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MCDERMOTT, WILL & EMERY

June 4, 1998

EX PARTE OR LATE FILED

VIA MESSENGER

Ms. Magalie R. Salas
Federal Communications Commission
Office of the Secretary
1919 M Street, N.W.
Room 222
Washington, DC 20554

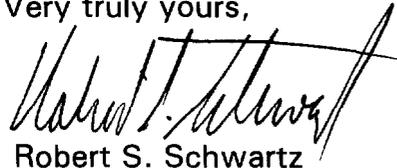
**Re: Notice of Oral and Written Ex Parte Presentation;
Docket No. 97-80**

Dear Ms. Salas:

This is to notify the Office of the Secretary that on June 4, 1998, Robert S. Schwartz of McDermott, Will & Emery, counsel to Circuit City Stores, Inc., provided documents to the office of Chairman Kennard and to the offices of Commissioners Ness, Furchtgott-Roth, Powell and Tristani and to the Cable and Mass Media Bureaus. Copies are enclosed with this notice.

In accordance with the Section 1.1206 of the Federal Communications Commission rules, this original and one copy are provided to your office. A copy of this notice has been hand-delivered to every office mentioned.

Very truly yours,



Robert S. Schwartz

Enclosure

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List A B C D E

June 4, 1998

**Circuit City Position Re Hybrid Digital-Analog Systems
In Which Analog Tier Contains Scrambled Programming**

Circuit City will be proposing a limited exception governing analog MVPD signals. The goals of this draft position are to offer as much flexibility to MVPD operators as is possible, yet still address circumstances in which the use of hybrid analog and digital conditional access and scrambling technologies would frustrate the effective use of a purely digital security interface.

For example, it seems quite possible that some systems may choose to present some valuable pay services only on the analog tier. If such services were to arrive at the set-top in scrambled form, an OpenCable-compliant device would be able to present the analog pay programming ONLY if the device contains analog descrambling circuitry. If such circuitry were embedded in the device, and there were no security interface for scrambled analog signals, the device could be provided only by the MVPD and not in any competitive retail product. This result would frustrate the goals of both the OpenCable project and this proceeding.

Accordingly, Circuit City believes that, for MVPD systems that choose to deliver scrambled analog and digital programming to the same subscriber in the manner described above, it is crucial that, through the OpenCable project or otherwise, an interface for analog security be provided and supported to the same extent as one for digital security. However, this would not be necessary in the following instances:

- (a) Where only analog services are provided to the subscriber.
- (b) Where the analog services provided to the subscriber have not been scrambled or otherwise encrypted in a way that would impede reception and display through circuitry now in use by consumer electronics and computer manufacturers.
- (c) Where the analog services, whether or not originally scrambled or otherwise protected, arrive at the set-top "in the clear" (e.g., through interdiction or multichannel descrambling).
- (d) Where the subscriber has the option of receiving any scrambled analog programming as digital programming also offered by that MVPD.

Circuit City urges the Commission to give priority, in its rules, to assuring that its orders as to digital programming will not be frustrated through hybrid service offerings of scrambled signals. It has proposed draft provisions that afford several options, as described above, for MVPDs to achieve this goal,

Circuit City Analysis Re POD Availability

To determine the design impact of the security module and security interface we begin with a basic block diagram of each. We assume the embedded design is complete, since orders have been taken and shipments are about to occur or have already begun. As this is the case, the entire conditional access system has been designed, implemented and tested.

