

bidirectional CableCARD standard.¹⁷³ As noted above, the six largest cable operators and numerous consumer electronics manufacturers negotiated an agreement for bidirectional compatibility that continues to rely on and builds on the standards for CableCARDs by using a middleware-based solution called “tru2way.” As the cable industry and the consumer electronics industry have concluded their negotiations on a bidirectional CableCARD standard, we do not believe it is necessary for those parties to continue to file status reports regarding those negotiations, and we therefore eliminate that requirement. As we will still require cable operators to commonly rely on CableCARDs in certain set-top boxes, we will retain the requirement that Comcast Corporation, Time Warner Cable, Cox Communications, Charter Communications, and Cablevision file quarterly reports detailing CableCARD deployment and support.¹⁷⁴

E. Petitions for Reconsideration

53. The Commission also has before it eight petitions for reconsideration in this docket. NCTA, DIRECTV, Genesis Microchip, Inc., MPAA, Broadcast Music, Inc. and the American Society of Composers, Authors and Publishers (“BMI and ASCAP”), and the National Music Publishers’ Association et al. (“NMPA”) separately filed petitions for reconsideration of the *Plug and Play Order*, while NCTA and MPAA also petitioned for reconsideration of the Commission’s *Sua Sponte Reconsideration Order*.¹⁷⁵ As noted below, many of these petitioners seek reconsideration of the Commission’s encoding rules.¹⁷⁶ Our encoding rules prescribe whether and how MVPDs may mark different forms of content (e.g., broadcast, non-premium subscription, pay television, video-on-demand, etc.) to limit the number of times the content may be copied. In addition to the petitions for reconsideration of orders adopted in the plug-and-play dockets, the Commission has before it a petition for reconsideration filed by TiVo, Inc., which is mooted by the rule changes adopted in this order.

54. *NCTA*. Our device certification rules allow device manufacturers to self-certify CableCARD devices once they have received CableLabs certification for any certified CableCARD device.¹⁷⁷ NCTA urges the Commission to reconsider the rule that a manufacturer’s certified first “product” eliminates the need for its first television set to be tested if the manufacturer has already received certification for a set-top box.¹⁷⁸ NCTA asserts that digital televisions (“DTVs”) are more complex than DVR devices or other products, and that a manufacturer’s first television should be tested in order to ensure that consumers’ televisions are able to receive digital cable programming.¹⁷⁹ We agree. As NCTA explains in its petition for reconsideration, “unless the first tested UDCP is a DTV, there will be no real test that the UDCP actually and clearly displays encrypted programming, [emergency alert system] messages, [Program and System Information Protocol] information, and closed captions so there

¹⁷³ See *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, 20 FCC Rcd 6794, 6795, ¶ 3 (2005).

¹⁷⁴ *Id.* at 6814-5, ¶ 39.

¹⁷⁵ See *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices; Compatibility Between Cable Systems and Consumer Electronics Equipment*, 18 FCC Rcd 27059 (2003) (“*Sua Sponte Reconsideration Order*”).

¹⁷⁶ See 47 C.F.R. §§ 76.1901-76.1909.

¹⁷⁷ 47 C.F.R. § 15.123.

¹⁷⁸ NCTA Petition for Reconsideration of the Plug and Play Order at 11 (filed December 29, 2003).

¹⁷⁹ *Id.* at 11-12.

is no assured compliance with all of the relevant standards in the agreed-upon Joint Test Suite.”¹⁸⁰ We conclude that making such testing a part of our rules is necessary to ensure that new devices are built to comply with the Commission’s rules. Accordingly, we grant NCTA’s petition for reconsideration with respect to this issue, and modify our rules to clarify that a manufacturer may not self-certify its first DTV.¹⁸¹

55. Next, NCTA asserts that the Commission’s rules permit too much flexibility in defining a qualified testing facility, and would allow unqualified organizations to test plug and play products because our rules do not require test facilities to be impartial or have appropriate testing equipment.¹⁸² NCTA urges us to define “qualified testing facility” more precisely. CEA disagrees, asserting that NCTA bases its assertions on unfounded security concerns.¹⁸³ We agree with NCTA’s assertions that it is important for our rules to require that qualified testing facilities are impartial organizations whose employees have a detailed understanding of the Joint Test Suite for CableCARD products. We do not believe that NCTA’s security concerns are unfounded, nor do we believe that NCTA’s suggested rule change will hinder independent testing facilities from becoming “qualified testing facilities.” Therefore, we adopt NCTA’s recommendation by modifying our rules to specifically require testing facilities to be impartial and have appropriate testing equipment.¹⁸⁴ To the extent that there are disagreements regarding whether specific testing facilities meet the standards set forth in our modified rule, we will consider such disagreements on a case-by-case basis.

56. In its final critique of the *Plug and Play Order*, NCTA takes issue with the language of certain Commission rules. NCTA asserts that the Commission’s rules should unequivocally state that digital cable ready products must “pass” applicable tests, rather than the current requirement which merely requires that the devices be subject to testing.¹⁸⁵ NCTA also requests that we amend our rules to clarify that a cable operator may carry more than 12 hours of programming metadata (Program and System Information Protocol or “PSIP” data)¹⁸⁶ if it so chooses, and shall only be required to carry PSIP data that conforms to the standards adopted by the Advanced Television Systems Committee for transmission of that data.¹⁸⁷ As these requests will clarify the Commission’s intent in the *Plug and Play Order*, we adopt them without exception.¹⁸⁸

57. NCTA’s petition for reconsideration of the *Sua Sponte Reconsideration Order* requests that the Commission clarify that programming that is not retransmitted “substantially simultaneously” to

¹⁸⁰ *Id.* at 12, n.17. The Joint Test Suite refers to the CableCARD device conformance checklists incorporated into Section 15.38 of our rules.

¹⁸¹ See Appendix B at 42-44 (amending Section 15.123).

¹⁸² NCTA Petition for Reconsideration of the Plug and Play Order at 12-17.

¹⁸³ CEA/CERC Opposition to NCTA Petition for Reconsideration at 25-26 (filed March 10, 2004).

¹⁸⁴ See Appendix B at 43 (amending Section 15.123(c)(2)).

¹⁸⁵ NCTA Petition for Reconsideration of the Plug and Play Order at 17.

¹⁸⁶ Programming metadata is information about television programming that can be used to populate programming guides. Examples of PSIP data include the system time table, the terrestrial virtual channel table, and the event information table. This information allows viewers to choose what to watch using program descriptions rather than just channel numbers.

¹⁸⁷ *Id.* at 17-20. The standard that the Commission adopted for PSIP data transmission is ATSC A/65B.

