



NEWS

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FCC ADOPTS ANTI-PIRACY PROTECTION FOR DIGITAL TV *Broadcast Flag Prevents Mass Internet Distribution; Consumer Copying Not Affected;* *No New Equipment Needed*

Washington, D.C. - Today, the Federal Communications Commission (FCC) adopted an anti-piracy mechanism, also known as the "broadcast flag," for digital broadcast television. The goal of today's action is to foster the transition to digital TV and forestall potential harm to the viability of free, over-the-air broadcasting in the digital age. The FCC said that consumers' ability to make digital copies will not be affected; the broadcast flag seeks only to prevent mass distribution over the Internet. Finally, the FCC said implementation of the broadcast flag will not require consumers to purchase any new equipment.

Today's rules are targeted only at products that are capable of receiving DTV signals over-the-air. These products must comply with the broadcast flag requirements by July 1, 2005. Other products such as digital VCRs, DVD players and personal computers that are not built with digital tuners installed are not required to comply with the new rule. In addition, the FCC explained that existing televisions, VCRs, DVD players and related equipment will remain fully functional under the new broadcast flag system.

In a *Report and Order* adopted today, the FCC permits use of the flag at the discretion of the broadcaster. The FCC said that the current lack of digital broadcast content protection could be a key impediment to the DTV transition's progress. The absence of such content protection could cause high value programming to migrate from broadcast television to more secure platforms such as cable and satellite TV service. Reduced availability of high value content on broadcast television could harm the viability of free over-the-air television and slow the DTV transition. The FCC declined to prohibit the use of the flag with regard to certain types of programming, such as news or public affairs.

To facilitate adoption of broadcast flag technology in television receivers and related equipment by 2005, the FCC established an interim policy that allows proponents of a particular content protection or recording technology to certify to the FCC that such technology is an appropriate tool to give effect to the broadcast flag, subject to public notice and objection. The FCC's interim certification decisions will be guided by a series of objective criteria aimed at promoting innovation in content protection technology.

The FCC also adopted a *Further Notice of Proposed Rulemaking* (FNPRM) seeking comment on a permanent objective process for the approval of digital recording and output content protection technologies that will foster innovation and marketplace competition.

A summary of the key issues is attached.

Action by the Commission, November 4, 2003, by Report and Order and Further Notice of Proposed Rulemaking (FCC 03-273). Chairman Powell, Commissioners Abernathy and Martin, with Commissioners Copps and Adelstein approving in part and dissenting in part. Commissioners Abernathy, Copps, and Adelstein issuing separate statements.

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FNPRM Comments due: January 14, 2003
Reply Comments due: February 13, 2003

MB Docket 02-230

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on the Commission's web site www.fcc.gov.

FCC ADOPTS ANTI-PIRACY PROTECTIONS FOR DIGITAL TV

SUMMARY OF KEY ISSUES

What is the Broadcast Flag?

- The “broadcast flag” is a digital code that can be embedded into a digital broadcasting stream. It signals DTV reception equipment to limit the indiscriminate redistribution of digital broadcast content.
- The broadcast flag will benefit consumers by ensuring continued access to high value programming content on free, over-the-air TV.
- The broadcast flag protects consumers’ use and enjoyment of broadcast video programming. The flag does not restrict copying in any way.

What types of programming are affected?

- The FCC allowed broadcasters to decide whether or not to include the flag with specific types of programming.
- The FCC declined to prohibit the use of the flag with regard to certain types of programming, such as news or public affairs.

What types of equipment are affected?

- All existing equipment in use by consumers today will remain fully functional. Thus, consumers can continue to use existing equipment without purchasing new or additional equipment to receive and view broadcast television signals.
- The new rule requires that DTV reception devices containing demodulators recognize and give effect to the broadcast flag pursuant to certain compliance and robustness rules.
- “Compliance” refers to what the covered demodulator can do with the broadcast content. If the flag is present, the content can be sent in one of several permissible ways, including (1) over an analog output, e.g. to existing analog equipment; or (2) over a digital output associated with an approved content protection or recording technology (this list of approved technologies is often referred to as “Table A”).
- “Robustness” refers to the ability to “hack” the system. The FCC adopted an “ordinary user” robustness standard that will afford consumer electronics, IT and PC manufacturers the maximum flexibility in innovation while ensuring adequate content security.

How does the broadcast flag affect cable TV and satellite TV operators (i.e. MVPDs)?

- The FCC determined that multichannel video programming distributors (MVPDs), such as cable and satellite TV operators, should have the latitude to implement the flag as appropriate for their distribution platforms, whether it be through direct pass-through or by effectuating the flag’s intent through their own conditional access system.
- The FCC said that MVPDs may not assert greater redistribution control protection for digital broadcast content than that which the broadcaster has selected. In the case of content which a broadcaster has not marked with the flag, MVPDs must deliver that content to subscribers in a manner that reflects and gives effect to its unflagged status.
- The FCC is seeking further comment on whether cable operators that retransmit DTV broadcasts may encrypt the digital basic tier in order to convey the presence of the flag through their conditional access system.

What is the interim policy for approving digital content protection and recording technologies?

- The FCC established an interim policy allowing proponents of a particular content protection or recording technology to certify to the FCC that such technology is an appropriate tool to give effect to the broadcast flag, subject to public notice and objection.
- This interim policy will enable the FCC to certify multiple compliant technologies in time for manufacturers to include flag technology in television receivers by 2005.
- Under this interim process, proponents must submit to the FCC the following information:
 1. a description of how the technology works, including its scope of redistribution;
 2. the level of protection the technology affords content;
 3. whether content owners, broadcasters, or equipment manufacturers have approved the technology for use; and
 4. if the technology is to be offered publicly, a copy of its licensing terms.
- Upon review of the initial submission, the FCC will issue a public notice. If no objection is received within 20 days, the FCC will expeditiously issue a decision on the approval of the submission. If substantive objections are raised within 20 days, the proponent of the technology can issue a response within 10 days. The FCC will then make a decision as expeditiously as possible and expects such decision to be made no later than 90 days from the reply filing.
- The FCC said it expects any approved technologies that are publicly offered to be licensed on a reasonable and nondiscriminatory basis. The FCC also encouraged the development of multiple technologies, such as digital rights management, software-based, and non-encryption alternatives that will promote consumer uses and access to content.

What is the permanent process for approving content protection and recording technologies?

- The FCC determined that additional public comment is needed in order to formulate a permanent open, objective process for the approval of digital recording and output content protection technologies that will foster innovation and marketplace competition. The FCC initiated a *Further Notice of Proposed Rulemaking* to examine this issue in greater detail.

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