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THE CITY OF AKRON·OHIO

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Donald L. Plusquellic
Mayor

June 22. 1994

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Dear Mr. Caton:

The enclosed is submitted on behalf of the City of Akron, Ohio, and numerous surrounding municipalities specified in the enclosed filing (collectively "Akron Area Cities") to be included as part of the expanded record sought by the Federal Communications Commission (FCC) in ET Docket No. 93-7, pertaining to compatibility between cable systems and consumer electronic equipment. The Akron Area Cities support a prohibition on scrambling of any cable programming service channel and respectfully request the FCC to establish such a prohibition in its regulations without further delay.

The original and nine (9) copies are enclosed. Please contact me at the above address and telephone number if additional information is needed to properly evaluate the enclosed materials.

Sincerely,

David Muntean, Esq.
Assistant Law Director

Enclosure

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JUN 2 3 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Section 17	)	
of the Cable Television	)	
Consumer Protection and	)	
Competition Act of 1992	)	ET Docket No. 93-7
	)	
Compatibility Between	)	
Cable Systems and Consumer	)	
Electronics Equipment	)	

COMMENTS AND INFORMAL REQUEST FOR COMMISSION ACTION BY THE CITY OF AKRON, OHIO, AND SURROUNDING MUNICIPALITIES (COLLECTIVELY "AKRON AREA CITIES")

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For the Akron Area Cities

Dated: June 22, 1994

TABLE OF CONTENTS

	Page
SUMMARY	i
INTRODUCTION	1
DISCUSSION	4
A. Scrambling and the Tier Buy-Through Prohibition	4
B. Scrambling and Signal Theft	5
C. Scrambling Drives Revenue for the Operator	6
D. Scrambling is Detrimental to Subscribers	8
CONCLUSION	10

SUMMARY

In its First Report and Order, in ET Docket No. 93-7, the Federal Communications Commission ("FCC" or "Commission") issued regulations designed to enhance the compatibility between cable systems and subscribers' consumer electronics equipment, including a rule to prohibit scrambling on the statutory basic tier. As described herein, the communities of Akron, Barberton, Stow, Tallmadge, Fairlawn, Mogadore, Silver Lake, Doylestown, and Springfield Township, Ohio (collectively, "Akron Area Cities") urge the Commission to act immediately to extend such a scrambling prohibition to all regulated tiers.

The Commission has stated that it wishes to wait for an expanded record before deciding whether to ban scrambling on the cable programming service tier(s). Akron Area Cities, however, show in these Comments that this delay in extending such a prohibition is having serious detrimental effects on cable subscribers in the Akron Area and countless other jurisdictions. Further, this document indicates that the typical cable operator argument that expanded basic scrambling is absolutely needed to comply with the tier buy-through prohibition and deter signal theft is not dispositive, and instead shows that scrambling of the cable programming service tier(s) actually serves to drive revenue opportunities for the operator, is not in the public interest and creates numerous related problems of public concern. Based on this, the Akron Area Cities conclude that it would best serve the public interest if the Commission immediately acts to prohibit scrambling of all regulated service tiers in the Akron Area and all other affected cable systems. Many franchises throughout the country which were written a number of years ago do not give the franchising authorities the right to prohibit scrambling of regulated service tiers. Thus a general prohibition needs to be adopted by the FCC regarding this matter.

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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Section 17 of the Cable Television Consumer Protection and Competition Act of 1992	)	
	)	ET Docket No. 93-7
Compatibility Between Cable Systems and Consumer Electronics Equipment	)	

COMMENTS AND INFORMAL REQUEST FOR COMMISSION ACTION BY THE CITY OF AKRON, OHIO, AND SURROUNDING MUNICIPALITIES (COLLECTIVELY "AKRON AREA CITIES")

I. INTRODUCTION

In its First Report and Order, in ET Docket 93-7, released May 4, 1994, the Federal Communications Commission ("FCC" or "Commission") issued regulations designed to enhance the compatibility between cable television systems and consumer electronics equipment in accordance with Section 17 of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"). These Comments are filed pursuant to Section 1.41 of the Commission's rules, as an Informal Request for Commission Action. In these Comments, the communities of Akron, Barberton, Stow, Tallmadge, Fairlawn, Mogadore, Silver Lake, Doylestown, and Springfield Township, Ohio (collectively, "Akron Area Cities") urge the Commission to take immediate action to prohibit channel scrambling on all regulated service tiers.

