

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

In the Matter of:

Basic Service Tier Encryption

MB Docket No. 11-169

Compatibility Between Cable Systems and
Consumer Electronics Equipment

PP Docket No. 00-67

COMMENTS OF RCN TELECOM SERVICES, LLC

RCN Telecom Services, LLC (“RCN”) submits these comments in response to the Commission’s proposal to permit all-digital cable operators to encrypt basic tier programming.¹ RCN has submitted a waiver petition seeking this very relief for its Chicago and New York City systems, and applauds the Commission’s action in this proceeding.² As the rules now stand, the requirement to offer basic-tier programming “in the clear” means that anyone with a QAM tuner and a live connection—including former subscribers, new residents, and Internet-only subscribers—can watch unencrypted basic tier programming without paying for it. Absent the ability to encrypt the basic tier, RCN can prevent such theft only by physically cutting the cable or installing “traps” (frequency blocking hardware) on the consumer’s coaxial line—neither of

¹ *Basic Service Tier Encryption Compatibility Between Cable Systems and Consumer Electronics Equipment*, 76 FCC Rcd. 66666 (2011) (“*Notice*”).

² *See* Petition for Waiver of RCN Telecom Services, Inc., CSR-8525-Z (filed Aug. 12, 2011) (“RCN Waiver Petition”) (In the RCN Waiver Petition, RCN inadvertently misidentified itself as RCN Telecom Services, Inc., a predecessor corporation to RCN Telecom Services, LLC.) To ensure the completeness of the record, RCN is filing a copy of these comments in that proceeding as well.

which can be done if the recipient subscribes to Internet-only service. But these require time- and energy-consuming site visits. Only by encrypting its basic tier programming (the remainder is already encrypted) can RCN both prevent theft and spare consumers from having to wait for a technician when they wish to change or discontinue service.

As RCN described in its waiver request, permitting RCN as an all-digital cable provider to encrypt the basic tier will not harm subscribers because all legitimate RCN video subscribers already use set-top boxes or CableCARDS to access cable service, both of which will be able to decrypt the basic tier. To be sure, the *Notice* identifies correctly that some subscribers receive basic-tier programming on second or third television sets without intervening equipment. RCN proposed in its own waiver request reasonable transitional measures for this negligible number of subscribers, and it could support similar measures in this proceeding—so long as such measures are limited to those subscribers who actually need new equipment.

Perhaps of most importance to RCN is the timing of relief for its Chicago and New York City systems—systems where theft is already a substantial and growing problem. Even as it considers rule changes of general applicability, the Commission can and should move forward to grant RCN's pending waiver request for those two systems immediately, subject to RCN's compliance with final rules the Commission puts in place. The record in RCN's Chicago/New York waiver request proceeding is complete, and RCN has received no substantive opposition. RCN therefore urges the Commission to permit RCN and its Chicago and New York customers to benefit from encryption of basic tier service as soon as possible. Indeed, timely Commission action in RCN's Chicago/New York waiver proceeding could allow RCN to submit real-world data to help inform the Commission in *this* proceeding.

I. Action in this Proceeding is Necessary to Prevent Growing Instances of Cable Theft.

The prohibition on encrypting basic-tier broadcast programming has long created the opportunity for service theft.³ Because a cable operator must offer basic-tier signals “in the clear,” anyone with a live connection and a QAM tuner, whether an actual subscriber or not, can watch the unencrypted programming. Former RCN subscribers or those who move into residences previously served by RCN can thus steal basic service if they have a QAM tuner—and nearly all new televisions now have QAM tuners.

The problem has grown as more customers take Internet service without video service (*i.e.*, buy standalone broadband service). RCN, like many cable operators, offers both television and broadband—as well as digital voice service—through a single cable, and allows consumers to choose whether they want to buy just broadband, just video service or both. That single cable provides Internet-only customers not only with the Internet service to which they have subscribed, but also with the opportunity to use a QAM tuner to illicitly watch unencrypted basic-tier programming.