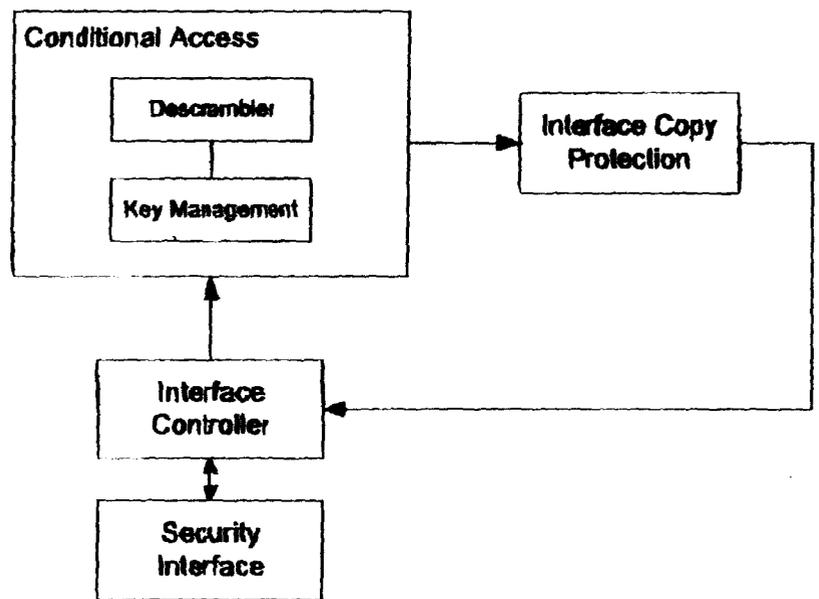
Due to the high volume orders already placed for these set top boxes one can be assured that the conditional access implementation has been optimized for minimal parts cost, minimum P.C. board real estate and minimal cost. As we look at the block diagrams we see that the significant change to the set top box for non-embedded security is the design of circuitry to interface to the external module, the control of the interface, and interface copy protection and authentication.

Although the specifications for these elements are not complete, the majority of the work has been completed and the open cable initiative expects the final specification to be complete by year-end. Based upon our current evaluation of the specifications and the overall design process, we believe set top boxes with the security interface can be available mid-1999. During this development the entire interface must be thoroughly tested. This would include the interface, interface controller, interface copy protection and the appropriate firmware to drive it. This would require at a minimum a prototype security module in order to check all electrical and timing specifications.

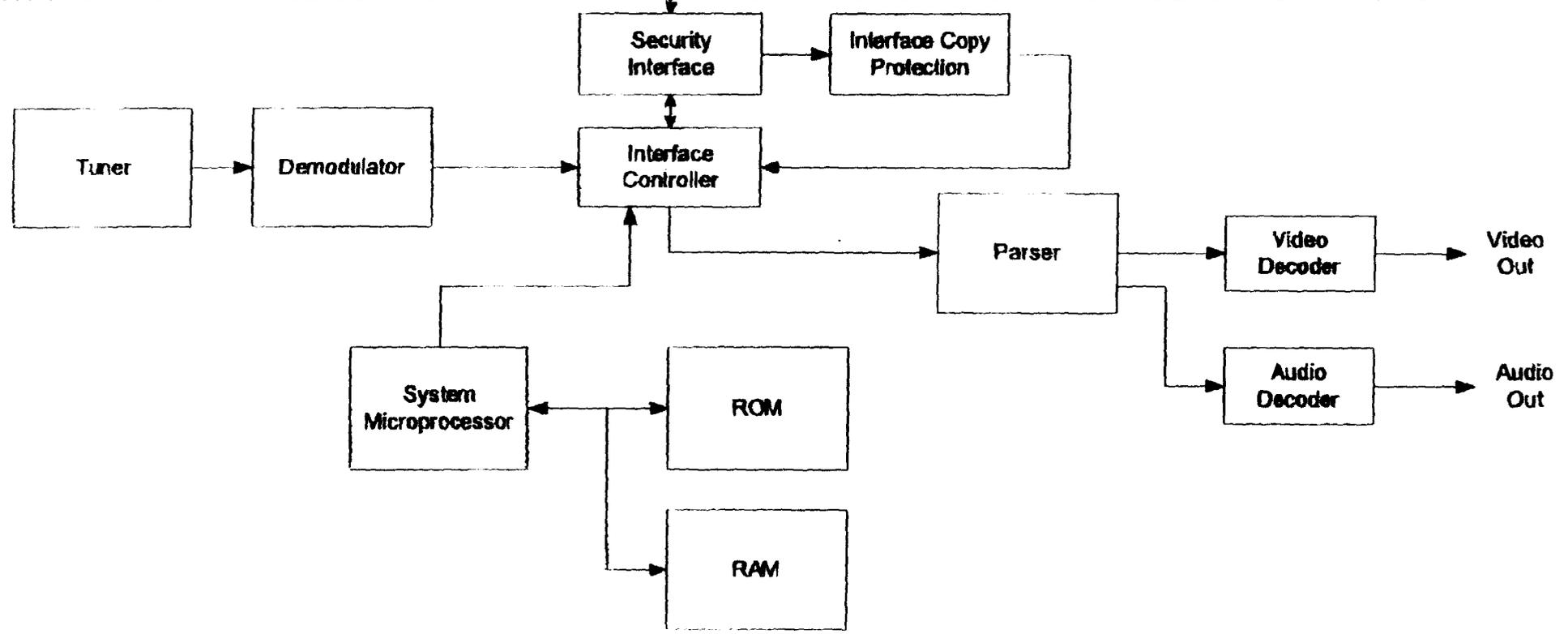
In addition, all interface commands and data paths must be verified. In other words, all aspects of the security module must be tested as part of the process of ensuring the security interface on the set top box performs properly. Upon further study one can see that the security interface is truly bi-directional, which means that the interface design in the set top box must be basically identical to the design in the security module. The same can be said for the interface -- copy protection circuitry, although not bi-directional, must be complimentary. Here again the design for the set top box will also set the design for the security module.

