

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

In the Matter of)	
)	
Implementation of Section 304 of the Telecommunications Act of 1996)	CS Docket No. 97-80
)	
Commercial Availability of Navigation Devices)	
)	
Compatibility Between Cable Systems and Consumer Electronics Equipment)	PP Docket No. 00-67
)	
Evolution Broadband, LLC's Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules)	CSR-7902-Z
)	

ORDER ON RECONSIDERATION

Adopted: January 25, 2011

Released: January 26, 2011

By the Commission:

I. DISCUSSION

1. In our recent *Third Report and Order and Order on Reconsideration*, we adopted rules to improve the market for CableCARD devices. These rule changes included, *inter alia*, references to standards and test procedures to which devices are subject before they may be labeled or marketed as “unidirectional digital cable products,”¹ a requirement that cable operators support the reception of switched digital video services on retail CableCARD devices,² and a prohibition on price discrimination against retail devices.³ Following release of the *Third Report & Order*, we have concluded that certain

¹ See *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices; Compatibility Between Cable Systems and Consumer Electronics Equipment; Oceanic Time Warner Cable, A subsidiary of Time Warner Cable, Inc.; Oceanic Time Warner Cable, a division of Time Warner Cable, Inc. Oceanic Kauai Cable System; Oceanic Time Warner Cable, a division of Time Warner Cable, Inc. Oceanic Oahu Central Cable System; Cox Communications, Inc. Fairfax County, Virginia Cable System; Cable One, Inc.'s Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, CS Docket No. 97-80; PP Docket No. 00-67; File Nos. EB-07-SE-351, EB-07-SE-352; NAL/Acct. Nos. 200832100074, 200932100001, 200932100002, 200932100003, 200932100008, 200932100022, and 200932100023; FRN Nos. 0018049841, 0016034050; CSR-8080-Z, 25 FCC Rcd 14657 at ¶¶ 34-38; Appendix B (amending Sections 15.38(c) and 15.123(c)) (2010) (“*Third Report & Order*”).

² *Third Report & Order* at ¶ 9-14; Appendix B (adopting new Section 76.1205(b)(4)).

³ *Id.* at ¶¶ 15-19; Appendix B (adopting new Section 76.1205(b)(5)).

modifications and clarifications are needed in order to fully and accurately reflect our intent in adopting these rule changes.⁴ Accordingly, we adopt this *sua sponte* Order on Reconsideration.

2. The *Third Report & Order* referenced CableCARD device testing procedures and standards to ensure that our rules reflect the most recent standards available.⁵ Following release of the *Third Report & Order*, industry participants informed the Commission that the testing procedures and standards referenced in our new rules do not reflect the most recent standards available, and that certain portions of those rules contain inconsistent references to the facilities that are qualified to certify devices.⁶ Our intent is to reference the most up-to-date standards for unidirectional digital cable products available, and to allow any qualified test facility to certify unidirectional digital cable products. Accordingly, in the attached Appendix we modify our rules to refer to the most recent unidirectional CableCARD standards available.⁷

3. We also adopted a rule that was intended to ensure that all CableCARD-reliant navigation devices have access to switched digital programming.⁸ We have concluded that the rule that we adopted could be interpreted to extend to MVPDs that are not subject to our CableCARD rules and navigation devices that do not rely on CableCARDs. This was not our intent. Accordingly, we amend the rule to clarify that cable operators that are subject to our CableCARD support rules⁹ are required to provide CableCARD-reliant navigation devices with satisfactory access to switched digital programming.¹⁰

4. Similarly, we adopted a rule to ensure that cable operators do not subsidize the costs of leased set-top boxes with service fees, but that rule could be interpreted to apply to any subscriber who owns a navigation device even if the subscriber does not use it to receive cable services.¹¹ Accordingly, we modify our rules to make it clear that our anti-subsidy rule only applies in cases in which consumers use navigation devices that they own to receive video services provided by their cable operator.¹²

5. The *Third Report & Order* exempted leased one-way set-top boxes without recording functionality from the Commission's separated security and IP interface requirements.¹³ We now clarify that leased set-top boxes with integrated security may include an IP interface but only to the extent that

⁴ Pursuant to Section 1.108 of the Commission's rules. "[t]he Commission may, on its own motion, set aside any action made or taken by it within 30 days from the date of public notice of such action, as that date is defined in § 1.4(b) of these rules." 47 C.F.R. § 1.108. The date of public notice in a rulemaking proceeding is the date of publication in the Federal Register. 47 C.F.R. § 1.4(b)(1). We note that the *Third Report & Order* has not yet been published in the Federal Register and will be published concurrently with this Order.

⁵ *Third Report & Order* at ¶ 65; Appendix B (amending Sections 15.38(c); 15.123(c)(5)).

⁶ See Letter from Neal M. Goldberg, Vice President and General Counsel, National Cable and Telecommunications Association, to Marlene H. Dortch, Secretary, Federal Communications Commission at 1 (October 20, 2010).

