

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

In the Matter of:)	
)	
Implementation of Section 304 of the Telecommunications Act of 1996)	CS Docket No. 97-80
)	
Commercial Availability of Navigation Devices)	PP Docket No. 00-67
)	
Compatibility Between Cable Systems and Consumer Electronics Equipment)	
)	
)	

COMMENTS AND OPPOSITION OF BELLSOUTH ENTERTAINMENT, LLC

BellSouth Entertainment, LLC, on behalf of itself and its affiliated companies (collectively, "BellSouth") hereby offers its comments in support of three of the positions expressed in the petition for reconsideration of the Commission's *Second Report & Order* in the above-captioned proceeding¹ filed by DIRECTV, Inc. ("DIRECTV").² BellSouth opposes the DIRECTV Petition with respect to one position that DIRECTV asserts regarding an alleged broadband "loophole" in the Commission's encoding rules.

As a threshold matter, BellSouth is a multichannel video programming distributor ("MVPD") with a direct interest in this proceeding. BellSouth and its affiliated companies provide cable service in 14 franchise areas in Alabama, Florida and Georgia. In addition, BellSouth and DIRECTV have a strategic marketing alliance to offer BellSouth residential

¹ See Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices; Compatibility Between Cable Systems and Consumer Electronics Equipment, *Second Report and Order*, CS Docket No. 97-80, PP Docket No. 00-67 (rel. Oct. 9, 2003) ("Second Report and Order").

² Petition for Reconsideration of DIRECTV, Inc. (Dec. 29, 2003) ("DIRECTV Petition").

customers DIRECTV digital satellite television service beginning in early 2004.³ Furthermore, as industry economics improve and regulatory policies change to create a more favorable investment environment for the deployment of new broadband transmission technologies such as DSL and Fiber-To-The-Curb, BellSouth is upgrading its local wired transmission network with new broadband technologies that will have the technical capability to support the provision of various competitive video programming services.

The DIRECTV Petition seeks reconsideration of four aspects of the *Second Report and Order*. First, DIRECTV asserts that the Commission must close an alleged broadband “loophole” in the encoding rules, which DIRECTV argues has a discriminatory effect on DBS operators and other MVPDs that do not offer cable modems or similar broadband services. Second, DIRECTV asks the Commission to require certain minimum standards for televisions carrying an IEEE 1394 interface. Third, DIRECTV expresses a serious concern over CableLabs’ administration of changes to the Dynamic Feedback Arrangement Scrambling Technique (“DFAST”) license. Finally, DIRECTV reiterates its objection to the closed process that culminated in the Phase I Plug and Play agreement, urging that with respect to the Phase II process concerning bi-directional receiver specifications and related issues, no proposed regulations be accepted unless the voluntary inter-industry process includes DBS operators.

BellSouth supports the DIRECTV Petition with respect to the latter three issues.

First, like DIRECTV, BellSouth supports the Commission’s decision to refrain from requiring television manufacturers to implement IEEE 1394 connectors, but agrees with DIRECTV that the Commission’s rules should provide certain minimum standards for

³ This alliance will assist BellSouth in continuing its efforts, announced in 2000, to restructure its wireless video business.

televisions that *do* include such an interface.⁴ BellSouth agrees that the Commission, in failing to address the issue, should not thereby promote -- by default -- the cable-only version of the IEEE 1394 interface. Such a result would not serve the Commission's stated goal of avoiding a "competitive imbalance in the MVPD programming market."⁵

Second, BellSouth agrees that CableLabs is not the appropriate administrator of changes to the DFAST license.⁶ Without ascribing overtly anticompetitive motives to CableLabs, the fact remains that this entity is a wholly-owned affiliate of the largest cable operators, and as such, plainly has the incentive and the ability to hinder or prevent entirely the use of DFAST technology by non-cable MVPDs and their manufacturers. It will not promote MVPD competition to allow CableLabs to apply the DFAST license in a discriminatory fashion for cable-only use, when it is plain that incumbent cable operators continue to serve the majority of households in most franchise areas.⁷ BellSouth agrees that another, neutral administrator should be identified by the Commission that is institutionally capable of objective decisionmaking regarding changes to the DFAST license and related determinations.⁸

Third, BellSouth shares DIRECTV's concerns with respect to the exclusive, "back room" environment that led to the development and ultimate implementation of the Phase I Plug and Play agreement. BellSouth thus urges the Commission to ensure that DBS providers, along with other significant non-incumbent MVPDs, such as BellSouth, be invited to participate in the

⁴ See DIRECTV Petition at 6.

⁵ *Second Report and Order* at ¶ 71.

⁶ *Id.* at ¶ 76.

⁷ See In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, *Tenth Annual Report*, MB Docket No. 03-172 (rel. Jan. 28, 2004), at ¶ 124. Cable continues to serve approximately 75% of all MVPD subscribers. *Id.* at ¶ 4.

⁸ See DIRECTV Petition at 8.

Phase II round of industry discussions pertaining to bi-directional receiver specifications, heeding the Commission's admonition to the cable and consumer electronics industries "to consult with interested parties and affected industries."⁹

Finally, BellSouth does not support DIRECTV's position with respect to the need for the Commission to address an alleged broadband "loophole" in the encoding rules. To the contrary, the Commission's decision to exempt from its encoding rules content delivered over the Internet or over a MVPD's operations via cable modem or DSL facilities reflects well-reasoned public policy. The Internet and these two related Internet access technologies present a multitude of technical and public policy issues that are unique to those video delivery systems. Those issues are not ripe for consideration by the Commission and there is an obvious lack of a sufficient public record in this proceeding upon which the Commission could base any meaningful encoding rules regarding the use of those technologies. Furthermore, there is no objective evidence in the record to support DIRECTV's claim that exempting these alternative delivery technologies from the Commission's digital encoding rules results in adverse discriminatory effects that need to be addressed from a public policy standpoint.

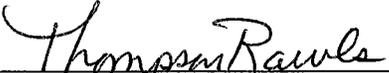
Accordingly, BellSouth supports reconsideration of the *Second Report and Order* with respect to three aspects discussed in the DIRECTV Petition, and opposes reconsideration on a fourth issue, as described above.

⁹ *Second Report and Order* at ¶ 8, n. 22. See also *Statement of Commissioner Kevin J. Martin* (noting concerns of interested parties that were excluded from the initial MOU process, and strongly encouraging that "all interested parties be allowed to participate in setting the groundwork for any necessary rules") (emphasis in original).

Respectfully submitted,

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