

the private sector, result from this action.

D. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 14, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

F. Approving SIP Revisions in Audit Law States

Nothing in this action should be construed as making any determination or expressing any position regarding Colorado's audit privilege and penalty immunity law (13-25-126.5, C.R.S.) or its impact upon any approved provision in the SIP, including the revision at issue here. The action taken herein does not express or imply any viewpoint on the question of whether there are legal deficiencies in this or any other Clean Air Act program resulting from the effect of Colorado's audit privilege and immunity law. A state audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities. EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen

enforcement under section 304 of the Clean Air Act is likewise unaffected by a state audit privilege or immunity law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: July 6, 1998.

Patricia D. Hull,
Acting Regional Administrator,
Region VIII.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart G—Colorado

2. Section 52.348 is amended by designating the existing text as paragraph (a) and by adding paragraph (b) to read as follows:

§ 52.348 Emission inventories.

* * * * *

(b) On September 16, 1997, the Governor of Colorado submitted the 1993 Carbon Monoxide Periodic Emission Inventories for Colorado Springs, Denver, Fort Collins, and Longmont as revisions to the Colorado State Implementation Plan. These inventories address carbon monoxide emissions from stationary point, area, non-road mobile, and on-road mobile sources.

[FR Doc. 98-18862 Filed 7-14-98; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 97-80; FCC 98-116]

Commercial Availability of Navigation Devices

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: These rules provide for the commercial availability of set top boxes and other consumer equipment used to receive video signals and other services. The intended effect of these rules is to expand opportunities for consumers to purchase this equipment from sources other than the service provider.

DATES: Effective upon approval by the Office of Management and Budget

("OMB"), but no sooner than August 14, 1998, except for § 76.1204, which shall become effective July 1, 2000. When approval is received, the Commission will publish a document announcing the effective date. Written comments by the public on the modified information collection requirements should be submitted on or before September 14, 1998.

ADDRESSES: A copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, NW, Washington, DC 20554, or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Thomas Horan, Cable Services Bureau, (202) 418-7200. For additional information concerning the information collections contained herein, contact Judy Boley at 202-418-0214, or via the Internet at jboley@fcc.gov.

PAPERWORK REDUCTION ACT: This *Report and Order* has been analyzed with respect to the Paperwork Reduction Act of 1995 (the "1995 Act") and found to impose new or modified information collection requirements on the public. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to take this opportunity to comment on the information collection requirements contained in this *Report and Order*, as required by the 1995 Act. Public comments are due September 14, 1998. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. *OMB Approval Number:* 3060-XXXX (new collection).

Title: Commercial Availability of Navigation Devices.

Type of Review: New collection.
Respondents: Businesses or other for-profit entities.

Number of Respondents: 200.

Estimated Time Per Response: 10 minutes to 40 hours.

Frequency of Response: On occasion.

Total Annual Burden to Respondents: 3,266 hours.

Total Annual Cost to Respondents: \$29,632.

Needs and Uses: The disclosure requirements set forth in this

proceeding will ensure that consumers can make informed decisions about the purchase and proper installation of navigation devices. The § 76.1207 petition process will give providers of multichannel video programming and equipment providers a forum in which to request relief from regulations adopted under this part for a limited time, provided that there is an appropriate showing 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. The § 76.1208 petition process allows interested parties to petition the Commission to provide for a sunset of navigation devices regulations. The semiannual reports will be used by the Commission to monitor the progress of key industry entities of their efforts to assure the commercial availability of navigation devices.

SUPPLEMENTARY INFORMATION:

1. The *Report and Order* addresses the issues raised in the *Notice of Proposed Rulemaking* in CS Docket No. 97-80, 62 FR 10011 (March 5, 1997) ("NPRM"), regarding the mandate expressed in Section 629 of the Communications Act (47 U.S.C. § 549) to ensure the commercial availability of "navigation devices," the equipment used to access video programming and other services from multichannel video programming systems.

2. *Entities Covered by Section 629.* The Commission concludes that Section 629 is jurisdictionally broad in terms of the multichannel video programming systems to which it applies. The rules adopted will be applied to multichannel video programming distributors (MVPDs) as defined by 47 U.S.C. § 522(13). Section 76.1200 of the rules defines the entities to which the rules apply. 47 U.S.C. § 573(c)(1) requires exclusion of open video systems operators from the requirements of Section 629.

