

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Delete, Delete, Delete)	GN Docket No. 25-133
)	

ORDER

Adopted: August 21, 2025

Released: August 21, 2025

By the Acting Chief, Media Bureau:

1. By this Order, we conform Part 76 of the Commission’s rules to court decisions nullifying certain provisions in that Part. In the *Delete, Delete, Delete* proceeding, the Commission made clear its goal to “review its rules to identify and eliminate those that are unnecessary in light of current circumstances.”¹ The Media Bureau takes this action in furtherance of that goal, finding that these rules “no longer have any operative effect,” and therefore should not remain in the Code of Federal Regulations (CFR).² Specifically, this action will remove from our regulations approximately 14 pages, 5,855 words, and 43 rules or requirements.

2. We first conform Part 76 to the decision of the Second Circuit Court of Appeals (Second Circuit) in *Time Warner Cable Inc. v. FCC (Time Warner Cable)*,³ which vacated the temporary standstill rule for program carriage complaint proceedings set forth in section 76.1302(k) of the Commission’s rules.⁴ The Commission adopted the temporary standstill rule in the *Program Carriage Second Report and Order* on July 29, 2011, establishing procedures for the Media Bureau’s consideration of requests for a temporary standstill of the price, terms, and other conditions of an existing programming contract by a program carriage complainant seeking renewal of such a contract.⁵ The Commission published a summary of the *Program Carriage Second Report and Order* in the Federal Register on September 29, 2011.⁶ In accordance with normal procedure, the CFR was revised to reflect adoption of the temporary standstill rule. On September 4, 2013, the Second Circuit issued its decision in *Time Warner Cable* vacating the temporary standstill rule, finding that the rule was not promulgated in accordance with the Administrative Procedure Act’s notice and comment rulemaking requirements.⁷ As a result of the Second Circuit’s decision, the text of section 76.1302(k) that currently appears in the CFR has no legal effect and is obsolete. We note that in 2020, the Commission issued a *Report and Order* deleting section 76.1302(k) from the CFR.⁸ The Commission subsequently published a summary of this *Report and Order* in the

¹ *Delete, Delete, Delete*, GN Docket No. 25-133, Public Notice, DA 25-219, at 1 (rel. Mar. 12, 2025).

² *Id.* at 5.

³ *Time Warner Cable Inc. v. FCC*, 729 F.3d 137 (2d Cir. 2013) (*Time Warner Cable*).

⁴ *Id.* at 171.

⁵ *Revision of the Commission’s Program Carriage Rules*, MB Docket No. 11-131, Second Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 11494, 11514-16, paras. 27-28 (2011) (*Program Carriage Second Report and Order*).

⁶ 76 Fed. Reg. 60652 (Sept. 29, 2011).

⁷ See *Time Warner Cable*, 729 F.3d at 171.

⁸ *Revision of the Commission’s Part 76 Review Procedures; Modernization of Media Regulation Initiative; Revision of the Commission’s Program Carriage Rules*, MB Docket Nos. 20-70, 17-105, 11-131, Report and Order, 35 FCC (continued....)

Federal Register, with an effective date of January 19, 2021.⁹ Nevertheless, section 76.1302(k) still remains in the CFR. Accordingly, we delete section 76.1302(k), finding that doing so has no effect on the scope and nature of the currently enforceable Commission requirements and simply effectuates the Second Circuit's action in *Time Warner Cable*.

