

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 02-19181 Filed 7-29-02; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 76

[CS Docket No. 01-290; FCC 02-176]

#### Implementation of the Cable Television Consumer Protection and Competition Act of 1992 and the Development of Competition and Diversity in Video Programming Distribution: Section 628(c)(5) of the Communications Act—Sunset of Exclusive Contract Prohibition

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, through this document, retains for five years, until October 5, 2007, the prohibition on exclusive contracts contained in section 628(c)(2)(D) of the Communications Act of 1934, as amended. Section 628(c)(2)(D) generally prohibits, in areas served by a cable operator, exclusive contracts for satellite cable programming or satellite broadcast programming between vertically integrated programming vendors and cable operators. Under section 628(c)(5), the prohibition on exclusive programming contracts contained in section 628(c)(2)(D) would cease to be effective on October 5, 2002, ten years after its enactment through the 1992 Cable Act, unless the Commission found that such prohibition continues to be necessary to preserve and protect competition and diversity in the distribution of video programming. To comply with section 628, the Commission conducted a proceeding in order to determine whether the exclusive contract prohibition should sunset. As a result of conducting its proceeding, the Commission found in this document that while the landscape of the market for the distribution of multichannel video programming changed for the better since 1992, the prohibition continues to be necessary to preserve and protect competition and diversity in the distribution of video programming.

**DATES:** Effective August 14, 2002.

**FOR FURTHER INFORMATION CONTACT:** Karen A. Kosar, Media Bureau at 202-418-1053 or via the Internet at [kkosar@fcc.gov](mailto:kkosar@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order in Docket No. 01-290, FCC 02-176. The complete text of this Report and Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, Courtyard Level, 445 12th Street, SW., Washington, DC, 20554. This document may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com). It is also available on the Commission's website at <http://www.fcc.gov>.

#### Synopsis of the Report and Order

1. The Report and Order is issued in accordance with section 628(c)(5) of the Communications Act of 1934, as amended. Section 628(c)(2)(D), enacted through the 1992 Cable Act, generally prohibits, in areas served by a cable operator, exclusive contracts for satellite cable programming or satellite broadcast programming between vertically integrated programming vendors and cable operators. Section 628(c)(5) directs that the prohibition on exclusive contracts contained in section 628(c)(2)(D) shall cease to be effective on October 5, 2002, ten years after its enactment, unless the Commission finds that such prohibition "continues to be necessary to preserve and protect competition and diversity in the distribution of video programming." The Commission issued a Notice of Proposed Rulemaking, 66 FR 54972, October 31, 2001, seeking comment on the possible sunset of Section 628(c)(2)(D). The Report and Order finds that the exclusivity prohibition should be retained for five years, until October 5, 2007.

2. In examining whether the exclusivity prohibition "continues to be necessary," the Commission sought guidance in the concerns Congress expressed in 1992, however, the Commission's analysis places substantial weight on whether, in the absence of the exclusivity prohibition, vertically integrated programmers would currently have the incentive and ability to favor their affiliated cable operators over nonaffiliated cable operators and program distributors using other technologies and, if they would, whether such behavior would result in a failure to protect and preserve competition and diversity in the distribution of video programming. The Report and Order recognizes that enforcement of the exclusivity prohibition against all vertically

integrated programmers may not always serve the public interest and notes that retention of the prohibition does not foreclose all exclusive arrangements between vertically integrated programmers and cable operators. The Report and Order finds that Congress explicitly recognized the existence of such programming by creating a public interest exception to the prohibition. The Report and Order acknowledges that significant changes have taken place in the multichannel video programming distribution ("MVPD") market over the past ten years, and yet finds that vertically integrated programmers generally retain the incentive and ability to favor their cable affiliates over nonaffiliated cable operators and other competitive MVPDs to such a degree that, in the absence of the prohibition, competition and diversity in the distribution of video programming would not be preserved and protected.

3. In addressing the ability of programmers to favor their cable affiliates over other MVPDs, the Report and Order finds that access to vertically integrated programming continues to be necessary in order for competitive MVPDs to remain viable in the marketplace. In that regard, an MVPD's ability to provide service that is competitive with an incumbent cable operator is significantly harmed if denied access to "must have" vertically integrated programming for which there are no good substitutes. The Report and Order also finds that vertically integrated programmers retain the incentive to favor their affiliated cable operators over competitive MVPDs such that competition and diversity in the distribution of video programming would not be preserved and protected. In that regard, the Report and Order finds that cable operators today continue to dominate the MVPD marketplace and that horizontal consolidation and clustering combined with affiliation with regional programming, have contributed to cable's overall market dominance. In addition, the Report and Order determines that an economic basis for denial of access to vertically integrated programming to competitive MVPDs continues, and that such denial would harm such competitors' ability to compete for subscribers. The Report and Order further finds that a partial sunset of the exclusivity prohibition is not warranted at this time.