3. *Equipment Covered.* The language of Section 629 indicates that Congress sought to have the marketplace offer consumers a choice over a broad range of equipment. Section 629(a) enumerates "converter boxes, interactive communications equipment, and other equipment used by consumers to access multichannel video programming and other services." Section 629 neither exempts nor limits any category of equipment used to access multichannel video programming or services offered over such systems from its coverage. Equipment used to

access video programming and other services offered over multichannel video programming systems include televisions, VCRs, cable set-top boxes, personal computers, program guide equipment and cable modems. Section 76.1200(c) of the rules defines the equipment to which the rules apply.

4. *Right to Attach.* The rules provide subscribers the right to attach any compatible navigation device to an MVPD system, regardless of its source, subject to the proviso that the attached equipment not cause harmful interference, injury to the system or compromise legitimate access control mechanisms. The Commission's rules make clear to subscribers that an MVPD is not the exclusive purveyor of navigation devices for its system. In addition to being directly restrained from attaching navigation equipment, consumers must also not be precluded from the possibility of obtaining equipment from commercial outlets by virtue of contractual or other restrictions on the availability of equipment that the service provider might seek to directly impose on suppliers of equipment. Section 76.1202 enforces the right to attach by precluding contractual or other arrangements, other than those involving equipment performing conditional access or security functions, that prevent navigation devices from being made available to subscribers from retailers, manufacturers, or other vendors that are unaffiliated with such service provider.

5. *Information on Technical Interface Specifications.* The Commission will require that MVPDs provide to the requesting party the technical information concerning interface parameters necessary for a navigation device to operate with the services delivered by the MVPD's system. Section 76.1205 delineates these requirements. The Commission will not replicate the more complete interface specification rules used in the telephone context, but will monitor closely industry progress on development of standards for attaching equipment, as well as MVPD compliance with the network disclosure requirements.

6. *Protection of Network Facilities.* The rules will allow MVPDs to restrict the attachment or use of equipment to their systems where electronic or physical harm would be caused by the attachment or operation of such equipment. MVPDs must publish, and provide to subscribers, standards and descriptions of devices that may not be used or attached to their systems because of the potential for harm. These requirements are contained in § 76.1203. To the extent that there is a dispute

whether an MVPD's equipment restrictions are unreasonable, the Commission's petition procedures are available.

7. *Security and Theft of Service.* No Commission action in this proceeding should be construed to authorize or justify any use, manufacture, or importation of equipment that would violate Section 633 of the Communications Act or any other provision of law precluding the unauthorized reception of MVPD service. Similarly, nothing in this proceeding should be construed as diminishing an operator's ability to seek civil damages against parties involved with navigation devices providing unauthorized reception of services.

8. *Signal Leakage.* When combined with the 47 CFR 76 signal leakage requirements, the 47 CFR 15 provisions provide sufficient safeguards for signal leakage and interference concerns for retail navigation devices. The part 15 provisions include limitations on signal leakage from electronic equipment and also specify equipment authorization procedures.

9. *Rules for Equipment Providing Conditional Access.* As of July 1, 2000, MVPDs covered by Section 629 who wish to distribute devices using integrated security may do so only if they also make available security modules separately. The device supplied by the service provider must be designed to connect to and function with other navigation devices through the use of a commonly used interface or through an interface that conforms to appropriate technical standards promulgated by a national standards organization. The rule requiring separation of security functions does not apply to MVPDs that support navigation devices that are portable throughout the continental United States, and are available from retail outlets and other vendors. There is an exception in the rules (§ 76.1204(d)) for situations in which where separation is not feasible. This exception is intended, however, to be a narrow exception to the general rules to account for unusual types of equipment.

10. The Commission is requiring the eight multiple system operators that are involved in the CableLabs/OpenCable project to advise the Commission semiannually—on January 7, 1999, July 7, 1999, January 7, 2000, and July 7, 2000—as to the progress of their efforts and the efforts of CableLabs to assure the commercial availability, to consumers of equipment used to access multichannel video programming and other services offered over multichannel video programming systems, from

manufacturers, retailers, and other vendors not affiliated with any multichannel video programming distributor. The reports should detail the progress being made toward meeting the July 1, 2000 deadline. The information should advise the Commission of the status of any standards or certification process and any anticipated dates for approval.

