

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 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 CABLEVISION SYSTEMS CORPORATION**

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Cablevision Systems Corporation (“Cablevision”) submits these comments in support of the Commission’s proposal to eliminate the basic service tier encryption prohibition for all-digital cable systems.<sup>1/</sup> Allowing encryption of the basic service tier for all-digital cable systems makes sense in light of the changes in the industry, and specifically the near ubiquitous deployment of digital television systems that already require set-top boxes or similar devices. In such cases, allowing encryption fosters substantial environmental, cost and service benefits for consumers, cable operators, and the general public.

**INTRODUCTION AND SUMMARY**

Cablevision supports the Commission’s proposal to eliminate the outdated prohibition on cable operators encrypting the basic tier in digitized systems. Cablevision’s success under the Commission’s grant of a waiver in 2010 for Cablevision’s New York City footprint illustrates the substantial environmental and consumer benefits of encryption and the virtual absence of consumer harm when encryption is accompanied by appropriately targeted consumer protection

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<sup>1/</sup> *Basic Service Tier Encryption; Compatibility Between Cable Systems and Consumer Electronics Equipment*, MB Docket No. 11-69, PP Docket No. 00-67, Notice of Proposed Rulemaking, FCC 11-153 (rel. Oct. 14, 2011) (“*Notice*”).

measures. Cablevision endorses the modest changes to the rule proposed in NCTA's comments in this docket to ensure that efforts to mitigate consumer disruption are appropriately targeted.

There are three main benefits from allowing cable operators to encrypt the basic tier in fully digitized systems. *First*, encryption enhances consumer welfare by allowing cable operators to connect and disconnect service remotely. Consumers no longer need to arrange their schedules to meet the cable technician, and the cable operator can respond to consumer orders for connection and disconnection much more quickly. *Second*, encryption reduces fuel consumption and CO<sub>2</sub> emissions, as cable operators do not have to roll trucks to connect and disconnect service. Cablevision's experience proves the environmental benefits of eliminating the encryption prohibition; Cablevision *reduced the number of truck rolls for service disconnections in New York City by over 99 percent*. *Third*, encryption reduces signal theft, whose costs are borne by all paying subscribers. By supporting enhanced security of content on the cable system, the Commission can ensure that highly valued content does not migrate to a more secure distribution tier.

To the extent there are any concerns that encrypting the basic tier in digitized systems might be disruptive for the very small pool of customers with digital TVs who can, today, view basic without a set top box or CableCARD, they can be readily addressed by targeted offers of free set top boxes and CableCARDS for a transitional period. Again, Cablevision's New York City experience is instructive; since encrypting the basic tier last year in its New York City system (serving over one million homes), Cablevision has received *not a single complaint from consumers about encryption*.

The Commission should eliminate this now-outdated rule by allowing cable operators the flexibility to encrypt the basic tier in digitized systems, provided operators make targeted offers of free set top boxes and CableCARDS to ameliorate any potential consumer disruption.

**I. FOR DIGITAL CABLE SYSTEMS, THE RULE PROHIBITING ENCRYPTION OF THE BASIC SERVICE TIER HAS BEEN OVERTAKEN BY TECHNOLOGY AND ITS RATIONALE NO LONGER APPLIES.**

Nearly twenty years ago, the Commission prohibited encryption of the basic service tier so that all subscribers would be able to receive basic service tier signals “in the clear,” as part of an effort to advance compatibility between analog cable systems and analog consumer electronics equipment.<sup>2/</sup> The rule was designed to enable consumers to avoid the cost and inconvenience of obtaining additional devices in order to watch encrypted analog programming on the rate regulated basic service tier.<sup>3/</sup>

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<sup>2/</sup> See *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 and Order, 9 FCC Rcd 1981, ¶ 55 (1994) (“1994 Compatibility Order”). The Commission itself has recognized that there is substantial doubt about whether the rule *even applies* to the transmission of digitally delivered basic tier services. Recognizing that the “express issue of digital basic tier encryption” is distinct from the prohibition contained in section 76.630(a), the Commission has previously suggested that the encryption rule may not even apply to the transmission of digitally delivered basic tier services; however, the issue has never been resolved. *Implementation of Section 304 of the Telecommunications Act of 1996*, Second Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 20885, ¶ 18 (2003); *Compatibility Between Cable Systems and Consumer Electronics Equipment*, Notice of Proposed Rulemaking, 15 FCC Rcd 8776, ¶ 17 (2000) (indicating that the intent of section 76.630(a) in 1994 was to “prohibit *analog* basic service tier scrambling”) (emphasis added); see also *Digital Broadcast Content Protection*, Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 23550, ¶ 59 (2003) (requesting comment on the issue of whether the prohibition should apply in the digital context).

