

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

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

**REPLY COMMENTS OF  
THE ASSOCIATION FOR MAXIMUM SERVICE TELEVISION, INC.**

December 18, 2000

## TABLE OF CONTENTS

SUMMARY .....	iii
I. THE CABLE INDUSTRY HAS NOT FULFILLED ITS OBLIGATION TO HELP CREATE MARKETABLE NAVIGATION DEVICES AND SEPARATE PODS. ....	3
A. The Cable Industry and Its Affiliated Equipment Manufacturers Overstate Accomplishments to Date. ....	3
B. Consumers Must Have Confidence in the Portability and Interoperability of the Host Devices That They Purchase. ....	5
C. The OpenCable Process Should Be Subject to Meaningful Deadlines. ....	6
II. THE CABLE INDUSTRY IS FOCUSING ON PROPRIETARY EPGS AND IS STIFLING UTILIZATION OF PSIP INFORMATION FOR OTHER EPGS. ....	7
III. THE UNAVAILABILITY OF COMMERCIAL NAVIGATION DEVICES IS DELAYING THE DTV TRANSITION. ....	10
A. The DTV Transition Cannot Take Place Without Sufficient Consumer Confidence in DTV Products. ....	10
B. Cable Customers Will Not Be Able to Reap the Benefits of Broadcasters' DTV Services If MSOs Will Not Transmit Full DTV Signals. ....	11

## SUMMARY

The Association for Maximum Service Television, Inc. (MSTV) strongly urges the Commission to take decisive action to fulfill its statutory duty to *assure* the commercial availability of independent navigation devices. The Commission must impose discipline on the process for developing and implementing the technology necessary to enable retail sale of truly competitive navigation devices. And it must enforce the existing navigation devices rules by sanctioning cable operators that impede the development of such devices and fail to disclose the technical information required under the rules.

Continued delays in the development of independent navigation devices stifles competition, restricts consumer choice, and threatens the progress and ultimate success of the DTV transition. Unless real progress is made in the very near term, the cable industry will flood the market with proprietary set-top boxes and freeze out competitors before the first independent set-top box reaches the shelves. Cable operators already are stalling competition in the EPG market by deploying digital set-top boxes that deliver their proprietary EPGs, while making no progress toward completing and implementing the PSIP carriage agreement that was announced ten months ago or disclosing program information necessary for the functionality of independent guides. As things stand now, a cable operator that transmits DTV signals controls the display of those signals through the functionality of its boxes (the vast majority of which cannot handle HDTV). If viewers are to have the HDTV option, they must have options in selecting cable boxes and other navigation devices.

The development of a competitive navigation devices market has been derailed, and it is past time for the Commission to step in. At a minimum, the Commission should:

- require the cable industry to develop POD-host standards that allow for the retail sale of navigation devices that are comparable to MSO-provided devices and that are portable around the country and interoperable with all cable systems;
- prohibit MSOs from deploying devices with integrated security functions as of January 1, 2002;
- sanction cable operators that violate the navigation devices rules by withholding needed technical information or otherwise impeding the development of competing EPGs and other navigation devices; and
- ensure that the technical standards for interoperability foster easy access to undegraded DTV signals so that consumers may enjoy all of the public benefits the digital transition was intended to offer.

Unless the Commission takes an active and effective role, a market for high quality independent navigation devices may never develop. Consumers will have no choice but to rely on the proprietary set-top boxes provided by the cable industry, the digital transition will suffer, and the Commission will have failed to fulfill its statutory mandate.

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The Association for Maximum Service Television, Inc. (MSTV)<sup>1</sup> respectfully submits these reply comments in the Commission's proceeding on assuring the commercial availability of independent navigation devices.<sup>2</sup> We urge the Commission, for the sake of consumers and their speedy adoption of digital devices, to take a more active role in overseeing the development and implementation of the technology necessary to enable retail sale of truly

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<sup>1</sup> MSTV represents more than 400 local television stations before the FCC and Congress on technical and technology issues relating to analog and digital television services and has frequently commented on the need for the Commission to ensure that DTV signals can pass undegraded through the cable plant to the consumer. *See, e.g.,* Comments of the Association for Maximum Service Television, Inc., *Carriage of the Transmissions of Digital Television Broadcast Stations*, CS Docket No. 98-120 (Oct. 13, 1998); Reply Comments of the Association for Maximum Service Television, Inc., *Carriage of the Transmissions of Digital Television Broadcast Stations*, CS Docket No. 98-120 (Dec. 22, 1998); Joint Broadcasters Comments, *Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, MM Docket No. 00-39 (May 17, 2000).

