

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

ORIGINAL

Implementation of Section 17 of the)
Cable Television Consumer Protection)
and Competition Act of 1992)
)
Compatibility Between Cable Systems)
and Consumer Electronics Equipment)

ET Docket No. 93-7

RECEIVED

FEB 16 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

REPLY COMMENTS OF CONTINENTAL CABLEVISION, INC.

Robert J. Sachs
Howard B. Homonoff
CONTINENTAL CABLEVISION, INC.
The Pilot House
Lewis Wharf
Boston, MA 02110

Paul Glist
COLE, RAYWID & BRAVERMAN
1919 Pennsylvania Avenue, N.W.
Suite 200
Washington, D.C. 20006
(202) 659-9750

February 16, 1994

No. of Copies rec'd
List ABCDE

004

TABLE OF CONTENTS

SUMMARY OF COMMENTS	1
I. THE COMMISSION SHOULD NOT COMPEL THE COSTS OF COMPONENT DESCRAMBLERS TO BE BUNDLED WITH PROGRAM SERVICE PRICES	3
II. THE COMMISSION SHOULD NOT OUTLAW SCRAMBLING OF BASIC	4
III. CONSUMER EQUIPMENT COMPATIBILITY NOTICES SHOULD NOT IDENTIFY SPECIFIC BRANDS OR SPECIFIC MERCHANTS	5
IV. THE COMMISSION SHOULD REJECT PROPOSALS TO ARREST TECHNOLOGICAL INNOVATION	6
V. DIGITAL STANDARDS SHOULD BE PURSUED BY FURTHER RULEMAKING	6
VI. THE COMMISSION SHOULD ASSIGN APPROPRIATE RESPONSIBILITIES TO MANUFACTURERS AND COMPETING MVPD'S TO COMPLY WITH COMPATIBILITY RULES	7
Conclusion	9

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

Implementation of Section 17 of the)
Cable Television Consumer Protection)
and Competition Act of 1992)
Compatibility Between Cable Systems)
and Consumer Electronics Equipment)

ET Docket No. 93-7

REPLY COMMENTS OF CONTINENTAL CABLEVISION, INC.

Continental Cablevision, Inc., submits this Reply in response to Comments filed January 25, 1994 in this Docket.

SUMMARY OF COMMENTS

A review of a number of the initial comments in this proceeding supports Continental's view that the Commission needs to reconsider several key elements of its Notice of proposed Rulemaking on equipment compatibility. An alteration of some elements of the Commission's proposal is critical to avoid creating inconsistencies in the 1992 Cable Act, forcing less affluent consumers to bear an unfair burden of unnecessary additional costs.

Of greatest concern is the Commission's proposal to forbid cost recovery for component descramblers, which is inconsistent with the Cable Act's unbundling requirements and will do nothing to advance the timetable for a viable "in-the-clear" transport technology. By contrast, unbundled component descrambler costs would offer consumers a financial incentive to migrate to cable compatible components in order to enjoy the substantially reduced cost of a component descrambler. At the same time, those customers who cannot or chose not to migrate, in order to prolong the lives of their TV receivers and obtain all of the functionalities from integrated

converter/decoders, should not be forced to pay for the privileged minority who can afford to upgrade their TV's at will.

Scrambling of basic is a last ditch effort to curtail rampant piracy in selected markets. Any ban on future scrambling, even one tempered with the opportunity for waiver, would be a misguided effort to adopt a version of the 1992 Act which was rejected in conference, and would send the wrong message to thieves. Any future restriction on scrambling should at most be limited to must carry broadcasters and PEG signals. At the very least, where scrambling has been deployed, it should be grandfathered.

Requiring consumer education notices which detail brands of compatible equipment and retail outlets where it is available is impractical and should be rejected. To properly educate consumers, manufacturers and retailers should be required to provide point of sale compatibility education.

The Commission should reject the drastic suggestions of some comments which would curtail technological innovation. To limit the functions which a component descrambler could provide, or to force all future service through such a descrambler, would not only eliminate existing services like digital music and XPRESS XCHANGE, but effectively put a regulatory cap on innovation.

Digital standards should be pursued by separate rulemaking to provide the CAG with more time to forge consensus and the market more time to select a winner or forge an alliance, rather than having the government pick a winner.

All devices which tune cable channels should meet compatibility requirements, or contain conspicuous warnings that they do not. All multichannel video program distributors should comply with compatibility rules, so that DBS and cable customers can all enjoy compatibility.