<sup>3/</sup> See *1994 Compatibility Order* ¶ 49 (“This proposal was intended to ensure that consumers who have purchased TV receivers and VCRs capable of tuning basic service channels are able to continue to receive service on those channels without the need for a set-top device.”); *Compatibility Between Cable Systems and Consumer Electronics Equipment*, Notice of Proposed Rulemaking, 15 FCC Rcd 8776, ¶ 17 (2000) (“Our decision to prohibit analog basic service tier scrambling (subject to a waiver procedure), while primarily justified as ‘appropriate as a means to promote compatibility between cable service and consumer electronics equipment,’ was also based in part on the fact that cable operators had previously generally not scrambled these signals.”).

**A. The Cable Industry’s Technology, Market Structure, and Consumer Expectations Have Changed Drastically Since Adoption of the Encryption Ban.**

As the Commission recognized in the *Notice*, the world of cable delivery has changed dramatically since adoption of the encryption rule two decades ago.<sup>4/</sup> Broadcasters and most cable programming services have transitioned to digital formats, and the number of digital offerings and interactive features offered over cable systems, such as video on demand, has exploded. The vast majority of cable subscribers take digital service as part of their video package to take advantage of these developments.<sup>5/</sup>

As the number of digital subscribers has increased, many cable systems have transitioned to all-digital delivery, or will do so in the near future. Even among customers that opt not to subscribe to a digital service tier, the great majority still choose to have a set-top box in order to receive local broadcast signals following the digital transition.<sup>6/</sup> The Commission estimated that today approximately 77 percent of cable subscribers have at least one digital cable set-top box or retail CableCARD device, which would enable them to receive fully encrypted service.<sup>7/</sup>

The trend towards required devices for viewing broadcast programming was cemented during the digital transition when Congress authorized subsidies for converter boxes so that all owners of analog-only television sets could obtain them to ensure continued receipt of local

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<sup>4/</sup> *Notice* ¶ 3.

<sup>5/</sup> See National Cable & Telecommunications Association, Industry Data (as of June 2011), <http://www.ncta.com/Statistics.aspx> (finding that digital penetration for basic video customers is at 77.1 percent).

<sup>6/</sup> *Notice* ¶ 3 (“As a result of this digital transition, most cable subscribers now have at least one cable set-top box or CableCARD device in their homes.”).

<sup>7/</sup> *Id.*

broadcast signals following the digital transition.<sup>8/</sup> The transition to a marketplace in which most cable subscribers use devices to watch basic broadcast programming has occurred with little, if any, fanfare. And as the development of DVR services, interactive and Internet TV services, and others continues and grows, the idea of a device-free television experience is becoming extinct.<sup>9/</sup>

Indeed, traditional cable operators are the only remaining major multichannel video programming distributors (“MVPDs”) that even offer an analog service. Competition from direct broadcast satellite (“DBS”) and telco video providers is fierce, but DBS providers are not even subject to the encryption requirements and both they and the telcos require their subscribers to have some form of digital reception device in order to receive any service at all. Online video distributors, like Netflix, also compete with cable and offer video programming to consumers on a fully encrypted basis. Given these structural transformations in the video delivery market that have taken place since the time of the encryption rule’s adoption, continued disparate treatment of MVPDs cannot be justified.

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<sup>8/</sup> *Id.* (describing that the digital transition has resulted in the majority of subscribers having at least one set-top box or CableCARD device); *Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission’s Rules*, Third Report and Order and Third Further Notice of Proposed Rule Making, 22 FCC Rcd 21064, ¶ 42 (2007) (“After the DTV transition . . . some sort of set-top or converter box will be the rule rather than the exception for those Americans with analog television sets. Whether consumers currently obtain video programming through over-the-air broadcasts, cable, or DBS, they generally will need either set-top boxes or digital televisions to receive programming once the transition is complete.”).

