

SUPPORTING STATEMENT

With this submission, the Federal Communications Commission (“the Commission” “the FCC”) seeks approval from the Office of Management and Budget (OMB) to extend the information collection requirements contained in this collection for a period of three years.

A. Justification.

1. The information collection requirements for this collection are as follows:

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.

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-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

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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(a) 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 76.1205(b)(1)(A) states that the requirement that cable operators allow consumers to self-install CableCARDS 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 information collection requirements contained in Section 76.1205(b)(1)(A) are intended to ensure that consumers are able to install CableCARDS in the devices they purchase because we have determined this is essential to a functioning retail market.

47 CFR 76.1205(b)(2) states that cable operators shall 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 cable operators 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 76.1207 states that the Commission may waive a regulation related to Subpart P (“Competitive Availability of Navigation Devices”) 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 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 2012, there were 466 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.

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:

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). As a result, the information collection requirements which were contained in 47 CFR 76.1905(c)(2) and (c)(3), 47 CFR 76.1906(a)(1) and (b) and the complaint information collection requirements were removed from this collection.

The Commission released on October 14, 2010 a Third Report and Order and Order on Reconsideration, *Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices*, 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 were 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.¹

On March 17, 2005, the Commission released a Second Report and Order and Further Notice of Proposed Rulemaking, *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 FCC 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 distributors² in order to promote the retail sale of navigation devices.³ This extension was 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. The rules adopted in

¹ 47 U.S.C. § 549.

² 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.

³ 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.”

this proceeding added information collection requirements to this collection and 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 and the National Cable and Telecommunications Association. 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 (TV) 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 TV 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 TV 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 to promote the retail sale of 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

⁴ Dynamic Feedback Arrangement Scrambling Technique.

scrambling technology needed to build unidirectional digital cable products, they may also file complaints with the FCC.

On June 24, 1998, the FCC 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 an avenue to request relief from regulations adopted under this rule part for a limited time, provided an appropriate showing of 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 TV 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 the Commission's 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 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 contained in this collection herein will have a differential impact upon small businesses or small entities which is due to: (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. In addition, the other associated information collection requirements 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 FCC 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 TV 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. The FCC does 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. Likewise, the Commission limits the number of respondents that are responsible for filing, which relieves small entities of the filing burden.

8. The Commission published a Notice in the Federal Register (82 FR 12093, February 28, 2017) seeking public comments on the information collection requirements contained in this collection.

The Commission received one comment from NCTA—The Internet & Television Association. That comment asserted that the Commission should not renew the requirement that the largest cable operators submit quarterly reports about CableCARD inventories, prices, installation, and support because CableCARD support is routine and the reports are an outdated relic of a time before consumers used applications to access multichannel video programming on devices that they own. Accordingly, NCTA argues, the reports no longer have any “practical utility” and are not “necessary for the proper performance of the functions of the Commission,” as the Paperwork Reduction Act requires. 5 C.F.R. § 1320.8(d)(1).

We disagree that it is appropriate to allow the renewal to lapse. The Commission is currently considering the extent to which these reports continue to have practical utility and are necessary for the proper function of the Commission. Specifically, the Commission recently sought comment on several issues

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relating to implementation of Section 629, including whether filing of the reports continues to be necessary. In letters to Congress, the Chairman of the FCC signaled that he favors elimination of this reporting requirement and wants to “take appropriate action with respect to this regulation in an efficient manner.” Letters from Ajit V. Pai, Chairman, FCC, to Congresswoman Mimi Walters et al (April 13, 2017), available at https://apps.fcc.gov/edocs_public/attachmatch/DOC-344527A1.pdf.

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. The Commission estimates that there are **962 respondents** for this information collection. Therefore, the Commission’s burden estimates are as follows:

Rule Sections/ Services	Annual Responses	Hourly Burden	Burden Hours	Hourly “In- House” Cost	Annual “In- House” Cost
Section 15.123	2 verification documents	1 hour	2 hours	\$60/hour	\$120
Section 76.1203	10 publication of standards and description of devices	2 hours	20 hours	\$100/hour	\$2,000
Section 76.1205(a)	10 requests for information	2 hours	20 hours	\$20/hour	\$400
	10 responses to requests	0.166 (10 minutes)	1.66 hours	\$20/hour	\$33
Sections 76.1205(b)(1) and (b)(1)(A)	50,000 requests	0.25 hours	12,500 hours	\$20/hour	\$250,000
Section 76.1205(b)(1)(A)	10 installation manuals	40 hours	400 hours	\$20/hour	\$8,000
Section 76.1205(b)(2)	200 Single-stream CableCARD	0.25 hours	50 hours	\$20/hour	\$1,000
Section 76.1205(b)(5) CableCARD Price Notification	5,000 disclosures	0.5 hours	2,500 hours	\$20/hour	\$50,000
Sections 76.1207 and 76.1208	2 petitions	40 hours	80 hours	\$60/hour	\$4,800
	2 oppositions to petitions	40 hours	80 hours	\$60/hour	\$4,800
	2 replies to oppositions	40 hours	80 hours	\$60/hour	\$4,800
CableCARD Support Reports	4 reports	40 hours	160 hours	\$60/hour	\$9,600

Rule Sections/ Services	Annual Responses	Hourly Burden	Burden Hours	Hourly “In- House” Cost	Annual “In- House” Cost
Sections 15.118(a) and 15.19(d) Label/ Information Disclosure	10,000 “Cable Ready” Devices	0.00278 hours	27.8 hours	\$8/hour	\$222
Totals:	65,252 (responses)		15,921 hours (rounded)		\$335,775

Total Number of Respondents: 962

Total Number of Responses: 65,252

Total Annual Burden Hours: 15,921 hours

Total Annual In-House Cost: \$335,775

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

13. Annual Cost Burden. There are no capital and start-up costs; however, with regard to maintenance and operating costs, there is a \$1,495 initial filing fee associated with petitions:

Total Annual Cost Burden: 2 petitions x \$1,495 filing fee = **\$2,990.**

14. Cost to the Federal Government:

Sections 76.1207 and 76.1208 petitions: 2 petitions filed annually with a processing time of 50 hours per petition. Attorneys at the GS 15, Step 5 level (\$71.56/hour) and clerks at the GS 7, Step 5 level (\$24.41/hour) will process these filings.

	Total Petitions Filed		Total hours per Filing		Cost per hour		Cost per filing
Attorneys	2	x	48 hours	x	\$71.56	=	\$6,869.76
Clerical	2	x	2 hours	x	\$24.41	=	<u>\$ 97.64</u>
							\$6,967.40

CableCARD reports: Four (4) reports filed annually a processing time of 50 hours per petition. Attorneys, GS 15 Step 5 (\$71.56/hour) and clerks, GS 7, Step 5 (\$24.41/hour) will process these filings.

	Total Petitions		Total hours per		Cost			Cost per filing
	<u>Filed</u>		<u>Filing</u>		<u>per hour</u>			
Attorneys	4	x	48 hours	x	\$71.56	=		\$13,739.52
Clerical	4	x	2 hours	x	\$24.41	=		<u>\$ 195.28</u>
								\$13,934.80

Total Cost to the Federal Government: \$6,967.40 + \$13,934.80 = **\$20,903.20**

15. The Commission does not have any program changes to this collection. However, there are adjustments to this collection which are the result of a re-evaluation of our estimates for this collection. The adjustments are as follows: -520,548 to the annual number of responses, -32,231 to the annual burden hours, and +370 to the annual cost.

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

17. The Commission does not intend to seek approval to display the expiration date for OMB approval of this information because there are no forms associated with this information collection.

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.