In deliberating and reaching agreement on the consumer electronics/cable system compatibility issue, the U.S. Senate and House of Representatives concluded that the Commission should determine whether and, if so, under what circumstances cable operators

should be permitted to scramble or encrypt the signals they transmit to subscribers. Congress was primarily concerned that such technology not interfere with the full functioning of subscribers' televisions and VCRs. Congress was also concerned about the cost of compatibility enhancement measures to consumers. Finally, Congress desired that cable operators be required, to the extent technically and economically feasible and allowing for the need to protect their signals from theft, to deliver as many channels as possible "in the clear" so that such channels could be sent directly to subscribers' televisions and VCRs without passing through a converter box.

Indeed, in the First Report and Order, the FCC states at paragraphs 19 and 31 that it continues to believe the most desirable solution to solving compatibility problems between cable systems and subscribers' consumer electronic equipment is to use technologies that provide all authorized signals in the clear. Pursuant to this belief, the Commission will encourage "the use and development of cable signal delivery methods, such as traps, interdiction, addressable filters and other clear channel delivery systems, that eliminate the need for any additional equipment on the subscriber's premises."[1] The FCC further acknowledges, "While scrambling provides a high degree of security for cable operators, it also is the greatest source of equipment compatibility problems for consumers."[2]

Based on this, the Commission acts in the First Report and Order to prohibit the scrambling of the channels included in the statutory basic service tier. It leaves open the question of whether scrambling should also be prohibited on the cable programming service tier(s), but states at paragraph 58 that "it seems reasonable to presume that if a signal

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[1] First Report and Order, in ET Docket 93-7, para. 19.

[2] Id. at para. 31.

carried on a regulated tier was not scrambled before the 1992 Cable Act, there is no need to scramble that signal now or in the future" and "the routine scrambling of these signals also causes significant compatibility problems for subscribers by necessitating the use of set-top descramblers."[3] The Commission then states that an expanded record on this issue is needed.

Akron Area Cities have a critical interest in this proceeding because they are franchising authorities for Warner Cable Communications of Greater Akron ("Warner") (see also Appendix 1). Since January, 1994, Warner has proceeded with a system upgrade that will ultimately affect over 55,000 subscribers in the City of Akron, as well as approximately 52,000 additional subscribers in neighboring jurisdictions. As part of this upgrade, Warner has chosen to scramble the cable programming services tier, as well as newly formed "a la carte" tiers (which may themselves be questionable formulations under the Commission's rate regulation rules). Warner alleges that such scrambling is needed to comply with the "buy-through" prohibition found in both the 1992 Cable Act and FCC rules. Warner further alleges that such scrambling is needed generally to prohibit theft of its signals. Indeed, in this regard, Warner requires for all upgraded, non-basic only subscribers, which is a vast majority of its upgraded customer base, the lease of an expensive, addressable descrambling converter box that incorporates advanced security measures. This converter is often required for every separately tuned device on every outlet and provides new business and revenue enhancement for Warner. Consequently, as it relates to consumer electronic compatibility, reference to the converter implementation by Warner as an "upgrade" is a misnomer and contrary to the public interest.

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[3] First Report and Order, in ET Docket 93-7, para. 58.

The result of this requirement has been a significant amount of subscriber dissatisfaction. Akron Area Cities have received numerous complaints on this subject (via letters, editorials, feature articles in newspapers, aired news reports, public meetings and enumerable phone calls to public officials and organizations), indicating that upgraded subscribers have seen a reduction in compatibility between the cable system and their consumer electronics with minimal increase in the provision of regulated services, while at the same time seeing a significant increase in leased equipment costs. Warner continues to upgrade several thousand homes per month (currently totaling over 20,000 subscribers) which means that these negative consequences for cable consumers in Greater Akron expand every day. While the Akron Area Cities continue to attempt to block the scrambling of the expanded basic "satellite" (cable programming service) tier(s) through their own resolutions and ordinances, to date such actions have not been effective. Despite strong subscriber outcry, Warner refuses to halt cable programming service scrambling and the associated implementation of unwanted converters. The Akron Area Cities, therefore, strongly believe that the Commission must move quickly to federally prohibit scrambling on all regulated service tiers, especially in cases like that in Greater Akron where scrambling has been implemented since the passage of the 1992 Cable Act. Given the recent introduction of this complex issue, such federal prohibition should be enacted by the FCC.

II. DISCUSSION

A. CABLE PROGRAMMING SERVICE SCRAMBLING IS NOT NEEDED TO COMPLY WITH THE BUY-THROUGH PROHIBITION

As the Commission and Congress have both stated, it is preferable to use in the clear signal delivery technology where economically and technically feasible. Warner has stated

to the Akron Area Cities that it cannot easily use such technology and still comply with the tier buy-through prohibition. It is notable, however, that Warner's stated methodology to comply with the buy-through prohibition and prevent cable programming service tier signal theft prior to the start of its system upgrade was based on the use of signal traps, and this methodology continues to apply to non-upgraded subscribers. While Warner argues that such trapping systems are old, outdated, unreliable and technologically problematic, and should not be a part of a state-of-the-art upgrade, it is again notable that they are still employed by many systems to accomplish state-of-the-art "consumer-friendly" system operation. It also should be recognized that Warner's channels appear to be grouped in such a way as to facilitate, without much modification, the use of band blocking traps that would only need to be employed for a small percentage of subscribers (statutory basic only or statutory basic without the satellite tier but with requested non-regulated services). Further, as the Commission has indicated, traps are not the only means of effectuating "in the clear" signal delivery. Systems such as interdiction and broadband descrambling could be employed, even in a targeted "pocket" or "zone" fashion so that users of only regulated services would not need the addressable converter. It is apparent to the Akron Area Cities that Warner's choice of the addressable converter to comply with the tier buy-through prohibition has been made for its convenience and revenue-generating purposes, is not user friendly and is not in the best interest of consumers.

B. CABLE PROGRAMMING SERVICE SCRAMBLING IS NOT NEEDED TO COMBAT THE THEFT OF REGULATED SERVICES

Warner maintains that scrambling the channels on all tiers above the statutory basic tier will help prevent signal theft. While the Akron Area Cities do not question the

operator's need to take necessary measures to inhibit signal theft, we do not believe that the scrambling of any regulated service is one of those essential measures. If this were true, then why was there no need to scramble the cable programming service tier prior to the upgrade, when the tier was composed of most of the same services as it is under the upgrade? Moreover, there was no need seen by Warner to scramble the service prior to its September 1, 1993 rate restructuring, when the satellite tier (known at that time as the "standard" tier) included more channels than it does now.

Additionally, the industry itself estimates that a significant portion of revenue lost from signal theft is due to illegal reception of non-regulated premium services, not expanded basic services. For example, the National Cable Television Association has historically estimated that upwards of eight percent of premium service revenue is lost because of signal theft.

In this regard, the Akron Area Cities believe that scrambling may be helpful to combat non-regulated service theft. However, notwithstanding assertions that may be made by the company at this time, the level of service theft for regulated services has apparently not in the past demonstrated to Warner, and consequently does not now demonstrate to us, the need for scrambling and the use of an associated descrambling addressable converter to combat such theft.

C. THE REQUIREMENT FOR A DESCRAMBLING CONVERTER ACTUALLY DRIVES REVENUE FOR THE OPERATOR

Warner's apparent approach is that the required lease of an addressable converter for regulated service-only customers is mainly a function of countering signal theft and complying with the buy-through prohibition and, although such a lease requirement results

in a revenue benefit for the company, this benefit is only a derivative result. Quite to the contrary, the Akron Area Cities believe that this lease requirement, while constituting one method of signal theft prevention and buy-through prohibition compliance, also drives significant revenue that was anticipated by the company. While Warner takes the position that this is a business decision, the Akron Area Cities believe it is contrary to the purpose and spirit of the 1992 Cable Act and FCC regulations.

First, even though the descrambling converter is a piece of rate-regulated equipment, the Commission's rules allow an 11.25% return on each converter. When this is multiplied by the number of Warner's subscribers who have not heretofore needed such a device, and then is multiplied again by the new converters needed for existing additional outlets, as well as the new converters needed so that both the television and VCR can have their own associated devices (in order to watch one cable programming service while recording another), the amount of new converters each generating an 11.25% profit constitutes a substantial amount of "real" revenue.

Second, now that the vast majority of Warner's upgraded subscribers are required to lease an addressable converter, many to receive the same or a lower level of service than they received without the converter prior to September 1, 1993, Warner has been able to expand its opportunity to market unregulated services. It is a well known marketing adage that easy accessibility and aggressive promotion helps build market penetration. Because a significant percentage of formerly converterless homes will now be forced to use converters once they are upgraded, Warner has new abilities to capture unregulated revenues from such homes. These opportunities should result in higher revenues overall for Warner. The disturbing fact is that many formerly converterless homes will wind up

paying for the privilege of being aggressively marketed to purchase unregulated services. This simply must not be allowed to happen in an effectively non-competitive marketplace.

At this point, it should be noted that Warner's current upgrade, while enhancing signal quality and adding channel capacity, appears to be adding only one new regulated service, and the rest are a la cartes, premiums and pay-per-view. This fact further points up that the converter box, while touted as providing state-of-the-art terminal features to the home, is in reality effectively and creatively facilitating the enhancement of unregulated revenues.

D. CABLE PROGRAMMING SERVICE TIER SCRAMBLING IS DETRIMENTAL TO SUBSCRIBERS AND SHOULD BE PROHIBITED BY THE COMMISSION

While the Akron Area Cities understand the desire on the Commission's part to obtain as expansive a record as possible in its deliberations on the issue of cable programming service scrambling, two facts are certain at this point: 1.) Akron Area subscribers are not benefiting from this type of scrambling, and neither are millions of other cable subscribers. In fact, some estimates indicate that more than a quarter of all cable subscribers must deal with the negative effects of expanded basic channel scrambling. 2.) Instead, it is cable operators that benefit from channel scrambling by being able to more easily protect and drive revenue, all the while doing so at the considerable expense of subscribers who no longer can obtain certain channels, cable programs and advertisements "in the clear" on television sets designed to be "cable ready" without significant additional cost.

The Akron Area Cities believe that a more expansive record in this proceeding will only serve to further underscore the already urgent need for the Commission to act quickly,

and without caveat, to prohibit scrambling of all regulated service tiers. In the Akron Area, as in other jurisdictions, Commission inaction has the effect of allowing Warner and other operators to continue to implement system conversions that cause, rather than solve, consumer electronic compatibility problems. The longer that such activity is allowed to proceed, the worse the consequences for consumers and the more difficult it will be to reverse the negative effects of the associated descrambling converter implementation. For example, if the Commission waits to prohibit expanded basic channel scrambling, then in Warner's case unnecessary converters will have been bought and installed only to have to be removed and warehoused. This will mean additional inconvenience for consumers and unnecessary expenditures for Warner, and future conflict over this activity's potential impact on rates.

It is disturbing to the Akron Area Cities that the system changes, which are promoted by Warner to be a boon for subscribers, have in the case of the descrambling converter requirement, created a very detrimental situation forced upon subscribers. The Commission can solve this problem by imposing a prohibition without any caveats on the scrambling of any regulated service tier. The experience of the Akron Area Cities and other jurisdictions supports such an action without further delay and the Commission has the authority, under its Congressional mandate, to take such an action. We urge the Commission, in protecting the interests of millions of consumers, in accordance with Congress' intent, to act now.

III. CONCLUSION

In summary, the Akron Area Cities believe the following conclusions support an immediate federal prohibition on scrambling of any regulated service tier:

A. Cable programming service scrambling is neither the only method nor the best method to comply with the federal tier buy-through prohibition and deter signal theft.

B. Cable programming service scrambling acts primarily to increase consumer electronic compatibility problems and drive unregulated revenues.

C. Cable programming service scrambling derives no benefits for subscribers and is contrary to Congressional intent in this proceeding.

D. The Commission has the authority and support it needs to act now to prohibit the scrambling of any regulated tier.

Respectfully Submitted,

City of Akron for Itself
and on behalf of Akron Area Cities

By: _____
David Muntean, Assistant Law Director

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APPENDIX 1

The communities of Cuyahoga Falls, Munroe Falls, Wadsworth Township, Lakemore and Norton, Ohio will also be impacted by these scrambling issues and anticipate joining with the Akron Area Cities in these Comments and Informal Request for Commission Action.

CERTIFICATE OF SERVICE

I, Bridget Y. Monroe, do hereby certify that a true and correct copy of the foregoing "Comments and Informal Request for Commission Action By the City of Akron, Ohio, and Surrounding Municipalities (Collectively "Akron Area Cities")" in ET Docket No. 93-7, was hand-delivered, this 23rd day of June, 1994, to the following:

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