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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

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REPLY COMMENTS OF STARSIGHT TELECAST,

FEDERAL COMMUNICATIONS COMMISSION  
IN OFFICE OF THE SECRETARY

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**REPLY COMMENTS OF STARSIGHT TELECAST, INC.**  
CC Docket No. 97-80

**SUMMARY**

Since 1986, StarSight Telecast, Inc. has pioneered the StarSight® on-screen, interactive electronic video program guide ("EPG") that is a quintessential navigational device envisioned by Section 629. StarSight has also pioneered the underlying technology, and the incorporation of that technology into customer premises equipment ("CPE") such as television receivers, VCRs, TVCRs and set-top boxes.

StarSight offers its EPG directly to consumers to use with over-the-air or multichannel video program distributor (MVPD) reception; via agreements with MVPDs who provide the StarSight EPG to their subscribers; and by licensing its technology for use by third parties in their own competing EPGs. Thus, under Section 629, StarSight is "equipment used by consumers to access . . . programming and other services;" one of those "other services;" and/or an unaffiliated "vendor" of services offered over an MVPD system.

StarSight therefore has a major interest in effective implementation of Section 629, which requires that Commission rules be built on three main foundations:

(1) No impediments to availability. Rules must prohibit, clearly and universally, any anticompetitive impeding of the availability of unaffiliated navigational equipment or services;

(2) Wide application. At least initially, rules must apply to all types of MVPDs and equipment; to the services the equipment makes available; and to each point in the chain of commercial availability to consumers where anticompetitive activity can thwart availability (i.e., from manufacture through retail and other availability to consumer use of equipment to receive the services of their choice); and

(3) Minimum necessary regulation. The Commission should avoid regulating intellectual property and proprietary technology, except to prohibit their anticompetitive misuse. Marketplace arrangements should be deferred to unless shown to be anticompetitive. For cases where anticompetitive behavior is demonstrated, the rules must provide for expedited resolution and appropriate sanctions.

That these principles must be the hallmarks of rules is clear from the unambiguous language of Section 629. Section 629 makes plain, for example, that the Commission must assure commercial availability not in a vacuum, but to consumers for their use to access services, such as StarSight's, from sources unaffiliated with the MVPD.

Applying Section 629 to the Commission's Notice in light of these three principles yields the following specific actions:

- No blanket waivers or exemptions from the rules should be granted ab initio. Section 629(c) provides for limited developmental waivers, and Section 629(e) allows for sunset, each upon particularized showings. No other exceptions are provided.

Any MVPD has the potential to undermine the availability the Commission must assure. Regulations cannot be "sunsetting" before ever taking effect.

- Sunset requires, in part, a showing of full competition, not generically as misconceived in some opening comments, but in the market for navigational devices used in conjunction with a particular class of MPVD. Sunset, at least of the anti-blocking component of rules, may never be appropriate, and certainly could not occur if any member of a class of MVPD blocks consumer access to an unaffiliated navigational device or service.

- The market is now generally competitive, and should be encouraged to continue as such without undue regulation. StarSight, for example, is already portable nationally, needs no standardization and does not impede any competing service or equipment. Past instances of certain cable operator anticompetitive "stripping" of StarSight data from the vertical blanking intervals of retransmitted PBS-affiliated broadcast signals now constitutes a violation of Section 629. Rules should prohibit MVPD stripping of VBI-carried navigational data now or at any time, and require digital restoration of the VBI as soon as technically feasible. Swift, effective enforcement must be afforded.

- The Commission should assure that system security, though a valid concern explicit in the statute, is not used as a pretext to circumvent the main objective: competitive availability.

MVPDs must not be re-empowered to exercise gatekeeper control over navigational availability in the name of system security.

- The Commission lacks authority to do more than prohibit the anticompetitive misuse of proprietary rights. As the Notice recognizes, reliance on such rights is also necessary to develop and deploy innovative technology such as StarSight's, which is also a goal of Section 629 and the Act as a whole. The Commission should therefore avoid compulsory licensing of technology. Rules should also avoid limiting business options such as exclusive contracts unless shown to violate the ban on impeding competitive availability.

- Rules should establish the right to attach, but should avoid other aspects of the "telephone model" such as rate regulation or excessive standardization.

