

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 76

[MB Docket No. 02–230; FCC 03–273]

Digital Broadcast Content Protection

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this item, the Commission adopts final rules implementing an ATSC flag-based redistribution control system to protect digital broadcast television content from unauthorized redistribution and ensure the continued flow of high value digital content to consumers via over-the-air broadcasting. This action is taken pursuant to the Commission's ancillary authority and is intended to preserve the viability of over-the-air broadcasting and further the digital television transition.

DATES: Effective January 2, 2004, except for §§ 73.9002 and 73.9008 which contain information collection requirements that are not effective until approved by the Office of Management and Budget. The FCC will publish a document in the **Federal Register** announcing the effective date for those sections. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register, as of January 2, 2004.

FOR FURTHER INFORMATION CONTACT: Susan Mort, susan.mort@fcc.gov, (202) 418–1043. For additional information concerning the information collection(s) contained in this document, contact Leslie Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet at Leslie.Smith@fcc.gov, or at 202–418–0217.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's Report and Order and Further Notice of Proposed Rulemaking, FCC 03–273, adopted and released on November 4, 2003. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: <http://www.fcc.gov>. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY

(202) 418–7365 or at Brian.Millin@fcc.gov.

Paperwork Reduction Act

The Report and Order portion of this document contains either a new or modified information collection(s). The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this Second Report and Order, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due February 2, 2004.

In addition to filing comments with the Secretary, a copy of any PRA comments on the information collections contained herein should be submitted to Leslie Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to Leslie.Smith@fcc.gov, and to Kim A. Johnson, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503, or via the Internet to Kim_A.Johnson@omb.eop.gov.

Summary of the Report and Order

1. In the *Report and Order* portion of this *Report and Order and Further Notice of Proposed Rulemaking*, the Commission adopts final rules implementing an ATSC flag-based redistribution control system to protect digital broadcast television content from unauthorized redistribution. Absent this action, we conclude that the threat of widespread unauthorized redistribution of high value digital content will deter content providers from making such content available through broadcast outlets. The creation of a redistribution control system for digital broadcast content is therefore necessary to preserve the future viability of over-the-air broadcasting.

2. Under this system, broadcasters are not required to, but may use the ATSC flag for redistribution control purposes only. The final rules require that demodulators integrated within, or produced for use in, digital television reception devices, including PC and IT products, (“Demodulator Products”) must recognize and give effect to the ATSC flag pursuant to certain compliance and robustness rules. MVPDs are permitted to perpetuate the flag in two ways on their systems: (1) By MVPD pass-through of the ATSC flag where the retransmission is unencrypted; or (2) where the retransmission is encrypted, by conveying the presence of the flag by

some means that requires the consumer's reception equipment to protect the content as if the flag were present.

3. As an enforcement mechanism, the *Report and Order* adopts written commitment regimes whereby (1) manufacturers or importers of ATSC demodulators obtain from buyers of such products a written commitment that they will incorporate such demodulators into compliant and robust devices or sell or distribute to third parties that have also made such written commitment, and (2) manufacturers or importers of Peripheral TSP Products agree to abide by the Demodulator Products compliance and robustness rules. The *Report and Order* further establishes interim procedures by which proponents of a particular content protection or recording technology can certify to the Commission that such technology is appropriate for use in Demodulator Products.

4. *Paperwork Reduction Act:* This *Report and Order* contains either a new or modified information collection(s). The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection(s) contained in this *Report and Order* as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due February 2, 2004.

5. *Final Regulatory Flexibility Analysis:* As required by the Regulatory Flexibility Act, the Commission has prepared a Final Regulatory Flexibility Analysis (“FRFA”) relating to this *Report and Order*. The FRFA is set forth within.

6. *Ordering Clauses:* It is ordered that pursuant to the authority contained in Sections 1, 2, 4(i) and (j), 303, 307, 309(j), 336, 337, 396(k), 403, 601, 614(b) and 624a, of the Communications Act of 1934, 47 U.S.C 151, 152, 154(i) and (j), 303, 307, 309(j), 336, 337, 396(k), 403, 521, 534(b) and 544a, that the Commission's rules ARE HEREBY AMENDED as set forth herein, and shall become effective 30 days after publication in the **Federal Register** except that rule sections 73.9002 and 73.9008 that contain information collection requirements under the PRA is not effective until approved by OMB. The FCC will publish a document in the **Federal Register** announcing the effective date for those sections. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief