

DOCSIS 2.0 cable modem and was also considering the introduction of a DOCSIS 2.0 cable modem with wireless connectivity for retail. Mr. Manning expressed Zoom’s view that Comcast “must have a process for certifying these cable modems” and that the “FCC and Congress would not accept the notion of Comcast effectively preventing any new [DOCSIS] 2.0 cable modems from being offered by national retailers like Best Buy and Staples.” He further pointed out that DOCSIS 3.0 cable modems were much more expensive to manufacture than DOCSIS 2.0 cable modems. In conclusion, Mr. Manning asked Mr. Livingood to confirm that Comcast would continue to certify DOCSIS 2.0 cable modems in a timely manner and stated that he looked forward to continuing to work cooperatively with Comcast. Ex. 6, at 3; Ex. 3, ¶ 52.

67. Mr. Livingood responded to Mr. Manning later that day but did not address any of Mr. Manning’s concerns. Rather, Mr. Livingood indicated that because Mr. Manning had mentioned “the FCC and/or legal action,” he could not be “further involved in this topic” and was referring the matter to Jeffrey Smith, Comcast Vice President and Deputy General Counsel. Ex. 6, at 3; Ex. 3, ¶ 52.

68. Following further discussions between Mr. Manning and Mr. Smith, Mr. Manning sent a letter to Mr. Smith on September 13, 2010. Mr. Manning asked that Comcast promptly agree to test Zoom’s two new DOCSIS 2.0 cable modems models provided that they complied with certain principles set forth in Mr. Manning’s letter. Mr. Manning also quoted the language of Section 629 of the Communications Act and stated that it was important for Comcast to act in a manner consistent with that provision. Ex. 3, ¶ 54.

69. Mr. Smith answered Mr. Manning’s letter on October 6, 2010. In his response, Mr. Smith stated that “Comcast ceased its review and certification of DOCSIS 2.0 devices approximately one year ago.” Although Mr. Smith admitted that Comcast had “not yet

designated DOCSIS 2.0 modems as ‘End of Life’” and continued to purchase and deploy such modems, he maintained that Comcast had “scaled back its purchase of those modems significantly and increasingly deploys DOCSIS 3.0 modems to its customers.” Ex. 5, at 2.

70. In his October 6 letter, Mr. Smith also took the position that “Comcast is under no obligation to certify Zoom’s or any other vendor’s high speed Internet devices for use with Comcast’s broadband Internet network.” In support of that position, Mr. Smith falsely claimed that Section 629 did not apply to “cable modem devices or services,” but rather “clearly and solely applies to converter boxes and other equipment used to access multichannel video programming and services.” Ex. 5, at 2. See Ex. 3, ¶ 56.

71. Mr. Smith concluded his letter by stating that notwithstanding Comcast’s concerns, it was willing to test “Zoom’s modification to its previously approved DOCSIS 2.0 device only.” He informed Mr. Manning that Comcast was “currently evaluating the impact of such an exception to [its] existing device testing process and policies, and [was] reviewing resources required to accommodate [Zoom’s] request.” He further advised Mr. Manning that a representative from Comcast would contact Zoom “with additional information in the next few weeks.” Ex. 5, at 2.

72. On October 7, 2010, Mr. Manning sought clarification from Mr. Smith as to what Comcast was willing to test. Mr. Smith responded that Comcast was only willing to proceed with testing one device: “the device for which [Zoom is] changing the current chipset (and accompanying electronics).” Ex. 6, at 5. Mr. Manning thanked Mr. Smith for the clarification. He stated that Zoom would “go forward with that one DOCSIS 2.0 cable modem product right away.” Ex. 6, at 7. See Ex. 3, ¶ 58.