¹⁸⁸ See Appendix B at 42-44 (amending Section 15.123(c)).

the time it is broadcast is not considered "Unencrypted Broadcast Television" under our encoding rules.¹⁸⁹ Currently, our rules define "Unencrypted Broadcast Television" as the retransmission of any service, program, or schedule or group of programs that is made by a terrestrial television broadcast station in the clear (*i.e.*, without any encryption).¹⁹⁰ NCTA asserts that it is likely that this definition is broader than the Commission intended. NCTA states, as an example, that the omission of the term "substantially simultaneously" prevents it from placing copy protections on VOD content that was originally delivered over the air because it is a retransmission of a program that was initially made by a terrestrial television broadcast station. With our encoding rules, we intend to reflect consumer expectations that they may freely copy unencrypted broadcast programming as it airs. We also intend to reflect that consumers do not have the expectation that they may freely copy all content simply because it was available over the air at one point during the history of television broadcasting. Therefore, we agree with NCTA's assertion that we should add the phrase "substantially simultaneously" back into the definition of "Unencrypted Broadcast Television," for the reason that NCTA provides.¹⁹¹

58. *DIRECTV*. *DIRECTV* urges the Commission to close what it calls the "broadband loophole" in the encoding rules.¹⁹² According to *DIRECTV*, cable operators and telcos will be able to subvert the Commission's encoding rules by delivering their video offerings over the Internet, which are specifically exempt from our encoding rules.¹⁹³ We understand *DIRECTV*'s concern, but there is no evidence that any MVPD is using Internet-based delivery to subvert our encoding rules. If *DIRECTV* has evidence that this concern is more than hypothetical and is harming consumers, we urge the company to file a petition for declaratory ruling or a petition for rulemaking. Therefore, we deny this portion of *DIRECTV*'s petition for reconsideration.

59. *DIRECTV* next argues that the Commission should define minimum standards that include an IEEE 1394 interface.¹⁹⁴ *DIRECTV* is concerned that television manufacturers could build sets with IEEE 1394 connections that support a cable-only version of IEEE 1394, and prevent consumers from connecting satellite boxes to their television sets. Given the rule change that we adopted in Section III.B above to remove the IEEE 1394 output requirement, and the limited consumer adoption of IEEE 1394 outputs on television sets, we dismiss *DIRECTV*'s petition for reconsideration as moot on this point.

60. *DIRECTV* also takes issue with the Commission's decision to provide CableLabs with the authority to approve and reject content protection technologies for set-top box outputs and to license DFAST technology, which is the content protection scheme used between CableCARDs and UDCPs.¹⁹⁵ *DIRECTV*'s objections are based on a concern that CableLabs could use its licensing power for anti-competitive purposes against *DIRECTV*'s services and devices by preventing *DIRECTV* devices from using DFAST or rejecting *DIRECTV*'s preferred content protection technologies.¹⁹⁶ The intervening

¹⁸⁹ NCTA Petition for Reconsideration of the Sua Sponte Reconsideration Order at 2-3 (filed Feb. 26, 2004). *See* 47 C.F.R. § 76.1902(s). MPAA makes the same argument in one of its petitions for reconsideration. *See* MPAA Petition for Reconsideration of the Sua Sponte Reconsideration Order at 1-3.

¹⁹⁰ 47 C.F.R. § 76.1902(s).

¹⁹¹ *See* Appendix B at 47-48 (amending Section 76.1902(s)).

¹⁹² *DIRECTV* Petition for Reconsideration at 4-5 (filed December 29, 2003).

¹⁹³ *Id.* *See* 47 C.F.R. § 76.1901

¹⁹⁴ *DIRECTV* Petition for Reconsideration at 6-7.

¹⁹⁵ *Id.* at 7-8.

¹⁹⁶ *Id.*

years since the adoption of the *Plug and Play Order* have demonstrated that these concerns are without merit. Indeed, as of June 30, 2003, 20.4 million households in the U.S. subscribed to DBS service;¹⁹⁷ as of June 2010, that number increased to over 33 million,¹⁹⁸ and DIRECTV has not established that CableLabs has rejected any content protection technology to DIRECTV's detriment. Furthermore, we have invited DIRECTV and others to cooperate with the Commission as we seek to develop a successor technology to CableCARD that would apply to all MVPDs.¹⁹⁹ Accordingly, we deny DIRECTV's petition for reconsideration.

61. *Genesis Microchip*. Genesis Microchip takes issue with the Commission's requirement that a DVI or HDMI interface be included on a digital cable ready device.²⁰⁰ Genesis Microchip asserts that DVI and HDMI were not developed by standards development organizations such as IEEE and ANSI, and are not available on a non-discriminatory basis.²⁰¹ Genesis Microchip also asserts that the Commission's requirement violates the Administrative Procedure Act.²⁰² Opponents to Genesis Microchip's petition for reconsideration point out correctly that the Commission addressed Genesis Microchip's arguments in the *Plug and Play Order*, stating that "the technology underlying these specifications is widely available in the marketplace today" and that "the adopter agreements for these technologies are freely offered on non-discriminatory terms."²⁰³ Furthermore, HDMI is a ubiquitous output, available on an estimated one billion devices,²⁰⁴ and we are convinced that Genesis Microchip's objections are not supported by marketplace reality. Therefore, we deny Genesis Microchip's petition for reconsideration.

62. *MPAA*. MPAA seeks reconsideration of four points in the *Plug and Play Order*.²⁰⁵ First, MPAA asserts that the Commission should mandate that all digital cable ready devices be built with the capability to recognize and honor video programming that is encoded with a request to remotely disable selected audio/video outputs, also known as "selectable output control." MPAA believes that selectable output control functionality is essential to protect content and facilitate future business models that take advantage of selectable output control functionality. We do not believe that such a mandate is necessary.

¹⁹⁷ *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, 19 FCC Rcd 1606, 1652, ¶ 65 (2004).

¹⁹⁸ http://files.shareholder.com/downloads/DTV/1008238777x0x393781/3FD65B79-BAF3-4CB4-B355-7BAC79FE15AB/DTV_News_2010_8_5_General_Releases.pdf;
<http://online.wsj.com/article/SB10001424052748704388504575419031760134088.html>.

¹⁹⁹ See *NOI 25* FCC Rcd at 4276, ¶ 2.

²⁰⁰ Genesis Microchip Petition for Reconsideration at 1-3 (filed December 29, 2003). HDMI and DVI are digital interfaces that transfer uncompressed video (and audio, in the case of HDMI) data to a display, such as a television set. The Commission's rule regarding labeling of certain television sets as "Digital Cable Ready" requires the television set manufacturer to include an HDMI or a DVI interface. 47 C.F.R. § 15.123(b)(6).

²⁰¹ Genesis Microchip Petition for Reconsideration at 6-13.

²⁰² *Id.* at 13-18.

²⁰³ *Plug and Play Order*, 18 FCC Rcd at 20897, ¶ 25. See also NCTA Opposition to Genesis Microchip Petition for Reconsideration at 5-9 (filed March 10, 2004); Silicon Image, Inc. Opposition to Genesis Microchip Petition for Reconsideration at 3-7 (filed March 10, 2004).

²⁰⁴ See High Definition Multimedia Interface, Frequently Asked Questions, at <http://www.hdmi.org/learningcenter/faq.aspx>.

²⁰⁵ MPAA Petition for Reconsideration at 1 (filed December 29, 2003).

In May 2010, the Commission's Media Bureau released an order granting in part MPAA's request for waiver of the prohibition on the use of selectable output control for certain high-value films in order to support a new business model of delivering early-release films over MVPD systems to consumers.²⁰⁶ As MPAA argued in support of that waiver, "the use of SOC would have no impact whatsoever on the ability of existing [consumer electronics equipment] to work in exactly the same fashion that such devices work today."²⁰⁷ While it is possible that consumer electronics manufacturers may want to build devices with SOC in order to be compatible with future business models like the early-release film model, as they are free to do under our rules, we do not believe that it is necessary to require such functionality to protect high-value content or ensure the success of such future business models.²⁰⁸ Therefore, we do not believe that it is necessary to mandate that such functionality be built into consumer electronics devices, and we deny MPAA's petition for reconsideration with respect to this issue.