⁷ See Appendix (amending Sections 15.38(c); 15.123(c)(5)).

⁸ *Third Report & Order* at ¶¶ 9-14; Appendix B (adopting new Section 76.1205(b)(4)).

⁹ See 47 C.F.R. § 76.640.

¹⁰ See Appendix (amending Section 76.1205(b)(4)).

¹¹ *Third Report & Order* at ¶¶ 9-14; Appendix B (adopting new Section 76.1205(b)(4)).

¹² See Appendix (amending Section 76.1205(b)(5)(D)).

¹³ *Third Report & Order* at ¶ 49; Appendix B (amending Sections 76.640(b)(4) and 76.1204(a)(2)).

the interface is not used to access cable operator-provided on-demand or cable operator-provided digital video recorder services. This prohibition is intended to prevent cable operators from subverting the spirit of the integration ban exemption for one-way, non-recording set-top boxes. It does not preclude a subscriber from using the IP connection to connect to a recording device purchased at retail. We also discovered that the *Third Report & Order* is missing the text in footnote 149, and amend the order accordingly by inserting in footnote 149 a cite to the Digital Living Network Alliance's Comments at pages 1-2, and Texas Instruments Reply at pages 2-5.¹⁴

6. Finally, the Commission has before it a petition for reconsideration filed by Public Knowledge, Free Press, Media Access Project, Open Technology Institute, and U.S. PIRG.¹⁵ Those parties seek reconsideration of a Memorandum Opinion and Order in which the Commission granted a waiver of our rule prohibiting cable operators from placing into service new navigation devices with integrated security.¹⁶ We dismiss the petition for reconsideration as moot, as a new rule that we adopted in the *Third Report & Order* exempts one-way set-top boxes without recording functionality from the separated security requirement.¹⁷

II. PROCEDURAL MATTERS

7. *Paperwork Reduction Act Analysis.* This document contains information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the information collection requirements contained in this proceeding. The Commission will publish a separate document in the Federal Register at a later date seeking these comments. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might "further reduce the information collection burden for small business concerns with fewer than 25 employees." We note that any compliance burden from our action either maintains *status quo* or is insignificant.¹⁸

8. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA),¹⁹ requires that a regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."²⁰ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small

¹⁴ Digital Living Network Alliance Comments at 1-2; Texas Instruments Reply at 2-5.

¹⁵ See Public Knowledge et al Petition for Reconsideration (filed Jun. 29, 2009).

¹⁶ *Evolution Broadband, LLC's Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, 24 FCC Rcd 7890 (2009).

¹⁷ See *Third Report & Order* at ¶¶ 45-51; Appendix B (amending sections 76.1204(a)(2)(i)). Public Knowledge et al.'s petition for reconsideration also fails on procedural grounds because none of the petitioners was a party to the underlying proceeding, and the petition for reconsideration did not "show good reason why it was not possible for [them] to participate in the earlier stages of the proceeding." 47 C.F.R. § 1.106(b)(1).

¹⁸ See also ¶¶ 8-9, *infra*.

¹⁹ The RFA, see 5 U.S.C. § 601 – 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

²⁰ 5 U.S.C. § 605(b).

governmental jurisdiction.”²¹ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.²² A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).²³

9. In this Order on Reconsideration, the Commission slightly modifies certain rules regarding devices that access cable services. As noted in paragraphs 2 through 5, *supra*, these changes are simple updates to reflect current standards and to clarify the situations in which our existing rules apply. Thus, any compliance changes either maintain *status quo* or are insignificant, and the economic effect on cable operators will not be significant. Therefore, we certify that the requirements of this Order on Reconsideration will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the Order on Reconsideration including a copy of this final certification, in a report to Congress and the Government Accountability Office pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, *see* 5 U.S.C. § 801(a)(1)(A). In addition, the Order on Reconsideration and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the Federal Register.²⁴

III. ORDERING CLAUSES

10. **IT IS ORDERED** that pursuant to the authority contained in Sections 1, 4(i) and (j), 303, 403, 601, 624A and 629 of the Communications Act of 1934, 47 U.S.C §§ 151, 154(i) and (j), 303, 403, 521, 544a and 549, and Section 1.108 of the Commission’s rules, 47 C.F.R. § 1.108, that the Commission’s rules **ARE HEREBY AMENDED** as set forth in Appendix A, and shall become effective 30 days after publication in the Federal Register, except for Section 76.1205(b)(5), which contains information collection requirements subject to the Paperwork Reduction Act. Section 76.1205(b)(5) shall become effective immediately upon announcement in the Federal Register of OMB approval.

11. **IT IS FURTHER ORDERED** that the Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of this *Order on Reconsideration*, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

²¹ 5 U.S.C. § 601(6).

²² 5 U.S.C. § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

²³ 15 U.S.C. § 632.

²⁴ *See* 5 U.S.C. § 605(b).

**APPENDIX
Final Rules**

Part 15 of the Code of Federal Regulations is amended as follows:

PART 15 – RADIO FREQUENCY DEVICES

1. The authority for Part 15 is amended to read as follows:

AUTHORITY: 47 U.S.C. 154, 302a, 303, 304, 307, 336, 544a, and **549**.