Finally the most significant part of the security module design is the conditional access system, which must also be part of the security module prototype. Fortunately, this portion has already been done as required for the embedded design. At worst, some implementation partitioning might change, but the design should be basically lifted from the embedded design. When one stands back and reviews these items, it becomes obvious that the security module design should be complete about the same time as the set top box with the security interface. The only additional issue is the package, which includes a new P.C. board and a mechanical enclosure that one should expect to be similar to standard PCMCIA devices.

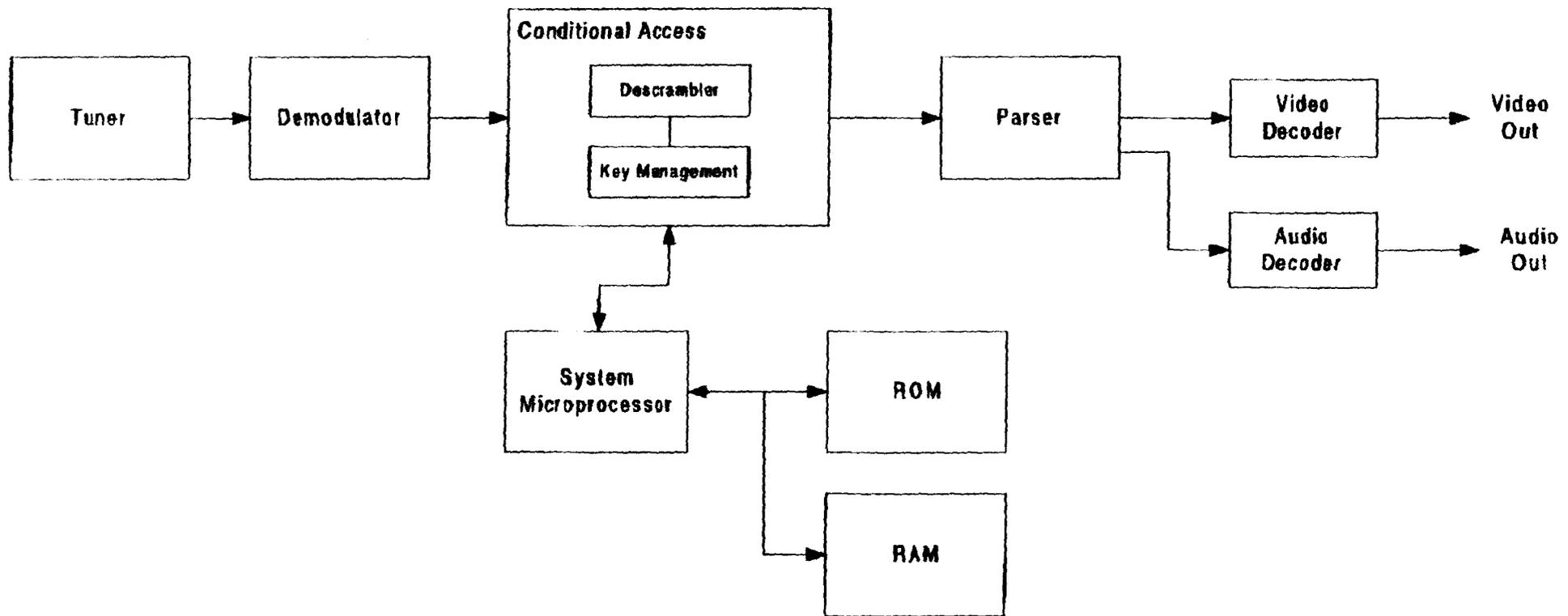
P.C. board design and PCMCIA packaging involve well-known methods, usually requiring lead-times of 2 to 3 months. **Thus there should be no reason that security modules should be more than a few months behind the set top boxes with security interfaces.** We agree that, long term, there will be opportunities to lower the cost of the security module by higher integration silicon techniques that typically require design cycles of 12 months or more -- but rarely do you find this level of integration in a first-generation products. All elements required for the security module will clearly be developed, prototyped and tested early enough in the process with techniques and technology which will be similar in approach and cost to those in the set top box. Thus, the first generation module should not be delayed substantially beyond the availability of the "box." This should allow first generation modules in 1999 with 2nd generation (lower cost ,higher silicon integration) available in 2000.