63. Second, MPAA would like Subscription VOD designated as a defined business model. Subscription VOD is a video-on-demand service that requires customers to subscribe to a service to gain access to the on-demand programming. In the *Plug and Play Order*, the Commission classified Subscription VOD as an Undefined Business Model, in order to "allow[...] SVOD to more fully develop as a program offering in the marketplace."²⁰⁹ MPAA asserts that because the Commission did not explicitly adopt a rule that allows cable operators to prohibit their subscribers from copying Subscription VOD, the Commission will stifle the development of the service. Starz Encore Group originally opposed this petition, arguing that the Commission's flexible rules would encourage SVOD to flourish,²¹⁰ but later withdrew its opposition based on its new position that the "Undefined Business Model" public notification process is "difficult and cumbersome . . . for cable operators to navigate."²¹¹ We conclude that MPAA's concerns were unfounded, and that the procedures agreed upon in the MOU are sufficient to meet the needs of content owners, MVPDs, and their subscribers. As contemplated in the *Plug and Play Order*, Subscription VOD services have thrived in the marketplace, as Starz On-Demand, HBO On-Demand, Cinemax On-Demand, and Showtime On-Demand are all popular services available to

²⁰⁶ *Motion Picture Association of America's Petition for Expedited Special Relief; Petition for Waiver of the Commission's Prohibition on the Use of Selectable Output Control* (47 C.F.R. § 76.1903), 25 FCC Rcd 4799 (2010). Section 76.1903 prohibits MVPDs from encoding content in such a manner that disables certain audiovisual outputs on set-top boxes.

²⁰⁷ See Letter from Antoinette Cook Bush and Jared S. Sher, Counsel, Motion Picture Association of America, to Marlene H. Dortch, Secretary, Federal Communications Commission, MB Docket No. 08-82, at 2 (Nov. 23, 2009).

²⁰⁸ See Public Knowledge Opposition to MPAA Petition for Reconsideration at 3-6 (filed March 10, 2004); Home Recording Rights Coalition Opposition to MPAA Petition for Reconsideration at 2-4 (filed March 10, 2004). See also CEA/CERC Opposition to MPAA Petition for Reconsideration at 2-11 (filed March 10, 2004).

²⁰⁹ *Plug and Play Order* 18 FCC Rcd at 20918, ¶ 74. Under the Commission's rules, Undefined Business Models are subject to public review of how they are encoded for recording purposes, whereas certain Defined Business Models, such as pay-per-view, are allowed to be encoded as "copy never." 47 C.F.R. §§ 76.1904-76.1906. Entities that are subject to the encoding rules are allowed to encode Undefined Business Model content as they see fit, with the caveat that the Commission may review the encoding of that Undefined Business Model if we receive a complaint about it during the public review period. 47 C.F.R. § 76.1906.

²¹⁰ Starz Encore Group LLC's Opposition to MPAA's Petition for Reconsideration at 3-7 (filed March 10, 2004).

²¹¹ Letter from Richard H. Waysdorf, Vice President, Business Affairs, Starz Entertainment Group LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission at 1 (April 15, 2005).

consumers.²¹² Subject to the review process for Undefined Business Models set forth in Section 76.1906 of our rules,²¹³ content providers and MVPDs are free to negotiate the terms for how such business models are encoded. To the extent that any interested party has specific problems with the current state of the encoding of any SVOD service, our rules set forth procedures for filing complaints regarding how such content is encoded.²¹⁴ Accordingly, we deny MPAA's petition for reconsideration with respect to this issue.

64. Third, MPAA seeks simplified procedures for announcing and challenging the launch of an Undefined Business Model for content encoding purposes. When an entity launches a new video programming service that is not defined in our encoding rules, that entity must announce its launch publicly, describe the service, and explain how it will be encoded for recording purposes.²¹⁵ Interested parties may then challenge the encoding terms for up to two years after the announcement of the service. MPAA's challenge stems from a concern that Undefined Business Model announcements will lead to regulatory uncertainty because numerous MVPDs will be required to make announcements regarding these new business models, and that the window for accepting such challenges is too long. We disagree. This rule has been in effect for over six years, and the Commission has not received a single challenge regarding the encoding rules for an undefined business model. Accordingly, we conclude that MPAA's speculative challenge is unfounded.

65. Fourth, MPAA seeks clarification that Section 76.1908(a),²¹⁶ which allows MVPDs to maintain undistributed copies of audio-visual content that is encoded in any way the MVPD chooses, does not nullify contractual obligations between MVPDs and content providers. MPAA is correct in its assertion that the Commission did not intend that MVPDs be allowed to use Section 76.1908(a) of the Commission's rules to make copies of "Copy Never" content on a PVR in a consumer's home. Therefore, we clarify that Section 76.1908(a) does not permit MVPDs to make copies of content that would violate agreements between content owners and MVPDs.²¹⁷

66. Finally, MPAA seeks review of the Commission's *Sua Sponte Reconsideration Order* on the same grounds that NCTA does.²¹⁸ For the same reasons provided in our consideration of NCTA's petition above in paragraph 57, MPAA's petition is granted with respect to this issue.

67. *BMI and ASCAP*. BMI and ASCAP have filed a petition for reconsideration seeking a declaration that performance rights organizations are allowed to decrypt content that has been encrypted, when used solely for the purpose of monitoring and tracking transmissions of audiovisual works for royalty purposes.²¹⁹ We do not believe that a rule change is necessary for such a narrow exception of our

²¹² *Plug and Play Order*, 18 FCC Rcd at 20917-8, ¶ 73-74. See, e.g., www.starz.com/channels/ondemand/; <http://www.hboondemand.com/>; <http://www.cinemax.com/ondemand/>; <http://www.sho.com/site/schedules/ondemand.do>.

²¹³ 47 C.F.R. § 76.1906.

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ 47 C.F.R. § 76.1908(a).

²¹⁷ See Appendix B at 48 (amending Section 76.1908(b)).

²¹⁸ MPAA Petition for Reconsideration of the Sua Sponte Reconsideration Order at 2-3 (filed Feb. 27, 2004).

²¹⁹ BMI and ASCAP Petition for Reconsideration at 2-3 (filed December 24, 2003).

rules, and we agree with the Home Recording Rights Coalition that the Commission does not have the authority to grant a waiver of the Digital Millennium Copyright Act's prohibition on circumventing content encryption.²²⁰ Accordingly, we deny BMI and ASCAP's petition for reconsideration.

68. *NMPA*. The National Music Publishers Association seeks reconsideration of the Commission's decision not to require output controls on digital audio outputs.²²¹ NMPA asserts that unprotected digital audio outputs will contribute to illegal copying, and that the Commission's decision not to require content protections on digital audio outputs violates copyright concerns. We continue to believe that our existing treatment of audio outputs is necessary to protect legacy devices that do not have protected digital connections.²²² Moreover, NMPA provides no evidence that illegal copying of the audio channel of cable television programming is anything more than a speculative problem.²²³ Accordingly, we deny NMPA's petition for reconsideration.

69. *TiVo*. On July 27, 2009, TiVo filed a petition for reconsideration of the Commission's decision that our then existing rules did not require cable operators to provide UDCPs with access to switched digital channels.²²⁴ Due to the rule change that we adopt in Section III.A.1 above, which requires cable operators to provide UDCPs with access to switched digital channels, we dismiss TiVo's petition as moot.

