

**SUPPORTING STATEMENT**

**A. Justification.**

1. In January 2013, the D.C. Circuit released its opinion in *EchoStar Satellite L.L.C. v. FCC*, 704 F.3d 992 (D.C. Cir. 2013). In that decision, the D.C. Circuit vacated the Second Report and Order, FCC 03-225 (released October 9, 2003). Therefore, the information collection requirements that were contained in 47 CFR 76.1905(c)(2) and (c)(3), 47 CFR 76.1906(a)(1) and (b) and the complaint requirement are no longer a part of this information collection. The Commission is revising this collection to remove those requirements and the burden hours and cost burden associated with them.

**These information collection requirements are also apart of this collection and have not changed since last approved by the Office of Management and Budget (OMB):**

**47 CFR 76.1205(b)(1)** states a multichannel video programming provider that is subject to the requirements of Section 76.1204(a)(1) must 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.

**47 CFR 76.1205(b)(1)(A)** states that 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.

The requirements contained in Section 76.1205 are intended to ensure that consumers are able to install CableCARDS in the devices that they purchase at retail, which the Commission determined is essential to a functioning retail market.

**47 CFR 76.1205(b)(2)** states effective August 1, 2011, provide multi-stream CableCARDS to subscribers, unless the subscriber requests a single-stream CableCARD. This requirement will ensure that consumers have access to CableCARDS that are compatible with their retail devices, and can request such devices from their cable operators.

**47 CFR 76.1205 (b)(5)** requires to 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. This requirement is intended to ensure that consumers understand that retail options are available and that cable operators are not subsidizing their own devices with service fees in violation of Section 629 of the Act.

**47 CFR 15.123(c)(3)** states 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-

**Title: Commercial Availability of Navigation Devices**

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.

**47 CFR 15.123(c)(5)(iii)** states 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.

**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.

**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 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.

**Title: Commercial Availability of Navigation Devices**

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.

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

**History:**

The Commission released on October 14, 2010 a Third Report and Order and Order on Reconsideration, FCC 10-181, CS Docket 97-80 and PP Docket 00-67, modifying the Commission's rules to implement Section 629 of the Communications Act (Section 304 of the Telecommunications Act of 1996). The rules are modified to (1) require cable operators to support the reception of switched digital video services on retail devices to ensure that subscribers are able to access the services for which they pay regardless of whether they lease or purchase their devices; (2) prohibit price discrimination against retail devices to support a competitive marketplace for retail devices; (3) require cable operators to allow self-installation of CableCARDS where device manufacturers offer device-specific installation instructions to make the installation experience for retail devices comparable to the experience for leased devices; (4) require cable operators to provide multi-stream CableCARDS by default to ensure that cable operators are providing their subscribers with current CableCARD technology; and (5) clarify that CableCARD device certification rules are limited to certain technical features to make it easier for device manufacturers to get their products to market. These rules are intended to achieve Section 629's directive to assure a retail market for navigation devices, such as set-top boxes, that can access cable services.

On April 21, 2010, the FCC released a *Fourth Further Notice of Proposed Rulemaking*, FCC 10-61, which proposed new rules to improve the CableCARD regime. The proposed rules were intended to improve CableCARD installation procedures, ensure that consumers are charged equal and transparent prices for CableCARDS, and provide consumers who use retail devices access to linear channels that is equivalent to those who lease devices. These proposed changes meet the directive of Section 629 of the Communications Act.<sup>1</sup>

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 the *Second Report and Order and Further Notice of Proposed Rulemaking*, the Commission extended by twelve months the existing 2006 deadline in Section 76.1204(a)(1) prohibiting the deployment of integrated navigation devices by multichannel video programming distributors<sup>2</sup> in order to promote the retail sale of non-integrated navigation devices.<sup>3</sup> This extension was intended to

---

<sup>1</sup> 47 U.S.C. § 549.

<sup>2</sup> 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.

<sup>3</sup> 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

**Title: Commercial Availability of Navigation Devices**

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.<sup>4</sup> The rules adopted in this proceeding added information collection requirements to this collection and also were intended to implement Section 629 of the Communications Act of 1934, as amended, 47 U.S.C. § 549.

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

---

the marketplace.

<sup>4</sup> 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.

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 DFAST<sup>5</sup> license which governs the scrambling technology needed to build unidirectional digital cable products, they may also file complaints with the FCC.

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.

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. Due to 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 reports would

---

<sup>5</sup> Dynamic Feedback Arrangement Scrambling Technique.

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,<sup>6</sup> 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

---

<sup>6</sup> 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 (79 FR 15335) on March 19, 2014 seeking comments on the information collection requirements contained in this supporting statement. To date, no comments have been 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 with this collection of information.