<sup>2</sup> Further Notice of Proposed Rulemaking and Declaratory Ruling, *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, CS Docket No. 97-80, FCC 00-341, 15 FCC Rcd. 18199 (rel. Sept. 18, 2000) ("Notice").

competitive navigation devices. The Commission has established deadlines – they have not been met. The Commission has encouraged voluntary collaboration between the cable and equipment manufacturing industries – but this voluntary collaborative process has been derailed by a cable industry with no intent or incentive to open the market for navigation devices that compete with their proprietary products or limit their control over their programming packages. The time has come (it came some time ago) for the Commission to enforce its navigation devices rules and to take decisive action to meet its statutory mandate of assuring consumer access to independent navigation devices. Cable operators who continue to ignore these mandates should be sanctioned.

Despite reams of rhetoric on all sides, at bottom is the fact that independent manufacturers still cannot produce navigation devices that will allow the public to access the complete range of DTV and other digital offerings easily and without loss of functionality. The Commission simply must exert tighter control over the process of establishing technical standards necessary for the production of independent navigation devices – a process that affects many industries with varied and competing interests and that affects, ultimately, the consumers. Particularly, the Commission should be wary of cable industry efforts to stifle competition for ancillary features such as interactive electronic program guides (EPGs). Indeed, the Commission should sanction the cable industry for its continued violation of the navigation devices rules for failing to disclose the technical information required by the rules to enable independent EPGs. To the extent that the cable industry continues to delay the creation of detailed specifications to deliver broadcast EPG information over cable, it also acts to frustrate the navigation devices rules.

Moreover, the Commission must not allow delays in the development of digital navigation devices to hobble the DTV transition. As long as MSOs are allowed to flood the market with proprietary set-top boxes, they will maintain a stranglehold on their subscribers' access to DTV signals. To the extent that cable operators carry DTV signals (a small extent right now), they can downconvert, degrade, or otherwise reduce the functionality and appeal of broadcasters' DTV offerings by controlling the set-top box. Only by affording consumers access to alternative boxes can the Commission ensure that viewers will actually get to see HDTV and other DTV services. The Commission must prevent MSOs from controlling the pace of the DTV transition by actively ensuring the retail availability of fully functional navigation devices in fulfillment of its statutory duty under Section 629 of the Communications Act.<sup>3</sup>

**I. THE CABLE INDUSTRY HAS NOT FULFILLED ITS OBLIGATION TO HELP CREATE MARKETABLE NAVIGATION DEVICES AND SEPARATE PODS.**

**A. The Cable Industry and Its Affiliated Equipment Manufacturers Overstate Accomplishments to Date.**

The Commission has placed great trust in CableLabs and the OpenCable project to facilitate the development of a competitive market for navigation devices. Now, that trust appears misplaced. The OpenCable project, the Commission has said, "should lead to standardization, design, and production of PODs and permit the design, production, and distribution of the associated host devices for retail sale."<sup>4</sup> Much ink was spilled in this proceeding's comments to attempt to explain how the cable industry so far has fulfilled its

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<sup>3</sup> See 47 U.S.C. § 549(a).

<sup>4</sup> Notice at ¶ 6 (citing Report and Order, *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, CS Docket No. 97-80, 13 FCC Rcd. 14775, 14806 (1998) ("*Navigation Devices Order*").

obligations and met deadlines in pursuit of these goals.<sup>5</sup> However, as the consumer electronics industry – the industry that actually will manufacture the hoped-for devices – has stated: “[N]o functioning PODs or host device for the PODs can yet be designed.”<sup>6</sup> Moreover, “*it is currently impossible to design a digital television receiver that will be compatible with cable systems utilizing the POD-Host interface.*”<sup>7</sup> The specifications for the POD-host interface simply are not sufficiently finalized to permit the manufacture of products that not only will descramble scrambled programming but also will support other host device features such as EPGs.<sup>8</sup>

The cable industry’s claims of progress are meaningless when its process is bereft of results. Section 629 of the Communications Act requires that the Commission “assure the commercial availability” of navigation devices.<sup>9</sup> It is not enough for the Commission to agree to a cable industry-led standards-setting process. It is not enough for the cable industry’s

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<sup>5</sup> See, e.g., Comments of Mediacom Communications Corporation, *et al.*, at 4-6 (“Mediacom, *et al.* Comments”), Comments of Motorola, Inc. at 3-4 (“Motorola Comments”); Comments of National Cable Television Association at 8-10 (“NCTA Comments”), Comments of Time Warner Cable at 4-5 (“Time Warner Comments”).