I. THE COMMISSION SHOULD NOT COMPEL THE COSTS OF COMPONENT DESCRAMBLERS TO BE BUNDLED WITH PROGRAM SERVICE PRICES

The Commission's proposal to forbid cost recovery for component descramblers has been uniformly critiqued as legally unjustifiable, impractical and inconsistent with a sensible public policy approach. The Cable-Consumer Electronics Compatibility Advisory Group ("CAG"), MSO's and Zenith alike agree that such a prohibition is inconsistent with the Commission's past reading of the Cable Act and its own rate regulations rules.¹ Retailers consider such mandatory bundling as anti-competitive, and a disservice to the fundamental goals of the Act.² The Comments uniformly noted that creating such punitive "incentives" will not make in-the-clear transport technology any more advanced than it is today. By contrast, the lower costs of component descramblers alone, plus the savings from remote controls, supply sufficient incentives for consumers to migrate to cable compatible components without compromising the need for signal security.³ Those customers who cannot or chose not to migrate, in order to

¹E.g., Comments of the Cable-Consumer Electronics Compatibility Advisory Group (CAG) at 17; Comments of Tele-Communications, Inc. at 3; Comments of Zenith Electronics Corporation at 4.

²Comments of Circuit City Stores, Inc. at ii. Circuit City contends that bundling equipment prices with program service prices will preclude the development of competing equipment suppliers and thereby frustrate consumer choice and the statutory preference for market, rather than regulatory solutions.

³As indicated in Continental's initial Comments, a component descrambler will cost about 34% less than an addressable converter. In a standard "cost-based" equipment price, in which capital is 2/3 of the converter cost and maintenance is 1/3, the typical cost of equipment will drop from \$1.50 to \$1.04, and any rented remote control may be returned for an additional (typical) savings of \$0.35. Thus, a consumer could be able to save \$9.72 per year (\$0.81/mo.) by changing to a component descrambler.

prolong the lives of their TV receivers and obtain all of the functionalities from integrated converter/decoders,⁴ should not be forced to pay for the privileged minority who can afford to upgrade at will. To force such an outcome is to create a nonsensical public policy which would have that more prosperous minority subsidized by the far larger majority, who will neither need nor desire the more expensive equipment. For all of these reasons, Continental reaffirms its view that there is no legal or factual basis for the Commission to forbid the recovery of costs of component descramblers.

II. THE COMMISSION SHOULD NOT OUTLAW SCRAMBLING OF BASIC

Nor is there any basis in the record for outlawing scrambling on basic. In fact, what little direct and specific evidence there is of the actual effects of scrambling demonstrates that only very few subscribers face difficulties in recording or viewing shows which may be casually attributed to scrambling.⁵ Indeed, there is little evidence that scrambling of basic is widespread. Continental's comments explained that scrambling of basic is a last ditch effort to curtail rampant piracy in selected markets. The piracy we have seen first hand in markets like Los Angeles is a major organized criminal business, not the work of garage tinkerers. Outlawing the defenses which cable operators must occasionally use to combat such crime ignores the scale of this real-world problem and sends exactly the wrong message to thieves.

⁴Integrated converter/decoders will continue to be in demand, as most consumers opt for the remote control, remote volume, parental control, superior tuning, pay-per-view ordering, electronic program guides, and other features which may be added to older receivers by using an integrated converter/decoder.

⁵Continental's previous Reply Comments, at 7-8, present detailed survey information quantifying exactly how infrequent are the "compatibility" problems which are colloquially attributed to scrambling.

Several comments suggest that a ban on scrambling basic subject only to occasional waivers would be acceptable, but such proposals are in reality a misguided effort to adopt a version of the 1992 Act which was specifically rejected in conference. The Senate proposed such a ban on scrambling, subject only to a few exceptions for which the cable operator carried the burden of proof. That proposal was rejected by Congress.⁶ It is not for the Commission to reinvent a solution which Congress has rejected.

We reiterate, therefore, that there should be no restriction on scrambling, particularly of signals which are not must carry broadcasters or PEG channels.⁷ At a minimum existing applications of basic scrambling should be grandfathered.

III. CONSUMER EQUIPMENT COMPATIBILITY NOTICES SHOULD NOT IDENTIFY SPECIFIC BRANDS OR SPECIFIC MERCHANTS

The Commission's proposal to require detailed consumer notices of brand names and retail sources for competing remotes has been almost universally decried as burdensome and impractical, for all the reasons presented by Continental.⁸ At most, cable operators should be required to identify the brand of set-top device which the operator uses, not all possible competing brands. Continental welcomes the involvement of manufacturers in educating our

⁶See Conference Report 102-802, 102d Cong. 2d Sess. at 86-88 (rejecting Senate proposal which prohibits scrambling except as permitted by FCC rule to protect against theft.)

⁷Pac Tel's notion (at pages 3-4 of its Comments) that customers who have paid for basic should receive every signal unscrambled merely begs the question: customers pay for premium channels, and no one doubts the legitimacy of scrambling premium services. Moreover, Pac Tel's criticism is misplaced, because cable's use of scrambling for security is no different than LECs reliance on decoders to deliver video dial tone services.