73. On October 12, 2010, Norm Baker, a Senior Network Engineer at Comcast, contacted Mr. Manning and Mr. Vance. Mr. Baker indicated that he had been asked to contact Zoom to begin making arrangements for the testing of Zoom’s new DOCSIS 2.0 cable modem device. Mr. Baker attached to his e-mail message, Ex. 6, at 7, documents related to Comcast’s P&E testing regime. Ex. 8; Ex. 9; and Ex. 11. See Ex. 3, ¶ 59,

74. Because Zoom’s cable modems had never before been subject to Comcast’s P&E testing regime, Mr. Vance was concerned by Mr. Baker’s message and reached out to Mr. Livingood. Ex. 3, ¶ 60. In his e-mail message, Mr. Vance first expressed Zoom’s appreciation that Comcast had agreed to test Zoom’s new DOCSIS 2.0 cable modem device. He then informed Comcast that Zoom’s plan was to sell this device at retail only and recounted that when Zoom had submitted its new DOCSIS 3.0 cable modem model to Comcast earlier in the year, Comcast had waived its P&E testing requirements because the cable modem was to be sold at retail only. Mr. Vance then asked whether the P&E tests similarly could be waived for Comcast’s new DOCSIS 2.0 cable model device. Ex. 6, at 10; Ex. 3, ¶ 61.

75. In response to Mr. Vance’s question, Mr. Livingood refused to waive Comcast’s P&E tests. Rather, he indicated that Comcast’s “testing/cert policies continue to evolve” and that Comcast now believed “it is important that all devices in the network, whether customer-purchased or Comcast-purchased, should pass P&E evaluation.” Ex. 6, at 10; Ex. 3, ¶ 62.

76. Mr. Vance asked both Mr. Livingood and Mr. Iveson when Comcast had changed its testing policies and if there was a document that described those policies. Mr. Livingood responded that he wasn’t sure why it mattered when the policy had changed and that any questions concerning the policy modification should be referred to Mr. Smith. Mr. Livingood further stated: “I’m sure we can send you a formal letter explaining the fact that P&E testing is

part of the certification process, but I'm unsure of the utility of that given that we've already explained that via email." Ex. 6, at 16; Ex. 3, ¶ 62.

F. Comcast's P&E Testing Regime

77. That same day, Mr. Vance and Mr. Baker exchanged e-mail messages that shed additional light on the requirements of Comcast's P&E testing regime. For example, Mr. Baker indicated that Comcast would need to perform two weeks of onsite inspections at Zoom's facilities. Ex. 6, at 12-14.

78. The vast majority of the requirements contained in Comcast's P&E testing regime have nothing to do with preventing electronic or physical harm to Comcast's network or theft of service, and are unreasonable for Comcast to apply to cable modems purchased by their subscribers at retail. Ex. 3, ¶ 67-68.

79. For example, Comcast evaluates the performance of cable modems at temperatures far above those generally found in the United States and far above those at which many other electronic devices are designed to operate. Specifically, [REDACTED]

[REDACTED] Ex. 8, at 11. Zoom's cable modems support operation at ambient temperatures from 0° to 40°C (32° to 104°F). For reference, the Apple iPad is specified to operate from 0° to 35°C (32° to 95°F), and a typical HP PC (for example, the model HP Pro 3130 Minitower) is specified to operate from 5° to 35°C (41° to 95°F). Even if a cable modem were to suffer decreased performance at extremely high temperatures, this would not cause harm to the network or facilitate theft of service. Ex. 3, ¶ 69.

80. Comcast places greater restrictions on the surface temperatures of cable modems than are found in UL safety standards. Specifically, [REDACTED]

[REDACTED] Ex. 8, at 13. Zoom’s cable modems meet UL safety standards (UL 60950) that a plastic case of an electronic device may nowhere exceed 70°C, when the device is operated at an ambient temperature of 25°C. Stricter regulations regarding the temperature of a cable modem’s outside surface neither protect Comcast’s network from harm nor prevent theft of service. Ex. 3, ¶ 69.

81. Comcast regulates how the prolonged application of certain substances to a cable modem affects its appearance. Specifically, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Ex. 8, at 20. This requirement neither protects Comcast’s network from harm nor prevents theft of service. Ex. 3, ¶ 69.