4. The Report and Order also finds that the scope of the exclusivity prohibition should not be narrowed to apply to particular types of programming or specified geographic

areas. The Report and Order also rejects expanding the prohibition to terrestrially delivered programming or non-vertically integrated programming. Finally, during the year before the expiration of the exclusivity prohibition on October 5, 2007, the Commission will undertake a review to again determine whether the prohibition continues to be necessary. During the five-year period, the Commission will continue to evaluate petitions for exclusivity, under the public interest factors established by Congress. If, however, a dramatic shift in the competitive landscape should occur before five years, the Commission may initiate its review earlier on its own motion or in response to a petition.

#### **Paperwork Reduction Act Analysis**

5. Although the Notice of Proposed Rulemaking (NPRM) indicated that some of the issues on which we sought comment might entail a modified information collection subject to the Paperwork Reduction Act of 1995 ("PRA"), Public Law 104-13, the rule change adopted herein does not affect the information collection previously approved by the Office of Management and Budget ("OMB") under Control Number: 3060-0551.

#### **Final Regulatory Flexibility Analysis**

6. As required by the Regulatory Flexibility Act of 1980, as amended, ("RFA"), an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities was incorporated in the Notice of Proposed Rulemaking in CS Docket No. 01-290. The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA. The comments received are discussed below. This present Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

##### *A. Need for, and Objectives of, the Report and Order*

7. The purpose of section 628 of the Communications Act is to promote the public interest, convenience, and necessity by increasing competition and diversity in the multichannel video market, to increase the availability of satellite cable programming and satellite broadcast programming to persons in rural and other areas not currently able to receive such programming, and to spur the development of communications technologies, for example new MVPDs. Specifically, this proceeding involves section 628(c)(2)(D), which prohibits, in areas served by a cable operator, exclusive contracts for satellite cable

programming or satellite broadcast programming between vertically integrated programming vendors and cable operators unless the Commission determines that such exclusivity is in the public interest. The exclusivity prohibition set forth in section 628(c)(2)(D) ceases to be effective after a 10-year period ending October 5, 2002. Section 628(c)(5) of the Communications Act requires that restriction on exclusive contracts, within areas served by cable, are to sunset unless the Commission finds, in a proceeding conducted during the last year of such 10-year period, that such prohibition continues to be necessary to preserve and protect competition and diversity in the distribution of video programming. Pursuant to this statutory mandate, we have concluded that the exclusivity prohibition set forth in section 628(c)(2)(D) continues to be necessary to preserve and protect competition and diversity in the distribution of video programming because cable MSOs continue to possess significant market power and continue to control a significant proportion of programming, to the detriment of DBS and other competitive MVPDs, some of which are smaller entities. Retention of the exclusivity prohibition in this proceeding addresses the competitive imbalance that continues to exist in the marketplace by maintaining and securing the ability of competitive MVPDs to access vertically integrated programming.

##### *B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA*

8. The American Cable Association ("ACA") filed comments and states that access to satellite programming is essential for smaller cable systems and a sunset of the prohibition could result in small cable companies losing access to over one-third of their satellite programming services. To remedy the situation, the ACA urges the Commission to extend the sunset of the prohibition on exclusive contracts, as the loss of access rights to particular programming would have a significant impact on the continuing viability of many small cable businesses. The Commission considered the potential economic impact on small entities because this issue was pertinent to our determination whether to retain or sunset the exclusivity prohibition and it was a central concern raised in some comments. Cable operators control a formidable share of the market with 78 percent of MVPD subscribers receiving their video programming from a cable operator. DBS has made competitive

strides to the point where its share of total MVPD subscribers has grown to 18 percent. But other competitive MVPDs, such as SMATV providers, OVS operators, MMDS, and cable overbuilders, to name a few of the competitive alternatives to cable, have not made similar inroads into cable's market dominance. In general, comments filed by competitive MVPDs, many of which are smaller entities, assert that the market is dominated by cable and not fully competitive. In enacting the exclusivity prohibition in 1992, Congress concluded that because cable MSOs dominated the video environment vertically integrated program suppliers had the incentive and ability to favor their affiliated cable operators over other multichannel programming distributors. Competitive MVPDs assert that the market dominance of cable has not significantly changed in the years since the enactment of the provision. They contend that there is a likelihood that access to particular programming affiliated with cable operators will be threatened and compromised if the prohibition against exclusivity contracts were allowed to sunset. Individual proposals as to how to address this problem generally support the position that the exclusivity prohibition should be retained. If the prohibition were not retained, these entities will not have access to significant programming that is vital to their subscribers. Comments from competitive MVPDs regarding the importance of the prohibition to their economic viability and survival and the Commission's decision and justification to continue to retain the exclusivity prohibition are discussed in the Section entitled Incentive and Ability in this Report and Order.

