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April 24, 2002

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William Caton
Acting Secretary
Federal Communications Commission
455 12th St. S.W.
Washington, D.C. 20554

Re: Ex Parte Notice: CS Docket 97-80 Commercial Availability of Navigation Devices

Dear Mr. Caton:

On April 23, 2002 Frank Manning of Zoom Telephonics and George Bachrach of Bachrach & Co. met with Steve Broeckaert, Tom Horan, William Johnson, Mike Lance, Susan Mort, and Michael Perko of the FCC's media bureau, as well as with Steve Klitzman of the FCC's office of legislative affairs. Zoom's purpose for the meeting was primarily to encourage consumer options and a robust retail market for cable modems and ADSL modems.

We pointed out that Section 629 of the Telecom Act of 1996 states the following:

> The Commission shall, in consultation with appropriate industry standard-setting organizations, adopt regulations to assure the commercial availability, to consumers of multichannel video programming and other services offered over multichannel video programming systems, of converter boxes, interactive communications equipment, and other equipment used by consumers to access multichannel video programming and other services offered over multichanel video programming systems, from manufacturers, retailers, and other vendors not affiliated with any multichannel video programming distributor. Such regulations shall not prohibit any multichannel video progrmaming distributor from also offering converter boxes, interactive communications equipment, and other equipment used by consumers to access multichannel video programming and other services offered over multichannel video programming and other services offered over multichannel video programming systems, to consumers, if the system operator's charges to consumers for such devices and equipment are separately stated and not subsidized by charges for any such service.

We noted that some cable service providers tie rental of a cable modem to their offer for cable modem service, and do not provide any discount to customers who buy their own cable modem. These cable service providers do not separately state charges to consumers for cable modems, as mandated by section 629. They typically do not even allow a cable modem to be used with their service unless the cable service provider supplies that cable modem. We view these cable service providers to be in direct violation of section 629. Their pricing and authorization processes thwart section 629's intent to assure the commercial availability to consumers of cable modems from manufacturers, retailers, and other vendors not affiliated with any multichannel video programming distributor. We believe that the FCC should attempt to correct this situation promptly.

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We also noted that most of the major cable service providers do not permit attachment of a CableLabs qualified cable modem unless that cable modem has also been tested and approved by that specific cable service provider. We pointed out that of 116 cable modems approved by CableLabs in the five most recent quarters starting in early 2001, only 2 were authorized for use by one large cable service provider, only 8 were authorized for use by a second large service provider, and only 10 were authorized for use by a third large service provider. We believe that the practice of follow-on test requirements should be reviewed, and that the FCC should consider a policy requiring that a cable modem's successful CableLabs testing be the only required testing. As an alternative, the FCC should consider an approach similar to that required by FCC Part 68 for telephone equipment.

We also discussed ADSL modems briefly, and noted that significant retail markets were opening up in Germany and the UK, but not in the USA. Our understanding is that Germany now prevents the bundling of an ADSL modem with the telephone company's ADSL service, thereby encouraging a competitive retail market. In the USA, the ADSL modem rental is tied to the service offered by telephone companies and Internet Service Providers, severely impeding the retail market. In addition, consumer alternatives in the USA are hampered by differing test requirements by each ILEC, and by the fact that ILEC testing typically occurs only if the ILEC or an ISP is considering purchase of the ADSL modem for sale or rental to its customers.

We encouraged the FCC to promote a robust, competitive retail market for cable modems and ADSL modems.

Pursuant to 47 CFR sec. 1.1206(b)(1) of the Commission's rules, this letter is sent for inclusion in the public record.

Sincerely,

Frank Manning
President