11. The Commission's rules permit MVPDs to continue to provide equipment on an integrated basis until January 1, 2005, so long as modular security components are also made available. MVPDs may continue to sell or lease boxes after this date provided the boxes have a severable security component rather than integrated security. In the year 2000, once separate security modules are available, the Commission will assess the state of the market to determine whether that time frame is appropriate and will review the mechanics of the phase out of integrated boxes.

12. *Affiliation.* Affiliation is defined based on common ownership or control as defined in the notes accompanying 47 CFR 76.501.

13. *Subsidies.* Existing equipment rate rules applicable to cable television systems not facing effective competition address Section 629(a)'s requirement that charges to consumers for such devices and equipment are separately stated and not subsidized by charges for any other service. While a cable operator subject to rate regulation may offer navigation devices necessary to receive regulated services, it may do so only within the parameters of 47 CFR 76.923. Section 76.923 sets forth the rules for determining the rates for equipment and installation used to receive the basic service tier and states that cable operators subject to rate regulation are not permitted to charge subscribers for equipment beyond actual cost. The relevant rule is found in § 76.1206.

14. *Waivers.* A provider of multichannel video programming and other services offered over multichannel video programming systems, or an equipment provider, may petition the Commission for a waiver. The Commission may waive a regulation adopted under Section 629 if such service or equipment provider makes an appropriate showing that such 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. The Commission will apply the procedural

rules set forth in 47 CFR 76.7. The relevant rule is contained in § 76.1207.

15. *Sunset of Regulations.* The regulations adopted under this section shall cease to apply when, as stated in Section 629(e), the Commission determines that (1) the market for MVPDs 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. An interested party may petition the Commission to determine that Section 629(e) has been satisfied. This rule is found in § 76.1208.

16. *Digital Television Compatibility.* In the context of this and other proceedings, the issue of transmitting digital television signals to consumers has been raised. Since the record on this issue in this proceeding is extremely limited, and the matter may more appropriately be addressed in another proceeding, the Commission will defer consideration here. The Commission intends to monitor developments with respect to the compatibility of set-top boxes and digital televisions.

17. *Electronic Program Guides.* An issue was raised in this proceeding, regarding whether electronic program guide equipment and guide services are covered by the requirements of Section 629. Based on the plain language of Section 629, it appears clear that the equipment used to access such electronic program guides is "equipment used by consumers to access . . . services offered over multichannel video programming systems" and hence falls within the requirements of Section 629. While the Commission is committed to encouraging the development of the market for the provision of electronic program guide services as part of its broader goal of promoting consumer choice, the record in this proceeding is limited on this issue. Therefore, the Commission cannot adequately address at this time the extent of any obligation of multichannel video programming systems to make such services available pursuant to Section 629 or otherwise. The Commission will monitor developments with respect to the availability of electronic program guides to determine whether any action is appropriate in the future.

Final Regulatory Flexibility Analysis

18. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated into the *NPRM* in this proceeding. The

Commission sought written public comment on the possible impact of the proposed policies and rules on small entities in the *NPRM*, including comments on the IRFA. This Final Regulatory Flexibility Analysis ("FRFA") in this *Report and Order* conforms to the RFA.

19. *Need for Action and Objectives of the Rules.* The 1996 Act added a new Section 629 to the Communications Act of 1934, as amended, that requires the Commission to develop rules to assure competitive availability of navigation devices used in conjunction with multichannel video programming distributors ("MVPD"). The Commission is promulgating these rules in order to implement this provision of Section 629. The statutory objective of Section 629 is assure that navigation devices used by consumers to access a particular MVPD's programming are available to consumers from manufactures, retailers and other vendors not affiliated with that MVPD.

20. *Summary of Significant Issues Raised by the Public Comments in Response to the IRFA.* No comments were filed specifically in response to the IRFA. The Commission, however, considered the economic impact on small entities through consideration of comments that pertain to issues of concern to MVPDs. Commenters cautioned that rules enacted to implement the requirements of Section 629 must not jeopardize the system and signal security of MVPDs and should not mandate technical standards that would interfere with innovation of navigation devices or development of new technologies. In the *Report and Order*, the Commission notes concern with system security and allows MVPDs to restrict the attachment or use of navigation equipment to their systems where electronic or physical harm would be caused by the attachment or operation of such equipment. As for signal security, the rules allow MVPDs to disconnect service to subscribers using a navigation device that assists in the unauthorized reception of service. The rules promulgated also note concern for inhibiting innovation or development of new technologies. The Commission does not mandate particular standards or require specific action, but seeks to recognize accepted industry standards that have evolved or are evolving.

21. *Description and Estimate of the Number of Small Entities to Which the Rules Will Apply.* The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that might be affected by the rules here adopted. The

RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. Under the Small Business Act, a small business concern is one which: (a) is independently owned and operated; (b) is not dominant in its field of operation; and (c) satisfies any additional criteria established by the SBA. The rules adopted in this *Report and Order* will affect cable systems, multipoint multichannel distribution systems, direct broadcast satellites, home satellite dish manufacturers, satellite master antenna television, local multipoint distribution systems, small manufacturers, electronic equipment manufacturers, computer manufacturers, and small retailers.

22. *Small Multichannel Video Programming Distributors ("MVPD")*: The SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating \$11 million or less in annual receipts. This definition includes cable system operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Bureau of the Census, there are approximately 1,758 total cable and other pay television services and 1,423 had less than \$11 million in revenue. Below each service is addressed to provide a more precise estimate of small entities.

23. *Cable Systems*: The Commission has developed, with SBA's approval, our own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving no more than 400,000 subscribers nationwide. Based on recent information, the Commission estimates that there were 1439 cable operators that qualified as small cable companies at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, the Commission estimates that there are fewer than 1439 small entity cable system operators that may be affected by the decisions and rules we are adopting. The Commission concludes that only a small percentage of these entities currently provide qualifying "telecommunications

services" as required by the Communications Act and, therefore, estimate that the number of such entities are significantly fewer than noted.

24. The Communications Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000." The Commission has determined that there are 61,700,000 cable subscribers in the United States. Therefore, the Commission found that an operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed \$250 million in the aggregate. Based on available data, the Commission finds that the number of cable operators serving 617,000 subscribers or less totals 1450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, the Commission is unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

25. *Multipoint Multichannel Distribution Systems ("MMDS")*: The Commission refined its definition of "small entity" for the auction of MMDS as an entity that together with its affiliates has average gross annual revenues that are not more than \$40 million for the preceding three calendar years. This definition of a small entity in the context of MMDS auctions has been approved by the SBA.

26. The Commission completed its MMDS auction in March 1996 for authorizations in 493 basic trading areas ("BTAs"). Of 67 winning bidders, 61 qualified as small entities. Five bidders indicated that they were minority-owned and four winners indicated that they were women-owned businesses. MMDS is an especially competitive service, with approximately 1573 previously authorized and proposed MMDS facilities. Information available to us indicates that no MMDS facility generates revenue in excess of \$11 million annually. The Commission concludes that, for purposes of this FRFA, there are approximately 1634 small MMDS providers as defined by the SBA and the Commission's auction rules.

27. *ITFS*: There are presently 2032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in the definition of a small business. However, the Commission does not collect annual revenue data for ITFS licensees and is not able to ascertain how many of the 100 non-educational licensees would be categorized as small under the SBA definition. No commenters address these non-educational licensees. Accordingly, the Commission concludes that at least 1932 licensees are small businesses.

28. *Direct Broadcast Satellite ("DBS")*: Because DBS provides subscription services, DBS falls within the SBA definition of cable and other pay television services (SIC 4841). As of December 1996, there were eight DBS licensees. However, the Commission does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could be affected by these proposed rules. Although DBS service requires a great investment of capital for operation, in the *NPRM*, the Commission acknowledged that there are several new entrants in this field that may not yet have generated \$11 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated. Since the publication of the *NPRM*, however, more information has become available. In light of the 1997 gross revenue figures for the various DBS operators, the Commission concludes that no DBS operator qualifies as a small entity.

29. *Home Satellite Dish ("HSD")*: The market for HSD service is difficult to quantify. Indeed, the service itself bears little resemblance to other MVPDs. HSD owners have access to more than 500 channels of programming placed on C-band satellites by programmers for receipt and distribution by MVPDs, of which 350 channels are scrambled and approximately 150 are unscrambled. HSD owners can watch unscrambled channels without paying a subscription fee. To receive scrambled channels, however, an HSD owner must purchase an integrated receiver-decoder from an equipment dealer and pay a subscription fee to an HSD programming packager. Thus, HSD users include: (1) Viewers who subscribe to a packaged programming service, which affords them access to most of the same programming provided to subscribers of other MVPDs; (2) viewers who receive only nonsubscription programming; and (3) viewers who receive satellite

programming services illegally without subscribing.

30. According to the most recently available information, there are approximately 20 to 25 program packagers nationwide offering packages of scrambled programming to retail consumers. These program packagers provide subscriptions to approximately 2,184,470 subscribers nationwide. This is an average of about 77,163 subscribers per program packager. This is substantially smaller than the 400,000 subscribers used in the Commission's definition of a small multiple system operator ("MSO").

31. *Satellite Master Antenna Television ("SMATVs")*: Industry sources estimate that approximately 5200 SMATV operators were providing service as of December 1995. Other estimates indicate that SMATV operators serve approximately 1.162 million residential subscribers as of June 30, 1997. The ten largest SMATV operators together pass 848,450 units. Assuming that these SMATV operators serve 50% of the units passed, the ten largest SMATV operators serve approximately 40% of the total number of SMATV subscribers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, the Commission is not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten SMATVs, the Commission concludes that a substantial number of SMATV operators qualify as small entities.

32. *Local Multipoint Distribution System ("LMDS")*: Unlike the above pay television services, LMDS technology and spectrum allocation will allow licensees to provide wireless telephony, data, and/or video services. A LMDS provider is not limited in the number of potential applications that will be available for this service. Therefore, the definition of a small LMDS entity may be applicable to both cable and other pay television (SIC 4841) and/or radiotelephone communications companies (SIC 4812). The SBA approved definition for cable and other pay services that qualify as a small business is defined above. A small radiotelephone entity is one with 1500 employees or fewer. However, for the purposes of this *Report and Order* on navigation devices, the Commission includes only an estimate of LMDS video service providers.

33. An auction for licenses to operate LMDS systems was recently completed by the Commission. The vast majority of

the LMDS license auction winners were small businesses under the SBA's definition of cable and pay television (SIC 4841). The Commission adopted a small business definition for entities bidding for LMDS licenses as an entity that, together with affiliates and controlling principles, has average gross revenues not exceeding \$40 million for each of the three preceding years. The Commission has not yet received approval by the SBA for this definition.

34. There is only one company, CellularVision, that is currently providing LMDS video services. In the IRFA, the Commission assumed that CellularVision was a small business under both the SBA definition and our auction rules. No commenters addressed the tentative conclusions reached in the *NPRM*. Accordingly, the Commission affirms the tentative conclusion that a majority of the potential LMDS licensees will be small entities, as that term is defined by the SBA.

35. *Small Manufacturers*: The SBA has developed definitions of small entity for manufacturers of household audio and video equipment (SIC 3651) and for radio and television broadcasting and communications equipment (SIC 3663). In each case, the definition includes all such companies employing 750 or fewer employees.

36. *Electronic Equipment Manufacturers*: The Commission has not developed a definition of small entities applicable to manufacturers of electronic equipment, and therefore, will use the SBA definition of manufacturers of Radio and Television Broadcasting and Communications Equipment. According to the SBA's regulations, a TV equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern. Census Bureau data indicates that there are 858 U.S. firms that manufacture radio and television broadcasting and communications equipment, and that 778 of these firms have fewer than 750 employees and would be classified as small entities. The Census Bureau category is very broad, and specific figures are not available as to how many of these firms are exclusive manufacturers of television equipment or how many are independently owned and operated. The Commission concludes that there are approximately 778 small manufacturers of radio and television equipment.

37. *Electronic Household/Consumer Equipment*: The Commission has not developed a definition of small entities applicable to manufacturers of electronic equipment used by consumers, as compared to industrial

use by television licensees and related businesses, and therefore will utilize the SBA definition applicable to manufacturers of Household Audio and Visual Equipment. According to the SBA's regulations, a household audio and visual equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern. Census Bureau data indicates that there are 410 U.S. firms that manufacture radio and television broadcasting and communications equipment, and that 386 of these firms have fewer than 500 employees and would be classified as small entities. The remaining 24 firms have 500 or more employees; however, the Commission is unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. Furthermore, the Census Bureau category is very broad, and specific figures are not available as to how many of these firms are exclusive manufacturers of television equipment for consumers or how many are independently owned and operated. The Commission concludes that there are approximately 386 small manufacturers of television equipment for consumer/household use.

38. *Computer Manufacturers*: The Commission has not developed a definition of small entities applicable to computer manufacturers, and therefore will use the SBA definition of Electronic Computers. According to SBA regulations, a computer manufacturer must have 1,000 or fewer employees in order to qualify as a small entity. Census Bureau data indicates that there are 716 firms that manufacture computers and of those, 659 have fewer than 500 employees and qualify as small entities. The remaining 57 firms have 500 or more employees; however, the Commission is unable to determine how many of those have fewer than 1,000 employees and therefore also qualify as small entities under the SBA definition. The Commission concludes that there are approximately 659 small computer manufacturers.

39. *Small Retailers*: The Commission has not developed a definition of small entities applicable to navigation retail devices, and therefore will utilize the SBA definition. The 1992 Bureau of the Census data indicates: there were 9,663 U.S. firms classified as Radio, TV & electronic stores (SIC 5731), and that 9,385 of these firms had \$4.999 million or less in annual receipts and 9,473 of these firms had \$7.499 million or less in annual receipts. Consequently, the Commission concludes that there are approximately 9,663 small entities that

produce and distribute radio, television, and electronic equipment that may be affected by the decisions in the *Report and Order*.

40. *Description of Reporting, Recordkeeping and Other Compliance Requirements.* This analysis examines the costs and administrative burdens associated with our rules and requirements. The rules adopted require MVPDs to make available, upon request, technical information concerning interface parameters. The Commission believes, however, that this requirement would not necessitate any additional professional, engineering, or customer service skills beyond those already utilized in the ordinary course of business by MVPDs.

41. *Steps Taken to Minimize Significant Economic Impact On Small Entities and Significant Alternatives Considered.* The Commission believes that the rules, implemented to assure commercial availability of navigation devices, will have the positive result of opening up to small retailers the market to sell or lease navigation devices to MVPD subscribers. Section 629 includes provisions which may lessen compliance impact on small entities affected by the rules adopted in this *Report and Order*. Section 629(c) specifies that the Commission shall waive the regulations developed to implement Section 629 when necessary for an MVPD to develop new or improved services offered over its system. Second, Section 629(e) requires the Commission to sunset the rules adopted in the *Report and Order* once a determination is made that (1) the market for MVPDs is fully competitive; (2) the market for convertor 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. The rules also consider situations and offer relief where the commercial availability of navigation devices performing conditional access functions could adversely impact an MVPD. An MVPD is not subject to the rules requiring the commercial availability of navigation devices if: (1) it is not reasonably feasible to separate conditional access functions from other functions; or (2) it is not reasonably feasible to prevent the unauthorized reception of service by subscribers using navigation devices obtained from other sources.

42. In the *NPRM*, the Commission asked for comment as to other means for achieving a competitive market for navigation devices. Commenters suggest means which would lead to more governmental involvement in the

equipment design process and the retail marketplace. For instance, some commenters advocate that the Commission require MVPDs to license proprietary design specifications to manufacturers of navigation devices. The Commission has determined that allowing for technical innovation and flexible design standards would be the best means of meeting Section 629's statutory mandate of maximizing consumer choice in consumer electronics equipment. The Commission noted the ongoing activities of several industry organizations to develop open equipment standards. Accordingly, the Commission has adopted a regulatory regime to implement Section 629's requirements that causes minimum intrusion into the commercial marketplace.

43. It is ordered that, pursuant to authority found in Sections 4(i), 303(r), and 629 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and 549, the Commission's rules are hereby amended as set forth below.

44. It is further ordered that the rules as amended shall become effective upon approval by OMB, but no sooner than August 14, 1998, except for § 76.1204, which shall become effective July 1, 2000.

45. It is further ordered that Tele-Communications, Inc., Time Warner Cable, Jones Intercable, U S WEST Media Group, Marcus Cable, Advance/Newhouse Communications, Cox Communications, and Comcast Corporation shall file reports on January 7, 1999, July 7, 1999, January 7, 2000, and July 7, 2000 detailing the progress of their efforts and the efforts of CableLabs to assure the commercial availability, to consumers of equipment used to access multichannel video programming and other services offered over multichannel video programming systems, from manufacturers, retailers, and other vendors not affiliated with any multichannel video programming distributor.

46. It is further ordered that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

Magalie Roman Salas,
Secretary.

Rule Changes

Part 76 of title 47 of the Code of Federal Regulations is amended as follows:

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

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

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

2. Subpart P is added to read as follows:

Subpart P—Competitive Availability of Navigation Devices

§ 76.1200 Definitions.