<sup>6</sup> Letter to Magalie Roman Salas, Secretary, Federal Communications Commission, from Michael Petricone, Vice President, Technology Policy, Consumer Electronics Association, PP Docket No. 00-67, at 3 (Nov. 30, 2000) (“CEA November 30 Letter”); see Comments of Consumer Electronics Association at 11 (“By focusing only on its obligations to produce PODs, the cable industry has failed to provide technical specifications for interactive and non-interactive OpenCable host devices in time to support competitive entry by major manufacturers into a commercial market for navigation devices by July 1, 2000.”) (“CEA Comments”); Comments of Philips Electronics North America Corporation at 3 (stating that OpenCable specifications currently allow the development and testing of basic, but not advanced interactive navigation devices) (“Philips Comments”).

<sup>7</sup> CEA November 30 Letter at 3 (emphasis in original).

<sup>8</sup> See *id.*

<sup>9</sup> 47 U.S.C. § 549(a).

standards-setting body to *attempt* to reach goals and deadlines. It certainly is not enough for the cable industry to make excuses when it comes up short.<sup>10</sup> The statute requires results, and the Commission is to “assure” them.

**B. Consumers Must Have Confidence in the Portability and Interoperability of the Host Devices That They Purchase.**

A related area where the cable industry elevates form over substance is the development of “middleware” to permit the portability (to any area of the country) and interoperability (between different cable systems) of host devices, whether separate set-top boxes or integrated into DTV receivers.<sup>11</sup> The Commission cannot assure the commercial availability of navigation devices without consumer acceptance of those devices. And consumers will not purchase host devices, especially as part of expensive digital television sets, unless they are assured that these devices will work anywhere in the country on any cable system. A competitive market for devices of limited geographic and inter-system use simply cannot develop in our mobile 21st Century society. Accordingly, middleware – or whatever technology is developed to enable portability and interoperability – is not a non-essential “extra.” Rather, because lack of portability and interoperability effectively prevent the development of a market for competing host devices, the failure to make real progress in this area contravenes the Commission’s navigation devices rules and the goals of Section 629.<sup>12</sup>

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<sup>10</sup> See Comments of Consumer Electronics Retailers Coalition at 7-8 (describing continued attempts of the cable industry to minimize and evade obligations) (“CERC Comments”).

<sup>11</sup> See, e.g., Mediacom, *et al.* Comments at 5-6 (claiming that cable industry is not required to facilitate portability and thus industry efforts exceed FCC requirements); NCTA Comments at 13 (same).

<sup>12</sup> See 47 C.F.R. § 76.1202 (prohibiting cable operators from preventing retail availability of navigation devices).

For too long, we all have heard promises that middleware soon will be available. It now appears that more years will pass before the technology exists for true portability and interoperability.<sup>13</sup> Until the technology to provide the assurance of portability and interoperability is developed, there will be no retail market for host devices, and the primary objective of Section 629 will remain unmet. In order to prevent further delay in the development of this technology and to fulfill its statutory mandate, the Commission should require that OpenCable specifications support the manufacture of host devices that are portable and interoperable between cable systems, and it should require that such specifications be made available by a date certain.

**C. The OpenCable Process Should Be Subject to Meaningful Deadlines.**

Obviously, the OpenCable process has not been as successful as the Commission and other interested parties had hoped. In fact, some observe that “OpenCable is following an agenda that is contrary to the Commission’s overall intent.”<sup>14</sup> Despite cable industry claims, it did not substantially meet the July 1, 2000 deadline for the availability of equipment to provide conditional access capabilities (security functions) separate from other navigation functions.<sup>15</sup> Fully tested PODs were not available; there was not enough lead time for manufacturers to actually produce compatible host devices; there was no final license for independent manufacture

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<sup>13</sup> See CEA Comments at 15 (“Industry observers estimate that [a middleware] solution is years away from completion . . . .”); CERC Comments at 16 (“The history of the ‘middleware’ project . . . has been one of low priority, delay, and, at times, paralysis. . . . [I]t is still extremely vulnerable to further delay or ultimate frustration . . . .”).

