

SEPARATE STATEMENT OF COMMISSIONER KATHLEEN Q. ABERNATHY

Re: Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices; and Compatibility Between Cable Systems and Consumer Electronics Equipment, Second Report and Order and Second Further Notice of Proposed Rulemaking, CS Docket No. 97-80, PP Docket No. 00-67 (adopted Sept. 10, 2003).

The plug-and-play agreement between the cable television and consumer electronics industries and today's Order adopting final rules are critical milestones in the digital television transition. As a result of this Order, millions of consumers will be able to receive high-definition and other digital programming by connecting a cable wire directly to a digital television or other device — without using a set-top box. Such cable-ready digital television sets should be commercially available by the end of next year or shortly thereafter. I commend the industry groups for their commitment to the collaborative process that made this rulemaking possible, and I appreciate the excellent work of the Media Bureau and my colleagues in drafting the Order and Further Notice.

The Order adopts technical standards regarding the distribution of video programming on digital cable systems and labeling requirements for devices marketed as “digital cable ready.” More controversially, the Order establishes encoding rules — a ban on selectable output control, a ban on the down-resolution of broadcast programming, and copy-protection limits for various categories of programming. Ordinarily, I would strongly prefer to leave such matters to the marketplace. I am quite reluctant to employ regulation to dictate how programming should be protected. Nevertheless, the record demonstrates that the cable and consumer electronics industries would not have resolved these thorny issues without an assurance that *all* MVPDs would be subject to the same rules. In other words, absent regulatory intervention to ensure a level playing field, the digital transition may well have been derailed.

Given this context, I support the encoding rules in the Order, and I take comfort from the fact that our rules are both balanced and narrowly tailored to the governmental interests at stake. For example, we concluded that, at this time, a flat ban on selectable output control is necessary in light of the extreme consequences of an MVPD's use of that tool. By contrast, we have proscribed down-resolution only for broadcast content — rather than banning this tool across the board — because the record demonstrates that this partial ban strikes the optimal balance among the interests of content owners, MVPDs, manufacturers, and, most importantly, consumers. Likewise, we have attempted to maximize flexibility for subscription video-on-demand services and other new business models by declining to mandate uniform copy-protection caps for such services, since they do not fall neatly into the established categories. Wherever possible, I have strived to minimize the degree of governmental intervention.

Finally, I am also pleased that the Order and Further Notice, on balance, will promote innovation to a far greater degree than the existing PHILA licensing process. I recognize that computer manufacturers, software companies, and others are concerned that

the compliance and robustness rules associated with the new DFAST license are skewed in favor of digital televisions and against PCs. Yet, unlike the status quo, which is characterized by a closed certification process and a PHILA license that assigned no express role to the FCC, the Commission's new rules establish a more open certification process and the DFAST license gives the FCC an oversight role in the approval of new outputs and content protection technologies. Through this oversight, the Commission can assure that PCs and other devices with open architectures and alternative copy-protection schemes are included in the DTV transition. It is also important for the Commission to establish this initial framework for one-way digital television receivers, after which a broader array of interests can participate in the development of a two-way standard. I look forward to that second phase and stand ready to take other steps to promote competition in the market for navigation devices and to continue furthering the DTV transition.