IV. CONCLUSION

70. The steps we take in this order represent inexpensive reforms that will remove the disparity in the subscriber experience for those customers who choose to purchase a retail navigation device as opposed to leasing the cable provider's set-top box. These steps will help to develop a retail market for navigation devices during the interim period before a successor solution is developed and implemented for all MVPDs. While we are optimistic about the prospects of a successor technology, we must also be pragmatic about harnessing realized solutions. Therefore, until a successor technology is actually available, the Commission must strive to make the existing CableCARD standard work effectively.

V. PROCEDURAL MATTERS

71. *Paperwork Reduction Act Analysis*. This document contains information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the information collection requirements contained in this proceeding. The Commission will publish a separate document in the Federal Register at a later date seeking these comments. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), we will seek specific comment on how the Commission might "further reduce the information collection burden

²²⁰ Home Recording Rights Coalition Opposition to BMI and ASCAP Petition for Reconsideration at 6-7 (filed March 10, 2004).

²²¹ NMPA Petition for Reconsideration at 1-4 (filed December 29, 2003).

²²² See Public Knowledge Opposition to NMPA Petition for Reconsideration at 7-9 (filed March 10, 2004).

²²³ *Id.* at 4, n.5.

²²⁴ See Petition for Reconsideration or Clarification of TiVo Inc., File Nos. EB-07-SE-351, EB-07-SE-352 (filed July 27, 2009); *Oceanic Time Warner Cable, Cox Communications, et al.*, 24 FCC Rcd 8716 (2009).

for small business concerns with fewer than 25 employees.”

72. *Final Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act,²²⁵ the Commission has prepared a Final Regulatory Flexibility Analysis (“FRFA”) relating to this *Report and Order*. The FRFA is set forth in Appendix A.

73. *Congressional Review Act.* The Commission will send a copy of this *Third Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

74. *Additional Information.* For additional information on this proceeding, contact Steven Broeckaert, Steven.Broeckaert@fcc.gov, or Brendan Murray, Brendan.Murray@fcc.gov, of the Media Bureau, Policy Division, (202) 418-2120.

75. For additional information concerning the information collection(s) contained in this document, contact Cathy Williams at (202) 418-2918, or via the Internet at PRA@fcc.gov.

VI. ORDERING CLAUSES

76. **IT IS ORDERED** that, pursuant to Sections 1, 4(i) and (j), 303, 403, 601, 624A and 629 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i) and (j), 303, 403, 521, 544a, and 549, this *Report and Order* **IS ADOPTED**.

77. **IT IS FURTHER ORDERED** that, pursuant to the authority contained in Sections 1, 4(i) and (j), 303, 403, 601, 624A, and 629 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i) and (j), 303, 403, 521, 544a, and 549, the Commission’s rules **ARE AMENDED** as set forth in Appendix B.

78. **IT IS FURTHER ORDERED** that the rules contained herein **SHALL BE EFFECTIVE** 30 days after publication of the *Third Report and Order* in the Federal Register, except for the rules that contain information collection requirements subject to the Paperwork Reduction Act,²²⁶ which shall become effective immediately upon announcement in the Federal Register of OMB approval.

79. **IT IS FURTHER ORDERED** that the National Cable and Telecommunications Association and Consumer Electronics Association **SHALL NO LONGER FILE REPORTS** regarding the status of negotiations for a bidirectional CableCARD standard. This reporting requirement was subject to the PRA and shall cease to be effective once approved by OMB. The Commission will publish a notice in the Federal Register announcing the effective date.

80. **IT IS FURTHER ORDERED** that the Petition for Reconsideration filed December 29, 2003 by the National Cable and Telecommunications Association **IS GRANTED**.

81. **IT IS FURTHER ORDERED** that the Petition for Reconsideration filed February 26, 2004 by the National Cable and Telecommunications Association **IS GRANTED**.

82. **IT IS FURTHER ORDERED** that the Petition for Reconsideration filed December 29,

²²⁵ See 5 U.S.C. § 604.

²²⁶ Those rule changes are Sections 76.1205(b)(1)(a), 76.1205(b)(5), 76.1602(b)(7), and 76.1602(b)(8) of the Commission’s Rules.

2003 by DIRECTV IS DENIED.

83. **IT IS FURTHER ORDERED** that the Petition for Reconsideration filed December 29, 2003 by Genesis Microchip, Inc IS DENIED.

84. **IT IS FURTHER ORDERED** that the Petition for Reconsideration filed December 29, 2003 by the Motion Picture Association of America IS GRANTED IN PART AND DENIED IN PART.

85. **IT IS FURTHER ORDERED** that the Petition for Reconsideration filed February 27, 2004 by the Motion Picture Association of America IS GRANTED.

86. **IT IS FURTHER ORDERED** that the Petition for Reconsideration filed December 24, 2003 by Broadcast Music, Inc. and the American Society of Composers, Authors and Publishers IS DENIED.

87. **IT IS FURTHER ORDERED** that the Petition for Reconsideration filed December 29, 2003 by the National Music Publishers' Association et al IS DENIED.

88. **IT IS FURTHER ORDERED** that the Petition for Reconsideration filed July 27, 2009 by TiVo, Inc. IS DISMISSED AS MOOT.

89. **IT IS FURTHER ORDERED** that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Third Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

90. **IT IS FURTHER ORDERED** that the Commission SHALL SEND a copy of this *Third Report and Order* in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, see 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Fourth Further Notice of Proposed Rule Making (FNPRM)*.² The Commission sought written public comment on the proposals in the *FNPRM*, including comment on the IRFA.³ No commenting parties specifically addressed the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.⁴

A. Need for, and Objectives of, the Rules.

1. The need for FCC regulation in this area derives from deficiencies in our rules that prevent consumer electronics manufacturers from developing video navigation devices (such as televisions and set-top boxes) that can be connected directly to cable systems and access cable services without the need for a cable-operator provided navigation device. The objectives of the rules we adopt are to support a competitive market for navigation devices by increasing customer service and by improving audio-visual output functionality on cable-operator-leased devices.

2. Specifically, we adopt rules that (i) require cable operators to provide customer and technical support for retail devices to access switched digital channels; (ii) require that equivalent prices be charged for CableCARDS⁵ for use in cable-operator-provided set-top boxes and in retail devices, and that require the pricing information and billing of the CableCARD to be more transparent; (iii) simplify the CableCARD installation process; (iv) require cable operators to provide their subscribers with CableCARDS that can tune multiple streams of programming; and (v) streamline the CableCARD device certification process by modifying our rules to reflect updated testing procedures,⁶ and prohibiting a qualified testing facility from refusing to certify UDCCPs for any reason other than a failure to comply with the conformance checklists referenced in our current rules.

B. Legal Basis.

3. The authority for the action proposed in this rulemaking is contained in Sections 1, 4(i) and (j), 303, 403, 601, 624A and 629 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i) and (j), 303, 403, 521, 544a and 549.

¹ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² See Implementation of Section 304 of the Telecommunications Act of 1996, CS Docket No. 97-80, *Fourth Further Notice of Proposed Rulemaking*, 25 FCC Rcd 4303 Appendix B (2010).

³ See *Id.* at ¶ 1.

⁴ See 5 U.S.C. § 604.

⁵ A CableCARD is a security device provided by a cable operator, which can be inserted into a retail navigation device bought by a consumer in the retail market to allow the consumer's television to display encrypted video programming.

