

EX PARTE ORAL PRESENTATION

A Partnership Including
Professional Corporations
600 13th Street, N.W.
Washington, D.C. 20005-3096
202-756-8000
Facsimile 202-756-8087
<http://www.mwe.com>

Robert S. Schwartz
Attorney at Law
shebam@access.digex.net
202-756-8081

Boston
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MCDERMOTT, WILL & EMERY

April 2, 1998

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VIA MESSENGER

Ms. Magalie R. Salas
Federal Communications Commission
Office of the Secretary
1919 M Street, N.W.
Room 222
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**Re: Notice of Oral Ex Parte Presentation; Docket 97-80
and Digital Must Carry**

Dear Ms. Salas :

This is to notify the Office of the Secretary that on March 27, Alan McCollough, President, and W. Stephen Cannon, Senior Vice President and General Counsel of Circuit City Stores, Inc., accompanied by Robert S. Schwartz, an attorney with the law firm of McDermott, Will & Emery, on behalf of its client, Circuit City, and Miles Circo, Vice President of Divx, an affiliate of Circuit City, made oral ex parte presentations to Commissioner Furchtgott-Roth and his assistant Paul Misener, and Commissioner Ness and her assistants David Siddall and Anita Wallgren. A presentation was also made to John Logan, Acting Chief, and William Johnson, Deputy Chief, of the Cable Services Bureau, accompanied by staff from that bureau and others.

The substance of these conversations is set forth in a copy of the talking points used for the meetings, which is enclosed.

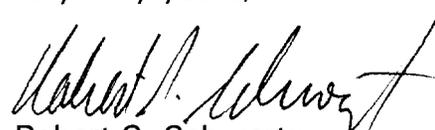
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Federal Communications Commission
December 3, 1997
Page 2

In accordance with the Section 1.1206 of the Federal Communications Commission rules, this original and one copy are provided to your office. A copy of this notice has been hand-delivered to the individuals named above.

Very truly yours,



Robert S. Schwartz

Enclosure

cc: Office of the Secretary (6 copies)
Commissioner Furchtgott-Roth
Commissioner Ness
Mr. Paul Misener
Mr. David Siddall
Ms. Anita Wallgren
Mr. John Logan
Mr. William Johnson

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Circuit City Stores

March 27, 1998

Talking Points for FCC Visits

(1) Competitive Availability of Navigation Devices.

We are getting nearer to the goal of competition along the telephone model, where:

- *anyone can build a telephone
- *any device can work as a telephone

Specifically, we think the appropriate competitive goals re "navigation devices" are:

- *consumers need only pay for one digital decoder per viewing location;

- *they can obtain this capability competitively, in the marketplace, in a functional form determined by the marketplace:

- *standalone set-top box(es) (cable, DTV broadcast converter, DBS, "Web TV," or one box offering all of these)

- *as a TV feature

- *as a VCR feature

- *as a computer product feature

- *as a feature in DVD players, etc.

- *if consumers can gain "competitively available" cable navigation devices only as standalone, cable-only boxes, we have failed to offer them the rewards of new technology and they will be paying for duplicate capabilities in their future TVs, DVD players, "Web TVs," etc. Circuit City wants the right to offer such "cable" boxes competitively, but its overall goal is to be able to offer navigation functionality to consumers, in CE and computer devices, in whatever physical format the marketplace demands.

In this context, the progress of the OpenCable project is encouraging, but not definitive:

- *achieving truly competitive commercial availability appears to be a goal of the project, but its priority is not clear.

- *legacy digital set-top boxes that are not OpenCable compliant are being rolled out as we speak and may place limitations on the ability of the OpenCable specification to support the goals outlined above.

(2) Digital Must Carry Issues

Circuit City has a potential commercial stake in either of the "visions" being promoted with respect to digital television – true HDTV, on the one hand, and multichannel SDTV and data transmissions, on the other.

Accordingly, we have looked at the issue exhaustively. We conclude that the choice should be driven by the interests of consumers, as expressed in the marketplace – but **not** dictated by the remnants of cable monopoly power, over transmission to and display in the home, established under a regulatory system based on obsolete economic assumptions.

Since cable systems still are **the** means of signal carriage to about two of every three homes, decisions on the resolution of broadcast digital signals may, unless the Commission takes appropriate action, be effectively forced by a handful of MSOs. In such case, the decisions of local broadcasters will be made not in response to the needs and wants of their customers, but rather in necessary reaction to limitations enforced by the vestiges of monopoly.

Therefore, Circuit City believes that the Commission does need to take action to preserve the ability for decisions to be made by broadcasters in response to consumer demand. For cable systems to act as **conduits rather than filters** in this respect, we believe the Commission should require the following:

***Cable systems should be required to maintain the resolution quality of signals received from broadcasters. However, they should be free to adjust transmission parameters such as VSB/QAM so long as the received resolution and display characteristics are not degraded.**

***The marketplace for navigation devices should be such that cable operators cannot, through setting specifications for such devices, dictate to or limit the actions of broadcasters. Specifications for digital cable navigation devices should require that they produce a picture for analog display from **any** of the ATSC formats. Otherwise, consumers who took down their rooftop antennas for analog broadcasts, and now rely on their cable operators, will lose access to broadcast stations if (1) the cable system switches to digital transmission, and (2) the navigation device will not convert an ATSC transmission for analog display. To avoid thus losing customers, a broadcaster may have to conform to the dictates of local cable systems.**

***At a minimum, the Commission should expedite the true, competitive commercial availability of navigation devices to consumers under Section 629 – so, if cable operators choose not to offer fully functional navigation devices, consumers will have a competitive alternative. (OpenCable specifications, accordingly, should not limit the number of ATSC formats that can be displayed.)**

Therefore, Circuit City recommends as an appropriate immediate goal for the Commission, in enforcing Section 629, that it require the Cable industry, through its private, voluntary OpenCable process, to achieve the following by September 1, 1998:

- *include in the OpenCable technical specifications a national and renewable security interface (e.g., NRSS) -- to allow any device containing such an interface and otherwise complying with OpenCable specifications to function as a navigation device

- *include in the specifications a facility for allowing software configuration of OpenCable compliant devices to particular cable systems, to assure that devices are truly portable from locality to locality (as are telephones, TVs, etc.)

- *establish a logo/certification program so that:

- (a) any manufacturer willing to comply with OpenCable specifications may distribute a "cable" box or integrate navigation features into a device (TV, VCR, DTV converter, "Web TV,") without fear of prosecution for cable piracy -- as the cable operator may still supply the security circuitry direct to the customer, for use through the standard interface -- and
- (b) any vendor, such as a retailer, can order a product that includes navigation device functionality without obtaining permission from any cable operator so long as it has an OpenCable logo indicating that it complies with OpenCable specifications

None of these requirements is inconsistent with the objectives of the OpenCable project. Unless, however, the Commission clearly establishes these as objectives for this project to constitute compliance with Section 629, they may be frustrated by interim developments, conflicting priorities, and the requirements of legacy devices.