

March 24, 2003

Via Electronic Filing

Ms. Marlene H. Dortch
Federal Communications Commission
Office of the Secretary
445 12th Street, 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. Dortch:

On March 20, 2003, representatives of Matsushita Electric Corporation of America (hereinafter "Panasonic"), met via telephone conference with Stacy Robinson, Legal Advisor to Commissioner Abernathy, to discuss the above-captioned rulemaking. Paul Liao, Chief Technology Officer, and the undersigned represented Panasonic. For this telephone conference we were joined by Michael Petricone, Vice President Technology Policy, Consumer Electronics Association. On March 21, 2003, representatives of Panasonic met with Commissioner Martin and Legal Advisor Catherine Bohigian; Legal Advisor to Commissioner Copps Alexis Johns; and Media Bureau representatives Rick Chessen, Michael Lance, Thomas Horan, William Johnson, Steven Broeckert, and Susan Mort. Paul Liao, Chief Technology Officer, and the undersigned represented Panasonic in these three meetings.

The purpose of these meetings was to express Panasonic's support for retaining current Commission regulations requiring common reliance by all parties on the "POD-Host" interface by January 1, 2005, and concern over potential significant and negative effects, for consumers and competition, in the event such a requirement were stayed or eliminated altogether. Panasonic indicated its support for FCC actions to date to implement the objectives of the Section 304 of the Telecommunications Act of 1996. We believe the 1998 Navigation Device Rule achieved the following three objectives:

- Encouraged retail availability from non-cable-affiliated suppliers of competitive navigation devices that will bring the benefits of competition to consumers (e.g. lower costs, increased innovation, etc.).
- Enabled portability, as anticipated by the Commission, to allow consumers to use their televisions and other cable-ready products, acquired from non-cable-affiliated suppliers, anywhere in the United States.
- Established a clear and unambiguous roadmap and timetable for all cable equipment suppliers and cable system operators to plan for and move to common reliance on a single set of specifications and standards for a "POD-Host" interface.

The keystone of the Navigation Device order was the requirement that all suppliers of digital cable navigation devices utilize a separable security module (point of deployment or "POD"), which allows cable operators to continue to use a variety of proprietary conditional access systems, yet still opens a competitive marketplace for digital cable-ready products from non-cable-affiliated suppliers, such as Panasonic. Thus, the POD provides a straightforward regulatory and technical solution that assures a wide range of competitive digital cable products.

These competitive products would be operational in virtually any cable system nationwide, regardless of the conditional access system used by a consumer's local cable system. Indeed, the cable industry, led by its R&D consortium CableLabs, successfully developed a complete POD-Host technical design, ensuring that all the unidirectional and bi-directional cable services then contemplated could be accessed and operated through the POD-Host interface. Panasonic was an active contributor to this development. Enabled by the POD, the Navigation Device order established a general principle – that all cable services would be supported by a common interface, as the Commission noted in its Rule, similar to the Carter-Phone Rule that was successful in creating innovation and competition in telecommunications customer premises equipment.

Panasonic expressed its appreciation for the efforts of the cable industry and the efforts of the cable service providers to develop the specifications for the POD. Panasonic was the first major TV manufacturer to sign a POD Host Interface License Agreement and expects to have digital cable-ready television on the market before the end of this year. These products will be unidirectional devices. Panasonic expressed its appreciation for the support of cable operators in reaching this agreement, as well as the more recent Cable-CE national “plug and play” agreement, but noted that both agreements were established under the assumption of a common interface for connecting products to a cable system, and that the existing 2005 deadline played a key role in encouraging these agreements to be made in a timely manner. Panasonic expressed its confidence in the cable industry's support for POD-equipped unidirectional devices and that the rollout of such products this Fall will be successful.