82. Comcast regulates a cable modem’s weight. Specifically, [REDACTED]
[REDACTED]
[REDACTED] Ex. 8, at 14. This requirement neither protects Comcast’s network from harm nor prevent theft of service. Ex. 3, ¶ 69.

83. Comcast regulates the strength of a cable modem’s packaging. Specifically [REDACTED]
[REDACTED] Ex. 8, at 19. This requirement neither protects Comcast’s network from harm nor prevent theft of service. Ex. 3, ¶ 69.

84. Comcast places labeling requirements on cable modems. Specifically, [REDACTED]
[REDACTED]

[REDACTED] Ex. 8, at 15. This requirement neither protects Comcast’s network from harm nor prevent theft of service. Ex. 3, ¶ 69.

85. Comcast sets forth rules regarding the placement of a bar code label on a cable modem’s packaging. Specifically, Comcast [REDACTED]

[REDACTED]

[REDACTED] Ex. 8, at 19. These requirements neither protect Comcast’s network from harm nor prevent theft of service. Ex. 3, ¶ 69.

86. Comcast regulates how fluctuations in voltage affect the modem’s performance. Specifically, [REDACTED]

[REDACTED]

[REDACTED] Ex. 8, at 24. UL safety testing already confirms that Zoom’s cable modems meet relevant overvoltage protection requirements. These requirements neither protect Comcast’s network from harm nor prevent theft of service. Ex. 3, ¶ 69.

87. Comcast tests how a cable modem’s performance is affected by sudden changes in humidity. Specifically, [REDACTED]

[REDACTED]

Ex. 8, at 20. The criteria listed for this test do not include testing for harm to the network, or for the potential theft of services. Ex. 3, ¶ 69.

88. Comcast sets absurd standards for testing the robustness of a cable modem’s buttons and switches. Specifically, [REDACTED]

93. The supplier's personnel indicated that meeting the ingress requirements as well as satisfying other elements of the P&E testing regime would require a redesign of the modem and cost considerable time and money. They also informed Zoom that any attempt at such a redesign might not succeed on the first attempt. Ex. 3, ¶ 65. In addition, the supplier estimated that Comcast's P&E requirements would increase by five to seven dollars the previous unit price quote for Zoom's volume purchase of a new DOCSIS 3.0 cable modem model with wireless connectivity. The higher price is caused by design changes that would need to be made to the cable modem to attempt to meet the P&E requirements. These changes are not necessary to prevent harm to the network or theft of service. Ex. 3, ¶ 73.

94. Because of the costs associated with Comcast's new P&E testing as well as the uncertainties associated with whether a redesigned DOCSIS 2.0 cable modem model could pass Comcast's tests and be approved for attachment to its network, Zoom decided that it could not bring its new DOCSIS 2.0 cable modem model to market if it was subject to Comcast's P&E requirements. Ex. 3, ¶ 66.

95. Moreover, Zoom executives have concluded that it likely will be unable to introduce another cable modem model at retail if Zoom is required to participate in P&E testing before a new cable modem model may be attached to Comcast's network. Ex. 3, ¶ 72.

96. In all of its experience with manufacturing cable modems, Zoom is not aware of an instance where one of its devices has caused harm to a cable operator's network, or where a Zoom device has facilitated the theft of service from a cable operator. Ex. 3, ¶ 30.

COUNT ONE

UNLAWFUL STANDARDS FOR ATTACHING DEVICES

47 C.F.R. § 76.1203

97. Complainant Zoom repeats and realleges each and every allegation contained in paragraphs 1 through 96 of this Complaint.

98. 47 C.F.R. § 76.1203 provides in full: “A multichannel video programming distributor 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 restrictions may be accomplished by publishing and providing to subscribers standards and descriptions of devices that may not be used with or attached to its system. 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).

99. Navigation devices are defined in the Commission’s rules to be “[d]evices such as converter boxes, interactive communications equipment, and other equipment used by consumers to access multichannel video programming and other services offered over multichannel video programming systems.” 47 C.F.R. § 76.1200(c).