2. Revise paragraph (c) of §15.38 to read as follows:

(c) The following materials are freely available from at least one of the following addresses: Cable Television Laboratories, Inc., 858 Coal Creek Circle, Louisville, Colorado, 80027, www.cablelabs.com/opencable/udcp; or at Consumer Electronics Association, 1919 S. Eads St. Arlington; VA 22202, http://www.ce.org/public_policy.

(1) Uni-Dir-PICS-I01-030903: “Uni-Directional Receiving Device: Conformance Checklist: PICS Proforma,” 2003, IBR approved for §15.123.

(2) Uni-Dir-ATP-I02-040225: “Uni-Directional Receiving Device Acceptance Test Plan,” 2004, IBR approved for §15.123.

(3) M-UDCP-PICS-I04-080225, IBR approved for §15.123.

(4) TP-ATP-M-UDCP-I05-20080304, IBR approved for §15.123.

3. Revise §15.123 to read as follows

§15.123 Labeling of Digital Cable Ready Products.

(c)(2) A qualified test facility is a testing laboratory representing cable television system operators serving a majority of the cable television subscribers in the United States or an appropriately qualified independent laboratory with adequate equipment and competent personnel knowledgeable with respect to the **references noted in § 15.38**. For any independent testing laboratory to be qualified hereunder such laboratory must ensure that all its decisions are impartial and have a documented structure which safeguards impartiality of the operations of the testing laboratory. In addition, any independent testing laboratory qualified hereunder must not supply or design products of the type it tests, nor provide any other products or services that could compromise confidentiality, objectivity or impartiality of the testing laboratory’s testing process and decisions.

(3) 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 qualified test facility**.

(5) This subsection applies to unidirectional digital cable product models which utilize Point-of-Deployment modules (PODs) in multi-stream mode (M-UDCPs).

(i) The manufacturer or importer shall have a sample of its first model of a M-UDCP tested at a qualified test facility to show compliance with **M-UDCP-PICS-I04-080225** as specified in the procedures set forth in **TP-ATP-M-UDCP-I05-20080304** (both references incorporated by reference, see § 15.38). If the model fails to comply, the manufacturer or importer shall have retested, at a qualified test facility, a product that complies with the applicable tests and procedures in § 15.38 before any product or related model may be labeled or marketed. If the manufacturer or importer's first M-UDCP is not a television, then that manufacturer or importer's first model of an M-UDCP which is a television shall be tested pursuant to this subsection as though it were the first M-UDCP.

(iii) 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-UDCP-PICS-I04-080225** (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-UDCP-PICS-I04-080225** (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-UDCP-PICS-I04-080225** to the **qualified test facility**.

(iv) **M-UDCPs must be in compliance with M-UDCP-PICS-I04-080225** (incorporated by reference, see § 15.38) in accordance with the procedures set forth in **TP-ATP-M-UDCP-I05-20080304**, (incorporated by reference, see § 15.38) or an equivalent test procedure that produces identical pass/fail test results.

In the event of any dispute over the applicable results under an equivalent test procedure, the results under **TP-ATP-M-UDCP-I05-20080304** shall govern.

Part 76 of the Code of Federal Regulations is amended as follows:

PART 76 – MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

4. The authority for Part 76 continues to read as follows:

AUTHORITY: 47 U.S.C. 151, 152, 153, 154, 301, 302a, 303, 303a, 307, 308, 309, 312, 317, 325, 338, 339, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 531, 571, 572, and 573.

5. Revise paragraph (b) of §76.1205 to read as follows:

§76.1205 CableCARD Support

(b) A multichannel video programming provider that is subject to the requirements of Section **76.640** must:

(4) Effective August 1, 2011, provide, through the use of a commonly used interface and published specifications for communication, **CableCARD-reliant**, firmware-upgradable navigation devices the ability to tune simultaneously as many switched-digital channels as the greatest number of streams supported by any set-top box provided by the cable operator, or four simultaneous channels, whichever is greater;

(5)(D) For any bundled offer combining service and an **operator-supplied navigation device** into a single fee, including any bundled offer providing a discount for the purchase of multiple services, such provider shall make such offer available without discrimination to any customer that owns a navigation device, and, **to the extent the customer uses such navigation device in lieu of the operator-supplied equipment included in that bundled offer**, shall further offer such customer a discount from such offer equal to an amount not less than the monthly rental fee reasonably allocable to the lease of the operator-supplied navigation device included with that offer. For purposes of this section, in determining what is “reasonably allocable,” the Commission will consider in its evaluation whether the allocation is consistent with one or more of the following factors: (i) an allocation determination approved by a local, state, or federal government entity; (ii) the monthly lease fee as stated on the cable system rate card for the navigation device when offered by the cable operator separately from a bundled offer; and (iii) the actual cost of the navigation device amortized over a period of no more than 60 months.