However, despite the best intentions of the cable service providers, without a firm, continuing requirement for the utilization of the POD by all parties, there may well not be sufficient future incentive for the incumbent suppliers of cable headend equipment, who are also set-top box suppliers, to cooperate with the cable and consumer electronics industries in ensuring that digital cable services that go beyond *unidirectional* ones will be supported by either the present POD or future generations of the POD. These services include advanced *bi-directional/ interactive* digital services, and also new services that require *multiple streams* of programming (e.g. for PVR/personal video recorder, picture-in-picture, etc.). The continuing requirement of common reliance on the POD will ensure that, as in the first instance of POD design, all parties continue to focus their time, attention, and resources on assuring future POD designs will support advanced bi-directional/ interactive and new multiple-stream services not already incorporated in the current POD at the most effective, efficient, and low-cost way possible. Without such a continuing requirement, the result would be to reduce the consumer's choice at retail (e.g. make impossible a television that supports all bi-directional/interactive services without a separate cable-operator supplied set-top box, or that includes a built-in PVR that works with cable services). In addition, dropping the requirement on all parties eventually will lead to the higher prices that a loss of competition inevitably brings. All of this can only slow the digital transition and undermine the goal of Section 304 of the 1996 Telecommunications Act.

Hence, Panasonic suggested that, absent the existing requirement that all parties utilize the POD, the objectives of the 1998 Navigation Device Rule would be endangered. At a minimum the Commission would be forced to put in place additional burdensome oversight and enforcement to ensure that bi-directional/interactive and multiple-stream cable services become truly compatible with the POD. The simplicity of the POD requirement is that it establishes a level playing field among all parties that minimizes the need for an ongoing and necessarily intrusive Commission role in resolving disputes about compatibility between bi-directional/interactive and multiple-stream cable services and POD-equipped products.

Thus, the Commission's Rule prohibiting cable operators from providing set-top boxes with embedded security as of January 1, 2005, helps to ensure current *and future* compatibility between cable-ready products from non-cable-affiliated suppliers and cable systems. A stay or elimination of the 2005 POD requirement, as reported to be now under consideration, would confuse and delay on-going cable-consumer electronics industry discussions for bi-directional/interactive and multiple-stream products, and cause consumer uncertainty about whether future "OCAP-equipped" televisions would be compatible with all bi-directional/interactive and multiple-stream cable services. Without a continued requirement on all parties to rely on the POD, compatibility with future advanced cable services (*e.g.* interactive programs/games, electronic program guides, time-shift PVR recording, etc.) might not be possible to implement on future non-cable-affiliated competitive products. For these reasons, Panasonic urged that the Commission maintain its requirement that all parties utilize the POD as the sole and common interface for all cable systems and cable consumer products.

Panasonic acknowledged that the short time for cable operators to implement certain advanced bi-directional/interactive (*i.e.* those not already provided for in the design of the POD) and new multiple-stream services with a POD presents a challenge, and may put cable service providers at a competitive disadvantage in the short term. Therefore, rather than a stay or elimination of the current 2005 requirement, we suggested that the Commission consider other means—such as temporary suspension of the Rule or careful use of a temporary waiver process—in order to meet the urgent needs of individual cable operators. Such an approach would permit cable operators to field new services and provide new products without the POD for a limited period of time, *e.g. one year*, but would require a showing by a petitioner, subject to a speedy public comment process, that such a temporary suspension or waiver is appropriate. Panasonic said it could support such limited flexibility in the Rule in order to provide short-term relief so long as it does not compromise the critical role of common reliance on the POD by all parties, which is the only reasonable mechanism to ensure compatibility of cable-ready products from non-cable-affiliated suppliers for present and future cable services.

Respectfully submitted,

Paul G. Schomburg
Senior Manager
Government & Public Affairs

Cc: Commissioner Kevin J. Martin
Catherine Bohigian, Legal Advisor to Commissioner Martin
Stacy Robinson, Legal Advisor to Commissioner Abernathy
Steven Broeckaert, Media Bureau
Rick Chessen, Media Bureau
Thomas Horan, Media Bureau
William Johnson, Media Bureau
Michael Lance, Media Bureau
Susan Mort, Media Bureau
Michael Petricone, Consumer Electronics Association