Security Module



Set Top Box with Security Interface



Part 76, Subpart T

COMMERCIAL AVAILABILITY OF MULTICHANNEL VIDEO PROGRAMMING DISTRIBUTOR NAVIGATION DEVICES

76.1600 Definitions

(a) *Navigation Devices*: equipment that is used to receive the multichannel video programming and other services provided over an MVPD system.

(b) *Security Equipment*: equipment installed on or with respect to an MVPD subscriber's premises that uses scrambling, encryption or other techniques to prevent the unauthorized reception of multichannel video programming and other services provided over MVPD systems.

(c) *Cable System Terminal Devices*: equipment installed on a cable television subscriber's premises by a cable system operator providing the functionalities of cable navigation devices and cable security equipment on an unseparated basis.

76.1601 Provision of Equipment

(a) *Security Equipment*. Security Equipment may be provided only by an MVPD system operator. Such equipment (1) may only be used by the system operator to control access to multichannel video programming and other services provided over an MVPD system, subject to the requirements of Section 76.630 of this part, and (2) may not provide subscribers with any non-security-related functionality provided by Navigation Devices and other consumer electronics equipment available from retailers, manufacturers and other vendors on a commercial basis.

(b) *Navigation Devices*. (1) An MVPD system operator may offer Navigation Devices to its subscribers for lease or purchase, provided that the charges for such devices are separately stated and are not subsidized by the system operator's service offerings. (2) Retailers, manufacturers and other entities not affiliated with MVPD system operators may provide Navigation Devices to subscribers on a commercial basis.

76.1602 Introduction of Interoperable Security Equipment

(a) *New Equipment*. As of the date twelve months from the effective date of the order creating this section, an MVPD system operator shall make available to all new subscribers for any service Security Equipment that complies with the definitional and interoperability provisions of this subpart, and will enable the use of Navigation Devices that are commercially available from manufacturers, retailers, and other vendors not affiliated with the MVPD system operator.

(b) Replacement of Equipment by the MVPD System Operator. As of the date twelve months from the effective date of the order creating this section, MVPD system operators that make changes to a subscriber's service so as to necessitate the replacement of a Cable System Terminal Device or other similar MVPD device or Navigation Device on the subscriber's premises shall make available Security Equipment that complies with the definitional and interoperability provisions of this subpart, and will enable the use of Navigation Devices that are commercially available from manufacturers, retailers, and other vendors not affiliated with the MVPD system operator.

(c) Subscriber Requests. As of the date twelve months from the effective date of the order creating this section and upon the request of a subscriber, an MVPD system operator must replace a previously installed Cable System Terminal Device or similar MVPD device or Navigation Device with Security Equipment that complies with the definitional and interoperability provisions of this subpart, and will enable the use of Navigation Devices that are commercially available from manufacturers, retailers, and other vendors not affiliated with the MVPD system operator.

(d) Deployment of Nonconforming Equipment. As of the date twelve months from the effective date of the order creating this section, MVPD system operators are prohibited from putting into service any equipment installed on or with respect to an MVPD subscriber's premises that will not function with Security Equipment that complies with the definitional and interoperability provisions of this subpart or enable the use of Navigation Devices that are commercially available from manufacturers, retailers, and other vendors not affiliated with the MVPD system operator.

