diminished. On the other hand, by depriving inventors like GI of a fair return on their creativity, imposition of a compulsory licensing requirement would stifle serve to innovation, contrary to Congress' express directive under Section 629.[64]

Moreover, as GI noted in its initial comments, "any attempt to impose a compulsory license requirement would raise serious constitutional issues and would exceed the scope of the Commission's authority under the Communications Act, as amended."[65] Clearly, "the Commission may not rely on the provisions of Section 629 itself as authority to impose a system of compulsory licensing on owners of intellectual property which may be embodied in navigation devices used in conjunction with MVPD-provided services;"[66] nor is such authority conferred in any other section of the statute. Absent explicit statutory authority, any attempt to impose mandatory licensing obligations on manufacturers, pursuant to Time Warner's proposed rule or otherwise, "would . . . constitute unauthorized regulation of legal rights granted to patent holders under the framework of laws established by Congress pursuant to Article I, Section 8 of the United States Constitution . . . [and] would also

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[64] See Conference Report at 181 ("[T]he Commission [should] avoid actions which could have the effect of freezing or chilling the development of new technologies and services.").

[65] Id. at 100.

[66] See GI Initial Comments at 100-101, noting that Section 629(f) explicitly states that "[n]othing in this section shall be construed as expanding or limiting any authority that the Commission may have under law in effect before the date of enactment of the Telecommunications Act of 1996." Id. at 100.

raise serious constitutional issues under the Fifth Amendment's 'takings' clause."[67] Finally, the imposition and enforcement of regulatory requirements relating to the licensing of intellectual property would require the Commission "to adjudicate disputes over which we have little expertise and, arguably, to intrude on functions performed by other agencies and the courts."[68]

Accordingly, in the absence of a clear demonstration of a "market failure" which the Commission has the statutory authority to address and in light of the serious constitutional and public policy concerns raised by the imposition of restrictions on the use and licensing of intellectual property, there is simply no basis for the Commission, in the context of this or any other proceeding, to impose broad restrictions on manufacturers of the sort described in Time Warner's Petition.

CONCLUSION

For the reasons stated above, GI believes that the record clearly establishes that application of the rules adopted in this proceeding to analog devices is unnecessary, counterproductive, and

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[67] GI Initial Comments at 101.

[68] In the Matter of Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems, FCC 96-14, Report and Order, 11 FCC Rcd 2429, at ¶ 28 (1996). In this regard, as GI has previously observed, "[a]ny attempt to address [constitutional] concerns through compensation paid to the patent holder in the form of royalty payments inevitably would lead to disputes concerning the appropriate level of such payments. The administrative costs of resolving such disputes are likely to be substantial." GI Comments at 107.

contrary to the express requirements of Section 629 of the Communications Act.

GI also agrees with those petitioners who have objected to the ban on MVPD provision of "integrated" devices. Because the prohibition itself is arbitrary, capricious, unsupported by the record, and contrary to the provisions and purposes of Section 629 and other pertinent sections of the Act, GI opposes CEMA's proposal to accelerate implementation of this unlawful requirement.

Finally, GI opposes Time Warner's proposal to impose expansive, burdensome regulatory obligations on the commercial activities of equipment manufacturers, which clearly fall outside the scope of the Commission's statutory authority and are unsupported by the record in this proceeding.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Rosalyn Bethke, do hereby certify that copies of the foregoing COMMENTS/OPPOSITION TO PETITIONS FOR RECONSIDERATION were sent via first-class, postage prepaid, United States mail, this 23rd day of September, 1998, to the following:

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