

**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 BendBroadband

Bend Cable Communications, LLC d/b/a BendBroadband (“BendBroadband”) submits these comments in response to the Commission’s Notice of Proposed Rulemaking in this proceeding.¹ BendBroadband agrees that consumers’ interests would be well served by allowing cable operators of all-digital systems to encrypt basic programming. However, the Commission should modify the proposed conditions of this option and/or exempt small cable operators from such conditions, as set forth below.

I. All-Digital Cable Operators Should be Permitted to Encrypt Basic Programming

BendBroadband is a small, locally-run, family-owned cable operator that has served central Oregon since 1955. The company provides service to approximately 35,000 customers in its three franchised service areas in Deschutes County. Although small in size, BendBroadband seeks to provide its customers with the latest and best services that can be delivered. In 1997, the company became one of the first cable operators in the nation to deploy broadband Internet services to consumers. At the beginning of 2009, BendBroadband became the first traditional cable operator in the continental United States to eliminate analog transmission and transition to

¹ See *In re Basic Service Tier Encryption, Compatibility Between Cable Systems and Consumer Electronics Equipment*, Notice of Proposed Rulemaking, MB Docket No. 11-169, PP Docket No. 00-67; FCC No. 11-153 (rel. Oct. 14, 2011) (“*NPRM*”).

a fully digital network. BendBroadband is also bringing new and better broadband services to rural America, by recently becoming the first communications company in the country to deploy the ultra-fast LTE fixed-wireless protocol, and also by winning a Recovery Act grant from NTIA to greatly expand and improve the broadband infrastructure in rural central Oregon. In all of these endeavors, BendBroadband seeks to deliver the services of tomorrow, today.

But a regulation from yesterday -- the Commission's requirement that basic programming must be transmitted without encryption -- stands in the way of delivering all of the new benefits of an all-digital network to consumers. An all-digital network enables a service provider to activate and terminate service remotely and immediately, without customer appointments or truck rolls. However, to do so, the operator must either encrypt its programming or accept a high level of exposure to theft of service. To reduce theft, the service provider must either install and maintain traps at the premises of customers who subscribe to broadband service without video service or encrypt basic video service. Otherwise, the company cannot prevent a broadband customer from receiving unencrypted programming whether they pay for it or not, so many broadband customers may believe that it is not theft for them to view it.

Unfortunately, BendBroadband estimates the cost to install and maintain traps to the growing number of broadband-only homes would be approximately seven hundred thousand dollars (nearly \$200 per subscriber) over four years. These costs include an estimated 2000 additional truck rolls per year, since traps must physically be added or removed when a customer or household's service status changes. In our rural markets where customers can be located more than 20 miles from our service center, these truck rolls are expensive, consume significant amounts of fuel, and produce harmful CO₂ emissions. Because central Oregon can receive significant snowfall in winter, appointments can also be delayed due to severe weather.

Traps are an old analog technology that the company had hoped to avoid with its all-digital conversion. Adding such components to the cable plant increases the risk of service failures and degradation of the customer experience. Traps greatly reduce the cable provider's flexibility to make changes to its spectrum management plans, channel lineups, and service offerings. Traps have to be custom made to fit the requirements of the system at a specific point in time. Each trap has to be physically replaced when the provider reallocates spectrum to accommodate, for example, channel bonding for faster internet speeds. This inflexibility prevents an operator from being able to adapt to changing consumer preferences or deploy more efficient spectrum allocations unless all traps are replaced or removed.

Thus, the need for installation and disconnection appointments and truck rolls delays service, costs money, degrades network performance, limits engineering flexibility to meet changing customer needs, and inconveniences customers. All of this could be avoided if BendBroadband were permitted to encrypt all of its programming.

The inability to make service changes without a physical truck roll would also be a competitive disadvantage because BendBroadband's two largest competitors, DirecTV and DISH, are not subject to the same encryption constraints. A DBS customer service representative can make service changes in real time while on the phone with a customer, while the Commission's existing regulatory framework would leave BendBroadband to require truck rolls and service appointments to deliver the same change when a broadband customer is adding or removing video service.

