CONRAD BURNS
MONTANA

DEPUTY WHIP

Docket #97-80

DOCKET FILE COPY ORIGINAL

United States Senate

WASHINGTON, DC 20510-2603
(202) 224-2644

COMMITTEES:
APPROPRIATIONS
COMMERCE, SCIENCE, AND TRANSPORTATION
ENERGY AND NATURAL RESOURCES
SMALL BUSINESS
SPECIAL COMMITTEE ON AGING

RECEIVED
JUN 8 1998
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

June 4, 1998

EX PARTE OR LATE FILED

The Honorable William E. Kennard
Chairman
Federal Communications Commission
1919 M Street, NW
Washington, DC 20036

Dear Chairman Kennard:

I understand that the FCC is planning to adopt an order next month implementing Section 629 of the Communications Act regarding the commercial availability of customer equipment used in multichannel video programming systems. While I applaud the effort you and your staff have made to bring this very complex set of issues to resolution, I must remind you that the Senate overwhelmingly rejected a similar provision because of our strong concern that government intervention into this highly dynamic area would jeopardize network security and impede innovation.

In this regard, I understand that one of the critical open issues in your staff's deliberations is how a particular multichannel video programming distributor (MVPD) should be permitted to implement security protections in its network. For example, I have been told that certain parties have advocated that the FCC require MVPDs to offer their subscribers a separate security module and to preclude MVPDs from offering integrated equipment that combines security and non-security components. Such a proposal cannot be squared with the plain meaning and intent of Section 629 and its legislative history. Section 629 clearly provides an absolute right on the part of MVPDs to protect the security of their networks, and it would be contrary to the statute and to good public policy for the Commission to interfere in this area by limiting MVPDs' security options or, worse yet, adopting a particular governmentally-prescribed manner in which security must be implemented.

Moreover, Section 629(a) precludes the FCC from prohibiting "any [MVPD] from also offering converter boxes, interactive communications equipment, and other equipment used by consumers," and places no restrictions on such offerings other than that the MVPD may not improperly cross subsidize lower equipment prices with higher services prices. I do not see how the Commission could read a prohibition on an MVPD's ability to offer an integrated device to be consistent with this provision, especially given the well-expressed security concerns set forth in the statute itself and in its legislative history.

I note that this conclusion is consistent with allowing consumers to have the benefit of

No. of Copies rec'd 0+7
List A B C D E

HELENA (406) 449-5401 | MISSOULA (406) 329-3528 | BUTTE (406) 723-3277 | BOZEMAN (406) 586-4450 | GLENDIVE (406) 365-2391 | KALISPELL (406) 257-3360 | GREAT FALLS (406) 452-0585 | BILLINGS (406) 252-0550 | TOLL FREE 1-800-344-1513

choice and of any lower prices that cost efficiencies of integrated equipment would generate. In fact, the FCC already decided this issue correctly in a 1996 Order[1] and there is no reason to change that decision now.

I respectfully urge you to take these views into serious consideration as you write final rules in this area.

Sincerely,

Conrad Burns
Chairman
Senate Subcommittee on Communications

cc:
Commissioner Susan Ness
Commissioner Harold Furchtgott-Roth
Commissioner Michael Powell
Commissioner Gloria Tristani

---

[1] Equipment Compatibility Reconsideration Order, FCC 96-129, at ¶ 38 (1996)("[W]e see no need to preclude cable operation from also incorporating signal access control functions in multi-function component devices... Our decision ensures that subscribers will have several competitive alternatives in selecting component descrambler equipment.").