<sup>14</sup> CEA Comments at 13.

<sup>15</sup> See 47 C.F.R. § 76.1204(a)(1), (e); CEA Comments at 9 (explaining that despite cable industry claims of meeting the July 1, 2000, “[t]o this day, . . . manufacturers are still unable to build devices that are guaranteed to work”).

of host devices; and there was no assurance that the specifications would allow manufacture of host devices comparable to MSO-provided devices.<sup>16</sup>

It is time – in fact, past time – for the Commission to require the OpenCable process to produce meaningful results. In order to provide the cable industry with the incentive to stop focusing on proprietary technology, the Commission should set January 1, 2002 as the date by which MSOs may no longer deploy integrated devices.<sup>17</sup> Maintaining the 2005 deadline provides the cable industry much too much time to thoroughly entrench its proprietary devices so that a competitive market will not develop for decades, if ever. Additionally, the Commission should (1) set clear benchmarks for the development of standards that enable the independent manufacture of host devices comparable to MSO-provided host devices, (2) require substitute alternative standards if these benchmarks are not met, and (3) sanction members of the cable industry that attempt to derail the development of a competitive navigation devices market by deploying proprietary devices when comparable devices are not available at retail.<sup>18</sup>

## **II. THE CABLE INDUSTRY IS FOCUSING ON PROPRIETARY EPGS AND IS STIFLING UTILIZATION OF PSIP INFORMATION FOR OTHER EPGS.**

Much of the inaction on the part of the cable industry may be explained by its apparent desire to delay competition to ancillary features supported by its proprietary navigation devices for as long as it can. The cable industry has long enjoyed gatekeeper control over access

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<sup>16</sup> See CERC Comments at 9.

<sup>17</sup> See, e.g., CEA Comments at 16-17 (calling for acceleration of deadline to January 1, 2002); CERC Comments at 15-17 (same).

<sup>18</sup> See CEA Comments at 13; CERC Comments at 11-12 (“[Sanctions against the distribution of digital devices by MSOs] must now be considered seriously by all concerned with competition and with the integrity of FCC regulations.”).

to subscribers' homes, and has only ceded this control when forced by law to do so. By opening the navigation devices market to independent competitors, the cable industry would be relinquishing some of this control. Particularly in the area of EPGs, the cable industry is promoting its own interests to the detriment of competition and consumer choice. As more and more channels and services become available, EPGs are becoming increasingly indispensable for consumers to effectively use their televisions. While MSO EPG signals generally are carried "out-of-band" in a separate channel, non-MSO EPGs for digital signals can only function if in-band Program and System Information Protocol (PSIP) is transmitted and can pass through the POD-host interface.

Currently, MSOs are deploying digital set-top boxes that deliver their proprietary EPGs, but there has been little progress toward completing and implementing the PSIP carriage agreement that was announced on February 22, 2000.<sup>19</sup> Again, it is time for greater Commission oversight and participation in the standards-setting and implementation process. Specifically, the Commission should require the cable industry to work toward meaningful completion and implementation of the PSIP carriage agreement and establish a firm deadline (*e.g.*, 60 days) to do

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<sup>19</sup> See CEA November 30 Letter at 3; CEA Comments at 12 ("For the development of EPG functionality, for example, there are no open standards for the provision of program and event information that is equivalent to the information commonly provided to proprietary set-top boxes."). The willingness of MSOs to stifle competition among EPGs has been demonstrated in the analog context. Time Warner Cable disabled the analog EPG information for Gemstar's competing EPG, and it was not until Time Warner faced increased scrutiny in the context of a special relief proceeding and the AOL/Time Warner merger review that it ceased stripping Gemstar's EPG information from local broadcast signals so that the EPG equipment that consumers had purchased at retail would work. See Comments of Gemstar-TV Guide International, Inc. and Gemstar Development Corp. at 4 n.8.