⁶ See Appendix B (amending Section 15.123(c)); NCTA Comments at 25-6 (*citing* National Cable and Telecommunications Association's Opposition to Petitions for Reconsideration and Notice of Joint Proposal for Improved Testing Rules in CS Docket No. 97-80, Exhibit A, Agreement Concerning Equivalent ATP, March 10, 2004).

B. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.

4. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules.⁷ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental entity” under Section 3 of the Small Business Act.⁸ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁹ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (“SBA”).¹⁰

5. *Cable Television Distribution Services.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.”¹¹ The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: all such firms having \$13.5 million or less in annual receipts.¹² According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year.¹³ Of this total, 1,087 firms had annual receipts of under \$10 million, and 43 firms had receipts of \$10 million or more but less than \$25 million.¹⁴ Thus, the majority of these firms can be considered small.

⁷ 5 U.S.C. § 603(b)(3).

⁸ 5 U.S.C. § 601(3) (incorporating by reference the definition of “small business concern” in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies, “unless an agency, after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of such the term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.

⁹ 5 U.S.C. § 601(3) (incorporating by reference the definition of “small business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

¹⁰ 15 U.S.C. § 632. Application of the statutory criteria of dominance in its field of operation, and independence are sometime difficult to apply in the context of broadcast television. Accordingly, the Commission’s statistical account of television stations may be over-inclusive.

¹¹ U.S. Census Bureau, 2007 NAICS Definitions, “517110 Wired Telecommunications Carriers” (partial definition); <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110>.

¹² 13 C.F.R. § 121.201, NAICS code 517110.

¹³ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005).

¹⁴ *Id.* An additional 61 firms had annual receipts of \$25 million or more.

6. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers, nationwide.¹⁵ Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard.¹⁶ In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.¹⁷ Industry data indicate that, of 6,635 systems nationwide, 5,802 systems have under 10,000 subscribers, and an additional 302 systems have 10,000-19,999 subscribers.¹⁸ Thus, under this second size standard, most cable systems are small.

7. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."¹⁹ The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate.²⁰ Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard.²¹ We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million,²² and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment."²³ The SBA has developed a small business size

¹⁵ 47 C.F.R. § 76.901(e). The Commission determined that this size standard equates approximately to a size standard of \$100 million or less in annual revenues. *Implementation of Sections of the 1992 Cable Act: Rate Regulation*, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 (1995).

¹⁶ These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006*, "Top 25 Cable/Satellite Operators," pages A-8 & C-2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006*, "Ownership of Cable Systems in the United States," pages D-1805 to D-1857.

¹⁷ 47 C.F.R. § 76.901(c).

¹⁸ Warren Communications News, *Television & Cable Factbook 2008*, "U.S. Cable Systems by Subscriber Size," page F-2 (data current as of Oct. 2007). The data do not include 851 systems for which classifying data were not available.

¹⁹ 47 U.S.C. § 543(m)(2); see 47 C.F.R. § 76.901(f) & nn. 1-3.

²⁰ 47 C.F.R. § 76.901(f); see Public Notice, *FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, DA 01-158 (Cable Services Bureau, Jan. 24, 2001).

²¹ These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006*, "Top 25 Cable/Satellite Operators," pages A-8 & C-2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006*, "Ownership of Cable Systems in the United States," pages D-1805 to D-1857.

²² The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.901(f) of the Commission's rules. See 47 C.F.R. § 76.909(b).

²³ U.S. Census Bureau, 2002 NAICS Definitions, "334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing"; <http://www.census.gov/epcd/naics02/def/NDEF334.HTM#N3342>.

standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, which is: all such firms having 750 or fewer employees.²⁴ According to Census Bureau data for 2002, there were a total of 1,041 establishments in this category that operated for the entire year.²⁵ Of this total, 1,010 had employment of under 500, and an additional 13 had employment of 500 to 999.²⁶ Thus, under this size standard, the majority of firms can be considered small.

8. *Other Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged in manufacturing communications equipment (except telephone apparatus, and radio and television broadcast, and wireless communications equipment).”²⁷ The SBA has developed a small business size standard for Other Communications Equipment Manufacturing, which is: all such firms having 750 or fewer employees.²⁸ According to Census Bureau data for 2002, there were a total of 503 establishments in this category that operated for the entire year.²⁹ Of this total, 493 had employment of under 500, and an additional 7 had employment of 500 to 999.³⁰ Thus, under this size standard, the majority of firms can be considered small.

9. *Electronics Equipment Manufacturers.* The SBA has developed a small business size standard for manufacturers of audio and video equipment,³¹ which is: all such firms having 750 or fewer employees.³² Census Bureau data indicates that there are 571 U.S. establishments that manufacture audio and visual equipment, and that 560 of these establishments have fewer than 500 employees and would be classified as small entities.³³ The remaining 11 establishments have 500 or more employees; however, we

²⁴ 13 C.F.R. § 121.201, NAICS code 334220.

²⁵ U.S. Census Bureau, American FactFinder, 2002 Economic Census, Industry Series, Industry Statistics by Employment Size, NAICS code 334220 (released May 26, 2005); <http://factfinder.census.gov>. The number of “establishments” is a less helpful indicator of small business prevalence in this context than would be the number of “firms” or “companies,” because the latter take into account the concept of common ownership or control. Any single physical location for an entity is an establishment, even though that location may be owned by a different establishment. Thus, the numbers given may reflect inflated numbers of businesses in this category, including the numbers of small businesses. In this category, the Census breaks-out data for firms or companies only to give the total number of such entities for 2002, which was 929.

²⁶ *Id.* An additional 18 establishments had employment of 1,000 or more.

²⁷ U.S. Census Bureau, 2002 NAICS Definitions, “334290 Other Communications Equipment Manufacturing”; <http://www.census.gov/epcd/naics02/def/NDEF334.HTM#N3342>.

²⁸ 13 C.F.R. § 121.201, NAICS code 334290.

²⁹ U.S. Census Bureau, American FactFinder, 2002 Economic Census, Industry Series, Industry Statistics by Employment Size, NAICS code 334290 (released May 26, 2005); <http://factfinder.census.gov>. The number of “establishments” is a less helpful indicator of small business prevalence in this context than would be the number of “firms” or “companies,” because the latter take into account the concept of common ownership or control. Any single physical location for an entity is an establishment, even though that location may be owned by a different establishment. Thus, the numbers given may reflect inflated numbers of businesses in this category, including the numbers of small businesses. In this category, the Census breaks-out data for firms or companies only to give the total number of such entities for 2002, which was 471.

³⁰ *Id.* An additional 3 establishments had employment of 1,000 or more.

³¹ 13 CFR § 121.201, NAICS code 334310.

³² 13 C.F.R. § 121.201, NAICS code 334290.

³³ Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 2002 Economic Census, Industry Series – Manufacturing, Audio and Video Equipment Manufacturing, Table 4 at 9 (2004). The (continued....)

are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. We therefore conclude that there are no more than 560 small manufacturers of audio and visual electronics equipment for consumer/household use.

10. *Computer Manufacturers.* The Commission has not developed a definition of small entities applicable to computer manufacturers. Therefore, we will utilize the SBA definition of electronic computers manufacturing. According to SBA regulations, a computer manufacturer must have 1,000 or fewer employees in order to qualify as a small entity.³⁴ Census Bureau data indicates that there are 485 firms that manufacture electronic computers and of those, 476 have fewer than 1,000 employees and qualify as small entities.³⁵ The remaining 9 firms have 1,000 or more employees. We conclude that there are approximately 476 small computer manufacturers.