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

12. **We estimate that there are 962 respondents, as follows:**

<b>Rule Sections/ Services</b>	<b>Total Annual Responses</b>	<b>Hourly Burden</b>	<b>Total Burden Hours</b>	<b>Hourly “In- House” Cost</b>	<b>Total Annual “In-House” Cost</b>
<b>Section 15.123</b>	<b>2,000 verification documents</b>	<b>1 hour</b>	<b>2,000 hours</b>	<b>\$60/hour</b>	<b>\$120,000</b>
<b>Section 76.1203</b>	<b>10 publication of standards and description of devices</b>	<b>2 hours</b>	<b>20 hours</b>	<b>\$20/hour</b>	<b>\$ 400</b>
<b>Section 76.1205(a)</b>	<b>10 requests for technical information</b>	<b>2 hours</b>	<b>20 hours</b>	<b>\$20/hour</b>	<b>\$ 400</b>
	<b>10 responses to requests</b>	<b>.166 (10 minutes)</b>	<b>1.66 hours</b>	<b>\$20/hour</b>	<b>\$ 33</b>
<b>Sections 76.1205(b)(1) and (b)(1)(A)</b>	<b>50,000 requests</b>	<b>0.25 hours</b>	<b>12,500 hours</b>	<b>\$20/hour</b>	<b>\$250,000</b>
<b>Section 76.1205(b)(1)(A)</b>	<b>10 installation manuals</b>	<b>40 hours</b>	<b>400 hours</b>	<b>\$20/hour</b>	<b>\$ 8,000</b>
<b>Section 76.1205 (b)(2)</b>	<b>200 requests for Single-stream CableCARDS</b>	<b>0.25 hours</b>	<b>50 hours</b>	<b>\$20/hour</b>	<b>\$ 1,000</b>
<b>Section 76.1205(b)(5) CableCARD Price Notification</b>	<b>5,000 disclosures</b>	<b>0.5hours</b>	<b>2,500 hours</b>	<b>\$20/hour</b>	<b>\$ 50,000</b>
<b>Sections 76.1207 and 76.1208</b>	<b>2 petitions</b>	<b>40 hours</b>	<b>80 hours</b>	<b>\$60/hour</b>	<b>\$ 4,800</b>
	<b>2 oppositions to petitions</b>	<b>40 hours</b>	<b>80 hours</b>	<b>\$60/hour</b>	<b>\$ 4,800</b>
			<b>80</b>		

	2 replies to oppositions	40 hours	hours	\$60/hour	\$ 4,800
<b>CableCARD Support Reports</b>	4 reports	120 hours	480 hours	\$60/hour	\$ 28,800
<b>Sections 15.118(a) and 15.19(d) Label/Information Disclosure</b>	500,000 DTV Receivers	0.00278 hours	1,390 hours	\$8/hour	\$ 11,120
<b>Recordkeeping</b>	28,550 records	1 hour	28,550 hours	\$20/hour	\$571,000
<b>Totals:</b>	585,800 (responses)		48,152 HOURS (rounded)		\$1,055,153

**Total Number of Respondents: 962**

**Total Number of Responses: 585,800**

**Total Annual Burden Hours: 48,152 hours**

**Total Annual In-House Cost: \$1,055,153**

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 \$1,310 initial filing fee associated with petitions:

**Total Annual Cost Burden: 2 petitions x \$1,310 filing fee = \$2,620**

14. Cost to the Federal Government:

**Sections 76.1207 and 76.1208 petitions:** 2 petitions filed with the Commission annually with an average processing time of 50 hours per petition. Attorneys at the GS 15, Step 5 level (\$67.88/hour) and clerks at the GS 7, Step 5 level (\$23.15/hour) will process these filings at the Commission:

	<b>Total Petitions Filed</b>		<b>Total hours per Filing</b>		<b>Cost per hour</b>	=	<b>Cost per filing</b>
Attorneys	2	x	48 hours	x	\$67.88	=	\$6,516.48
Clerical	2	x	2 hours	x	\$23.15	=	\$ 92.60
							<u>\$6,609.08</u>



**CableCARD reports:** 4 reports filed with the Commission annually with an average processing time of 50 hours per petition. Attorneys at the GS 15 Step 5 level (\$67.88/hour) and clerks at the GS 7, Step 5 level (\$23.15/hour) will process these filings at the Commission:

	<b>Total Petitions</b>		<b>Total hours per</b>		<b>Cost</b>		<b>Cost per filing</b>
	<b><u>Filed</u></b>		<b><u>Filing</u></b>		<b><u>per hour</u></b>		
Attorneys	4	x	48 hours	x	\$67.88	=	\$13,032.96
Clerical	4	x	2 hours	x	\$23.15	=	<u>\$ 185.20</u>
							\$13,218.16

**Total Cost to the Federal Government:** \$6,609.08 + \$13,218.16 = **\$19,827.24**

15. The Commission has program changes/decreases to this collection as follows: 250 to the annual responses, 9,050 hours to the annual burden hours and \$131,000 to the annual cost burden. These program changes are due to the D.C. Circuit releasing its opinion in *EchoStar Satellite L.L.C. v. FCC*, 704 F.3d 992 (D.C. Cir. 2013) which the D.C. Circuit vacated the Second Report and Order, FCC 03-225 (released October 9, 2003) in January 2013.

There are also adjustments/decreases to this collection of 662 to the annual number of responses, 4,151 to the burden hours and \$36,680 to the annual cost burden. These adjustments are due to the Commission reevaluating its burden for this 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. There are no other exceptions to the Certification Statement.

**B. Collections of Information Employing Statistical Methods:**

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