

SUPPORTING STATEMENT

A. Justification.

1. On March 17, 2005 the FCC released a *Second Report*, In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices, CS Docket No. 97-80, FCC 05-76. In this *Second Report and Order and Further Notice of Proposed Rulemaking*, the Commission extends by twelve months the existing 2006 deadline in Section 76.1204(a)(1) prohibiting the deployment of integrated navigation devices by multichannel video programming distributors¹ in order to promote the retail sale of non-integrated navigation devices.² This extension is intended to afford cable operators additional time to investigate and develop a downloadable security solution that will allow common reliance by cable operators and consumer electronics manufacturers on an identical security function without the additional costs of physical separation inherent in the point-of-deployment module, or CableCARD, solution.³

Revised Information Collection Requirements:

The Commission is consolidating information collection OMB Control Number 3060-1032 (Commercial Availability of Navigation Devices and Compatibility between Cable Systems and Consumer Electronic Equipment, CS Docket 97-80 and PP Docket No. 00-67) into OMB Control Number 3060-0849 (Commercial Availability of Navigation Devices) per OMB's request. The Commission will submit an 83-D Form to discontinue information collection 3060-1032 once we receive OMB approval for this information collection (3060-0849) which is being revised due to the consolidation.

Information collection requirements:

47 CFR 76.1203 provides that a multichannel video programming distributor may restrict the attachment or use of navigation devices with its system in those circumstances where electronic or physical harm would be caused by the attachment or operation of such devices or such devices that assist or are intended or designed to assist in the unauthorized receipt of service. Such restrictions may be accomplished by publishing and providing to subscribers standards and descriptions of devices that may not be used with or attached to its system. Such standards shall foreclose the attachment or use only of such devices as raise reasonable and legitimate concerns of electronic or physical harm or theft of service.

47 CFR 76.1205 states that technical information concerning interface parameters which are needed to permit navigation devices to operate with multichannel video programming systems shall be provided by the system operator upon request.

¹ A multichannel video program distributor is an entity such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, a television receive-only satellite program distributor, a satellite master antenna television system operator, that make available for purchase, by subscribers or customers, multiple channels of video programming.

² Navigation devices are defined as "converter boxes, interactive equipment, and other equipment used by consumers within their premises to receive multichannel video programming and other services offered over multichannel video programming systems." An "integrated navigation device" performs both conditional access (*i.e.*, security) functions and other functions. The rules require multichannel video programming distributors to cease deploying, by a date certain, new navigation devices that perform both conditional access functions and other functions in a single integrated device. This requirement is intended to eliminate impediments discouraging cable subscribers from switching to navigation devices available through retail outlets, thereby promoting competition in the marketplace.

³ Because downloadable security is a software-oriented, rather than hardware-oriented, approach, implementation would not require the potentially costly physical separation of hardware that the ban on integrated navigation devices would require. Without downloadable security, in order to comply with the ban, cable operators will need to rely on the same security hardware (called the point-of-deployment module, or CableCARD) that consumer electronics manufacturers must use.

47 CFR 76.1207 states that the Commission may waive a regulation adopted under this Part for a limited time, upon an appropriate showing by a provider of multichannel video programming and other services offered over multichannel video programming systems, or an equipment provider that such a waiver is necessary to assist the development or introduction of a new or improved multichannel video programming or other service offered over multichannel video programming systems, technology, or products. Such waiver requests are to be made pursuant to 47 CFR Section 76.7.

47 CFR 76.1208 states that any interested party may file a petition to the Commission for a determination to provide for a sunset of the navigation devices regulations on the basis that (1) the market for multichannel video distributors is fully competitive; (2) the market for converter boxes, and interactive communications equipment, used in conjunction with that service is fully competitive; and (3) elimination of the regulations would promote competition and the public interest.

47 CFR 76.1905 (c)(2) states interested persons may submit comments or oppositions to the petition within thirty (30) days after the date of public notice of the filing of such petition. Comments or oppositions shall be served on the petitioner and on all persons listed in petitioner's certificate of service, and shall contain a detailed full statement of any facts or considerations relied on. Factual allegations shall be supported by affidavit or declaration of a person or persons with actual knowledge of the facts, and exhibits shall be verified by the person who prepares them.