100. A cable modem is a navigation device pursuant to the Commission’s definition because it is used by consumers to access other services (namely, broadband Internet access services) offered over a multichannel video programming system.

101. Comcast currently will not certify a new cable modem model for attachment to its system unless that cable modem has been deemed to comply with the standards set forth in its P&E testing regime.

102. Numerous standards contained in Comcast’s P&E testing regime do not relate to whether a cable modem will cause electronic or physical harm to Comcast’s network or facilitate theft of service.

103. Accordingly, by virtue of the acts described above, Comcast has violated 47 C.F.R. § 76.1203 by employing standards through its P&E testing regime that foreclose the attachment of cable modems to its system even when there are no reasonable and legitimate concerns that such modems would cause electronic or physical harm to its network or theft of service.

COUNT TWO

**VIOLATION OF RIGHT TO ATTACH
47 C.F.R. § 76.1201**

104. Complainant Zoom repeats and realleges each and every allegation contained in paragraphs 1 through 96 of this Complaint.

105. 47 C.F.R. § 76.1201 provides in full: “No multichannel video programming distributor shall prevent the connection or use of navigation devices to or with its multichannel video programming system, except in those circumstances where electronic or physical harm would be caused by the attachment or operation of such devices or such devices may be used to assist or are intended or designed to assist in the unauthorized receipt of service.”

106. Navigation devices are defined in the Commission’s rules to be “[d]evices such as converter boxes, interactive communications equipment, and other equipment used by consumers to access multichannel video programming and other services offered over multichannel video programming systems.” 47 C.F.R. § 76.1200(c).

107. A cable modem is a navigation device pursuant to the Commission’s definition because it is used by consumers to access other services (namely, broadband Internet access services) offered over a multichannel video programming system.

108. Comcast currently will not allow subscribers to attach newly designed cable modem models to its system unless those cable modem models have participated in Comcast’s P&E testing regime and been deemed to comply with Comcast’s P&E standards.

109. Numerous standards contained in Comcast’s P&E testing regime do not relate to whether a cable modem will cause electronic or physical harm to Comcast’s network or facilitate theft of service.

110. Accordingly, by virtue of the acts described above, Comcast is preventing the connection of cable modems to its system in circumstances other than those where electronic or physical harm would result or such devices could be used to assist in the unauthorized receipt of service, thereby infringing its subscribers’ right to attach equipment in violation of 47 C.F.R. § 76.1201.

COUNT THREE

**RESTRICTING AVAILABILITY OF DEVICES
47 C.F.R. § 76.1202**

111. Complainant Zoom Telephonics repeats and realleges each and every allegation contained in paragraphs 1 through 96 of this Complaint.

112. 47 C.F.R. § 76.1202 provides in full: “No multichannel video programming distributor shall by contract, agreement, patent right, intellectual property right or otherwise prevent navigation devices that do not perform conditional access or security functions from being made available to subscribers from retailers, manufacturers, or other vendors that are unaffiliated with such owner or operator, subject to 76.1209.”

113. Navigation devices are defined in the Commission’s rules to be “[d]evices such as converter boxes, interactive communications equipment, and other equipment used by consumers

to access multichannel video programming and other services offered over multichannel video programming systems.” 47 C.F.R. § 76.1200(c).

114. A cable modem is a navigation device pursuant to the Commission’s definition because it is used by consumers to access other services (namely, broadband Internet access services) offered over a multichannel video programming system.

115. Comcast currently will not allow subscribers to attach newly designed cable modem models to its system unless those cable modem models have participated in Comcast’s P&E testing regime and been deemed to comply with Comcast’s P&E standards.

116. Given that Comcast is the largest provider of cable Internet services in the county, manufacturers are unlikely to introduce new cable modem models to national retailers unless those cable modems are approved for attachment to Comcast’s network.

117. The expense, delays, difficulties, and uncertainties associated with Comcast’s new P&E testing regime will prevent cable modem manufacturers from introducing certain new cable modem models into the retail market.