<sup>9/</sup> Indeed, an SNL Kagan study, citing the cable industry’s “full conversion to digital video delivery,” estimated that “the collective installed base of digital cable units, including set-top boxes, DTAs and DCRs, will increase from nearly 98 million devices at the end of 2010 to more than 152 million units by 2014.” Ian Olgeirson, *U.S. Cable Set-Top Box Outlook*, SNL KAGAN (Sept. 21, 2010), <http://www.snk.com/interactivex/article.aspx?id=11720124&KLPT=6> (“2010 SNL-Kagan Report”); see also Ian Olgeirson, *Cable Set-Top Forecast: Industry’s Move to IP Video Impacts Projections*, SNL KAGAN (Sept. 16, 2011), <http://www.snk.com/interactivex/article.aspx?id=13304593&KPLT=6> (noting that “cable operators are on track to collectively deploy more than 13 million new set-top boxes and digital terminal adapters, or DTAs, in 2011, adding to an install base that will handily top 100 million before the end of the year”). SNL Kagan also estimated that the “ratio of devices per home . . . is forecast to approach 2.9 in the five-year outlook, as digital video stretches to second and third televisions in the home.” See *2010 SNL-Kagan Report*.

Consumer expectations, too, have changed in recent years. Consumers that want to start, stop, or reconnect service want and expect the cable company to be able to handle that request with a phone call, and to effectuate that request immediately. Yet in many instances, the cable operator cannot do so. Today, with broadcast basic services always available “in the clear,” cable operators must use other security measures that require them to schedule an individual service visit and send a service representative every time a subscriber seeks to initiate, disconnect, or reconnect service.<sup>10/</sup> Rather than protect consumers, the Commission’s rule prohibiting encryption of the analog basic tier, which has remained largely unchanged since its inception, today largely interferes with cable operators’ ability to offer the best possible consumer experience while offering only negligible countervailing public benefits.

Further, in contrast to when the encryption rule was adopted, today’s cable subscribers typically do not have an expectation – or the capability – of receiving digital cable services without a set-top box or other digital-ready or encryption device. In all-digital cable systems, all customers that receive any service beyond the basic-only tier will already have a set-top box or CableCARD, and even basic-only subscribers will already have a set-top box unless they have a digital television set with a built-in QAM tuner.<sup>11/</sup> Thus, given the high percentage of subscribers already using set-top boxes, problems due to incompatibility between cable service and consumer electronics equipment will not be widespread once basic tier scrambling is

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<sup>10/</sup> *Notice* ¶ 5 (noting the assertion of parties requesting waiver of the encryption rule that “encrypting the basic service tier in an all-digital system will eliminate the need for many service appointments because it will allow cable operators to enable and disable cable service remotely by activating and deactivating the encryption capability of set-top boxes and CableCARDS from the headend.”).

<sup>11/</sup> *Id.* ¶ 4 (describing the limited universe of subscribers that encryption of the basic service tier would affect).

commenced.<sup>12/</sup>

**B. The Benefits of Providing Unencrypted Basic Service Signals No Longer Offset the Putative Harms Associated with Encryption**

The benefits to consumers from leaving the basic service tier unencrypted no longer outweigh the public interest costs of doing so. Without full encryption, service technicians must connect and disconnect service manually.<sup>13/</sup> Customers wishing to add or change service must accommodate these service appointments, sometimes coordinating with superintendents or other third parties to permit access to easements, basements, or other limited-access premises. Arranging and participating in these service calls inconveniences the consumer and increases the number of truck rolls and other costs borne by the cable operator.

In an encrypted system, however, the cable operator can leave the video feed active, because a consumer cannot view encrypted programming without an authorized account and descrambler. Service can be turned on or off by authorizing a device remotely – such as a consumer’s own digital-ready television – or with a set-top box or CableCARD delivered to the customers’ premises (or picked up) at the consumer’s convenience.<sup>14/</sup> The customer can quickly add or remove service, and the cable operator can eliminate incremental truck rolls. A reduction in truck rolls would foster environmental benefits by decreasing fuel consumption and CO<sub>2</sub> emissions. Such positive environmental effects would alleviate traffic congestion in urban areas and minimize service calls in rural areas where negative environmental impacts may be particularly acute due to long drive times. The environmental costs and harms associated with a rule that impeded the ability of cable operators to remotely disconnect and reconnect subscribers

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<sup>12/</sup> *Id.* (explaining that the Commission expects the number of subscribers potentially affected by encryption of the basic service tier to be “small”).

were not accounted for when the encryption rule was adopted in 1994, but have clearly been recognized as significant today.

Lack of encryption today also poses a far greater risk of signal theft than when the rule was instituted.<sup>15/</sup> Although piracy of basic broadcast content may not have been a concern in 1994, the widespread use of digital technology today allows popular broadcast television shows to be copied and almost immediately illegitimately broadcast over the Internet.<sup>16/</sup> Indeed, digital piracy of broadcast and other programming causes content providers to lose billions of dollars a year.<sup>17/</sup> Absent some mechanism for protecting digital broadcast content against the risks of

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<sup>13/</sup> *Id.* ¶ 5 (“In order to remotely activate and deactivate service, cable operators must leave every home connected to the cable plant rather than manually disconnect the cable that runs to a home, which is how many cable operators disconnect service today.”).

<sup>14/</sup> *Id.* (“If the cable operator is allowed to encrypt every signal, the operator can keep every home connected to the cable plant regardless of whether the home subscribes to cable service. The operator can ensure that only paid subscribers are able to access the service by authorizing and deauthorizing CableCARDS as people subscribe or cancel cable service.”).

<sup>15/</sup> In adopting the encryption ban in 1994, the Commission responded to theft of service concerns raised by cable operators by averring that the rule would have a “minimal impact on the cable industry in view of the fact that most cable systems now generally do not scramble the basic tier signals.” *1994 Compatibility Order* ¶ 55. The Commission noted that cable operators did not encrypt the basic tier because “theft of basic service is less of a problem than is theft of other services,” and cable operators believed that the risk of theft was outweighed by the benefits of “allowing subscribers to access basic tier channels without using a descrambling set-top box.” *1994 Compatibility Order* ¶ 50; *see also Implementation of Section 17 of the Cable Television Consumer Protection and Competition Act of 1992, Compatibility Between Cable Systems and Consumer Electronics Equipment*, Notice of Proposed Rulemaking, 8 FCC Rcd 8495, ¶ 13 (1993) (“We note that most basic services are currently carried unscrambled.”).

<sup>16/</sup> *See, e.g., Fox’s 8-Day Delay on Hulu Triggers Piracy Surge*, TORRENTFREAK (Aug. 22, 2011), available at <http://torrentfreak.com/foxs-8-day-delay-on-hulu-triggers-piracy-surge-110822/> (reporting that once Fox stopped offering free access to its shows the day after they aired on television, viewers illegally downloaded and streamed the shows from unauthorized sources, and that one of the reasons behind this is the widespread availability of such pirated sources); Vanessa Thorpe, *Young Turn to Piracy to Watch Pay TV for Free*, THE OBSERVER (Feb. 5, 2011), available at <http://www.guardian.co.uk/media/2011/feb/06/sky-atlantic-tv-piracy-internet> (observing that “increased demand will bring new and cheaper ways to watch television over the internet into the mainstream” and that “younger audiences are already resorting to streaming bootleg episodes from sites not sanctioned by the programme’s ‘rights-holders’.”).

<sup>17/</sup> *See* Center for Copyright Information, *Fact Sheet on the Content Theft Challenge* (July 7, 2011), <http://www.copyrightinformation.org/facts> (citing Stephen E. Siwek, *The True Cost of Piracy to the U.S.*

Internet redistribution, higher value content will migrate to a more secure distribution tier.

Encrypting basic tier programming will ensure that broadcasts on that tier are as secure as programming on other encrypted tiers and will ensure the continued robustness of the basic tier as a home for high-value content.<sup>18/</sup>

Encryption is the best means of protecting video programming. Without full-spectrum encryption, primary connections can be split off to provide unauthorized secondary connections to adjacent premises or service locations. Further, any attempt to improve operations and customer convenience by leaving unencrypted plant “hot” would exacerbate this problem by allowing theft not just from active subscriber drops but also “inactive” subscriber drops that are not terminated at the pole. In the absence of encryption, the operator must decide either to suffer increased risk of theft of service or to deny consumers the benefit of increased remote operations – a cost/benefit calculation mooted by encrypting the basic tier.