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To: The Commission

**REPLY COMMENTS OF STARSIGHT TELECAST, INC.**

1. StarSight Telecast, Inc. ("StarSight"), by its attorneys, hereby replies to the opening comments of various parties in this proceeding. StarSight is the pioneer of the StarSight® on-screen, electronic video program guide ("EPG") that is a quintessential multichannel navigational device as envisioned in Section 629. StarSight has also pioneered the navigational technology behind its EPG, and the incorporation of that technology into customer premises equipment ("CPE"). StarSight markets its EPG products and services under the brand name StarSight®, and its EPG and technology are commonly incorporated into CPE. StarSight is the only EPG producer expressly named in the Commission's Notice of Proposed Rulemaking ("Notice") in this proceeding.<sup>1/</sup>

2. As detailed below, StarSight competes in the navigational devices and services market in several different

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<sup>1/</sup> Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices, FCC 97-53, released January 17, 1997, (Notice of Proposed Rulemaking in CS Docket No. 97-80) ("Notice"), ¶ 18. (By public notice (DA97-1253) released June 13, 1997, the Cable Services Bureau extended the reply comments deadline from June 16 to June 23, 1997.)

ways: as a licensor of its EPG and service to different types of multichannel video program distributors ("MVPDs") to make available to their subscribers; as a distributor of its own EPG to its own customers for use with MVPD or over-the-air reception of video programming; and as a licensor of StarSight technology to third parties who develop their own customized EPGs.

3. StarSight therefore has a major stake in the effective implementation of Section 629. In these Reply Comments StarSight focuses on the plain, unambiguous language of the statute itself as the controlling guide to resolving many of the issues raised in the Notice and disputed in opening comments. Using this approach and other analysis, StarSight addresses the following major questions:

- The required scope of applicability of implementing rules (to all types of MVPDs and equipment; to the navigational services the equipment delivers as well as to the equipment itself; and to each point in the chain of commercial availability to consumers).

- The necessary role of the FCC (to prohibit and impose sanctions for the blocking of competitively available navigational devices and the services they facilitate; to safeguard intellectual property rights as essential to technical innovation and its competitive availability; and to defer to the maximum extent possible to pro-competitive arrangements in the marketplace).

4. Section I of these Reply Comments describes StarSight's current operations, services and ways of doing business, which have evolved and diversified considerably from its initial role as the entrepreneur of a proprietary EPG. Section II responds to opening comments concerning the scope and intent of FCC implementing rules true to the letter and spirit of the statute. Section III makes a series of specific recommendations concerning the role of the FCC -- actions to be taken and avoided in implementing rules -- to achieve effective implementation of Section 629.

**I. DESCRIPTION OF STARSIGHT AND ITS PARTICIPATION IN THE COMPETITIVE AVAILABILITY OF NAVIGATION DEVICES**

5. StarSight Telecast, Inc., a California corporation, was founded in 1986 to design and market an easy-to-use, accurate and interactive method of identifying, selecting and recording multichannel video programming.<sup>2/</sup> StarSight has developed an on-

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<sup>2/</sup> On May 8, 1997, StarSight Telecast, Inc. became a wholly-owned subsidiary of Gemstar International Group Limited ("Gemstar"). Gemstar develops, markets and licenses proprietary technologies and systems aimed at making technology user-friendly for consumers, including for the purpose of navigational guidance to consumers for multichannel programming and other services. Gemstar products include VCR Plus+®, Index Plus+™ and GuidePlus+. VCR Plus+ allows a user to record a television show simply by entering a number - the PlusCode® number - printed in television program guides. Index Plus+™ is a videotape indexing system built into new VCRs that features an on-screen directory of videotape content displaying titles automatically captured from the broadcast. TV Guide Plus+ allows users to find out what's on TV in current or future time periods, and offers one-button recording of any show listed in the guide through the built-in VCR Plus+ system.

screen interactive video program guide and VCR control service under the StarSight® brand name, and holds patents and proprietary technology in the field of electronic program navigational guides. StarSight distributes the StarSight EPG to its own customers, licenses the StarSight EPG to MVPDs to distribute to their subscribers, and licenses its technology for use by third parties as components in their own customized EPGs.

