

BELLSOUTH

DUCKET FILE COPY ORIGINAL

Karen B. Possner
Vice President-Strategic Policy

Suite 900
1133-21st Street, N.W.
Washington, D.C. 20036-3351
202 463-4160
202 463-4637 (fax)
Internet: possner.karen@bsc bls.com

PP-000000

JUN 3 1998

EX PARTE OR LATE FILED

June 3, 1998

SEARCHED
SERIALIZED
INDEXED
FILED

Ex Parte

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W. – Room 222
Washington, D.C. 20554

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

Dear Ms. Salas:

Attached is a letter to Ms. Jane Mago, Senior Legal Advisor to Commissioner Michael Powell, concerning BellSouth's views on the commercial availability of navigation devices. Please include it in the public record of the above-referenced proceeding and direct any questions regarding this matter to the undersigned.

Sincerely,



Attachment

No. of Copies rec'd 0 + 1
List A B C D E

Karen B. Possner
Vice President-Strategic Policy

Suite 900
1133-21st Street, N.W.
Washington, D.C. 20036-3351
202-463-4160
202-463-4637 (fax)
Internet: possner.karen@psc.bls.com

June 3, 1998

Ms. Jane Mago
Senior Legal Advisor
Office of Commissioner Powell
Federal Communications Commission
1919 M Street, N.W. – Room 844
Washington, D.C. 20554

Dear Ms. Mago:

Thank you again for taking the time to meet with me, Tom Rawls and Scott Swix earlier this week to discuss our concerns relating to CS Dkt. No. 97-80. This letter augments BellSouth's views on Section 629 of the Communications Act which directs the Commission to adopt regulations that assure the commercial availability of navigation equipment used by consumers to access multichannel video programming and other services from unaffiliated vendors.

The last sentence of subsection (a) clarifies that the Commission's rules implementing this section may not prohibit any multichannel video programming distributor (MVPD) from also offering such equipment "if the system operator's charges to consumers for such devices and equipment are separately stated and not subsidized by charges for any such service." Significantly, this language does not expressly require all MVPDs to separately state the charges for such equipment in a manner that is not subsidized by charges for other programming services as a condition to offering such equipment; rather, this rule is directed at ensuring that *any* MVPD, even a cable operator with market power that is not subject to effective competition, also may provide such equipment if it agrees to these conditions.

If the MVPD lacks market power, public policy need not require the MVPD to restrict how it offers such equipment because it is incapable of using market power to force customers to purchase only its service in a competitive market where customers have an alternative choice of MVPDs. On the other hand, if the MVPD has market power, as is the case with most of today's incumbent cable operators, the Commission should not and may not, by this language, prohibit that MVPD from offering such equipment where it agrees to offer such equipment under restrictions described in subsection (a).

This reading of Section 629(a) is consistent with the Commission's current cable rate regulation rules that essentially require regulated cable operators that are not subject to effective competition to offer such equipment via separate charges that are not bundled with other regulated charges. However, once a cable operator is subject to effective competition as defined

Ms. Magalie Roman Salas

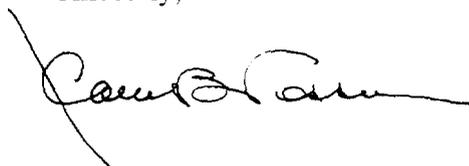
June 3, 1998

Page Two

by the Communications Act (47 U.S.C. §543(l), that cable operator presumptively lacks market power and these restrictions are removed. Rules adopted by the Commission in this proceeding should follow a parallel path, consistent with the last sentence of subsection (a) as explained above. Competitive market forces will assure the commercial availability of such equipment where effective competition is present. This public policy view is recognized in subsection (e) of Section 629 which provides, in essence, that the regulations adopted in this proceeding shall cease to apply in all circumstances once the Commission determines that the markets for MVPDs and such equipment are fully competitive and the elimination of such regulation is in the public interest.

Please do not hesitate to contact me if you would like additional information regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Carol A. Roman", with a long horizontal flourish extending to the right. A diagonal line is drawn over the signature from the top left to the bottom right.

cc: Rick Chessen Deborah Klein
Wendy Creeden Karen Kornbluh
Dale Hatfield Jonathan Levy
Meryl Icové Paul Misener
Bill Johnson Anita Wallgren