##### *C. Description and Estimate of the Number of Small Entities To Which the Rules Will Apply*

9. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The RFA generally 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. 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").

10. Small MVPDs. The SBA has developed a small business size standard for cable and other program distribution services, "which includes all such companies generating \$11 million or less in revenue annually. This category includes, among other, cable operators, closed circuit television services, direct broadcast satellite services, multipoint distribution services, open video systems ("OVS"). Satellite master antenna television ("SMATV") systems, and subscription television services. According to the Census Bureau data from 1992, there were 1,788 total cable and other pay television services and 1,423 had less than \$11 million in revenue. We address below each service individually to provide a more precise estimate of small entities.

11. 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 fewer than 400,000 subscribers nationwide. We last estimated that there were 1439 cable operators that qualified as small cable companies. 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, we estimate that there are fewer than 1439 small entity cable system operators that may be affected by the decisions and rules adopted in this Report and Order.

12. The Communications Act, as amended, also contains a size standard for 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 67,700,000 subscribers in the United States. Therefore, an operator serving fewer than 677,000 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, we find that the number of cable operators serving 677,000 subscribers or less totals approximately 1450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, we are 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.

13. Open Video Systems. Because OVS operators provide subscription services OVS falls within the SBA-recognized definition of "Cable and Other Pay Television Services. This definition provides that a small entity is one with \$11 million or less in annual receipts. The Commission has certified 25 OVS operators with some now providing service. Affiliates of Residential Communications Network, Inc. ("RCN") received approval to operate OVS systems in New York City, Boston, Washington, D.C. and other areas. RCN has sufficient revenues to assure us that they do not qualify as small business entities. Little financial information is available for the other entities authorized to provide OVS that are not yet operational. Given that other entities have been authorized to provide OVS service but have not yet begun to generate revenues, we conclude that at least some of the OVS operators qualify as small entities.

14. Program Producers and Distributors. The Commission has not developed a definition of small entities applicable to producers or distributors of cable television programs. Therefore, we will use the SBA classifications of Motion Picture and Video Tape Production (NAICS Code 51211), Motion Picture and Video Tape Distribution (NAICS Code 42199), and Theatrical Producers (Except Motion Pictures) and Miscellaneous Theatrical Services (NAICS Codes 56131, 71111, 71141, 561599, 71151, 71112, 71132, 51229, 53249). These SBA definitions provide that a small entity in the cable television programming industry is an entity with \$21.5 million or less in annual receipts for NAICS Codes 56131, 51211, 42199, and 51212, and \$5 million or less in annual receipts for NAICS Codes 56131, 71111, 71141, 561599, 71151, 71112, 71131, 71132, 51229, and 53249. Census Bureau data indicate the following: (a) There were 7,265 firms in the United States classified as Motion Picture and Video Production (NAICS Code 51211), and that 6,987 of these firms had \$16.999 million or less in annual receipts and 7,002 of these firms had \$24.999 million or less in annual receipts; (b) there were 1,139 firms classified as Motion Picture and Video Tape Distribution (NAICS Codes 42199 and 51212), and 1007 of these firms had \$16.999 million or less in annual receipts and 1013 of these firms had \$24.999 million or less in annual receipts; and (c) there were 5,671 firms in the United States classified as Theatrical Producers and Services

(NAICS Codes 56131, 71111, 71141, 561599, 71151, 51229, and 53249), and 5627 of these firms had \$4.999 million or less in annual receipts.

15. Each of these NAICS categories is very broad and includes firms that may be engaged in various industries, including cable programming. Specific figures are not available regarding how many of these firms exclusively produce and/or distribute programming for cable television or how many are independently owned and operated. Thus, we estimate that our rules may affect approximately 6,987 small entities primarily engaged in the production and distribution of taped cable television programs and 5,627 small producers of live programs that may be affected by the rules adopted in this proceeding.

16. Direct Broadcast Satellite Service ("DBS"). Because DBS provides subscription services, DBS falls within the SBA-recognized definition of "Cable and Other Pay Television Services." This definition provides that a small entity is one with \$11 million or less in annual receipts. There are four licensees of DBS services under part 100 of the Commission's rules. Three of those licensees are currently operational. Two of the licensees that are operational have annual revenues that may be in excess of the threshold for a small business. The Commission, however, does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could be impacted by these proposed rules. DBS service requires a great investment of capital for operation, and we acknowledge, despite the absence of specific data on this point, that there are 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.