As used in this subpart:

(a) *Multichannel video programming system.* A distribution system that makes available for purchase, by customers or subscribers, multiple channels of video programming other than an open video system as defined by § 76.1500(a). Such systems include, but are not limited to, cable television systems, multichannel multipoint distribution systems, direct broadcast satellite systems, other systems for providing direct-to-home multichannel video programming via satellite, and satellite master antenna systems.

(b) *Multichannel video programming distributor.* A person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, or a television receive-only satellite program distributor, who owns or operates a multichannel video programming system.

(c) *Navigation devices.* Devices such as converter boxes, interactive communications equipment, and other equipment used by consumers to access multichannel video programming and other services offered over multichannel video programming systems.

(d) *Affiliate.* A person or entity that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person, as defined in the notes accompanying § 76.501.

(e) *Conditional access.* The mechanisms that provide for selective access and denial of specific services and make use of signal security that can prevent a signal from being received except by authorized users.

§ 76.1201 Rights of subscribers to use or attach navigation devices.

No multichannel video programming distributor shall prevent the connection or use of navigation devices to or with its multichannel video programming system, except in those circumstances where electronic or physical harm would be caused by the attachment or operation of such devices or such devices may be used to assist or are intended or designed to assist in the unauthorized receipt of service.

§ 76.1202 Availability of navigation devices.

No multichannel video programming distributor shall by contract, agreement, patent right, intellectual property right or otherwise prevent navigation devices that do not perform conditional access or security functions from being made available to subscribers from retailers, manufacturers, or other vendors that are unaffiliated with such owner or operator, subject to § 76.1209.

§ 76.1203 Incidence of harm.

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. In any situation where theft of service or harm occurs or is likely to occur, service may be discontinued.

§ 76.1204 Availability of equipment performing conditional access or security functions.

(a)(1) A multichannel video programming distributor that utilizes navigation devices to perform conditional access functions shall make available equipment that incorporates only the conditional access functions of such devices. Commencing on January 1, 2005, no multichannel video programming distributor subject to this section shall place in service new navigation devices for sale, lease, or use

that perform both conditional access and other functions in a single integrated device.

(2) The foregoing requirement shall not apply to a multichannel video programming distributor that supports the active use by subscribers of navigation devices that: (i) operate throughout the continental United States, and (ii) are available from retail outlets and other vendors throughout the United States that are not affiliated with the owner or operator of the multichannel video programming system.

(b) Conditional access function equipment made available pursuant to paragraph (a)(1) of this section shall be designed to connect to and function with other navigation devices available through the use of a commonly used interface or an interface that conforms to appropriate technical standards promulgated by a national standards organization.

(c) No multichannel video programming distributor shall by contract, agreement, patent, intellectual property right or otherwise preclude the addition of features or functions to the equipment made available pursuant to this section that are not designed, intended or function to defeat the conditional access controls of such devices or to provide unauthorized access to service.

(d) Notwithstanding the foregoing, navigation devices need not be made available pursuant to this section where:

(1) It is not reasonably feasible to prevent such devices from being used for the unauthorized reception of service; or

(2) It is not reasonably feasible to separate conditional access from other functions without jeopardizing security.

(e) The requirements of this section shall become applicable on July 1, 2000.

§ 76.1205 Availability of interface information.

Technical information concerning interface parameters that are needed to permit navigation devices to operate with multichannel video programming systems shall be provided by the system operator upon request in a timely manner.

§ 76.1206 Equipment sale or lease charge subsidy prohibition.

Multichannel video programming distributors offering navigation devices subject to the provisions of § 76.923 for sale or lease directly to subscribers,

shall adhere to the standards reflected therein relating to rates for equipment and installation and shall separately state the charges to consumers for such services and equipment.

§ 76.1207 Waivers.

The Commission may waive a regulation adopted under this subpart 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 should be made pursuant to § 76.7. Such a waiver shall be effective for all service providers and products in the category in which the waiver is granted.

§ 76.1208 Sunset of regulations.

The regulations adopted under this subpart shall cease to apply when the Commission determines 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. Any interested party may petition the Commission for such a determination.

§ 76.1209 Theft of service.

Nothing in this subpart shall be construed to authorize or justify any use, manufacture, or importation of equipment that would violate 47 U.S.C. 553 or any other provision of law intended to preclude the unauthorized reception of multichannel video programming service.

§ 76.1210 Effect on other rules.

Nothing in this subpart affects § 64.702(d) of the Commission's regulations or other Commission regulations governing interconnection and competitive provision of customer premises equipment used in connection with basic common carrier communications services.

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