Because of the encryption ban, RCN can address basic-tier service theft only by physically “cutting the cable” on the consumer’s coaxial line (which is time consuming and expensive) or by installing traps (which is even more time consuming and expensive). As RCN described in its waiver petition, such measures inconvenience subscribers and waste energy.⁴ Moreover, neither of these measures work for Internet-only subscribers, as each would stop the provision of Internet service that the subscriber has legitimately purchased from RCN.

³ 47 C.F.R. § 76.630(a).

⁴ *See* RCN Waiver Petition at 2-5.

RCN's recent conversion to all-digital service has made remote provisioning and termination a real alternative to physical disconnects and truck rolls.⁵ Remote provisioning does not extinguish any portion of the signal being transmitted to the consumer, but simply orders the set-top box or CableCARD to stop decrypting the target programming. For the unencrypted basic tier, however, these signals continue to be passed through without change, since they are never encrypted in the first place. Thus, a "live connection" remains through which unencrypted programming can be viewed with a QAM tuner. As RCN described in its waiver petition, the end result has been a substantial increase in basic-service theft.⁶ RCN cited two "tap pulls,"—that is, physical disconnections of service—from Chicago apartments where RCN had previously provided service but was no longer doing so. In one instance, nearly twenty percent of the households from which RCN physically disconnected service contacted RCN within a week of the tap pull to subscribe for cable service, clear evidence that they had previously been viewing cable without paying; in the other, twelve percent did. A reasonable explanation for this trend, which coincides with RCN's conversion to all-digital video and the recent ubiquity of QAM tuners, is theft of service.

Only by encrypting the basic tier in addition to the rest of its programming lineup can RCN use remote provisioning both to prevent theft of basic cable service and avoid expensive, time-consuming, and pollution-causing home visits, especially as more and more subscribers purchase QAM tuner-equipped televisions.⁷ If the basic tier is encrypted, then when the customer discontinues service, the set-top box or CableCARD will simply be instructed to stop decrypting the basic tier. In that case, the mere presence of a "live connection" will no longer

⁵ RCN Waiver Petition. at 2-3.

⁶ *Id.* at 5.

⁷ *Id.* at 3-5.

enable cable theft, as the QAM tuner will be unable to view the programming. The Commission's proposed rule will thus save subscribers time and money while substantially reducing pollution. RCN's views on this matter are shared by other digital cable providers, who themselves are suffering from increasing levels of basic cable theft.⁸ RCN agrees with the Commission that the benefits of preventing theft by permitting encryption would well outweigh the related minimal costs.⁹

II. The Cost to Consumers of Encrypting Basic Cable Programming is Minimal.

The *Notice* rightly identifies the primary cost to consumers of permitting encryption of basic tier cable service as a loss of compatibility for those consumers who use neither cable boxes nor CableCARDS to receive basic tier programming. It also correctly notes that this cost is both minimal and readily mitigated.¹⁰

This is certainly so for RCN in all of its systems because the company has already completed its transition to all-digital delivery. As a result, all of RCN's video customers have at least one cable box or CableCARD, making new equipment expenses associated with basic-tier encryption essentially a non-issue. The only RCN subscribers who could theoretically be harmed by encrypting the basic tier (other than those who can no longer steal RCN's service) are those that have a cable box or CableCARD for a primary television but use second or third televisions equipped with QAM tuners to view unencrypted basic-tier programming.¹¹ The

⁸ *See, e.g.*, Petition for Special Relief on an Expedited Basis of Inter Mountain Cable, Inc., CSR 8483-Z at 3 (Apr. 19, 2011) (describing a theft rate of 24 percent).

⁹ In this regard, RCN is also agrees with the Commission's tentative conclusion that its proposal comports with the Commission's obligations under 47 U.S.C. § 544a, which requires the Commission to ensure the compatibility of cable equipment with consumer goods consistent with the need to prevent theft. *Notice*, ¶ 10.

¹⁰ *Notice*, ¶ 12.

¹¹ *Id.*

number of such customers is difficult to quantify, although RCN believes the number to be very small. RCN nonetheless agrees that offering transitional measures to mitigate expenses for these subscribers is reasonable and appropriate. RCN proposed in its waiver proceeding measures comparable to those approved by the Commission in the *Cablevision* proceeding—*e.g.*, providing these customers with one free cable box or CableCARD for a period of one year on those additional outlets not currently equipped with a set-top box or CableCARD.