6. The StarSight EPG and technology often include the following primary features:

**Program Schedule Information.** The StarSight EPG allows customers to conveniently view (i) up to seven days (24 hours per day) of continually updated television program schedule information covering substantially all of the numerous channels available to the customer (whether by cable, satellite, open video systems ("OVS"), wireless cable, emerging technologies such as multichannel DTV-related services, or over-the-air broadcast)<sup>3/</sup> and (ii) information about programs in progress as the viewer changes from one channel or information source to another, even during commercials. For example, as the viewer switches from channel to channel, the StarSight EPG displays the program title, the broadcast time remaining, and a brief description of the program and theme. With the touch of a button, the viewer is able to receive a more detailed description

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<sup>3/</sup> The navigational information is often, but not necessarily, displayed in a "grid" or "column" format similar to that of traditional TV schedules.

of the program in progress. The database for this television schedule information typically is comprised of program data purchased by StarSight from data providers, and is updated regularly as required to keep the information current.

**Program Selection.** The StarSight EPG enables customers to easily select a desired program or service, for viewing or VCR recording, that is in progress or that will be available to the viewer anytime during the next week via the viewer's method of receiving video programming. Selection can be made by the program's title or theme category, as well as by the traditional method of selection by channel number. This process eliminates the confusion consumers face in selecting programs by network or station channel numbers that are often reallocated by MVPDs or assigned to non-corresponding channel numbers in MVPDs' channel line-ups. It also makes all types of programming, in an increasingly complex, multichannel environment, more accessible to more audiences.

**One-Button Recording™.** With the touch of a button on a remote control, the StarSight EPG enables customers to record a current or future television program or series of related programs (such as the parts of a miniseries) by selecting the program title to be recorded. The customer has the choice of recording the program once for just that episode, daily for each day's episode for shows such as news, soap operas or talk shows, or weekly for programs that are presented once each week.

**Customized Channel Set-Up.** The StarSight EPG enables customers to set the order of channels by preference and, if they wish, to delete never- or infrequently-watched channels from the program schedule information to reflect their viewing preferences and reduce the time spent grazing through the program listings. This also facilitates parental guidance of children's viewing. Deleted channels may be reselected whenever the viewer so desires. The StarSight EPG also allows a customer to arrange the line-up of channels in the program schedule in order of preference. For example, the viewer can choose CNN, Comedy Central and Nickelodeon, in that order, to be at the top of the line-up.

7. As described above, the StarSight EPG is a navigational device that allows viewers to, among other things, access program information and tune to programming in progress. Such EPGs not only are navigational devices in the sense described above, but also are included in the "other services" expressly mentioned in Section 629(a) to which a navigational device (such as a cable converter) can provide access. StarSight, therefore, depending upon how its service and delivery are structured in a given instance, may be equipment and/or a service which consumers access via equipment, both of which are referenced in Section 629(a).

8. **StarSight Delivery Systems.** StarSight distributes the StarSight EPG as a service to customers and through MVPDs such as cable television operators and local telephone companies that

provide video services. StarSight also licenses its intellectual property for use in non-StarSight navigational products and services that provide their own unique and competing guide features.

9. Currently customers can subscribe to the StarSight EPG directly from StarSight for use with StarSight-capable televisions, VCRs, TVCRs, satellite integrated receiver descramblers ("satellite receivers") and stand-alone StarSight receivers.<sup>4/</sup> Customers in limited geographic areas also are able to subscribe to or receive the StarSight service through MVPDs with StarSight-capable set-top boxes. Customers who have C-band satellite receivers may receive the StarSight Service via StarSight-capable satellite receivers marketed by StarSight licensees. In the future, customers will be able to subscribe to the StarSight EPG service via PCTVs, Internet terminals and other video and information appliances.

10. Typically, the StarSight EPG service delivery system consists of a program schedule database, a transmission network, order processing and customer support. This system delivers the StarSight EPG to StarSight's consumer electronics customers. For MVPDs, StarSight relays the program schedule data via telephone lines to the MVPD's headend. The MVPD then uses its own network to distribute the data to StarSight-capable set-top boxes in

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<sup>4/</sup> StarSight itself is not currently manufacturing the stand-alone StarSight receiver, though existing units continue to be used and serviced.

subscribers' homes, and provides its own order processing and customer support.

11. StarSight purchases television program schedule data and cable television channel line-up information in an electronic format from data providers. The data is processed at the StarSight computer facility in Fremont, California to include subscriber authorization information, which allows a customer's StarSight-capable hardware to receive only that portion of the program schedule data which corresponds to the customer's geographic area, method of reception and system configuration. The program schedule data is then distributed over the transmission network to StarSight-capable hardware in customers' homes on a daily basis.