By controlling access to video programming content and preventing signal theft, encryption further helps to ensure that all recipients of video programming pay their fair share of

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*Economy*, Report for the Institute for Policy Innovation (Oct. 2007)) (“A comprehensive study found that \$58 billion is lost to the U.S. economy annually due to content theft, including more than 373,000 lost American jobs, \$16 billion in lost employee earnings, and \$3 billion in badly needed federal, state and local governments’ tax revenue.”); Michael Cieply, *Digital Piracy Spreads, and Defies a Fix*, N.Y. TIMES (April 6, 2009) (“\$20 billion annually in copyrighted movies, music and other entertainment are being lost to global piracy networks”); *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Thirteenth Annual Report, 24 FCC Rcd 542, ¶ 277 (2009) (“As high-value digital video content is being made available to consumers, the Motion Picture Association of America (‘MPAA’) and other content creators are increasingly concerned about unauthorized copying and the use of such content. According to an MPAA study, the industry lost \$6.1 billion to piracy in 2005. MPAA stresses the need to implement content protection measures . . . to reduce these losses.”).

<sup>18/</sup> See *Digital Broadcast Content Protection*, Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 23550, ¶ 4 (2003) (“[T]he potential threat of mass indiscriminate redistribution will deter content owners from making high value digital content available through broadcasting outlets absent some content protection mechanism.”); see also *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Supplemental Notice of Inquiry, 24 FCC Rcd 4401, ¶ 27 (2009) (acknowledging that “digital technology enables the reproduction and distribution of an infinite number of high-quality copies of copyrighted material [and] digital media is especially vulnerable to piracy,” and asking for information on available content protection technologies).

the costs associated with such programming. Ensuring that all viewers pay their proportionate share of programming costs and expenses in turn helps minimize rates for the subscriber base. Thus, the Commission's supporting rationale for the rule – that cable subscribers expect to receive unencrypted basic service tier signals and cable operators are unconcerned about theft of basic service – no longer holds true.

**C. Sound Public Policy Favors Revisiting Outmoded Rules Such as the Encryption Ban**

The Administration's recent Executive Order on regulatory reform expressly directs federal agencies to review and repeal rules that “may be outmoded, ineffective, . . . or excessively burdensome.”<sup>19/</sup> In the Commission's report responding to this directive, it stated that in identifying rules for retrospective analysis, it “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.”<sup>20/</sup>

The encryption rule clearly meets this criteria and therefore is ripe for revision.<sup>21/</sup> In particular, changes in technology and market structure – caused by the transition to digital cable delivery systems and intense competition from DBS, telco, and online video providers – have directly affected the rule. The rule also places a disproportionate and undue burden on cable operators, because many of cable's competitors are not subject to the basic service tier

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<sup>19/</sup> Exec. Order No. 13579, 76 Fed. Reg. 41,587 (July 11, 2011).

<sup>20/</sup> See Federal Communications Commission, *Preliminary Plan for Retrospective Analysis of Existing Rules*, at 7 (Nov. 7, 2011) (“*FCC Analysis Plan*”), available at [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2011/db1107/DOC-310874A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db1107/DOC-310874A1.pdf).

<sup>21/</sup> *FCC Analysis Plan* at 13.

encryption requirement. In addition, the rule could result in greater net benefits to the public if modified by improving customer service, creating positive environmental effects, and protecting against theft of service. Lastly, the Commission has received several requests for waiver of the rule.<sup>22/</sup> Consequently, it is clear that the rule should be amended to allow encryption of the basic service tier.

**II. CABLEVISION’S EXPERIENCE SHOWS THAT ALLOWING ENCRYPTION OF THE BASIC SERVICE TIER FOR ALL-DIGITAL CABLE SYSTEMS CREATES SIGNIFICANT BENEFITS WHILE AFFECTING ONLY A MINISCULE NUMBER OF SUBSCRIBERS.**

Cablevision’s experience shows that adopting the Commission’s proposal to allow encryption of the basic service tier in all-digital systems would create substantial customer service, operational, and environmental benefits. In addition, any attendant disruptions of service would impact only a very small number of subscribers and can be virtually eliminated through the adoption of narrowly tailored consumer protection measures.<sup>23/</sup>

**A. The Subscriber and Public Benefits of Basic Service Tier Encryption Are Borne Out by Cablevision’s Experience in New York City**

Cablevision’s experience in New York City demonstrates that subscribers and the public reap substantial benefits from encryption of the basic tier. In particular, basic tier encryption has yielded a dramatic reduction in truck roll disconnects. Cablevision’s last report to the Commission mentioned that it had expanded the operational zone for “truckless” disconnects and reconnects in July 2011 to 401,000 households, or about one-third of the total households served

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<sup>22/</sup> Notice ¶ 5.