C. Description of Projected Reporting, Recordkeeping and other Compliance Requirements.

11. The rules adopted in the Order will impose additional reporting, recordkeeping, and compliance requirements on cable operators. The Order adopts a rule that requires cable operators to charge equivalent and transparent prices for CableCARDs. This rule change will require certain cable operators to change their billing practices by reporting CableCARD prices on their websites, annual rate cards, or monthly bills. The Order also adopts a rule that will require device manufacturers to include CableCARD installation instructions with their devices.

D. Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered.

12. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.³⁶

13. Four of the final rules did not require the Commission to consider alternatives. Based on our review of the record and analysis, a consideration of alternatives is unnecessary because adoption of these rules leads to far greater consumer and industry benefits that outweigh any de minimis burden that may be placed on small entities. The switched digital support rule places a minor burden on cable operators. This burden is offset because the rule will greatly benefit consumers by ensuring that subscribers are able to access all of the programming for which they pay. This rule ensures consumers will benefit regardless of whether they use retail or leased devices.

(Continued from previous page) _____

amount of 500 employees was used to estimate the number of small business firms because the relevant Census categories stopped at 499 employees and began at 500 employees. No category for 750 employees existed. Thus, the number is as accurate as it is possible to calculate with the available information.

³⁴ 13 C.F.R. § 121.201, NAICS code 334111.

³⁵ Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1997 Economic Census, Industry Series – Manufacturing, Electronic Computer Manufacturing, Table 4 at 9 (1999).

³⁶ 5 U.S.C. § 603(b).

14. The installation rule decreases the burden on cable operators with respect to customer service calls. It requires cable technicians to arrive with the number of CableCARDS that a consumer requests, and allow for self-installation of CableCARDS. The effect will be to reduce the difficulties that consumers face when seeking to install a CableCARD in a retail device and to reduce the number of service calls that cable operators and subscribers need to schedule.

15. The rule regarding Multi-stream CableCARDS places a minimal burden on cable operators by requiring cable operators to provide subscribers with Multi-stream CableCARDS. However, the record indicates that Multi-stream CableCARDS have been the standard since 2007 and CableCARD manufacturers are no longer making single stream CableCARDS to sell to cable operators. Therefore, we believe the burden will be minimal and will be greatly outweighed by the benefits to consumers. This rule will reduce the cost that consumers face to use the picture-in-picture and "watch one, record one" functions of their video navigation devices, since fewer CableCARDS will be necessary.

16. The rule that streamlines the CableCARD device certification process will place no burden on qualified testing facilities. To the contrary, it will benefit consumer electronics manufacturers by reducing the cost of the certification process and limiting the influence that testing facilities have in the development of new consumer electronics equipment.

17. The Commission did consider alternatives to the pricing and billing rule. As proposed, the rule change would have required cable operators to separate and report the cost of a CableCARD on every monthly bill. As suggested in comments received in the proceeding, the Commission instead adopted a rule that will instead require cable operators to separate and report the cost on the annual rate card or on the operator's web site. This new rule places a smaller burden on cable operators than the proposed rule. It will also greatly benefit consumers, resulting in fewer customer service calls, an increase in transparency of pricing, and provide consumers with pricing information prior to purchase, rather than after.

E. Federal Rules Which Duplicate, Overlap, or Conflict with the Commission's Proposals.

18. None.

APPENDIX B

Final Rules

Part 15 of Title 47 of the Code of Federal Regulations will be amended as follows:

I. SUBPART B: Unintentional Radiators

1. Amend §15.38 to read as follows:

(c) The following materials are freely available from at least one of the following addresses: Cable Television Laboratories, Inc., 858 Coal Creek Circle, Louisville, Colorado, 80027, www.cablelabs.com/udcp; or at Consumer Electronics Association, 1919 S. Eads St. Arlington, VA 22202, http://www.ce.org/public_policy.

(1) Uni-Dir-PICS-I01-030903: "Uni-Directional Receiving Device: Conformance Checklist: PICS Proforma," 2003, IBR approved for §15.123.

(2) Uni-Dir-ATP-I02-040225: "Uni-Directional Receiving Device Acceptance Test Plan," 2004, IBR approved for §15.123.

() M-Host UNI-DIR-PICS-IOI-061101, IBR approved for §15.123.**

() TP-ATP-M-UDCP-IOI-061101, IBR approved for §15.123.**

2. Amend §15.123 to read as follows:

§15.123 Labeling of Digital Cable Ready Products.

(c) Before a manufacturer's or importer's first unidirectional digital cable product may be labeled or marketed as digital cable ready or with other terminology as described in paragraph (b) of this section, the manufacturer or importer shall verify the device as follows:

(1) The manufacturer or importer shall have a sample of its first model of a unidirectional digital cable product tested to show compliance with the procedures set forth in Uni-Dir-PICS-I01-030903: Uni-Directional Receiving Device: Conformance Checklist: PICS Proforma (incorporated by reference, see 15.38) at a qualified test facility. **If the model fails to comply, the manufacturer or importer shall have any modifications to the product to correct failures of the procedures in Uni-Dir-PICS-I01-030903: Uni-Directional Receiving Device: Conformance Checklist: PICS Proforma (incorporated by reference, see 15.38) retested at a qualified test facility and the product must comply with the applicable procedures in § 15.38 before the product or any related model may be labeled or marketed. If the manufacturer or importer's first unidirectional digital cable product is not a television, then that manufacturer or importer's first model of a unidirectional digital cable product which is a television shall be tested pursuant to this subsection as though it were the first unidirectional digital cable product. A qualified test facility may only require compliance with the procedures set forth in Uni-Dir-PICS-I01-030903: Uni-Directional Receiving Device: Conformance Checklist: PICS Proforma (incorporated by reference, see 15.38). Compliance**

testing beyond those procedures shall be at the discretion of the manufacturer or importer.

(2) A qualified test facility is a testing laboratory representing cable television system operators serving a majority of the cable television subscribers in the United States or an **appropriately qualified independent laboratory with adequate equipment and competent personnel knowledgeable with respect to the standards referenced in paragraph (b) of this section concerning the procedures set forth in Uni-Dir-PICS-I01-030903: "Uni-Directional Receiving Device: Conformance Checklist: PICS Proforma" (incorporated by reference, see § 15.38) and with Uni-Dir-ATP-I02-040225: "Uni-Directional Receiving Device Acceptance Test Plan," 2004, (incorporated by reference, see § 15.38). For any independent testing laboratory to be qualified hereunder such laboratory must ensure that all its decisions are impartial and have a documented structure which safeguards impartiality of the operations of the testing laboratory. In addition, any independent testing laboratory qualified hereunder must not supply or design products of the type it tests, nor provide any other products or services that could compromise confidentiality, objectivity or impartiality of the testing laboratory's testing process and decisions.**

(3) Subsequent to the testing of its initial unidirectional digital cable product model, a manufacturer or importer is not required to have other models of unidirectional digital cable products tested at a qualified test facility for compliance with the procedures of Uni-Dir-PICS-I01-030903: "Uni-Directional Receiving Device: Conformance Checklist: PICS Proforma" (incorporated by reference, see § 15.38) **unless the first model tested was not a television, in which event the first television shall be tested as provided in § 15.123(c)(1).** The manufacturer or importer shall ensure that all subsequent models of unidirectional digital cable products comply with the procedures in the Uni-Dir-PICS-I01-030903: "Uni-Directional Receiving Device: Conformance Checklist: PICS Proforma" (incorporated by reference, see § 15.38) and all other applicable rules and standards. The manufacturer or importer shall maintain records indicating such compliance in accordance with the verification procedure requirements in part 2, subpart J of this chapter. The manufacturer or importer shall further submit documentation verifying compliance with the procedures in the Uni-Dir-PICS-I01-030903: "Uni-Directional Receiving Device: Conformance Checklist: PICS Proforma" (incorporated by reference, see § 15.38) to **the testing laboratory** representing cable television system operators serving a majority of the cable television subscribers in the United States.