12. StarSight's consumer electronics customers receive the program schedule data through the vertical blanking interval ("VBI") of Public Broadcast Service ("PBS")-affiliated television stations using televisions, VCR's or StarSight's stand-alone receivers which are equipped with StarSight's technology. This hardware (e.g., StarSight-capable televisions and VCRs, which are available to consumers at retail facilities such as Circuit City Stores) receives and descrambles the data and gives customers on-screen access to the StarSight EPG. So long as the MVPD's network is not configured or misused to impede, block or strip StarSight's data from the VBI of the retransmitted signal of the PBS-affiliated station, a customer who has purchased StarSight-capable hardware (e.g., a television, VCR or set-top box that is

equipped with StarSight's technology) can access the StarSight EPG through StarSight itself (which in most cases is unaffiliated with the MVPD).

13. StarSight is aware of a limited number of instances in which the StarSight data service has not been passed on to customers by certain MVPDs. Theoretically, but not as a practical matter, StarSight customers could nevertheless receive the StarSight EPG through the VBI contained in the over-the-air transmissions of PBS-affiliated television signals with the use of an "A/B switch." This approach to the receipt of service, however, was discredited by the Commission years ago.<sup>5/</sup> In reality, the removal of the StarSight program schedule data from signals before being retransmitted by an MVPD makes it impossible or extremely difficult for the MVPD's customers to receive the StarSight EPG; this limits StarSight's penetration of the MVPD's market and the competitive availability of the StarSight guide, and equipment incorporating it, to consumers from a source unaffiliated with the MVPD; that availability is precisely what Section 629 requires the Commission to assure in this proceeding.

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5/ Amendment of Part 76 of the Commission's Rules Concerning Carriage of Television Broadcast Signals by Cable Television Systems, MM Docket No. 85-349, 1 FCC Rcd 864, Report and Order (1986). Congress' findings regarding the inefficacy of A/B switches to allow receipt of broadcast programming was upheld by the U.S. Supreme Court in its recent decision. Turner Broadcasting System, Inc. v. Federal Communications Commission, No. 95-922, Slip op. at 39, \_\_\_ U.S. \_\_\_ (1997). The same rationale applies to the use of A/B switches to receive navigational information for such programming.

14. In addition, in currently available digital technology, StarSight data is not passed on to customers of digital systems (such as a digital cable or digital satellite system) unless the operator of such a system uses equipment that restores the VBI containing the StarSight (or other providers') data. Digital equipment can and should be designed and manufactured to restore the VBI automatically, and may already be in development. Use of equipment that fails to do this after a certain point in time should be prohibited by Commission rules as inconsistent with Section 629.

15. **Competition.** Cable stripping of VBI content (which has no technological justification) and non-restoration of VBI material by digital systems (which will cease to be a technical problem in the foreseeable future) are notable exceptions to the generally highly competitive market for delivery of television program schedule information. Tolerance of these anticompetitive exceptions is inconsistent with the role assigned to the Commission by Section 629 to adopt regulations to assure commercial availability. Rules should address these practices by prohibiting MVPD VBI stripping now or at any time, and by requiring digital restoration of the VBI as soon as technically feasible.

16. Generally, apart from such specific exceptions, television schedule information may be obtained competitively in various formats including printed television schedules, on-screen, passive (non-interactive) scrolling program guides,

interactive program guides and web site guides. Printed television schedules include *TV Guide*, local cable television guides and local newspaper guides, all of which have a significant presence in the marketplace due to their familiarity to television viewers, their broad base of distribution and their presentation of feature articles and entertainment news. Passive electronic program guides exist for the MVPD market, such as that offered by Prevue Networks, Inc. ("Prevue").

17. Several companies have announced their intentions to market electronic program guides in set-top boxes which appear to be similar to the StarSight EPG. Prevue, for example, has announced plans to offer several levels of interactive services which will work in concert with the Prevue Channel. These will provide user control of the scroll and features such as direct tune, one-touch record reminders, sorting by genre and browse features for up to seven days of listings.