<sup>23/</sup> Cablevision voluntarily accepted the *Waiver Order* condition to provide the small subset of affected subscribers with free equipment for specified periods of time, and believes that similar conditions (subject to the modifications described below) are permissible as a transitional measure in the context of the particular rule at issue here because of the limited number of affected consumers. In general, however, conditioning regulatory choices on the provision of free offerings implicates the constraints of Section 623, which expressly limit the manner and circumstances under which the Commission can constrain the price of any cable offering. *See generally* 47 U.S.C. § 543.

by Cablevision in its New York City franchise area.<sup>24/</sup> Cablevision also reported that in approximately one month's time, it had eliminated an additional 2,366 disconnect truck rolls.<sup>25/</sup> Cablevision also anticipated that it would be able to eliminate about 5,000 disconnect truck rolls in a year within that area.<sup>26/</sup> This estimate has turned out to be far too conservative. Since the time of Cablevision's last report (at the beginning of August 2011) to the end of October 2011, Cablevision has reduced its disconnect truck rolls in that area by 19,099. Accordingly, as of the end of October 2011, Cablevision was performing remotely **99.5 percent of all disconnects** in the 401,000 household area.

Should the Commission grant the requested waiver, there is no reason why comparable results could not be replicated across Cablevision's entire network footprint, as well as in other cable systems across the country. Eliminating the vast majority of truck roll disconnects nationwide would result in clear customer service benefits in terms of increased convenience and environmental benefits in terms of reduced fuel consumption, traffic, and CO<sub>2</sub> emissions.

Basic service encryption engenders additional benefits beyond truckless disconnects. Leaving disconnected cable taps "hot" means, in many instances, those same taps subsequently can be used for remote service connections and reconnections. As of the end of October 2011, Cablevision left active approximately 39.5 percent of the cable taps in the 401,000 household area. As new customers take service in households where a prior disconnect was handled remotely and the cable drop left active, new service can be commenced remotely. Consequently, the number of cable taps left "hot" will continue to grow as Cablevision continues these efforts,

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<sup>24/</sup> Letter from Michael E. Olsen, Senior Vice President, Legal Regulatory and Legislative Affairs, Cablevision Systems Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission, MB Docket No. 09-168, at 2-3 (Aug. 11, 2011) ("Cablevision Report").

<sup>25/</sup> Cablevision Report at 2-3.

<sup>26/</sup> *Id.* at 3.

which will mean that an increasingly larger population will have the option of truckless service installation and re-installation, thereby greatly expediting the process of commencing service for new subscribers.

As Cablevision noted in its last report to the Commission, any customer that wishes to have a service appointment for installation may have one, regardless of whether service is active at the customer's premise due to a drop having been left active.<sup>27/</sup> Cablevision expects that as cable operators further simplify and streamline the process for customers to perform self-installations, customer expectations and habits change to become more accepting and desiring of self-installation, and cable operators implement fully encrypted operations in more areas, the number of customers requesting professional installation appointments will drop substantially.

**B. The Significant Benefits Fostered by Basic Service Tier Encryption Are Accompanied by Only Minimal, Manageable Costs Impacting an Extremely Limited Number of Cable Subscribers.**

Given that most cable customers already have and use set-top boxes or CableCARDs to receive cable service, encrypting the basic service tier on all-digital cable systems would only potentially affect those basic-only subscribers that have a digital television set with a built-in QAM tuner.<sup>28/</sup> In Cablevision's experience, as noted by the Commission, that number is miniscule.<sup>29/</sup> The number of basic-only subscribers served by Cablevision in New York City is less than 2% of its total subscriber base there, and the subset of those customers receiving their Basic service via QAM tuner is even smaller.

As a result, when Cablevision encrypted the basic service tier in its all-digital New York City systems, less than 0.1 percent of subscribers requested the free set-top box or CableCARD

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<sup>27/</sup> *Id.* at 2 n.4.