Similar transitional measures would also be appropriate in a rule of general applicability. But such measures should apply *only* to this small subset of subscribers. RCN does not understand the Commission to be proposing such measures for the vast number of its subscribers that already have set-top boxes or CableCARDS for all televisions used to view cable programming in the first instance, or for non-video subscribers. The Commission “propose[s] that cable operators that choose to encrypt the basic service tier in their service area provide to subscribers, without charge for a limited time, devices that can decrypt the basic service tier as described above.”¹² The proposal is designed to “limit the immediate costs that basic service tier subscribers would face on account of the need for *additional equipment* like set-top boxes to provide digital televisions equipped with clear QAM tuners access to basic service tier channels.”¹³ Where no such additional equipment is needed, there is no reason for the proposal to apply.¹⁴

III. The Commission Should Expediently Grant RCN’s Waiver Petition.

While RCN believes that action in this proceeding is appropriate and warranted, it urges the Commission not to delay grant of its pending Chicago/New York waiver petition until this

¹² *Notice*, ¶ 12.

¹³ *Id.* (emphasis added).

¹⁴ *See also id.*, ¶ 13 (proposing mitigation for low-income subscribers).

rulemaking is completed. RCN’s waiver petition described a substantial theft problem in those systems, and as described above, the problem has only continued to grow since RCN filed its petition.

The record in that proceeding is now complete. RCN has already notified subscribers in the two systems of the proposed change.¹⁵ Only three individual subscribers commented, each raising issues unrelated to the waiver petition. Neither franchising authority objected, and RCN has filed its reply comments.¹⁶ Accordingly, there is nothing left to resolve in that proceeding, and delay would only continue the potential growth of service theft. Indeed, quick action in *that* proceeding may well help the Commission develop the record in *this* one, as RCN would be able to provide real-world, real-time data on the degree to which encrypting the basic tier minimizes cable theft and the need for and effectiveness of transitional measures.

The Commission has wide latitude to act through adjudication or rulemaking.¹⁷ It has also granted waivers subject to the grantee’s compliance with future rules—including rules then pending in proceedings of general applicability.¹⁸ It should do so here. RCN fully understands that it may have to adjust whatever mitigation is required of it in the waiver proceeding to

¹⁵ For this reason, should the Commission complete this rulemaking prior to acting on RCN’s waiver petition, and should it require notification of subscribers prior to encryption of the basic tier, RCN hereby requests that the Commission waive this requirement with respect to its Chicago and New York Systems. Duplicative notices for these subscribers would be confusing for customers and unduly burdensome for RCN.

¹⁶ See Reply Comments of RCN, CSR-8525-Z (filed Oct. 21, 2011).

¹⁷ As one court put it, “[m]ost norms that emerge from a rulemaking are equally capable of emerging legitimately from an adjudication.” *Qwest Services Corp. v. FCC* 509 F.3d 531, 536 (D.C. Cir. 2007) (citing *NLRB v. Bell Aerospace Co.*, 416 U.S. 267, 294–95, 94 S. Ct. 1757, 40 L. Ed. 2d 134 (1974)); see also, e.g., *Time Warner Entertainment Co. v. FCC*, 240 F.3d 1126, 1141 (D.C. Cir. 2001) (noting that agencies have “very broad discretion whether to proceed by way of adjudication or rulemaking”).

¹⁸ See, e.g., *Requests for Waiver of Various Petitioners to Allow the Establishment of 700 MHz Interoperable Public Safety Wireless Broadband Networks*, 25 FCC Rcd. 5145, 5174 (2010) (conditioning waiver on agreement to comply with, *inter alia*, rules “as may be adopted in future”).

comply with rules adopted in this proceeding. RCN is more than willing to do so in order to begin addressing the theft problems within its New York and Chicago systems.

IV. Conclusion.

RCN fully supports the proposed rule change to allow encryption of basic-tier digital cable programming. RCN further submits that, because its own situation presents a simplified application of a policy that will benefit consumers, cable companies, and the environment, the Commission should act without delay to grant RCN's request for a waiver of Section 76.630(a) of the Commission's Rules.

Respectfully Submitted,

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