18. StarSight's parent company, Gemstar, offers TV Guide Plus+, an interactive electronic program guide that allows users to find out what's on TV in current or future time periods and offers one-button recording of any show listed in the guide through Gemstar's built-in VCR Plus+ system. Products incorporating the TV Guide Plus+ feature were introduced into the consumer electronics marketplace in late 1996. VideoGuide, Inc. also distributes a product called "VideoGuide," a stand-alone set-top box with an on-screen guide allowing users to display one week of television program information, along with news, sports

and weather information. Additional features include direct tuning of set-top boxes and televisions, automated VCR recording and remote control consolidation. Customers subscribe directly from VideoGuide to receive the service. National distribution of the VideoGuide product began in September 1995.

19. Viewers who receive television programming via C-Band satellite have access to a subscription service called SuperGuide offered by SuperGuide Corporation. SuperGuide provides C-Band satellite subscribers with on-screen program schedule information. Using a remote control, SuperGuide subscribers can tune to shows by program title and can also call up brief text descriptions of programs. SuperGuide automatically updates program listings daily, storing up to 12 days of schedules for 60 channels.

20. Manufacturers of cable set-top boxes also incorporate interactive guides into their equipment, which provide some features similar to those of the StarSight EPG.

21. The personal computing industry has made strides in the areas of multimedia and has begun announcing products that resemble televisions ("PCTVs"). Included in the functionality of these products are interactive electronic program guides. Companies such as Gateway 2000 have announced their intention to offer PCTVs using an interactive program guide developed by themselves and others. In addition, many other entities have

announced Internet-based guide products which have features similar to, and competitive with, the StarSight EPG.<sup>6/</sup>

22. Digital broadcast satellite systems ("DBS") also use interactive electronic program guides to enhance access to their programming. StarSight has licensed several manufacturers of DBS equipment to make and sell equipment that is capable of offering features of the StarSight EPG.

**II. COMMISSION RULES MUST IMPLEMENT THE BROAD APPLICABILITY OF SECTION 629 ITSELF**

**A. Section 629 Itself Provides Clear Answers To Many Of The Questions Raised In The Notice.**

23. The above background illustrates the diversity of ways in which StarSight participates and competes in the navigational devices marketplace, and sets the context for analysis of the statute in light of the Notice. This is a proceeding to implement Section 629. The language of that Section is highly instructive to Commission implementation and disposition of arguments made in opening comments. It is a basic principle of statutory construction that the statute itself is the starting point for its implementation, and that only when the statutory

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<sup>6/</sup> It is important that Commission rules take into account that the technology continues to evolve and that new applications, such as navigational guides to Internet information, must also be protected from anticompetitive interference, and allowed to develop without unnecessary regulation, consistent with Section 629.

language is unclear are secondary sources such as legislative history resorted to in order to fill in gaps.<sup>7/</sup>

24. The plain language of Section 629, for example, resolves questions concerning the appropriate scope of FCC implementation and the applicability of rules (Notice at para. 14, p. 8, and para. 16, p. 9). Subsection (a) requires the Commission to assure commercial availability not in a vacuum, nor as an end in itself, but

"to consumers of multichannel video programming and other services offered over multichannel video programming systems, 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, from manufacturers, retailers, and other vendors not affiliated with any multichannel video programming distributor". 47 U.S.C. § 549(a) (emphasis added).

Availability to consumers, for their use to access programming and other services such as StarSight's EPG service, from sources unaffiliated with the MVPD to which the consumer may subscribe, unquestionably is the main thrust of the statute.

25. This is plain not only from the just-quoted language, but from the rest of Subsection (a), which allows that MVPDs (in addition to those unaffiliated with them) may "also" offer navigational devices and equipment (and cannot be prohibited from doing so) if the MVPD's charges meet the nondiscrimination

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7/ Amgen, Inc. v. United States Int'l Trade Comm'n, 902 F.2d 1532, 1538 (Fed. Cir. 1990). (In the case of Section 629, the legislative history also supports the plain meaning of the statute.)

requirements of Subsection (a). No MVPD, therefore, may preclude consumer receipt of navigational services from sources unaffiliated with the MVPD. MVPDs have the option of offering their own navigational services, but the option of eliminating a competitor's service, if such an option ever existed in law, is eliminated by Section 629.

26. Subsection (b) precludes regulations that jeopardize system security. 47 U.S.C. § 549(b). Subsection (c) provides for waiver of regulations adopted under Subsection (a)

"for a limited time upon an appropriate showing . . . that such waiver is necessary to assist the development or introduction of a new or improved . . . programming or other service." 47 U.S.C. § 549(c) (emphasis added).