17. Home Satellite Dish Service ("HSD"). Because HSD provides subscription services, HSD falls within the SBA-recognized definition of "Cable and Other Pay Television Services." This definition provides that a small entity is one with \$11 million or less in annual receipts. 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 265 channels of programming placed on C-band satellites by programmers for receipt and distribution by MVPDs, of which 115 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 package. 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 non-subscription programming; and (3) viewers who receive satellite programming services illegally without subscribing. Because scrambled packages of programming are most specifically intended for retail consumers, these are the services most relevant to this discussion.

18. According to the most recently available information, there are approximately four program packagers nationwide offering packages of scrambled programming to retail consumers. These program packagers provide subscriptions to approximately 1,476,700 subscribers nationwide. This is an average of about 370,000 subscribers per program package. This is smaller than the 400,000 subscribers used in the commission's definition of a small MSO. Furthermore, because this is an average, it is likely that some program packagers may be substantially smaller.

19. Multipoint Distribution Service ("MDS"), Multichannel Multipoint Distribution Service ("MMDS") and Local Multipoint Distribution Service ("LMDS"). MMDS systems, often referred to as "wireless cable," transmit video programming to subscribers using the microwave frequencies of the Multipoint Distribution Service ("MDS") and Instructional Television Fixed Service ("ITFS"). LMDS is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.

20. In connection with the 1996 MDS auction, the Commission defined small businesses as entities that had annual average gross revenues of less than \$40 million in the previous three calendar years. This definition of a small entity in the context of MDS auctions has been approved by the SBA. The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas ("BTAs"). Of the 67 auction winners, 61 met the definition of a small business. MDS also includes licensees of stations authorized prior to the auction. As noted, the SBA has developed a definition of small entities for pay television services, which includes all such companies generating \$11 million or less in annual receipts. This definition includes multipoint distribution services, and thus applies

to MDS licensees and wireless cable operators that did not participate in the MDS auction. Information available to us indicates that there are approximately 850 of these licensees and operators that do not generate revenue in excess of \$11 million annually. Therefore, for purposes of the IRFA, we find there are approximately 850 small MDS providers as defined by the SBA and the Commission's auction rules.

21. The SBA definition of small entities for pay television services, which includes such companies generating \$11 million in annual receipts, seems reasonably applicable to ITFS. There are presently 2,032 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, we do not collect annual revenue data for ITFS licensees, and are not able to ascertain how many of the 100 non-educational licensees would be categorized as small under the SBA definition. Thus, we tentatively conclude that at least 1,932 licensees are small businesses.

22. Additionally, the auction of the 1,030 LMDS licenses began on February 18, 1998 and closed on March 25, 1998. The Commission defined "small entity" for LMDS licenses as an entity that has average gross revenues of less than \$40 million in the three previous calendar years. An additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding calendar years. These regulations defining "small entity" in the context of LMDS auctions have been approved by the SBA. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 winning bidders. Based on this information, we conclude that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

23. In sum, there are approximately a total of 2,000 MDS/MMDS/LMDS stations currently licensed. Of the approximate total of 2,000 stations, we estimate that there are 1,595 MDS/MMDS/LMDS providers that are small

businesses as deemed by the SBA and the Commission's auction rules.

24. Satellite Master Antenna Television ("SMATV") Systems. The SBA definition of small entities for "Cable and Other Pay Television Services" specifically includes SMATV services and, thus, small entities are defined as all such companies generating \$11 million or less in annual receipts. Industry sources estimate that approximately 5,200 SMATV operators were providing service as of December 1995. Other estimates indicate that SMATV operators serve approximately 1.5 million residential subscribers as of June 2000. The best available estimates indicate that the largest SMATV operators serve between 15,000 and 55,000 subscribers each. Most SMATV operators serve approximately 3,000–4,000 customers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are 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, we believe that a substantial number of SMATV operators qualify as small entities.

#### *D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements*

25. In this Report and Order the Commission concludes that section 628(c)(2)(D) of the Communications Act continues to be necessary to preserve and protect competition and diversity in the video programming marketplace. The Report and Order does not present any specific reporting, recordkeeping or other compliance requirements adopted herein, other than complying with the prohibition against engaging in exclusive contracting between cable operators and vertically integrated program suppliers. Thus, the classes of small entities that potentially will be affected and required to comply with the continuing prohibition includes entities conducting business in these areas.