47 CFR 76.1905 (c)(3) states the petitioner may file a reply to the comments or oppositions within ten (10) days after their submission, which shall be served on all persons who have filed pleadings and shall also contain a detailed full showing, supported by affidavit or declaration, of any additional facts or considerations relied on. There shall be no further pleadings filed after petitioner's reply, unless authorized by the Commission.

47 CFR 76.1906(a)(1) and (b) – state that a covered entity may launch a program service pursuant to an underfined business model. Concurrent with the launch of such service, the covered entity must issue a press release to the PR Newswire to provide public notice of that undefined business model. Interested parties may file complaints with the Commission if those interested parties object to the way the covered entity will apply its encoding.

47 CFR 15.118(a) and 47 CFR 15.19(d) (label and information disclosure) - The U.S. Bureau of the Census reports that, at the end of 2002, there were 571 U.S. establishments that manufacture audio and visual equipment. These manufacturers already have in place mechanisms for labeling equipment and including consumer disclosures in the form of owners' manuals and brochures in equipment packaging. We estimate that manufacturers who voluntarily decide to label their equipment will need no more than 5 hours to develop a label or to develop wording for a consumer disclosure for owners' manuals/brochures to be included with the device. Once developed, we do not anticipate any ongoing burden associated with the revision/modification of the label, if used, or the disclosure.

Recordkeeping certification – Manufacturers of unidirectional digital cable televisions and other unidirectional digital cable products will have to maintain records of their labeling regime. (This requirement is specified in FCC 03-225, CS Docket No. 97-80).

Status Reports – Periodic reports are required from large cable multiple system operators detailing CableCARD deployment/support and bidirectional support for navigation devices. (This requirement is specified in FCC 05-76, CS Docket No. 97-80).

Title: Commercial Availability of Navigation Devices

Complaints – Manufacturers may file complaints with the Commission concerning the certification process and the administration of the DFAST license. (This requirement is specified in FCC 03-225, CS Docket No. 97-80).

History:

In the Further Notice of Proposed Rulemaking (“FNPRM”), *Commercial Availability of Navigation Devices and Compatibility Between Cable Systems and Consumer Electronic Equipment*, CS Docket No. 97-80 and PP Docket No. 00-67, FCC 03-3, the FCC sought comment on a *Memorandum of Understanding Among Cable MSOs and Consumer Electronics Manufacturers* (“MOU”) filed on December 19, 2002, by members of the Consumer Electronics Association (“CEA”) and the National Cable and Telecommunications Association (“NCTA”). The MOU resulted from inter-industry discussions seeking to establish a so-called “cable plug and play” standard that will ensure the compatibility of cable television systems with DTV receivers and related consumer electronics equipment. The standard will allow consumers to directly attach their DTV receivers to cable systems and receive cable television services without the need for an external navigation device.

The compromise reached in the MOU, as detailed in the FNPRM, required the consumer electronics and cable television industries to commit to certain voluntary acts and sought the adoption of various Commission rules establishing, *inter alia*, a voluntary labeling regime for unidirectional digital cable television receivers and related digital cable products meeting certain technical specifications. The regime as proposed included testing and self-certification standards, as well as consumer information disclosures to purchasers of such receivers and products.

The proposed voluntary labeling regime would have prevented consumer electronics manufacturers from labeling or marketing a unidirectional digital cable compatible television receiver as “digital cable compatible” (or an alternative term to be established) unless it met certain specified technical standards (to be certified by a private industry organization) ensuring its compatibility with digital cable systems. Use of a label to mark the product physically was voluntary under the proposed regime. In addition, manufacturers would have been required to provide consumers with appropriate post-sale material, such as an owner’s guide, describing the features and functionality of the product.

On April 25, 2003, the FCC released an *Order and Further Notice of Proposed Rulemaking* (“*Order and FNPRM*”), In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices, CS Docket No. 97-80, FCC 03-89. In this *Order and FNPRM*, the Commission extended by eighteen months the existing 2005 deadline in Section 76.1204(a) (1) prohibiting the deployment of integrated navigation devices by multichannel video programming distributors in order to promote the retail sale of non-integrated navigation devices.