<sup>28/</sup> *Notice* ¶ 4.

<sup>29/</sup> *Id.*

to decode the newly encrypted signal, because the overwhelming majority of subscribers already had such devices in their homes.<sup>30/</sup> In addition, affected devices “often are non-primary devices in households, including guest room television sets and television sets in kitchens.”<sup>31/</sup> Given the small segment of subscribers that was even potentially affected by encryption of the Basic tier, and the steps Cablevision took to mitigate the impact for the even smaller subset that was actually affected, it is perhaps unsurprising that Cablevision received zero complaints arising from the encryption of its New York City system.<sup>32/</sup>

Cablevision’s experience in New York City demonstrates that encryption of the basic tier in a system that is already all-digital is actually a minor change, with no impact on all but a relative handful of customers (whose issues can be readily resolved by targeted offers of free equipment) and positive benefits for all subscribers. Extending the option to encrypt the basic tier to all cable operators that provide service over all-digital systems, including Cablevision with respect to its markets outside of New York City, will provide substantial consumer and public interest benefits with essentially no downside.

### **III. THE TARGETED TRANSITIONAL MEASURES FOR AFFECTED CONSUMERS PROPOSED IN THE NOTICE MUST BE TAILORED TO ACHIEVE THEIR INTENDED PURPOSE**

Cablevision’s experience shows that targeted consumer protection measures can ease the transition from an unencrypted to encrypted basic service tier for the limited number of current subscribers whose service could be disrupted by encryption, therefore resolving any potential negative impact of the proposed rule amendment. While Cablevision supports the adoption of consumer protection measures to address any potential service disruptions, certain modifications

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<sup>30/</sup> *Id.* ¶ 4 n.20.

<sup>31/</sup> *Id.*

<sup>32/</sup> *Id.* ¶ 8; Cablevision Report at 2.

to the Commission's proposed rule are required in order to ensure that the consumer protection conditions truly constitute "transitional measures for the limited universe of subscribers who currently access the unencrypted digital basic service tier without a set-top box."<sup>33/</sup>

Specifically, the proposed rule must be clarified to reflect the fact that in order to qualify for a transitional set-top box under any of the conditions, a current subscriber must, at the time of encryption, fall into the limited universe of customers for which the condition was designed. New customers that become subscribers after the date of encryption are not eligible for the offers, because they are by definition not disrupted by the encryption. Likewise, further tailoring is necessary in order to ensure that current customers do not mistakenly believe that the free equipment offers would extend to digital televisions purchased after encryption has commenced.

The rule also should include greater specificity regarding when free set-top boxes should be offered. In Cablevision's experience, the notice requirement applied to Cablevision in New York City should apply here. Namely, cable operators should be required to notify customers of the set-top box offer thirty days prior to the date of encryption and leave such offer open until thirty days after the date of encryption.<sup>34/</sup>

For these reasons, Cablevision endorses the proposed rule modifications included in NCTA's comments.<sup>35/</sup> Adopting these straightforward modifications to the consumer protection conditions included in the proposed rule will ensure that the conditions are appropriately tailored

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<sup>33/</sup> Notice ¶ 11.

<sup>34/</sup> See Cablevision Report at 2; Letter from Howard J. Symons, Counsel for Cablevision Systems Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission, MB Docket No. 09-168 (Jan. 7, 2010).

<sup>35/</sup> *Basic Service Tier Encryption; Compatibility Between Cable Systems and Consumer Electronics Equipment*, MB Docket No. 11-169, PP Docket No. 00-67, Notice of Proposed Rulemaking, FCC 11-153, Comments of National Cable and Telecommunications Association, at Exhibit A (Nov. 28, 2011).

to achieve the intended purpose of the rule of “minimiz[ing] any potential subscriber disruption.”<sup>36/</sup>

## CONCLUSION

For the reasons set forth above, the Commission should amend the basic service tier encryption rule, incorporating the minor modifications described herein, without delay. Providing cable operators with the ability to encrypt their basic service tiers will allow Cablevision’s success in New York City – in terms of improving customer service, enhancing the protection of video programming content, and reducing costs, fuel consumption, and CO<sub>2</sub> emissions – to be replicated by cable operators in service areas throughout the country.

Respectfully submitted,

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<sup>36/</sup> Notice ¶ 1.