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MCDERMOTT, WILL & EMERY

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September 7, 2000

VIA ECFS

Ms. Magalie R. Salas
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, D.C. 20554

Re: *Ex Parte* Presentation; In the Matter of Compatibility Between Cable Systems and Consumer Electronics Equipment; PP Docket No. 00-67; 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 September 7, 2000, on behalf of Circuit City Stores, Inc., Robert S. Schwartz of McDermott, Will & Emery met with David Goodfriend, Legal Advisor to Commissioner Ness. With respect to interpretation of Commission regulations pertaining to Navigation Devices, Mr. Schwartz made the following points:

- Par. 63 of the Navigation Device R&O addresses only those access controls that may be permitted in specifications that apply to host devices. This paragraph does not in any way connote approval of ancillary license restrictions, imposed on the licensee, as a condition of implementing such specifications.
- The question of ancillary license specifications is governed by Navigation Device Rule 76.1203. This rule says that [a cable operator] "may restrict the attachment or use of navigation devices with its system in those circumstances where electronic or physical harm would be caused by the attachment or operation of such devices or such devices that assist or are intended or designed to assist in the unauthorized receipt of service.... Such standards shall foreclose the attachment or use **only** of such devices as raise reasonable and legitimate concerns of electronic or physical harm or theft of service." (emphasis added).

The following additional points were made:

- The limitation on ancillary license restraints comprised by this regulation, and par. 76.1201, clearly put the burden of persuasion on the operator who would contractually limit the right to attach.
- An interface designed to pass an HDTV-resolution signal to the only input on an HD-ready receiver that is capable of receiving such a signal over cable cannot even colorably be classified as a device intended or designed to assist in theft of service.
- Recording functionality in a device also cannot, without limitation or qualification, be construed as intended or designed to assist in theft of service. The DFAST license drafts available to commenters at this date contain no such limitation or qualification.
- As to whether such burden of persuasion can be met, the Commission should require that a proposed final version of the DFAST license be submitted and published for comment. This is suggested by the procedure set forth in par. 124 of the R&O -- "to more specifically and clearly identify devices that can confidently be purchased and attached without dispute"

In accordance with Section 1.1206 of the Federal Communications Commission rules, this letter is being provided to your office. A copy of this notice has been delivered to the parties listed below.

Very truly yours,

/s/ Robert S. Schwartz

Robert S. Schwartz

cc: Chairman Kennard
 Commissioner Furchtgott-Roth
 Commission Ness
 Commissioner Powell
 Commissioner Tristani
 William J. Friedman IV
 David Goodfriend
 Paul Jackson
 Karen Edwards Onyeije
 Mark Schneider
 Helgi Walker
 Deborah Lathen
 William Johnson
 Deborah Klein
 Steven Broeckaert
 Thomas Horan
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 Bruce Franca
 Neal Goldberg – National Cable Television Association
 Fritz Attaway – Motion Picture Association of America