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March 4, 1999

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA MESSENGER

Ms. Magalie R. Salas
Federal Communications Commission
Office of the Secretary
The Portals
445 12th Street, S.W., TW-A325
Washington, DC 20554

Re: 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 March 4, 1999, Circuit City Stores, Inc., the Consumer Electronics Manufacturers Association and the Information Technology Industry Council made a written *ex parte* presentation to Chairman Kennard, Commissioners Ness, Furchtgott-Roth, Powell and Tristani, Deborah Lathen, Deborah Klein, William Johnson, Thomas Horan and Jon Wilkins. A copy of the written presentation is enclosed.

In accordance with 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 also been hand-delivered to the parties listed above.

Very truly yours,

Robert S. Schwartz

Enclosure

cc: Chairman William E. Kennard
Commissioner Susan Ness
Commissioner Harold W. Furchtgott-Roth
Commissioner Michael K. Powell
Commissioner Gloria Tristani
Deborah A. Lathen
William H. Johnson
Deborah Klein
Thomas Horan
Jon Wilkins

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

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

To the Commission:

The undersigned have opposed, fully or in part, reconsideration of the Commission's Report and Order in this Docket with respect to the application of § 76.1204 to analog Navigation Devices and services. We have now arrived at a common position as to how we would recommend that the Commission dispose of the pending motions in this respect.

We are sensitive to petitioners' concern, *inter alia*, that applying the requirements of the Report and Order to analog Navigation Devices, that are not capable of decoding digital transmissions, would require new investment, which the market may not otherwise demand, in analog-only devices. We must insist, however, that the Commission be absolutely committed to a "level playing field" for the marketing of Navigation Devices in competition with those provided by system operators. It has become clear that, for the foreseeable future, many Cable systems will be "hybrid" in nature, providing both analog and digital video services to the same household. Allowing the performance of analog conditional access functions by "hybrid" devices offered by system operators, but not by competitive devices, would give an intolerable advantage to the entrenched providers of Navigation Devices.

We do not believe that this advantage could or should be eliminated by Commission regulation of marketing, tiering, or pricing of services or devices. Rather, the simplest and fairest solution is simply to exempt analog-only Navigation Devices, that can not provide access to digital transmissions or services, from the pertinent regulations in this Docket. This would relieve the Cable industry of re-inventing analog-only devices, yet maintain a "level playing field" for devices that are also capable of accessing digital services offered by MVPD operators.

Accordingly, we propose an exception as follows:

Section 76.1204(f)

> Subsections (a)(1), (b), and (c) shall not apply to the provision of any navigation device that: (1) employs only an analog conditional access mechanism; (2) is capable only of providing access to analog video programming offered over a multichannel video program distribution system; and (3) does not provide access to any digital transmission of multichannel video programming or any other digital service through any receiving, decoding, conditional access, or other function, including any conversion of digital programming or services to an analog format.

Such an exemption would relieve Cable operators of an obligation to invest further in portable conditional access technology that would apply only to Navigation Devices that provide strictly analog services and are not likely to face competition for providing analog non-security features and functions through a standard analog conditional access interface. It would allow the industry to focus its efforts only on security interfaces that enable a "level playing field" for the competition that *is* expected in the market, from devices capable of providing digital, or both analog and digital, services.

Such an exemption would provide relief from an undertaking that representatives of the Cable industry have described as formidable and burdensome. It is our strong and considered opinion that, with the advantage of such relief – limiting new technical obligations to digital and hybrid devices – the industry ought to be able to meet a deadline with respect to its phaseout of integrated security well in advance of the present date of January 1, 2005. We believe a date of January 1, 2001 would be far more appropriate with that obligation so narrowed. In the intervening years until 2005, without a requirement that the system operators themselves must rely on whatever POD mechanism is developed for the benefit of their competitors, the Commission would face a heavy and difficult regulatory burden in ensuring that these competitors are not placed at any disadvantage.

Respectfully submitted,

Alan McCollough
President & COO
Circuit City Stores, Inc.

Gary Shapiro
President
Consumer Electronics Manufacturers Assoc.

Fiona Branton
Fiona Branton
Vice President & Chief Counsel
Information Technology Industry Council