#### *E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

26. The RFA requires an agency to describe any significant alternatives that it has considered in proposing regulatory approaches, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2)

the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

27. In the NPRM the Commission sought comment on whether section 628(c)(2)(D) should cease to be effective, pursuant to the sunset provision in section 628(c)(5), or whether section 628(c)(2)(D) should be retained. Thus, the NPRM invited comments on a number of issues that may significantly impact small entities. In this Report and Order, the Commission discusses the effect that section 628(c)(2)(D) has had on the video programming marketplace and provides justification for retention of the provision. In enacting the exclusivity prohibition contained in section 628(c)(2)(D), the underlying rationale was that vertically integrated programming suppliers had the incentive and ability to favor in an unfair manner, affiliated cable operators in programming arrangements. Thus, the prohibition served to guard against such a practice and helped to encourage competition and diversity. While the provision has succeeded to a certain extent in achieving its objectives, the video landscape has not changed markedly since the inception of the exclusivity protection provision. Cable MSOs continue to hold market power, and while DBS has increased its subscribership levels in recent years, the levels do not compare to cable. Other smaller video competitors, such as MMDS, OVS, SMATV and HDS, have not fared as well and represent a small percentage of MVPD subscribership. These competitive MVPDs argue that they continue to face hurdles in seeking access to critical programming because cable MSOs continue to control essential video programming services and are concerned about the potential loss of such programming absent the section 628(c)(2)(D) prohibition. In its Initial Regulatory Flexibility Analysis Comments, while it supports extending the exclusivity prohibition, ACA suggests that an additional alternative that would achieve the objective of the statute and minimize the impact on small entities is exemption from coverage of the rule, or any part thereof, for small entities.

28. In this Report and Order we discuss the present state of competition among MVPDs and the availability of vertically integrated programming in the section entitled Incentive and Ability. We conclude that while there is a wide variety of programming services

available from non-vertically integrated providers in recent years, nevertheless the market dominance of cable remains a concern because of the threat that cable MSOs will engage in exclusive arrangements and deprive competitive MVPDs and their subscribers of "must have," vertically integrated programming.

29. We considered the possibility of sunseting section 628(c)(2)(D). However, we recognized that the marketplace had not progressed to the point where there were assurances that there is significant enough competition in the cable industry to forestall the domination by cable of "must have" programming. Therefore, we retain section 628(c)(2)(D) because it prohibits, in areas served by a cable operator, exclusive contracts for satellite cable programming or satellite broadcast programming between vertically integrated programming vendors and cable operators. The decision reached in this Report and Order to retain the prohibition against engaging in exclusive contracts allows for greater competition and diversity, which provides for increased participation by various competitive MVPDs and programming suppliers, a number of which are smaller entities. Therefore we conclude that our decision to retain section 628(c)(2)(D) benefits smaller entities as well as larger entities.

#### Report to Congress

30. The Commission will send a copy of the Report and Order, including this RFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Commission will send a copy of the Report and Order, including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Report and Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

#### Ordering Clauses

31. Accordingly, *it is ordered* that, pursuant to authority found in sections 4(i), 303(r) and 628 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r) and 548, the Commission's rules *are hereby amended* as set forth in the rule changes.

32. *It is further ordered* that the rule adopted herein *will become effective* August 14, 2002.

33. *It is further ordered* that the Commission's Consumer and Government Affairs Bureau *shall send* a copy of this Report and Order, including the Final Regulatory Flexibility

Analysis, to the Chief Counsel of the Small Business Administration.

#### List of Subjects in 47 CFR Part 76

Administrative practice and procedure and Cable television.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

#### Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 76 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, 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. Section 76.1002 is amended by revising paragraph (c)(6) to read as follows:

#### § 76.1002 Specific unfair practices prohibited.

\* \* \* \* \*

(c) \* \* \*

(6) *Sunset provision.* The prohibition of exclusive contracts set forth in paragraph (c)(2) of this section shall cease to be effective on October 5, 2007, unless the Commission finds, during a proceeding to be conducted during the year preceding such date, that said prohibition continues to be necessary to preserve and protect competition and diversity in the distribution of video programming.

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[FR Doc. 02-19182 Filed 7-29-02; 8:45 am]

BILLING CODE 6712-02-P

#### DEPARTMENT OF DEFENSE

#### 48 CFR Parts 204, 215, 219, 225, and 252 and Appendix G to Chapter 2

#### Defense Federal Acquisition Regulation Supplement; Technical Amendments

**AGENCY:** Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD is making technical amendments to the Defense Federal Acquisition Regulation Supplement to update activity names and addresses, reference numbers, clause titles, and clause dates.

**EFFECTIVE DATE:** July 30, 2002.