118. Accordingly, by virtue of the acts described above, Comcast has violated 47 C.F.R. § 76.1202 by employing impermissible testing standards for cable modems that have the effect of preventing cable modems from being made available to its subscribers by retailers and manufacturers unaffiliated with Comcast.

COUNT FOUR

UNLAWFUL STANDARDS FOR ATTACHING DEVICES 47 C.F.R. § 76.1203

119. Complainant Zoom repeats and realleges each and every allegation contained in paragraphs 1 through 96 of this Complaint.

120. 47 C.F.R. § 76.1203 provides in full: “A multichannel video programming distributor 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 restrictions may be accomplished by publishing and providing to subscribers standards and descriptions of devices that may not be used with or attached to its system. 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).

121. Navigation devices are defined in the Commission’s rules to be “[d]evices such as converter boxes, interactive communications equipment, and other equipment used by consumers to access multichannel video programming and other services offered over multichannel video programming systems.” 47 C.F.R. § 76.1200(c).

122. A cable modem is a navigation device pursuant to the Commission’s definition because it is used by consumers to access other services (namely, broadband Internet access services) offered over a multichannel video programming system.

123. Comcast will not allow a subscriber to attach cable modem model to its system unless that cable modem model has been tested by Comcast and deemed to meet Comcast’s standards.

124. In October 2010, Comcast would not test Zoom’s new DOCSIS 2.0 cable modem model with wireless connectivity, and its reasons for refusing to accept Zoom’s new model for testing had nothing to do with concerns that the modem would cause harm to Comcast’s network or facilitate theft of service.

125. Accordingly, by virtue of the acts described above, Comcast has violated 47 C.F.R. § 76.1203 by refusing to test Zoom’s new DOCSIS 2.0 cable modem model with wireless connectivity so that it could be attached to Comcast’s network.

COUNT FIVE

**RESTRICTING AVAILABILITY OF DEVICES
47 C.F.R. § 76.1202**

126. Complainant Zoom Telephonics repeats and realleges each and every allegation contained in paragraphs 1 through 96 of this Complaint.

127. 47 C.F.R. § 76.1202 provides in full: “No multichannel video programming distributor shall by contract, agreement, patent right, intellectual property right or otherwise prevent navigation devices that do not perform conditional access or security functions from being made available to subscribers from retailers, manufacturers, or other vendors that are unaffiliated with such owner or operator, subject to 76.1209.”

128. Navigation devices are defined in the Commission’s rules to be “[d]evices such as converter boxes, interactive communications equipment, and other equipment used by consumers to access multichannel video programming and other services offered over multichannel video programming systems.” 47 C.F.R. § 76.1200(c).

129. A cable modem is a navigation device pursuant to the Commission’s definition because it is used by consumers to access other services (namely, broadband Internet access services) offered over a multichannel video programming system.

130. Comcast will not allow a subscriber to attach cable modem model to its system unless that cable modem model has been tested by Comcast and deemed to meet Comcast’s standards.

131. In October 2010, Comcast would not test Zoom’s new DOCSIS 2.0 cable modem model with wireless connectivity. Because Comcast currently is the largest cable operator in the United States, it not economically viable for Zoom to introduce a new cable modem model into the retail market unless it is approved for use on Comcast’s system.

132. Accordingly, by virtue of the acts described above, Comcast has violated 47 C.F.R. § 76.1202 by arbitrarily refusing to test a new Zoom DOCSIS 2.0 cable modem model with wireless connectivity and thus preventing that model from being made available to its subscribers by retailers and manufacturers unaffiliated with Comcast.

COUNT SIX

**UNLAWFUL STANDARDS FOR ATTACHING DEVICES
47 C.F.R. § 76.1203**

133. Complainant Zoom repeats and realleges each and every allegation contained in paragraphs 1 through 96 of this Complaint.

134. 47 C.F.R. § 76.1203 provides in full: “A multichannel video programming distributor 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 restrictions may be accomplished by publishing and providing to subscribers standards and descriptions of devices that may not be used with or attached to its system. 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).

135. Navigation devices are defined in the Commission’s rules to be “[d]evices such as converter boxes, interactive communications equipment, and other equipment used by consumers

to access multichannel video programming and other services offered over multichannel video programming systems.” 47 C.F.R. § 76.1200(c).

136. A cable modem is a navigation device pursuant to the Commission’s definition because it is used by consumers to access other services (namely, broadband Internet access services) offered over a multichannel video programming system.

137. Comcast does not publish or make publicly available the standards that it uses to determine whether a cable modem may be attached to its network.

138. Additionally, many of Comcast’s P&E standards are vague and ambiguous. For example, Comcast does not provide cable modem manufacturers with an objective standard for how much a cable modem may weigh. Rather, [REDACTED]

[REDACTED]

[REDACTED] Ex. 8, at 11.

139. Accordingly, by virtue of the acts described above, Comcast has violated 47 C.F.R. § 76.1203 by failing to publish or make publicly available the standards that it uses in determining whether cable modems will be restricted from Comcast’s network and by utilizing vague and ambiguous standards that do not provide sufficient notice to manufacturers or subscribers.

VI. PRAYER FOR RELIEF

Complainant respectfully requests that the Commission:

(a) find Comcast in violation of 47 C.F.R. § 76.1201, 47 C.F.R. § 76.1202, and 47 C.F.R. § 76.1203;

(b) enjoin Comcast from requiring cable modems being sold at retail to be evaluated in its Physical and Environmental testing regime before such modems may be attached to Comcast’s network;

(c) enjoin Comcast from requiring cable modems sold at retail to participate in any Comcast testing unrelated to preventing harm to the network or theft of service;

(d) order Comcast to remedy the delay that it has caused Zoom Telephonics in bringing its two newest DOCSIS 2.0 cable modems to the retail market by testing those modems in an expedited fashion and at no charge;

(e) enjoin Comcast from asking CableLabs to add any additional testing requirements to its testing of Zoom’s two newest DOCSIS 2.0 cable modems;

(f) order Comcast to agree to test any new DOCSIS 2.0 cable modem model or DOCSIS 3.0 cable modem model that Zoom submits in the next three years;

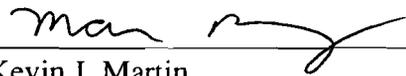
(g) order Comcast to publish its standards for testing all cable modems and (i) provide a detailed justification for how each test relates to whether a device will harm its network or facilitate theft of service and (ii) require Comcast to provide a detailed explanation of why the CableLabs testing process does not fully address any justification or concerns about cable modems harming Comcast’s network or facilitating theft of service; and

(i) order any other relief that the Commission may deem appropriate.

November 29, 2010

Respectfully submitted,

ZOOM TELEPHONICS, INC.

By: 
Kevin J. Martin
Matthew B. Berry*
Patton Boggs LLP
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Washington, D.C. 20037
(202) 457-6000

Its Counsel

** Admitted only in Virginia*

CERTIFICATE OF SERVICE

I, Matthew B. Berry, hereby certify that on this 29th day of November 2010, I caused a true and correct copy of the foregoing Complaint to be served via first-class mail, postage prepaid, upon:

Ms. Sheila Smith
Comcast Cable Communications LLC
One Comcast Center
Philadelphia, PA 19103

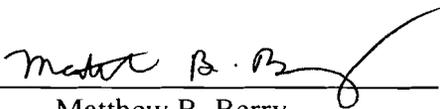

Matthew B. Berry

EXHIBIT 1

United States Code: 47 U.S.C. § 549

47 U.S.C. § 549 Competitive availability of navigation devices

(a) Commercial consumer availability of equipment used to access services provided by multichannel video programming distributors — 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 multichannel 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 programming 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 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.

(b) Protection of system security — The Commission shall not prescribe regulations under subsection (a) of this section which would jeopardize security of multichannel video programming and other services offered over multichannel video programming systems, or impede the legal rights of a provider of such services to prevent theft of service.