3. We also conform Part 76 to the decision of the District of Columbia Circuit Court of Appeals (D.C. Circuit) in *EchoStar Satellite LLC v. FCC (EchoStar Satellite)*,¹⁰ which set aside two 2003 Commission orders adopting the encoding rules set forth in sections 76.1901 through 76.1908 of the Commission's rules.¹¹ The Commission adopted the encoding rules, which place limits on the use of encoding by cable television operators and satellite providers to prevent or limit copying of their programming, in the *Second Plug and Play Report and Order* on September 10, 2003.¹² The Commission published a summary of the *Second Plug and Play Report and Order* in the *Federal Register* on November 28, 2003.¹³ On December 19, 2003, the Commission adopted an *Order on Reconsideration* which modified one of the definitions in the encoding rules.¹⁴ The Commission published a summary of the *Order on Reconsideration* in the *Federal Register* on January 28, 2004.¹⁵ In accordance with normal procedure, the CFR was revised to reflect adoption of the encoding rules. In *EchoStar Satellite*, the D.C. Circuit vacated in their entirety the *Second Plug and Play Report and Order* and the *Order on Reconsideration*, concluding that the Commission exceeded its statutory authority in adopting the encoding rules set forth in sections 76.1901 through 76.1908.¹⁶ As a result of the D.C. Circuit's decision, the text of sections 76.1901 through 76.1908 that currently appear in the CFR has no legal effect and is obsolete.¹⁷ Accordingly, we delete sections 76.1901 through 76.1908, finding that doing so has no effect

Rcd 13388, 13398, para. 18 (2020) ("As the rule was vacated by the Second Circuit, we will take this opportunity to delete the standstill provision, section 76.1302(k), from the text of the CFR.").

⁹ 85 Fed. Reg. 81805 (Dec. 17, 2020).

¹⁰ *EchoStar Satellite LLC v. FCC*, 704 F.3d 992 (D.C. Cir. 2013) (*EchoStar Satellite*).

¹¹ *Id.* at 1000. We note that Title 47, part 76, subpart W, titled "Encoding Rules," lists sections 76.1901 through 76.1909. See 47 CFR part 76, subpart W. However, section 76.1909 was not one of the encoding rules adopted in the *Second Plug and Play Report and Order*. Rather, that rule was adopted in the context of a different rulemaking proceeding. See *Digital Broadcast Content Protection*, MB Docket No. 02-230, Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 23550, 23595, Appendix B (2003), *vacated in part and rev'd in part*, *American Library Ass'n v. FCC*, 406 F.3d 689 (D.C. Cir. 2005); see also *Cable Television Technical and Operational Requirements*, MB Docket No. 12-217, Notice of Proposed Rulemaking, 27 FCC Rcd 9678, 9698, para. 42 (2012) (explaining the history of section 76.1909). Accordingly, we take no action with regard to 47 CFR § 76.1909 in this Order.

¹² *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 and PP Docket No. 00-67, Second Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 20885 (2003) (*Second Plug and Play Report and Order*), *recon. granted in part*, Order on Reconsideration, 31 Communications Reg. (P&F) 408 (2003) (*Order on Reconsideration*).

¹³ 68 Fed. Reg. 66728 (2003).

¹⁴ *Order on Reconsideration*, 31 Communications Reg. 408.

¹⁵ 69 Fed. Reg. 4081.

¹⁶ 704 F.3d at 1000.

¹⁷ We note that in 2023, the Commission's Office of Communications Business Opportunities (OCBO) issued a Public Notice seeking comment on whether certain rules adopted in calendar years 2007-2012 should be "continued without change, amended, or rescinded," as part of its implementation of the requirements of Section 610 of the Regulatory Flexibility Act. *FCC Seeks Comment Regarding Possible Revision or Elimination of Rules Adopted in 2007-2012 Under the Regulatory Flexibility Act*, 5 U.S.C. Section 610, Public Notice, 38 FCC Rcd 7450 (OCBO

(continued....)

on the scope and nature of the currently enforceable Commission requirements and simply effectuates the D.C. Circuit's action in *EchoStar Satellite*.