This is the only statutorily-prescribed waiver of the applicability of Section 629. No other exemptions are provided for except in Subsection (e), which requires the Commission to sunset regulations based on a specific, three-part determination. One prong of this test is that the market for navigational devices used in conjunction with a particular class of MVPD is "fully competitive." 47 U.S.C. § 549(e). Finally, Subsection (f) provides that nothing in Section 629 "shall be construed as expanding or limiting" the FCC's existing authority as of the time of enactment of Section 629. 47 U.S.C. § 549(f). Without more, Section 629 itself resolves several issues regarding the scope of Commission implementing rules, as described in the paragraphs which follow.

**B. Commercial Availability Means More Than Retail Availability of Equipment. It Means the Unimpeded Ability of Consumers to Use the Equipment to Receive the Intended Services, Including Those Made Available by StarSight and Others in Various Ways.**

27. The legislative goal is not the deployment of inert, neutered equipment. Retail availability, to be sure, is an important starting point. But what happens after the equipment leaves the store is of at least equal importance to effective Commission implementation. Commission regulations must assure not only that navigational equipment is competitively available for retail sale, but that, regardless of the legitimate source from which the consumer acquires it, the equipment is free of anticompetitive disabling or interference to its operation. Equipment is to be "available" as a means to an end: the deployment of a competitive choice of programming and navigational services, incorporating technology, to consumers.

28. Accordingly, as an absolute minimum Commission rules must prohibit, and provide for prompt determination of and appropriate sanctions for, any anticompetitive disabling or impeding of any unaffiliated navigational device or service. This prohibition must apply at every point in the "chain" of competitive availability where anticompetitive conduct could occur: manufacture (for example, of equipment containing features that affirmatively or gratuitously eliminate a consumer's ability to receive navigational services from other equipment or sources); sale, lease or other distribution; installation; and operation and use of the equipment by the

consumer to receive the intended services. No equipment manufacturer, MVPD or other entity should be able to defeat the expectations of consumers who choose to invest in equipment whose features enable them to receive navigational services over the air, via cable or any other MVPD.

29. The Commission must reject, as inconsistent with the plain language of Section 629 (as well as its legislative history, which also supports the approach StarSight advocates here),<sup>8/</sup> opening comment arguments to narrow the applicability of the statute in ways that amount to partial repeal of the provision. (Notice at para. 14, pp. 8-9.) Circuit City Stores, for example, provides no valid basis for the non-application of the law to any devices (and only to MVPDs).<sup>9/</sup> As shown above, the statute requires explicitly that devices be available from non-MVPD sources. Equally clear is that the statutory result that Commission regulation must "assure" can be undone by devices designed or employed to affirmatively block receipt of services from sources unconnected to the device in question, such as an MPVD's affirmative stripping of an EPG from the vertical blanking interval (VBI) of a retransmitted television signal.

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<sup>8/</sup> H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess. 180-181 (1996).

<sup>9/</sup> Circuit City Stores at 17.

**C. Section 629 Applies to Equipment and Services.**

30. Nor should any credence be given to Americast's claim that Section 629 applies only to basic equipment used to receive programming from MVPDs, and not to services offered by them;<sup>10/</sup> that view would require, in effect, the deletion of express terms of Section 629 ("programming and other services"), for which this rulemaking is not the right forum. In contrast, Time Warner Entertainment Company, L.P. ("Time Warner") asserts correctly that "Congress also recognized in Section 629(b) that equipment availability cannot be considered apart from the services which that equipment is designed to receive."<sup>11/</sup>

31. In this regard the opening comments of Time Warner are correct in recognizing explicitly that "program guides and programming search engines (e.g., StarSight) . . .," are navigational devices for purposes of Section 629.<sup>12/</sup> But Time Warner then concludes, too broadly and without support, that some "entire categories" of navigation devices need no inclusion in Section 629 implementation because they are "already commercially

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<sup>10/</sup> Americast at 6.

<sup>11/</sup> Time Warner at 26. Time Warner continues: "If making equipment competitively available only aids signal pirates in stealing service from MVPDs, or allows unscrupulous or uncaring individuals to interfere with the use and/or enjoyment of the network by other subscribers, then Congressional intent will have been perverted to the detriment of all." The same would be true, however, if MVPDs were aided by implementation of the statute to discriminate against unaffiliated navigational device competitors in the name of security or otherwise.

<sup>12/</sup> Id. at 19.