Meanwhile, the prohibition on encryption of basic programming has almost no benefit in an all-digital system. Encryption requires every customer to have a set-top box for each

television.² When the Commission adopted the basic tier encryption rule in 1994, consumers had the expectation of receiving broadcast channels without a set-top box when they subscribed to cable service.³ Even as recently as 2007 when BendBroadband announced its plan to transition to all-digital, only 55% of its customers had a set-top box. But today, every single one of BendBroadband's 35,000 customers has at least one set-top box and there over 2.7 set-top boxes on average per household in the system. The majority of these set-top boxes are low-cost to customers, renting for \$2.25 per month. Consumers are now widely accustomed to set-top boxes. Indeed, even over-the-air viewers need set-top boxes to watch broadcast channels on analog sets. Satellite and telephone company MVPDs require a set-top box for every television. In BendBroadband's transition, customer response was overwhelmingly positive, with few complaints about the need for a set-top box. BendBroadband's monthly surveys of its customers have shown a significant increase in overall customer satisfaction since the migration to all-digital. New digital customers quickly found that they enjoyed the benefits of digital cable, including VOD, parental controls, enhanced programming guides, and improved pictures made possible by the set-top box, all of which made having it worthwhile.

Indeed, the Commission has already determined that the benefits of an all-digital network outweigh any concern about the result that customers must have set-top boxes or CableCARD devices. The Bureau required BendBroadband to transition to all-digital as a condition of its partial waiver from the integration ban, upon finding that BendBroadband's transition to an all-digital network "would allow it to reclaim a considerable amount of spectrum within a clearly defined timeframe, which would enable it to provide consumers with advanced

² In this context, BendBroadband's use of the term "set-top box" can include a retail device that uses a CableCARD provided by BendBroadband.

³ *In re Implementation of Section 17 of the Cable Television Consumer Protection and Competition Act of 1992; Compatibility Between Cable Systems and Consumer Electronics Equipment*, First Report & Order, 9 FCC Rcd 1981 ¶ 55 (1994) ("*Compatibility Report and Order*").

telecommunication capabilities, thereby furthering the goals of Section 706.”⁴ BendBroadband continues to deliver on its commitment to advanced telecommunications capabilities made possible by its all-digital spectrum reclamation efforts, with 108 HD channels and DOCSIS 3.0 internet services in excess of 60 mbps available to all homes in the service area.

The proposed rule is consistent with Congressional objectives and requirements for 624A. Nothing in Section 624A requires the transmission of basic programming without encryption. Instead, it directs that “the Commission shall not limit the use of scrambling or encryption technology where the use of such technology does not interfere with the functions of subscribers’ television receivers or video cassette recorders,”⁵ and that the Commission should employ a cost-benefit analysis to determine “whether and, if so, under what circumstances to permit cable systems to scramble or encrypt signals.”⁶ Moreover, the Commission should also change its rules pursuant to Congress’ directive that it “periodically review and, if necessary, modify the regulations . . . to reflect improvements and changes in cable systems, television receivers, video cassette recorders, and similar technology.”⁷ .

BendBroadband therefore agrees with the NPRM that “the costs of retaining this rule . . . outweigh the benefits of retaining it (*e.g.*, ensuring the continued utility of devices with clear-QAM tuners).”⁸

⁴ *Bend Cable Communications, LLC d/b/a BendBroadband Request for Waiver of Section 76.1204(a)(1) of the Commission’s Rules*, CSR-7057-Z, Memorandum Opinion and Order, DA 07-47, ¶¶ 24-25 (rel. Jan. 10, 2007) (“*BendBroadband Waiver Order*”).

⁵ 47 U.S.C. § 544a(b)(2).

⁶ 47 U.S.C. § 544a(b)(2), § 544a(c)(1).

⁷ 47 U.S.C. § 544a(d). The proposed change is also warranted under the Commission’s “Preliminary Plan for Retrospective Analysis of Existing Rules” which, among other things, said that in identifying rules for retrospective analysis, the Commission “considers whether a regulation: (1) has been affected by changes in technology or new scientific research or changes in market structure; (2) has a disproportionate or undue burden on particular entities, has caused unintended negative effects, or could result in greater net benefits to the public if modified; and (3) has been subject to frequent requests for waivers by affected stakeholders or been identified by the public as needing revision.” FCC, *Preliminary Plan for Retrospective Analysis of Existing Rules*, at 7 (Nov. 7, 2011).