so.<sup>20</sup> MSOs should be required to carry without substantial alteration PSIP and related information that is part of the DTV signal – a step that may be taken immediately and which already is required pursuant to Section 76.1202 of the Commission’s rules.<sup>21</sup> Additionally, the Commission should enforce Section 76.1205 of its navigation devices rules<sup>22</sup> by ordering MSOs to disclose enough technical information about their own EPGs to enable broadcasters and equipment manufacturers to deploy EPGs, set-top boxes, cable-ready receivers, and other navigation devices that work with the cable system.<sup>23</sup> There should be a firm deadline for finalizing and disclosing these standards and the Commission should be willing to sanction MSOs that fail to provide this technical information, withhold proprietary EPG information, or otherwise violate the Commission’s navigation devices rules and undermine the intent of Section 629 of the Communications Act. The result of the Commission’s actions should be that “[c]onsumers [are] assured that the DTV sets they buy in retail stores . . . can benefit from

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<sup>20</sup> Specifically, the cable industry needs to do further technical work in the following cable infrastructure areas: content re-encoding, PSIP injection into uplink encoders, remultiplexing, and master downlinks feeding multiple cable systems utilizing varying channel maps. *See CEA* November 30 Letter at 3.

<sup>21</sup> By failing to carry a full DTV signal, MSOs render useless any navigation device functions that rely on PSIP and related information and, thus, prevent the retail availability of digital navigation devices in contravention of Section 76.1202 of the Commission’s rules. *See* 47 C.F.R. § 76.1202.

<sup>22</sup> 47 C.F.R. § 76.1205.

<sup>23</sup> *See* Statement of Victor Tawil, Senior Vice President, MSTV, *May 20 FCC Roundtable on DTV Compatibility with Cable and Other Video Distribution Services* at 14 (May 20, 1999) (“Tawil May 20 Statement”).

independent electronic program guides that work well with the programming information of all channels and afford easy navigation.”<sup>24</sup>

### **III. THE UNAVAILABILITY OF COMMERCIAL NAVIGATION DEVICES IS DELAYING THE DTV TRANSITION.**

#### **A. The DTV Transition Cannot Take Place Without Sufficient Consumer Confidence in DTV Products.**

“It will not matter how quickly broadcasters build DTV stations, how much they invest in programming, or how well they market their services if consumers are unable to access DTV programming easily or doubt that digital devices are a worthwhile investment this year or next.”<sup>25</sup> The DTV transition continues to be slowed because there are no standards for the interoperability of even the most basic DTV products, including DTV receivers and digital set-top boxes.<sup>26</sup> Consumers must be confident that the navigation devices built into or sitting on top of their DTV receivers will provide full functionality. In other words, if DTV receivers are to be widely accepted and purchased, several obstacles must be overcome, “particularly . . . final agreement on cable-DTV compatibility issues, including copy protection, PSIP carriage and man-machine interface specifications and steps that might be taken to ensure consumer access to a meaningful amount of HDTV programming.”<sup>27</sup> Until navigation devices – both set-top boxes and those integrated into DTV receivers – are available that can ensure the full functionality of

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<sup>24</sup> CEA Comments at 27.

<sup>25</sup> Tawil May 20 Statement at 2.

<sup>26</sup> See Reply Comments of the National Association of Broadcasters and the Association for Maximum Service Television, PP Docket No. 00-67, at 5 (June 8, 2000).

<sup>27</sup> Ex Parte Letter to Magalie Roman Salas, Secretary, Federal Communications Commission, from Sara W. Morris, Telecommunications Consultant to Thomson Consumer Electronics, MM Docket Nos. 00-39 & 98-120, at 1 (Nov. 28, 2000).

DTV signals (including any embedded EPG information) and that can work with any cable system in any location in the country, the DTV transition will remain stalled.

**B. Cable Customers Will Not Be Able to Reap the Benefits of Broadcasters' DTV Services If MSOs Will Not Transmit Full DTV Signals.**

With over 65 percent of television households receiving their television signals via cable, the full public benefits of the DTV transition can be realized only when cable subscribers are afforded undegraded access to broadcasters' digital signals. As long as MSOs are allowed to deploy proprietary, integrated navigation devices, they can continue to control the quality of the DTV signal that reaches subscribers. And MSOs have great incentive to maintain this bottleneck control as well as a proven record of doing so.<sup>28</sup> However, as the Commission recognized when it first established the navigation devices rules, "competition in the navigation equipment market is central toward encouraging innovation in equipment and services, and toward bringing more choice to a broader range of consumers at better prices."<sup>29</sup> The availability of enhanced pictures and features via competitive navigation devices will only increase consumer enjoyment of digital broadcasting, allowing DTV not only to be accepted but also to flourish.

