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EX PARTE OR LATE FILED

June 5, 1998

**VIA MESSENGER**

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

**RECEIVED**

JUN - 5 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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**Re: Notice of Written *Ex Parte* Presentation; In the Matter of  
Implementation of Section 304 of the  
Telecommunications Act of 1996; Commercial  
Availability of Navigation Devices: CS Docket No. 97-80**

Dear Ms. Salas:

This is to notify the Office of the Secretary that on June 5, 1998, Robert S. Schwartz of McDermott, Will & Emery, counsel to Circuit City Stores, Inc., provided a written *ex parte* document to the Rick Chessen, Senior Legal Advisor to Commissioner Tristani, Susan Fox, Senior Legal Advisor to Chairman Kennard, Jane Mago, Senior Advisor to Commissioner Powell, Paul Misener, Senior Legal Advisor and Helgi Walker, Legal Advisor to Commissioner Furchtgott-Roth, Anita Wallgren, Legal Advisor to Commissioner Ness, William Johnson and Meryl Ilove of the Cable Services Bureau and Karen Kornbluh of the Mass Media Bureau. A copy of the written *ex parte* document is enclosed with this notice.

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 parties listed above.

Very truly yours,

*Robert S. Schwartz*  
Robert S. Schwartz

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

**Ms. Magalie R. Salas**  
**June 5, 1998**  
**Page 2**

**Enclosure**

**cc: Rick Chessen**  
**Susan Fox**  
**Meryl Icove**  
**William Johnson**  
**Karen Kornbluh**  
**Jane Mago**  
**Paul Misener**  
**Helgi Walker**  
**Anita Wallgren**

June 5, 1998

**POSITION OF CIRCUIT CITY ON  
EFFECTIVENESS OF POTENTIAL RULE PROVISIONS  
AND DATE CALCULATION**

In its ex parte draft Rule, Circuit City proposes that, after a date certain calculated from the effective date of the Order, ALL new navigation devices placed into service (other than those already in inventory) must rely on separate security equipment to be made available by the MVPD. Proposed exceptions to this provision would be clearly limited.

Circuit City believes that the calculation of such a date from the effective date of the Order, and the requirement that after such a date all new navigation devices must rely on separate security modules, are absolutely critical to the successful deregulation, at long last, of this item of customer premises equipment.

Unqualified support by MVPDs and their security suppliers for a common and national security interface is the key to unleashing the forces of technological competition. Without confidence in such support, the diverse and competitive products that will drive down the cost of access to digital cable, and hence facilitate the conversion to digital spectrum, will not appear.

Circuit City believes that alternate Rule scenarios for assuring such support from those who have enjoyed a closed and regulated supply environment for decades may sound similar but in fact are very different:

- According to an alternate scenario, MVPDs could proceed indefinitely to deploy terminal equipment relying on embedded security for their own use, provided that, as of some future date, they must also "make available" security equipment to support competition from other devices.
- According to the scenario supported by Circuit City, MVPDs and others, as of a date certain, would all rely on the separate security equipment in their navigation devices.

The first scenario would be, essentially, business as usual. Support for the security equipment that enables competition and national portability would be, at best, ancillary to development of the terminal devices. The suppliers of the security equipment would have little incentive to proceed expeditiously, and strong incentives not to. And in the absence of volume orders for the security equipment from the MVPDs themselves, the efficiencies of mass production would be slow in coming. Under these circumstances, a successful FCC rule would have to be persistently and highly regulatory in nature.

Under the scenario supported by Circuit City, ALL suppliers of navigation devices would need to rely on the security equipment as of the same date. Development of such equipment on an expeditious and mass basis could not be an ancillary security goal; it would be the only goal. All industry participants would be stakeholders in a successful outcome. The marketplace, not the FCC, would be the arbiter of success.

Circuit City also believes strongly that the key date, on which all participants should rely on security equipment for devices placed in service or replaced, should be calculated from the effective date of the Order. In supporting its arguments as to what is a reasonable date in this respect, Circuit City has made reference to projections, as to the OpenCable project, that have been supplied by other participants in this rulemaking. It would be a misallocation of incentives, and an undue delegation of FCC authority, however, for the key date to be based on anything other than the effective date of the Order.