In a Second Report and Order and Second Further Notice of Proposed Rulemaking, *In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices, Compatibility Between Cable Systems and Consumer Electronics Equipment*, CS Docket No. 97-80, PP Docket No. 00-67, FCC 03-225, released on October 9, 2003 (“Second Report and Order”), the Commission adopted final rules that set technical and other criteria that manufacturers would have to meet in order to label or market unidirectional digital cable televisions and other unidirectional digital cable products as “digital cable ready.” This regime includes testing and self-certification standards, certification recordkeeping requirements, and consumer information disclosures in appropriate post-sale materials that describe the functionality of these devices and the need to obtain a security module from their cable operator. To the extent that manufacturers have complaints regarding the certification process, they may file formal complaints with the Commission. In addition, should

manufacturers have complaints regarding administration of the DFAST⁴ license which governs the scrambling technology needed to build unidirectional digital cable products, they may also file complaints with the FCC.

The Second Report and Order also prohibits Multichannel Video Programming Distributors (MVPDs) from encoding content to activate selectable output controls on unidirectional digital cable products, or the down-resolution of unencrypted broadcast television programming. MVPDs are also limited in the levels of copy protection that can be applied to various categories of programming. The encoding rules also include a petition process for new services within existing business models, a PR Newswire Notice relating to initial classification of new business models, and a complaint process for disputes regarding new business models.

On June 24, 1998, the Commission released a *Report and Order*, CS Docket No. 97-80, FCC 98-116, In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices. In this *Report and Order*, the Commission adopted rules to address the mandate expressed in Section 629 of the Communications Act to ensure the commercial availability of "navigation devices" and the equipment used to access video programming and other services from multichannel video programming systems. The purpose of Section 629 and the adopted rules expanded opportunities to purchase this equipment from sources other than the service provider.

As noted on the OMB Form 83-I, this information collection does not affect individuals or households; thus, there are no impacts under the Privacy Act.

Statutory authority for this collection of information is contained in Sections 4(i), 303(r), and 629 of the Communications Act of 1934, as amended.

2. The Section 76.1207 petition process gives multichannel video programming distributors and equipment providers a forum in which to request relief from regulations adopted under this Part of the Rules for a limited time, provided that there is an appropriate showing that such a waiver is necessary to assist the development or introduction of new or improved multichannel video programming or other services offered through multichannel video programming systems, technology, or products.

The Section 76.1208 petition process allows interested parties to petition the Commission to provide for a sunset of navigation devices regulations.

The labeling regime and consumer disclosure requirements applicable to consumer electronics manufacturers are used to inform consumers whether and to what extent digital television receivers or other digital consumer electronics devices are compatible with digital cable systems. The recordkeeping requirements for the certification process are used to ensure compliance with such process. Complaints regarding the certification process and administration of the DFAST license will permit Commission review in cases of dispute. The petition process for new services within defined business models, the PR Newswire notice for initial classification of new business models, and the complaint process for new business models will each be used as part of administering the encoding rule regime adopted in the Second Report and Order.

3. Because of the unique nature of the filings made pursuant to the waiver process, the use of information technology is not feasible in this situation. The information addressed in this supporting statement will not be collected or disclosed on standardized forms. Further, we do not anticipate that the

⁴ Dynamic Feedback Arrangement Scrambling Technique.

reports would involve the use of automated, electronic, mechanical, or technological collection techniques or other forms of information technology.

4. This agency does not impose similar information collection requirements on respondents in connection with this collection of information.
5. The Commission does not anticipate that the labeling regime and consumer disclosure requirements in this collection of information would have a differential impact upon small businesses or small entities since: (1) the labeling regime is voluntary, and (2) the burden's impact of the consumer disclosures will be *de minimis* since manufacturers of audio and visual equipment already have in place mechanisms for including such disclosures in the form of owners' manuals and brochures in equipment packaging. We believe that the other requirements in this collection of information will not have a significant impact on small entities/businesses.
6. If the waiver process were not conducted, the Commission would not be in compliance with Section 629 of the Communications Act of 1934, as amended. Section 629(c) provides that the Commission shall grant waivers of its navigation device rules when necessary to "assist the development or introduction of a new or improved multichannel video programming or other service." The Commission must accept waiver requests to comply with this Congressional mandate.

Furthermore, if these information collection requirements were not conducted, the Commission would be unable to fulfill its obligation to ensure the commercial availability of navigation devices pursuant to Sections 629 of the Communications Act of 1934, as amended.

7. The Commission believes that while the labeling regime and consumer disclosure requirements must be "ongoing," this approach is necessary in order to inform consumers whether and to what extent digital television receivers or other digital consumer electronics devices are compatible with digital cable systems. Otherwise, we believe that consumers would not receive adequate information when purchasing digital television equipment for use in connection with digital cable systems. Nearly sixty percent of television households subscribe to cable programming services,⁵ and a greater consumer awareness of the capabilities of the compatibility of digital television equipment with digital cable systems will further the transition to digital television. Furthermore, we do not believe that such an approach will be burdensome to the consumer electronics industry since the labeling regime is voluntary, and manufacturers already have in place mechanisms for labeling equipment and including consumer disclosures in the form of owners' manuals and brochures in equipment packaging. We also note the consumer electronics industry itself proposed the labeling regime and consumer disclosure requirements to the Commission.

With respect to the complaints regarding the certification process and administration of the DFAST license, the petition process for new services within defined business models, and the complaint process for new business models, comments or oppositions must be made within twenty days after the date of public notice of the filing of such complaint or petition. The complainant or petitioner may then file a reply within 10 days following submission of the responsive pleading.

The periodic updates required by the 2005 Deferral Order are essential to realizing the goal of Section 629 of the Communications Act of 1934, as amended, namely a competitive consumer market for navigation devices. With respect to the status reports for bidirectional and software-based security, the Commission allows each industry to file collectively, thereby reducing the burden and number of

⁵ National Cable and Telecommunications Association, Industry Statistics (2006), available at <http://www.ncta.com/ContentView.aspx?contentId=54>

respondents. Likewise, the Commission limits the number of respondents that are responsible for filing CableCARD deployment status reports, which relieves small entities of the filing burden.

8. The Commission published a Notice in the Federal Register Notice (72 FR 10213) on March 7, 2007. No comments were received from the public.

9. The Commission does not anticipate providing any payment of gift to any respondents.

10. There is no need for confidentiality.

11. No questions of a private or sensitive nature are involved.

12. **We estimate that there are 958 respondents, as follows:**

Rule Sections/ Services	Total Annual Responses	Hourly Burden	Total Burden Hours	Hourly “In-House” Cost	Total Annual “In-House” Cost
Section 76.1203	200 publication of standards	2 hrs	400 hours	\$20/hour	\$ 8,000
Section 76.1205	200 request for technical information	2 hrs	400 hours	\$20/hour	\$ 8,000
	200 responses to requests	.166 (10 minutes)	33 hours	\$20/hour	\$ 660
Sections 76.1207 and 76.1208	30 petitions⁶	40 hours	1,200 hours	\$60/hour	\$72,000
	30 oppositions to petitions	40 hours	1,200 hours	\$60/hour	\$72,000
	30 replies to oppositions	40 hours	1,200 hours	\$60/hour	\$72,000
Section 76.1905(b) and 76.1905(c)	25 petitions	40 hours	1,000 hours	\$60/hour	\$60,000
	25 oppositions to petitions	40 hours	1,000 hours	\$60/hour	\$60,000
	25 replies to oppositions	40 hours	1,000 hours	\$60/hour	\$60,000
Section 76.1906(a)(1)	25 notices	2 hours	50 hours	\$60/hour	\$ 3,000
Section 76.1906(b)	25 complaints	40 hours	1,000 hours	\$60/hour	\$60,000
	25 responses to complaints⁷	40 hours	1,000 hours	\$60/hour	\$60,000
CableCARD					

⁶ The petitions have two parties involved – a petitioning party and an opposing party.

⁷ The complaints have two parties – a complainant and a respondent.