4. Pursuant to 5 U.S.C. § 553(b)(B), because we are simply conforming the text of the Commission's rules in the CFR to reflect the court's decisions in *Time Warner Cable* and *EchoStar Satellite*, and we are not taking any independent action or exercising any discretion, we find that notice and the opportunity for public comment are unnecessary for this action.¹⁸ For the same reason, pursuant to 5 U.S.C. § 553(d), this action will be effective immediately upon publication in the Federal Register.¹⁹

5. The changes to Part 76 of the Commission's rules to conform to these court decisions are reflected in Appendix A.

6. **IT IS ORDERED** that Part 76 of the Commission's rules, 47 CFR Part 76, is amended as set forth in Appendix A, effective upon publication in the Federal Register.

2023) (*OCBO PN*). See 5 U.S.C. § 610 (requiring federal agencies to conduct a periodic review of the rules issued by the agency which have or will have a significant economic impact upon a substantial number of small entities to determine whether such rules should be continued without change, amended, or rescinded). The rules reviewed in the *OCBO PN* included sections 76.1902(s) (defining "unencrypted broadcast television") and 76.1908(a) (describing certain encoding practices not prohibited). The *OCBO PN* stated that sections 76.1902(s) and 76.1908(a) are "necessary to improve the operation of the CableCARDs and bolster support for retail CableCARD devices so that consumers may access cable services without leasing a set-top box from their cable operators." *OCBO PN*, 38 FCC Rcd at 7502. We find no basis in the *OCBO PN* to prevent us from eliminating these rules. The *OCBO PN* merely identified the original justification for adoption of these rules. Notably, however, the Commission had found in a Report and Order issued three years prior to the *OCBO PN* that "consumer demand for retail CableCARD devices never developed as anticipated" and that such demand was expected to continue to fall. *Expanding Consumers' Video Navigation Choices*, MB Docket No. 16-142, Report and Order, 35 FCC Rcd 10209, 10215-16, para. 10 (2020). Furthermore, the determination in the *OCBO PN* that these rules are necessary was a preliminary assessment and no one filed comments in response to the *OCBO PN* arguing that these rules remained necessary.

¹⁸ 5 U.S.C. § 553(b)(B); see, e.g., *EME Homer City Generation, L.P. v. EPA*, 795 F.3d 118, 134-35 (D.C. Cir. 2015) (good cause exception under section 553(b)(B) applies when "rulemaking without notice and comment is 'a reasonable and perhaps inevitable response to 'a court order.'" (citation omitted).

¹⁹ We find "good cause" under 5 U.S.C. § 553(d) to make the rules effective immediately upon publication in the Federal Register. See 5 U.S.C. § 553(d)(3) (stating that publication of a "substantive" rule shall be made not less than 30 days before its effective date, "except . . . as otherwise provided by the agency for good cause found and published with the rule"). In determining whether good cause exists, an agency should "balance the necessity for immediate implementation against principles of fundamental fairness which require that all affected persons be afforded a reasonable amount of time to prepare for the effective date of its ruling." *Omnipoint Corp. v. FCC*, 78 F.3d 620, 630 (D.C. Cir. 1996) (internal quotation marks omitted). Because the rules vacated in *Time Warner Cable* and *EchoStar Satellite* have been nullified for 12 years, we find that there will be no burden on the public from making these changes effective upon Federal Register publication, while doing so will have the benefit of ensuring that inoperative rules do not linger in the CFR unnecessarily. See 5 U.S.C. § 553(d)(1) (recognizing an exception to the 30-day requirement for a substantive rule which "relieves a restriction").

7. The Bureau has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs that this rule is non-major under the Congressional Review Act, 5 U.S.C. § 804(2). The Commission will send a copy of this Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

Erin Boone
Acting Chief, Media Bureau

APPENDIX A**Final Rules**

For the reasons set forth above, the Federal Communications Commission amends part 76 of Title 47 of the Code of Federal Regulations as follows:

PART 76 – MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

1. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 335, 338, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 562, 571, 572, 573.

Subpart Q – Regulation of Carriage Agreements**§ 76.1302(k) [Removed]**

2. Remove § 76.1302(k).

Subpart W – Encoding Rules**§§ 76.1901 through 76.1908 [Removed]**

3. Remove §§ 76.1901 through 76.1908.