⁸The solution suggested by the City of New York—to present video compatibility tutorials—is even more impractical. Any local government is free to present such a video on its government or public access channel. There is no basis in the Communications Act to force cable operators to become producers of educational programs with specific messages.

mutual customers, and believes it would be useful to mandate manufacturer participation at the point of sale, as suggested by Time Warner and TCI.⁹

IV. THE COMMISSION SHOULD REJECT PROPOSALS TO ARREST TECHNOLOGICAL INNOVATION

A few of the Comments suggest drastic restraints on technological innovation which should be promptly rejected by the Commission. Circuit City, for example, proposes that no functionality other than decoding ever be added to component descramblers. This suggestion comes from the retailer which markets audio and video components loaded annually with new functionalities, and who hopes to arrest any competing source of innovation. Titan suggests that all future services of any kind which are transmitted over cable must be forced through the component descrambler. Such a requirement is not only inconsistent with *existing* services, such as digital music and PC services like XPRESS XCHANGE: it would effectively put a regulatory cap on cable's innovation. The Commission should imagine the world we would have had the cable industry been forbidden from transmitting any service which could not be received over VHF channels on a standard tuner. Such a restriction is antithetical to the Commission's statutory mandate to embrace technological innovation, 47 U.S.C. § 157, and flies directly in the face of the efforts of all industries as well as Congress and the Clinton Administration to create a dynamic new telecommunications world.

⁹TCI at 11; Comments of Time Warner at 7.

V. DIGITAL STANDARDS SHOULD BE PURSUED BY FURTHER RULEMAKING

For similar reasons, Continental concurs with CAG's recommendation that digital standards be pursued in a separate rulemaking after the Committee is given a bit more time to collaborate.¹⁰ The Committee has done yeoman's work in forging a consensus on the contentious issues arising from analog transmission. Giving CAG slightly more time will afford them a decent opportunity to address digital standardization, and provide the market with somewhat more running room to select a winner or forge an alliance, either of which would be superior to having the government pick a winner in such a complex and dynamic area. Providing somewhat more time is also consistent with the request of manufacturers not to force all tuners to reach 1 GHz until the market chooses the services which will predominate above 800 MHz.¹¹ Just as the consumer electronics manufacturers do not wish to be saddled with an arbitrary standard which may frustrate the market's choice of services, cable operators should not have the development of digital services arrested by premature "standardization."

VI. THE COMMISSION SHOULD ASSIGN APPROPRIATE RESPONSIBILITIES TO MANUFACTURERS AND COMPETING MVPD'S TO COMPLY WITH COMPATIBILITY RULES

Continental remains concerned over significant omissions in the proposed reach of the Commission's compatibility rules. Continental is committed to alleviating the compatibility concerns of our customers, but we cannot do it alone. It is not enough for consumer electronics manufacturers to follow compatibility rules solely for units which are explicitly labelled "cable

¹⁰We also agree with CAG's proposed modifications to the implementation schedule at pages 8 and 16 of its Comments.

¹¹E.g., Zenith at 3.

ready."¹² The point of cable compatibility is that cable equipment should be compatible with *something*, and the manufacturers have made it clear that they fully intend to continue extensive manufacturing of equipment which does *not* meet the cable compatibility standards.¹³ The Commission should either require the manufacturers to comply with compatibility rules on all devices which have the capability of tuning cable channels, or, at a minimum, require clear and conspicuous warnings of incompatibility at the point of sale and on the packaging of such products.

Continental is also concerned that the proposed compatibility rules appear limited to only one transport technology, rather than to all multi-channel video program suppliers which interface with consumer electronics. Continental concurs with Cablevision's Comments (p. 16) concerning the application of compatibility standards to other MVPD's. We do not understand why a customer of DBS should be entitled to less protection from incompatibility than is afforded to cable customers. Such inconsistency ill-serves the goal of a ubiquitous, seamless information highway with competing information providers.

¹²Manufacturers are in fact already dropping the term "cable ready" in favor of other marketing euphemisms such as "181 channel capacity" and others.

¹³For example, Sharp states that it intends to continue to sell small size TVs, portable VCRs, LCD personal TVs and camcorders which tune cable channels but are not cable ready. Comments of Sharp at 3.

Conclusion

For the foregoing reasons, and those set forth in our prior Comments, Continental recommends that the Commission:

1. Permit component descramblers to be priced, like other equipment, unbundled from program service.
2. Not outlaw scrambling on basic, or at a minimum adopt rules which grandfather existing scrambling applications and allow waivers for future applications which affect access channels and must-carry broadcasters.
3. Adopt notice provisions which do not require cable operators to identify specific brands of compatible equipment or the names of specific merchants.

Respectfully submitted,



Robert J. Sachs
Howard B. Homonoff
CONTINENTAL CABLEVISION, INC.
The Pilot House
Lewis Wharf
Boston, MA 02110
(617) 742-9500



Paul Glist
COLE, RAYWID & BRAVERMAN
1919 Pennsylvania Avenue, N.W.
Suite 200
Washington, D.C. 20006
(202) 659-9750

February 16, 1994