(4) **Unidirectional digital cable product models must be tested for compliance with Uni-Dir-PICS-I01-030903: "Uni-Directional Receiving Device: Conformance Checklist: PICS Proforma" (incorporated by reference, see § 15.38) in accordance with Uni-Dir-ATP-I02-040225: "Uni-Directional Receiving Device Acceptance Test Plan," 2004, (incorporated by reference, see § 15.38) or an equivalent test procedure that produces identical pass/fail test results. In the event of any dispute over the applicable results under an equivalent test procedure, the results under Uni-Dir-ATP-I02-040225: "Uni-Directional Receiving Device Acceptance Test Plan," 2004 shall govern.**

(5) This subsection applies to unidirectional digital cable product models which utilize Point-of-Deployment modules (PODs) in multi-stream mode (M-UDCPs).

(i) The manufacturer or importer shall have a sample of its first model of a M-UDCP tested at a qualified test facility to show compliance with the M-Host UNI-DIR-PICS-IOI-061101 as specified in the procedures set forth in TP-ATP-M-UDCP-IOI-061101 (both references incorporated by reference, see § 15.38). If the model fails to comply, the manufacturer or importer shall have retested, at a qualified test facility, a product that complies with the applicable tests and procedures in § 15.38 before any product or related model may be labeled or marketed. If the manufacturer or importer's first M-UDCP is not a television, then that manufacturer or importer's first model of a M-UDCP which is a television shall be tested pursuant to this subsection as though it were the first M-UDCP.

(ii) A qualified test facility is a testing laboratory representing cable television system operators serving a majority of the cable television subscribers in the United States or an appropriately qualified independent laboratory with adequate equipment and competent personnel knowledgeable with respect to the references noted in § 15.38. For any independent testing laboratory to be qualified hereunder such laboratory must ensure that all its decisions are impartial and have a documented structure which safeguards impartiality of the operations of the testing laboratory. In addition, any independent testing laboratory qualified hereunder must not supply or design products of the type it tests, nor provide any other products or services that could compromise confidentiality, objectivity or impartiality of the testing laboratory's testing process and decisions.

(iii) Subsequent to the successful testing of its initial M-UDCP, a manufacturer or importer is not required to have other M-UDCP models tested at a qualified test facility for compliance with M-Host UNI-DIR-PICS-IOI-061101 (incorporated by reference, see § 15.38) unless the first model tested was not a television, in which event the first television shall be tested as provided in § 15.123(c)(5)(i). The manufacturer or importer shall ensure that all subsequent models of M-UDCPs comply with M-Host UNI-DIR-PICS-IOI-061101 (incorporated by reference, see § 15.38) and all other applicable rules and standards. The manufacturer or importer shall maintain records indicating such compliance in accordance with the verification procedure requirements in part 2, subpart J of this chapter. For each M-UDCP model, the manufacturer or importer shall further submit documentation verifying compliance with M-Host UNI-DIR-PICS-IOI-061101 to the testing laboratory representing cable television system operators serving a majority of the cable television subscribers in the United States.

(iv) M-UDCPs must be in compliance with M-Host UNI-DIR-PICS-101-061101 (incorporated by reference, see § 15.38) in accordance with the procedures set forth in TP-ATP-M-UDCP-IOI-061101, (incorporated by reference, see § 15.38) or an equivalent test procedure that produces identical pass/fail test results. In the event of any dispute over the applicable results under an equivalent test procedure, the results under TP-ATP-M-UDCP-IOI-061101 shall govern.

Part 76 of Title 47 of the Code of Federal Regulations will be amended as follows:

I. SUBPART K – TECHNICAL STANDARDS

1. Amend § 76.640 to read as follows:

§ 76.640 Support for unidirectional digital cable products on digital cable systems.

(b)(4) Cable operators shall:

(ii) Effective July 1, 2011, include both: (A) a DVI or HDMI interface and (B) a **connection capable of delivering recordable high definition video and closed captioning data in an industry standard format** on all high definition set-top boxes, **except unidirectional set-top boxes without recording functionality**, acquired by a cable operator for distribution to customers.

(iii) **Effective December 1, 2012**, ensure that the cable-operator-provided high definition set-top boxes, **except unidirectional set-top boxes without recording functionality**, shall comply with **an open industry standard that provides for audiovisual communications including service discovery, video transport, and remote control command pass-through standards for home networking.**

II. SUBPART P – COMPETITIVE AVAILABILITY OF NAVIGATION DEVICES

1. Amend § 76.1204 to read as follows:

§ 76.1204 Availability of equipment performing conditional access or security functions.

(a)(2) The foregoing requirement shall not apply **(i) with respect to unidirectional navigation devices without recording functionality; or (ii)** to a multichannel video programming distributor that supports the active use by subscribers of navigation devices that: (A) operate throughout the continental United States, and (B) are available from retail outlets and other vendors throughout the United States that are not affiliated with the owner or operator of the multichannel video programming system.

2. Amend § 76.1205 to read as follows:

§ 76.1205 CableCARD Support.

(a) Technical information concerning interface parameters that are needed to permit navigation devices to operate with multichannel video programming systems shall be provided by the system operator upon request in a timely manner.

(b) **A multichannel video programming provider that is subject to the requirements of Section 76.1204(a)(1) must:**

(1) provide the means to allow subscribers to self-install the CableCARD in a CableCARD-reliant device purchased at retail and inform a subscriber of this option when the subscriber requests a CableCARD. This requirement shall be effective August 1, 2011, if the MVPD allows its subscribers to self-install any cable modems or operator-leased set-top boxes and November 1, 2011 if the MVPD does not allow its subscribers to self-install any cable modems or operator-leased set-top boxes;

(A) This requirement shall not apply to cases in which neither the manufacturer nor the vendor of the CableCARD-reliant device furnishes to purchasers appropriate instructions for self-installation of a CableCARD, and a manned toll-free telephone number to answer consumer questions regarding CableCARD installation but only for so long as such instructions are not furnished and the call center is not offered;

(2) Effective August 1, 2011, provide multi-stream CableCARDS to subscribers, unless the subscriber requests a single-stream CableCARD;

(3) with respect to professional installations, ensure that the technician arrives with no fewer than the number of CableCARDS requested by the customer and ensure that all CableCARDS delivered to customers are in good working condition and compatible with the customer's device;

(4) Effective August 1, 2011, provide, through the use of a commonly used interface and published specifications for communication, firmware-upgradable navigation devices with the ability to tune simultaneously as many switched-digital channels as the greatest number of streams supported by any set-top box provided by the cable operator, or four simultaneous channels, whichever is greater;

(5) separately disclose to consumers in a conspicuous manner with written information provided to customers in accordance with Section 76.1602, with written or oral information at consumer request, and on web sites or billing inserts

(A) any assessed fees for the rental of single and additional CableCARDS and the rental of operator-supplied navigation devices; and,

(B) if such provider includes equipment in the price of a bundled offer of one or more services, the fees reasonably allocable to

(i) the rental of single and additional CableCARDS and

(ii) the rental of operator-supplied navigation devices.