(e) Deployment of Integrated Boxes. As of the date twelve months from the effective date of the order creating this section, no MVPD may deploy a Navigation Device with embedded Security Equipment.

(f) Rate Parity. An MVPD may not discriminate in the method used to calculate the rate it charges for Navigation Devices, Security Equipment or other categories of equipment or services that it provides to subscribers or potential subscribers to access its services and the method used to calculate the rate it charges to provide equipment or services necessary to allow subscribers or potential subscribers to access the MVPD's services using Navigation Devices secured through third-parties.

76.1603 Interoperability

(a) Security Equipment used for cable television shall comply with Section 15.115 of this chapter, and with the technical standards and consumer electronics compatibility requirements of subpart K of this part. In addition, the provision of security functionality by Security Equipment used by any MVPD will conform to appropriate technical standards promulgated by a national standards organization accredited by the American National Standards Institute, such as the analog decoder interface standard (EIA/IS-105.1, 105.2), the digital National Renewable Security Standard ("NRSS") (EIA/IS-679),

or other industry specifications suitable for ultimate adoption as an industry standard, insofar as such standards address the security functionalities required by the cable system operator. Security-related features, functions, techniques or protocols not encompassed in such standards may be utilized by MVPD system operators subject to the technical information disclosure requirements of this section.

(b) Navigation Devices shall not provide system security functionality such as that provided by Security Equipment.

(c) Navigation Devices shall comply with the requirements for TV interface devices and cable-ready consumer electronics equipment found in Sections 15.115 and 15.118 of this chapter, but in any event the interface of such equipment with Security Equipment will conform to appropriate technical standards promulgated by a national standards organization accredited by the American National Standards Institute, such as the analog decoder interface standard (EIA/IS-105.1), the digital National Renewable Security Standard ("NRSS") (EIA/IS-679), or other industry specifications suitable for ultimate adoption as an industry standard.

(d) An MVPD system operator, through the deployment of Security Equipment that is incapable of functioning via a standard security interface or through any requirement that a Navigation Device conform to design or performance specifications that are unique to a local MVPD system, shall not restrict the ability of a subscriber to use a Navigation Device that is manufactured or configured for approved use on any MVPD system in the United States from using such Navigation Device, without modification, on any other system in the same service class within the United States.

(e) Cable system operators shall ensure that the delivery of digital cable television services offered as of the date twelve months from the effective date of the order creating this section will conform to appropriate technical standards promulgated by national standards organizations accredited by the American National Standards Institute covering all technical characteristics affecting the interoperability of cable Navigation Devices, such as, but not limited to:

- (1) ATSC Digital Television, A/53;
- (2) RF Interface Specification for Television Receiving Devices and Cable Television Systems, EIA-23;
- (3) Cable Television Channel Identification Plan, EIA-542;
- (4) Digital Transmission Standard for Cable Television, SCTE DVS-031;
- (5) Digital Video Service Multiplex and Transport System Standard for Cable Television, SCTE DVS-093;

- (6) "Class A" Issues-Profiles, Levels and Formats, SCTE DVS-033;
 - (7) Program and System Information Protocol for Terrestrial Broadcast and Cable, SCTE DVS- 097;
 - (8) High Performance Serial Bus, IEEE 1394;
 - (9) Standards equivalent to those listed above.
- (f) The MVPD system operator may make changes to the system, services, facilities, operations or procedures, where such action is not inconsistent with the rules and regulations in this part. To the extent that the MVPD modifies its Security Equipment, thus rendering the subscriber's Navigation Device inoperable with the services delivered by the system, the MVPD must provide to the subscriber, at no cost, any new Security Equipment necessary to cause the Navigation Device to again be operable.
- (g) As of the date six months from the effective date of the order creating this section and within thirty days of the receipt of a request from a manufacturer, retailer, and other vendor that is not affiliated with the MVPD system operator, the system operator shall provide to the requesting party the technical information necessary to design Navigation Devices that will be interoperable with services delivered by the MVPD system, or shall provide reasonable terms for nondisclosure agreements under which such information may be obtained.
- (h) Upon the decision by the MVPD system operator to make changes to the system, services, facilities, operations or procedures that can reasonably be expected to render any subscriber's Navigation Devices no longer interoperable with the services delivered by the system, or require modification or alteration of such Navigation Device, or otherwise materially affect its use or performance, and in event no later than six months before such changes in the system are effected, the MVPD system operator shall make reasonable efforts to notify manufacturers, retailers, and other vendors of Navigation Devices commercially available to subscribers of services delivered by the MVPD system of such changes. Such notification will also provide the technical information necessary for manufacturers of commercially available Navigation Devices to design such devices that will be interoperable with services delivered by the MVPD system after the changes to the system have been effected, or will provide reasonable terms for nondisclosure agreements under which such information may be obtained.
- (i) Proprietary information owned or controlled by an MVPD and necessary to make a Navigation Device shall be licensed to the manufacturer upon request of the manufacturer. Any royalties or fees associated with the licensing of such proprietary information, other than those addressed in Section 76.1607 and nominal fees for certification, shall not be borne by the manufacturer.