⁸ *NPRM*, ¶ 8.

II. The Commission Should Exempt Small Cable Operators from Conditions and/or Clarify that the Conditions Apply for a Limited Time

While BendBroadband fully supports the Commission's tentative conclusion to permit all-digital systems to encrypt basic programming, it urges the Commission to modify the proposed conditions of this election, and/or to exempt small cable operators from the conditions.

The NPRM notes that if a cable operator begins to encrypt digital programming, customers who have previously viewed basic programming on secondary television sets without a set-top box would need to obtain a set-top box to be able to continue to do so. The Commission proposes to protect consumers from this consequence by requiring cable operators to provide free set-top boxes for a period of time.

BendBroadband appreciates these concerns, but urges the Commission likewise to consider the costs that would be borne by small cable operators and their customers in implementing them. In Section 624A(c)(1)(B), Congress specifically required the Commission to weigh the costs and benefits of its compatibility regulations. The NPRM itself conceded that the benefits of its proposed conditions are extremely limited, by recognizing that only a very small percentage of cable customers in an all-digital system would be affected by encryption.⁹ Under a similar condition of its waiver, Cablevision deployed free set-tops only to one-tenth of one percent of the relevant customers.¹⁰ One-tenth of one percent of BendBroadband's customer base would be 35 customers. But to protect these 35 customers from having to pay \$2.25 per month for a set-top box sooner rather than later, the company would incur indirect costs of making changes to the billing systems, training CSRs and installers, publishing explanations and notices to subscribers, and, most significantly, explaining to the other 99.9% of

⁹ *In re Cablevision Systems Corporation's Request for Waiver of Section 76.630(a) of the Commission's Rules*, Memorandum Opinion & Order, 25 FCC Rcd 134 ¶ 4 (2010) ("*Cablevision Waiver Order*").

¹⁰ *Cablevision Waiver Order*, n. 20.

the customer base why in fact they are not eligible for the free set-top offer. It would be grossly disproportionate for the Commission to impose these conditions on BendBroadband's decision to encrypt basic for the benefit of 35 customers when the Commission has imposed no such conditions on DirecTV, DISH, Verizon, or AT&T, who encrypt all services delivered to their 40 million customers.¹¹

The 1996 Act and numerous Commission decisions have recognized that small cable operators face difficult challenges that can warrant relaxation of certain regulatory burdens.¹² Such treatment would be appropriate here, given that the small, finite benefit of the condition would be received by so few consumers.

Even if the Commission applies conditions to small cable operators, it should make certain changes and clarifications to its proposed rules. First, and most importantly, the Commission should only require that free set-top boxes be offered for a limited period of time, rather than indefinitely. BendBroadband proposes that the offer be required to be available only for the period thirty days before and after the date of encryption. In addition, the free set-top box mandate should only apply if the customer had the additional television as of the date of encryption. The *NPRM*'s proposal that customers be eligible if they "currently" have an additional television could be read to suggest an ongoing obligation to offer free set-top boxes forever. The administrative burden and expense of the proposed rule for small operators would

¹¹ The Commission found that it should implement Section 624A in a manner that would "avoid the creation of a regulatory and marketplace imbalance between cable and DBS," and that "[a]bsent this approach, we believe that cable operators would be at a significant competitive disadvantage...." *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices; Compatibility Between Cable Systems and Consumer Electronics Equipment*, Second Report and Order and Second FNPRM, 18 FCC Rcd. 20885, 20910, ¶ 57 (2003).

¹² See e.g., 47 U.S.C. § 543(m); CS Docket No 98-120, *Carriage of Digital Television Broadcast Signals; Amendments to Part 76 of the Commission's Rules*, Fourth Report and Order, FCC 08-193 (2008).

be greatly magnified if the obligation to manage a free set-top eligibility program continued for years after the operator completed its transition to an all-digital, encrypted system.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "P. Hudson", written in a cursive style.

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