(C) CableCARD rental fees shall be priced uniformly throughout a cable system by such provider without regard to the intended use in operator-supplied or consumer-owned equipment. No service fee shall be imposed on a subscriber for support of a subscriber-provided device that is not assessed on subscriber use of an operator-provided device.

(D) For any bundled offer combining service and equipment into a single fee, including any bundled offer providing a discount for the purchase of multiple services, such provider shall make such offer available without discrimination to any customer that owns a navigation device, and shall further offer such customer a discount from such

offer equal to an amount not less than the monthly rental fee reasonably allocable to the lease of the operator-supplied navigation device included with that offer. For purposes of this section, in determining what is "reasonably allocable," the Commission will consider in its evaluation whether the allocation is consistent with one or more of the following factors: (i) an allocation determination approved by a local, state, or federal government entity; (ii) the monthly lease fee as stated on the cable system rate card for the navigation device when offered by the cable operator separately from a bundled offer; and (iii) the actual cost of the navigation device amortized over a period of no more than 60 months.

(c) A cable operator shall not provide misleading information regarding the ability of navigation devices to access switched digital channels.

3. Amend 76.1602 to read as follows:

§ 76.1602 Availability of equipment performing conditional access or security functions.

(b) Effective July 1, 1993, the cable operator shall provide written information on each of the following areas at the time of installation of service, at least annually to all subscribers, and at any time upon request:

(7) Effective May 1, 2011, any assessed fees for rental of navigation devices and single and additional CableCARDS; and,

(8) Effective May 1, 2011, if such provider includes equipment in the price of a bundled offer of one or more services, the fees reasonably allocable to

(i) the rental of single and additional CableCARDS and

(ii) the rental of operator-supplied navigation devices.

4. Amend 76.1902 to read as follows:

(s) Unencrypted broadcast television means any service, program, or schedule or group of programs, that is a substantially simultaneous retransmission of a broadcast transmission (i.e., an over-the-air transmission for reception by the general public using radio frequencies allocated for that purpose) that is made by a terrestrial television broadcast station located within the country or territory in which the entity retransmitting such broadcast transmission also is located, where such broadcast transmission is not subject to a commercially-adopted access control method (e.g., is broadcast in the clear to members of the public receiving such broadcasts), regardless of whether such entity subjects such retransmission to an access control method.

5. Amend 76.1908 to read as follows:

“Nothing in this subpart shall be construed as prohibiting a covered entity from:

(a) Encoding, storing or managing commercial audiovisual content within its distribution system or within a covered product under the control of a covered entity's commercially adopted access control method, provided that the outcome for the consumer from the application of the encoding rules set out in Sec. 76.1904(a) and (b) is unchanged thereby when such commercial audiovisual content is released to consumer control **and provided that all other laws, regulations, or licenses applicable to such encoding, storage, or management shall be unaffected by this section, or**

APPENDIX C

List of Commenters and Reply Commenters

Commenters:

1394 Trade Association
American Cable Association
ARRIS Group, Inc.
Beyond Broadband Technology LLC
Cable One, Inc.
Jose Cerna
Brian Charbonneau
Charter Communications, Inc.
Cisco Systems, Inc.
Comcast Corporation
Common Sense Media
Consumer Electronics Association & Consumer Electronics Retailers Coalition
Cox Communications, Inc.
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Digital Transmission Licensing Administrator
EchoStar Technologies, L.L.C.
Chris Edson
Evolution Digital, LLC
Free Press
Greg Friedman
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Larry Goldberg
Intel Corporation
IPCO, LLC
John Staurulakis, Inc.
Kaplan
Aaron Ledger
Allen G. Little
Motion Picture Association of America, Inc.
Motorola, Inc.
Multimedia over Coax Alliance
Nagravision
National Cable & Telecommunications Association
NATOA
OPASTCO, NTCA, ITTA, WTA, RICA
Pace Americas, Inc.
Farley Padron
Panasonic Corporation of North America
Allen Parke
Public Knowledge
Bruce Pujanauski
Josh Quigley
Jerald Rasmussen
RVU Alliance

Sweetwater Cable TV Co., Inc.
Telecommunications Industry Association
Texas Instruments Incorporated
Time Warner Cable Inc.
TiVo Inc.
Ben Tusa
Ubee Interactive
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Verizon
Ronald Vickery
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Time Warner Cable Inc.
TiVo Inc.
Jonathan Trudel
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John Whittle
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**STATEMENT OF
CHAIRMAN JULIUS GENACHOWSKI**

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

In this order, we take concrete steps to boost competition in the retail market for cable set-top boxes and benefit consumers of pay TV services.

We're under a congressional directive to spur competition in this market, and the Commission previously selected the CableCARD as its main vehicle to do so. But under our existing rules, it's been more difficult for consumers to use set-top boxes *bought* at retail than to use boxes *leased* from the cable operator. And indeed only a tiny fraction of cable subscribers have chosen to buy a set-top box. Consumers who buy a set-top box often find it difficult and time-consuming to get a cableCARD installed in the device, while leased boxes come with the cableCARD preinstalled.

There is also poor pricing transparency of cableCARDS because the cost of the card is often bundled with other equipment and service fees. As a result, consumers often don't know what cableCARDS cost -- making it difficult to make an informed decision whether to buy or lease a box. Consumers have no assurance that their monthly cable bill will be reduced if they buy rather than lease a box. And consumers who surmount all of these hurdles and buy a box anyway may find, to their dismay, that they can't access all channels if their cable operator converts to an all-digital system.

So, as the National Broadband Plan recognized, the current CableCARD approach isn't working. Today we take steps to improve it. The rules we adopt today require comparable treatment of retail and leased devices. They will also ensure that consumers who buy set-top boxes get the equipment credit and services to which they are entitled, creating a level playing field. We're also streamlining the process for getting set-top boxes to market by eliminating unnecessary delays and costs associated with set-top box testing and certification.

We hope and expect that these steps will lead to greater innovation and consumer choice and lower prices in consumer equipment.

Our ultimate goal in this area is to unleash maximum innovation through the TV. We've seen significantly less innovation -- fewer new devices, applications and services -- on the digital TV platform than on the computer or mobile platforms. Greater innovation can not only drive job creation and economic growth, it can help boost broadband adoption, since TVs are in over 90% of people's homes, while computers are in about 76%.

A key element of unleashing innovation through the TV is increased interoperability between a consumer's pay-TV programming stream and the consumer's broadband stream of data -- so that innovators can design applications that integrate pay-TV programming and other Internet content. As the National Broadband Plan described, this could be made possible by a gateway device to the consumer's home that would preserve the integrity of the pay stream, while spurring greater innovation around it in new devices and services.

Our work on the National Broadband Plan suggests that gateway devices and interoperability are keys to unleashing competition and innovation in the retail market with all of the attendant benefits of enhanced consumer choice, increased broadband investment, and greater economic growth.

We're of course cognizant of new developments linking the TV and Internet, and will study those as part of our process to determine how we can most effectively spur innovation in this important market.

Today's adoption of improvements to the CableCARD regime is an important step toward the goal of increased competition and customer choice for TV set-top boxes.

I thank the staff for their excellent work on this item.