76.1604 Equipment Authorization for Cable System Terminal Devices

Compliance with the Declaration of Conformity provisions set forth in Parts 2 & 15 of this chapter requires that, as of the date twelve months from the effective date of the order creating this section, manufacturers and importers of Cable System Terminal Devices may no longer market or import such devices to the extent that they include cable system security functionality such as that provided by Security Equipment, except for equipment subject to a waiver granted under Section 76.1605 of this part.

76.1605 Waiver

MVPD system operators may request waivers of any or all of the requirements of this subpart. Such a request shall, at a minimum, include:

- (a)* A showing by the MVPD system operator that such waiver is necessary to assist the development or introduction of a new or improved multichannel video programming or other service offered over the system;
- (b)* A showing by the MVPD system operator that the delivery of such new or improved multichannel video programming or other service offered over the system is not possible through the use of currently commercially available Navigation Devices;
- (c)* A showing by the MVPD system operator that any changes to the system that can reasonably be expected to render any subscriber's cable navigation devices no longer interoperable with the services delivered by the system, or require modification or alteration of such Navigation Device, or otherwise materially affect its use or performance, are directly related to the delivery of such new or improved multichannel video programming or other service offered over the MVPD system, and that subscribers' Navigation Devices will remain interoperable with the services delivered by the MVPD system that are unaffected by the delivery of such new or improved multichannel video programming or other service offered over the system;
- (d)* The technical information necessary for manufacturers of commercially available Navigation Devices to design such devices that will be interoperable with such new or improved multichannel video programming or other service offered over the MVPD system, or the reasonable terms for nondisclosure agreements under which such information may be obtained;
- (e)* An estimation of the date the waiver should be terminated based on the expected date of commercial availability of Navigation Devices that will be interoperable with such new or improved multichannel video programming or other service offered over the system.

76.1606 Sunset

The provisions of this subpart shall sunset when the Commission determines that: (1) the market for the specific MVPD service is fully competitive; (2) the market for Navigation Devices and other consumer electronics equipment used in connection with the specific MVPD service is fully competitive; and (3) the elimination of regulation would promote competition and the public interest.

76.1607 Certain Digital Transmission Systems

An MVPD that, as of the effective date of this section, supports the active use by subscribers of Navigation Devices (1) that operate portably throughout the continental United States, (2) all of which utilize for security a security architecture, all or some portion of which is physically replaceable, (3) that are commercially available throughout the continental United States from retailers and other vendors not affiliated with the MVPD, and (4) that are made available for manufacture by companies not affiliated with the MVPD, is exempt from the provisions of Sections 76.1601, 76.1602, 76.1603 and 76.1604.

76.1608 Delivery of Analog MVPD Signals

An MVPD is exempt from the provisions of Sections 76.1601, 76.1602, 76.1603 and 76.1604 for systems on which it:

- (a) Delivers only analog multichannel video programming and other services; or
- (b) Delivers analog multichannel video programming and other services to a subscriber without encryption or scrambling; or
- (c) Delivers analog multichannel video programming and other services to a subscriber without any equipment-based security installed as customer premise equipment inside a subscriber's premises; or
- (d) Delivers multichannel video programming and other services as part of a complete double carry analog and digital system.