(c) Waiver — The Commission shall waive a regulation adopted under subsection (a) of this section for a limited time upon an appropriate showing by a provider of multichannel video programming and other services offered over multichannel video programming systems, or an equipment provider, that such waiver is necessary to assist the development or introduction of a new or improved multichannel video programming or other service offered over multichannel video programming systems, technology, or products. Upon an appropriate showing, the Commission shall grant any such waiver request within 90 days of any application filed under this subsection, and such waiver shall be effective for all service providers and products in that category and for all providers of services and products.

(d) Avoidance of redundant regulations

(1) Commercial availability determinations — Determinations made or regulations prescribed by the Commission with respect to commercial availability to consumers of converter boxes, interactive communications equipment, and other equipment used by consumers to access multichannel video programming and other services offered over multichannel video programming systems, before February 8, 1996, shall fulfill the requirements of this section.

(2) Regulations — Nothing in this section affects section 64.702(e) of the Commission's regulations (47 C.F.R. 64.702(e)) or other Commission regulations governing interconnection

and competitive provision of customer premises equipment used in connection with basic common carrier communications services.

(e) Sunset — The regulations adopted under this section shall cease to apply when the Commission determines that —

- (1) the market for the multichannel video programming distributors is fully competitive;
- (2) the market for converter boxes, and interactive communications equipment, used in conjunction with that service is fully competitive; and
- (3) elimination of the regulations would promote competition and the public interest.

(f) Commission's authority. — Nothing in this section shall be construed as expanding or limiting any authority that the Commission may have under law in effect before February 8, 1996.

(June 19, 1934, ch. 652, title VI, Sec. 629, as added Pub.L. 104-104, title III, Sec. 304, Feb. 8, 1996, 110 Stat. 125.)

EXHIBIT 2

47 C.F.R. § 76.1201 Rights of subscribers to use or attach navigation devices.

No multichannel video programming distributor shall prevent the connection or use of navigation devices to or with its multichannel video programming system, except in those circumstances where electronic or physical harm would be caused by the attachment or operation of such devices or such devices may be used to assist or are intended or designed to assist in the unauthorized receipt of service.

47 C.F.R. § 76.1202 Availability of navigation devices.

No multichannel video programming distributor shall by contract, agreement, patent right, intellectual property right or otherwise prevent navigation devices that do not perform conditional access or security functions from being made available to subscribers from retailers, manufacturers, or other vendors that are unaffiliated with such owner or operator, subject to §76.1209.

47 C.F.R. § 76.1203 Incidence of harm.

A multichannel video programming distributor 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 restrictions may be accomplished by publishing and providing to subscribers standards and descriptions of devices that may not be used with or attached to its system. 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. In any situation where theft of service or harm occurs or is likely to occur, service may be discontinued.

EXHIBIT 3

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

_____)	
In the Matter of)	
)	
ZOOM TELEPHONICS, INC.)	File No. _____
Complainant,)	
)	
vs.)	
)	
COMCAST CABLE)	
COMMUNICATIONS, LLC,)	
A Subsidiary of)	
COMCAST CORPORATION,)	
Respondent.)	
_____)	

DECLARATION OF WILLIAM HUME VANCE

I, William Hume Vance, hereby declare under penalty of perjury that the following is true and correct to the best of my knowledge.

1. My full name is William Hume Vance; I am generally known as Hume Vance. I am currently the Director of Firmware Engineering for Zoom Telephonics, Inc (“Zoom” or “Zoom Telephonics”).

2. I received a Master of Engineering Degree in Electrical Engineering from Cornell University in 1984, and for the last twenty-six years have worked in the electronics industry.

3. My primary focus has been in the field of telecommunications. From 1984 to 1985, I designed test fixtures and programs for telecommunications integrated circuits at LTX Corporation. From 1985 to 1990, I worked on signal processing at Raytheon Corporation. From 1990 to 1994, I was employed by Motorola, Inc., where I