The increased sharpness of HDTV pictures is one of the oft-touted benefits of the DTV transition, and broadcasters face significant pressure to increase the amount of HDTV programming provided through their digital channels. However, even if broadcasters were to transmit 100 percent HDTV programming, the majority of cable subscribers would not be able to

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<sup>28</sup> See, e.g., *supra*, n.15 (describing Time Warner's stripping Gemstar's EPG information from analog signals).

<sup>29</sup> *Navigation Devices Order*, 13 FCC Red at 14776.

distinguish these programs from analog broadcasts because MSOs have not implemented the technology to convey broadcasters' HDTV signals to their subscribers. Most cable set-top boxes cannot pass through HDTV signals. And yet, for the DTV transition to succeed, the public must be able to buy set-top boxes that can accommodate all DTV programming and service options.

For the same reason, HDTV signal quality must not be degraded as a form of copy protection.<sup>30</sup> One way or another, agreement must be reached on non-degrading copy protection, whatever the method, so that digital navigation devices can be manufactured. As we have stated many times before, MSTV does not take a position on which copy protection technology should be adopted as long as it is adopted now and does not involve degrading the digital signal.

In sum, broadcasters' entire DTV signals must be protected when passing through the cable plant, and there must be navigation devices available that can use those signals to their fullest potential. The Commission should require MSOs to carry DTV signals without material degradation. That is, MSOs should transmit the entire qualified bitstream of the DTV signal through the cable facility, including any set-top boxes that MSOs deploy, so that cable DTV resolution is as high as that obtainable from over-the-air signals.<sup>31</sup> Also, the Commission should increase its regulatory oversight to ensure the competitive availability of navigation devices from independent manufacturers that will allow consumers to enjoy all the benefits of DTV.

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<sup>30</sup> See CERC Comments at 22-23 ("CERC does not believe that cutting off or disabling HD resolution is fair to the consumer.").

<sup>31</sup> See Tawil May 20 Statement at 16.

Otherwise, the public will fail to realize the benefits of DTV transmission, further delaying the development of a market for digital video equipment and, ultimately, the DTV transition itself.

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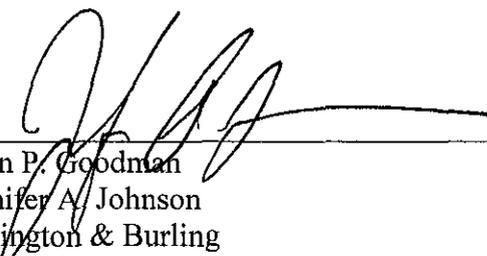
For the foregoing reasons, MSTV urges the Commission to:

- require the cable industry to develop POD-host standards that allow for the retail manufacture of navigation devices comparable to MSO-provided devices and that are portable around the country and interoperable with all cable systems;
- ensure that the standards are implemented by prohibiting MSOs from deploying devices with integrated security functions as of January 1, 2002;
- ensure through sanctions for violations of the navigation devices rules and other appropriate measures that the cable industry facilitates competition in markets for ancillary features such as EPGs by transmitting PSIP and related information and by disclosing information about proprietary EPGs; and
- ensure that the technical standards foster easy access to broadcasters' entire DTV signals and that DTV signals are protected as they pass through the cable plant so that consumers will be able to enjoy all the potential benefits of digital broadcasting.

Respectfully Submitted,

ASSOCIATION FOR MAXIMUM SERVICE TELEVISION, INC.

/s/ Victor Tawil  
Victor Tawil  
Senior Vice President  
Association For Maximum Service  
Television, Inc.  
1776 Massachusetts Avenue, N.W.  
Suite 310  
Washington, D.C. 20036  
Phone: (202) 861-0344  
Fax: (202) 861-0342

  
Ellen P. Goodman  
Jennifer A. Johnson  
Covington & Burling  
1201 Pennsylvania Avenue, N.W.  
P.O. Box 7566  
Washington, D.C. 20044-7566  
Phone: (202) 662-6000  
Fax: (202) 662-6291

*Attorneys for the Association for Maximum  
Service Television, Inc.*

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