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July 30, 1999

VIA MESSENGER

EX PARTE OR LATE FILED

Ms. Magalie R. Salas
Federal Communications Commission
Office of the Secretary
445 – 12th St., S.W.
Washington, D.C. 20554

**Re: 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 July 28, 1999, Alan McCollough, President and COO, W. Stephen Cannon, Sr. Vice President and General Counsel, and Miles Circo, of Circuit City Stores, Inc., accompanied by Robert S. Schwartz of McDermott, Will & Emery, made oral *ex parte* presentations to Commissioners Susan Ness and Gloria Tristani, Amy Nathan, Office of Plans and Policy, Kim Matthews, Mass Media Bureau, and Rick Chessen, Legal Advisor to Commissioner Tristani. The presentations addressed the lack of progress by the Cable Television industry in complying with Commission regulations with respect to competitive availability of Navigation Devices.

The points made by the Circuit City representatives were as follows:

- The "Status Report" filed by on July 7 by several MSOs, NCTA, General Instrument and Scientific Atlanta does not provide any indication of the failure to provide specifications adequate for manufacturers to be in a position to design and build competitive devices, of any sort, by the date of July 1, 2000.
- MSOs may, indeed, succeed in having "PODs" available on July 1, 2000, but without any competitive host devices this accomplishment will be meaningless.

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- The failure of OpenCable and its sponsors to fulfill their obligations

- The failure of OpenCable and its sponsors to fulfill their obligations occurs over a broad range, rather than as to any single aspect of the project, and is attributable almost solely to the failure of CableLabs to develop adequately detailed specifications and to transmit them to the Society of Cable Television Engineers.
- The limited specifications currently available for "baseline" devices are not sufficiently specific, and contain internal contradictions, such that any manufacturer attempting to build to such specifications would risk marketing a product that would be incapable of delivering any picture or sound on some or all supposedly conforming systems.
- There is not a date certain when complete specifications for navigation devices with "baseline" capability will be available.
- Most seriously of all, in Circuit City's view, support for 2-way interactive features that would make OpenCable devices truly competitive with MSO-provided devices (e.g., interactive Pay Per View) has been relegated to "extension" status and is seriously behind schedule with no clear prospect for success. Neither the spirit nor the letter of the Commission Regulation can be construed to have been met if consumer electronics manufacturers are effectively blocked from providing navigation devices with capability fully equal to that provided by devices supplied by the MSOs.
- The July 7 "Status Report" does concede that the Cable Industry is behind schedule in providing any potentially useful analog security interface for "hybrid" boxes, as Commission regulations require. As to this issue Circuit City made the following points:
 - Circuit City took the lead in convincing the consumer electronics industry, the information technology industry, and key companies to support relieving the Cable industry of the burden of separating security in analog-only Navigation Devices, and in persuading the Commission to adopt this approach on reconsideration.
 - In so doing Circuit City had been persuaded that the industry was working in good faith on a real solution to separable analog security for hybrid Navigation Devices (i.e., with both digital circuitry and analog conditional access).

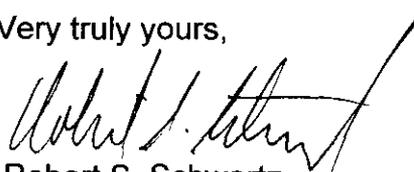
- Now, in the July 7 filing, the industry admits that it has taken no useful steps for timely compliance with the May, 1998 Report & Order and, if held to its obligations, could offer only impractical and inefficient support for the IS-105 standard, which was designed for other purposes, is obsolete, and will never be deployed in the real world.
- Apparently, Circuit City's leadership in removing the obligation to separate security in analog-only boxes has not, as we predicted to the Commission, resulted in timely concentration on a practical solution for hybrid devices. Rather, removing this issue as a problem for MSOs has led them to fall back on a "paper" solution – unnecessary for them and impractical for everyone else.
- The result is that, unless a higher priority is assigned to a real solution for hybrid systems, MSO's will remain the exclusive provider of Navigation Devices containing both digital and analog conditional access (by virtue of their ability to integrate analog security). This is anticompetitive and in direct contravention of both law and regulation.
- As to remedies available to the Commission, the Circuit City representatives suggested:
 - The Report & Order provides that the Commission will halt distribution of MSO devices if MSOs have not complied with their obligations as to competitive devices. We would not shrink from demanding this result.
 - Circuit City has argued throughout this proceeding that the Cable industry will assign adequate priority, resources, and staff *only* when MSO's themselves must fully rely on the OpenCable specifications in the devices they offer to customers. On reconsideration, Circuit City joined CEMA, ITI and others in arguing that the phaseout date for noncomplying MSO devices – currently set at January 1, 2005 – must be moved up by several years. The experience to date teaches that the industry has not, in fact, taken seriously its obligation to provide a "level playing field" for manufacturers and retailers of competitive devices and that the 2005 date is, indeed, too far "over the horizon" to compel the necessary determination.
- Finally, the Circuit City representatives pointed out that Circuit City has been a supporter of the OpenCable process from the outset and has argued that CableLabs' authority over implementation should not be

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diluted. The converse is that the Cable industry must be held responsible for the results. Circuit City representatives will attend the August 5 briefing for potential vendors and will report further to the Commission.

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 been hand-delivered to the parties listed above.

Very truly yours,



Robert S. Schwartz

Enclosure

cc: Comm. Susan Ness
Comm. Gloria Tristani
Amy Nathan
Kim Matthews
Rick Chessen