Support Reports	20 reports	40 hours	800 hours	\$60/hour	\$48,000
Certification Complaints	25 complaints	40 hours	1,000 hours	\$60/hour	\$60,000
	25 responses to complaints	40 hours	1,000 hours	\$60/hour	\$60,000
DFAST/Robustness Complaints	25 complaints	40 hours	1,000 Hours	\$60/hour	\$60,000
	25 responses to complaints	40 hours	1,000 Hours	\$60/hour	\$60,000
Label/Information Disclosure	21,600,000 DTV Receivers ⁸	0.00278 hours	60,048 hours	\$8/hour	\$480,384
Recordkeeping	28,550 records	1 hour	28,550 hours	\$20/hour	\$571,000
Totals:	21,629,510 (responses)		102,881 HOURS		\$1,875,044

Total Number of Respondents: 958

Total Number of Responses: 21,629,510

Total Annual Burden Hours: 102,881 hours

Total Annual In-House Cost: \$1,875,044

All estimates are based on Commission staff's knowledge and familiarity with the availability of the data required.

13. There should be no capital and start-up costs to comply with the Commission's request. In terms of maintenance and additional operating costs, there is a \$1,250 initial filing fee associated with Sections 76.1207, 76.1208 and 76.1905 petitions, certification complaints, and DFAST complaints:

Total Annual Cost Burden: 105 petitions x \$1,250 filing fee = **\$131,250**.

14. Cost to the Federal Government:

Sections 76.1207, 76.1208, 76.1905 and 76.1906 petitions/complaints: 80 petitions filed with the Commission annually with an average processing time of 50 hours per petition. Attorneys at the GS 15, Step 5 level (\$59.93/hour) and clerks at the GS 7, Step 5 level (\$20.44/hour) will process these filings at the Commission:

⁸ Annual estimates by the Consumer Electronic Ass. Reflect that 12 million units of digital TV receivers and displays were manufactured and shipped in 2005, which 15.9 million units shipped in 2006. We expect 21.0 million units will be shipped in 2007 and 27.9 million units in 2008. As a result, we estimate that over the next three years an average of 21.6 million digital television receivers and displays will be manufactured and shipped in the U.S.

	Total Petitions Filed		Total hours per Filing		Cost per hour	=	Cost per filing
Attorneys	80	x	48 hours	x	\$59.93	=	\$230,131.20
Clerical	80	x	2 hours	x	\$20.44	=	<u>\$ 3,270.40</u>
							\$233,401.60

CableCARD reports, Certification Complaints, DFAST Complaints: 70 petitions filed with the Commission annually with an average processing time of 50 hours per petition. Attorneys at the GS 15 Step 5 level (\$59.93/hour) and clerks at the GS 7, Step 5 level (\$20.44/hour) will process these filings at the Commission:

	Total Petitions Filed		Total hours per Filing		Cost per hour	=	Cost per filing
Attorneys	70	x	48 hours	x	\$59.93	=	\$201,364.80
Clerical	70	x	2 hours	x	\$20.44	=	<u>\$ 2,861.60</u>
							\$204,226.40

Total Cost to the Federal Government: 233,401.60 + 204,226.40 = **\$437,628.00**

15. There is an adjustment to the total annual burden hours and the total annual cost burden due to the consolidation of information collection OMB Control Number 3060-1032 (Commercial Availability of Navigation Devices and Compatibility between Cable Systems and Consumer Electronic Equipment, CS Docket 97-80 and PP Docket No. 00-67) into OMB Control Number 3060-0849 (Commercial Availability of Navigation Devices) per OMB's request. There are no program changes to this information collection.

16. The information in this collection will not be published for statistical use.

17. The Commission does not intend to seek approval not to display the expiration date for OMB approval of this information.

18. We note errors in the Commission's initial 60-day notice (72 FR 10213). The number of respondents is "958" instead of "933." The total annual cost burden is "\$131,250" instead of "1,771,844" and the total annual burden hours are "102,881 hours" instead of "101,161 hour." There are no other exceptions to the Certification Statement in Item 19 of OMB Form 83-I.

B. Collections of Information Employing Statistical Methods:

The Commission does not anticipate that the collection of information will employ statistical methods.