber
Pacific Bell Video Services
1275 Pennsylvania Ave., N.W.
Washington, D.C. 20004

Aaron I. Fleischman
Arthur H. Harding
Fleischman and Walsh, L.L.P.
1400 16th St., N.W., Suite 600
Washington, D.C. 20036

Michael R. Gardner, P.C.
1150 Connecticut Ave., N.W.
Suite 710
Washington, D.C. 20036

James F. Rogers
James H. Barker
Nandan M. Joshi
Latham & Watkins
1001 Pennsylvania Ave., N.W.
Suite 1300
Washington, D.C. 20004-2505

John D. Heubusch
Vice President, Government
Affairs
Gateway 2000, Inc.
707 D St., N.W.
Washington, D.C. 20004

John F. Raposa, HQE03J27
GTE Service Corporation
P.O. Box 152092
Irving, TX 75015-2092

Andrea J. Lachance
1850 M St., N.W.
Suite 1200
Washington, D.C. 20036

Fiona J. Branton
Director, Government Relations
and Regulatory Counsel
Information Technology
Council
1250 Eye St., N.W., Suite 200
Washington, D.C. 20005

Colleen Boothby
Kevin DiLallo
Levine, Blaszak, Block &
Boothby
1300 Connecticut Ave., N.W.
Suite 500
Washington, D.C. 20036-1703

Bruce N. Hahn
Director of Public Policy
Computing Technology Industry
Association
6776 Little Falls Road
Arlington, VA 22213

Daniel L. Brenner
Neil M. Goldberg
Loretta P. Polk
1724 Massachusetts Ave., N.W.
Washington, D.C. 20036

Benjamin J. Griffin
Robert L. Galbreath
Reed, Smith, Shaw & McClay
1301 K St., N.W.
Suite 1100 - East Tower
Washington, D.C. 20005

Richard A. Arsinow
1925 North Neva Avenue
Chicago, IL 60707-3831

John W. Pettit
Richard J. Arsenault
Drinker, Biddler & Reath, LLP
901 15th St., N.W.
Washington, D.C. 20005

Grant E. Seiffert
Director Government Relations
Telecommunications Industry
Association
1201 Pennsylvania Ave., N.W.
Suite 315
Washington, D.C. 20004-2401

Gregg P. Skall
Pepper & Corazzini, L.L.P.
1776 K Street, N.W., Suite 200
Washington, D.C. 20006

Robert Sachs
Margaret A. Sofio
John S. Fouhy
U S West Inc.
The Pilot House
Lewis Wharf
Boston, MA 02110

Brenda L. Fox
Gregory L. Cannon
1020 19th St., N.W.
Suite 700
Washington, D.C. 20036

Marvin Rosenberg
David Vaughan
Holland & Knight, LLP
2100 Pennsylvania Ave., N.W.
Suite 400
Washington, D.C. 20037-3202

Edward Schor
Anne Lucey
VIACOM INC.
1515 Broadway
New York, NY 10036

David A. Nall
Squire, Sanders & Dempsey
1201 Pennsylvania Ave., N.W.
P.O. Box 407
Washington, D.C. 20044

Glen B. Manishin
Elise P.W. Kiely
Frank V. Paganelli
Blumenfeld & Cohen
1615 M Street, N.W.
Suite 700
Washington, D.C. 20036

John M. Boehm
811 South 13th Street
Lincoln, NE 68508

Quincy Rodgers, Vice President
Christine G. Crafton,
Director, Industry Affairs
Faye Morrison,
Government Affairs
Representative
General Instrument Corporation
1133 21st St., N.W.
Suite 405
Washington, D.C. 20036-3384

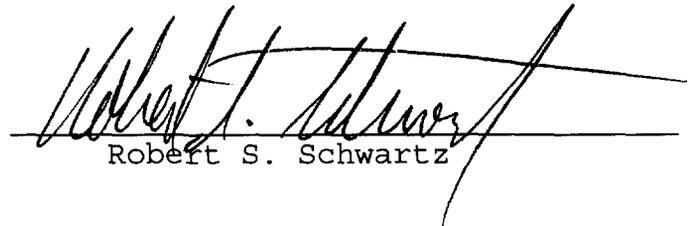
Jeffrey Krauss
Consultant
17 West Jefferson Street
Suite 106
Rockville, MD 20850

Philip L. Verveer
Francis M. Buono
Willkie Farr & Gallagher
Three Lafayette Centre
1155 21st St., N.W.
Suite 600
Washington, D.C. 20036-3384

Stuart Overby
Assistant Director
Spectrum Planning
Motorola, Inc.
1350 I St., N.W., Suite 400
Washington, D.C. 20005

Andrew R. Paul
Senior Vice President
Satellite Broadcasting and
Communications Association
225 Reinekers Lane
Suite 600
Alexandria, VA 22314

Bill Loughrey
Director of Government Affairs
Corporate Communications
Department
Scientific-Atlanta, Inc.
One Technology Parkway, South
Norcross, GA 30092-2967



Robert S. Schwartz