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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
)
Implementation of Section 304 of) CS Docket No. 97-80
the Telecommunications Act of 1996)
)
Commercial Availability of)
Navigation Devices)

OPPOSITION TO PETITION FOR RECONSIDERATION

PRIMESTAR, Inc. ("PRIMESTAR"), by its attorneys and pursuant to Section 1.429 of the Commission's rules, hereby opposes a portion of the Petition for Reconsideration ("Petition") of the Commission's Report and Order in the above-captioned proceeding,¹ filed by Time Warner Entertainment Company, L.P. ("Time Warner") on August 14, 1998. Specifically, PRIMESTAR opposes Time Warner's request

1 FCC 98-116, released June 24, 1998.

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that the Commission reconsider the DBS operator exemption from the rules promulgated in the Report and Order.

Contrary to Time Warner's assertion, Section 629 of the Communications Act of 1934, as amended, 47 U.S.C. § 529, does not mandate that rules designed to assure the commercial availability of navigation devices be applied equally to all classes of multichannel video program distributors ("MVPDs"), regardless of the state of the marketplace for a particular type of MVPD equipment. Section 629 directs the Commission to adopt rules "to assure the commercial availability, to consumers of multichannel video programming . . . [of navigation devices] from manufacturers, retailers and other vendors not affiliated with any multichannel video programming distributor." Clearly, if the Commission determines that the navigation devices of a class of MVPDs are widely available from multiple vendors, there is no need for intrusive government regulation to "assure" what already exists. This is precisely what the Commission did with regard to DBS.

First, the Commission found that, including PRIMESTAR, there were three DBS providers "and at least ten equipment manufacturers competing to provide programming and equipment to subscribers," Report and Order at ¶ 64. The Commission noted that DBS equipment is widely available in retail stores

and that competition had led to "lower equipment prices, enhanced options and features." Id. This trend has continued since the Report and Order was adopted with numerous discount programs and innovations offered by DBS operators and retailers alike. Finally, the Commission noted that a DBS provider's equipment enjoys nationwide geographic portability -- a fact that achieves one of the major objectives of Congress in adopting Section 629. Report and Order at ¶ 66.

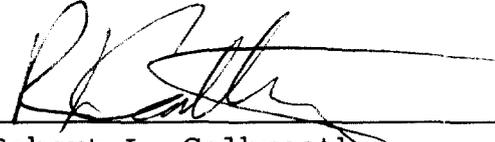
Given that the navigation devices used by DBS subscribers were already widely available, and portable, as the statute contemplated, the Commission correctly concluded that the imposition of rules in such circumstances "would serve a limited purpose and disrupt technical and investment structures that arose in a competitive environment." Id. at ¶ 64. Simply put, the Commission judged that regulation of DBS navigation equipment was not required to "assure" the objective of Section 629, and the Commission chose appropriately to apply its regulations only to those situations where the marketplace had not solved the issues that the statute addressed.

Accordingly, there is no public policy justification for reconsidering the exemption of DBS providers from the rules,

and Section 629, on its face, does not demand that the
Commission adopt needless regulations.

Respectfully submitted,

PRIMESTAR, INC.

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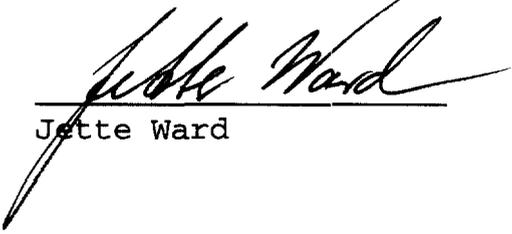
Its Attorneys

September 23, 1998

CERTIFICATE OF SERVICE

I, Jette Ward, a secretary with the law firm of Reed Smith Shaw & McClay LLP hereby certify that I caused a copy of the foregoing **OPPOSITION TO PETITION FOR RECONSIDERATION** to be served by first-class mail, postage prepaid, this 23rd day of September, 1998 on the following:

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Jette Ward