

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Basic Services Tier Encryption)	MB Docket No. 11-169
)	
Compatibility Between Cable Systems And Consumer Electronics Equipment)	WT Docket No. 00-67

COMMENTS



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I. INTRODUCTION.

In response to the Notice of Proposed Rulemaking (“NPRM”) in the above-captioned proceeding,¹ the American Cable Association² (“ACA”) offers these comments supporting the Commission’s proposal to remove its prohibition on basic service tier encryption for all-digital cable systems.³

ACA agrees with the Commission’s tentative conclusion that cable operators should be permitted, but not required, to encrypt their basic tier services on their all-digital systems.⁴ Allowing basic tier encryption in these cases will help lower operating costs for cable operators. This will be particularly true in the small and rural markets served by many of ACA’s members, where housing density is lower and truck rolls are typically longer than in urban markets. Permitting the scrambling of the basic tier also helps reduce signal theft, which benefits both sellers and purchasers of programming.

While ACA endorses the Commission’s tentative conclusion to allow operators of all-digital systems to encrypt basic tier programming, it urges the Commission to modify the proposed regulatory conditions required of these operators by limiting the amount of time that these conditions will be in effect, and adopting alternative conditions for smaller cable operators for whom the burden of satisfying them may be prohibitive.⁵

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

² ACA represents nearly 900 independent MVPDs that serve about 7.6 million video subscribers, primarily in smaller markets and rural areas. ACA member systems are located in 49 states and many U.S. territories. ACA’s members range from family-run cable businesses serving a single town to multiple system operators with small systems in small markets. More than half of ACA’s members serve fewer than 2,000 subscribers. Most ACA members provide video, voice, and data services, as part of a triple play offering, delivering these critical services to smaller-market and rural subscribers across the nation.

³ NPRM at ¶ 1.

⁴ *Id.* at ¶¶ 8, 14.

⁵ *Id.* at ¶¶ 11-13.

II. PERMITTING BASIC TIER ENCRYPTION FOR ALL-DIGITAL CABLE SYSTEMS PROMOTES EFFICIENCIES THAT WILL BENEFIT BOTH OPERATORS AND CONSUMERS WITHOUT ENDANGERING CABLE SERVICE COMPATIBILITY WITH CONSUMER ELECTRONICS EQUIPMENT.

ACA agrees with the Commission's assessment in the NPRM that marketplace, regulatory and technological changes since the adoption of the basic tier encryption prohibition more than 15 years ago have shifted the balance of benefits and burdens to the point where the costs of retaining the prohibition for all-digital cable systems clearly outweigh the benefits.⁶ As noted in the NPRM, the profusion of consumer electronic equipment that can both demodulate and decrypt digital cable services in the homes of all-digital systems means that the statutory goal of promoting compatibility between digital cable service and consumer television reception and navigation devices is achievable without the further need for the basic tier encryption prohibition.⁷ As a result of these developments, only a very small percentage of cable customers served by an all-digital system would be affected by basic tier encryption.⁸

ACA fully supports removing the prohibition on basic service tier encryption for digital cable systems. Available evidence suggests that permitting all-digital systems to encrypt the basic tier will significantly reduce the cost of turning customer's services on and off and will also help reduce cable signal theft.⁹ As the Commission acknowledges in the NPRM, a key problem with the basic tier encryption rule is that it effectively requires cable operators to physically connect and disconnect a

⁶ NPRM ¶ 8.

⁷ *Id.*

⁸ See *Cablevision Systems Corp. Request for Waiver of Section 76.630(a) of the Commission's Rules*, Memorandum Opinion and Order, 25 FCC Rcd 134, ¶ 4, n.20 (2010) ("*Cablevision Waiver Order*") (Cablevision deployed free set-top boxes pursuant to the Waiver Order to only one-tenth of one percent of the customers affected by basic tier encryption); NPRM ¶ 8 (noting that "Cablevision reports that no subscribers filed complaints" following the operators' encryption of the basic tier).

⁹ NPRM ¶¶ 7 & 8; see, e.g., *RCN Telecom Services, Inc.'s Request for Waiver of Section 76.630(a) of the Commission's Rules*, CSR-8525-Z, pp. 2-5 (filed Aug. 12, 2011) ("*RCN Request*").

residence from the cable network in order to turn service on and off.¹⁰ Where operators do not physically disconnect cable service, residents can take measures to receive the cable operator's basic service without paying, particularly those who subscribe to the operator's high speed Internet service.¹¹ The process of physically connecting and disconnecting customer premises is time-consuming and costly for both consumers and cable system operators – for an all-digital system, it is also unnecessary *but for* the existence of the basic tier encryption prohibition.

As the NPRM notes, there are significant efficiencies made possible by bidirectional technologies used in digital cable transmissions that can significantly reduce the need to physically disconnect a residence from the cable network.¹² All-digital systems permit the remote activation, deactivation, and alternation of services (“remote service management”). Remote service management frees not only the operator from manually connecting or disconnecting homes, but also the homeowner from the burden of waiting for the service technician to turn on service. The Commission has recognized that remote service management capabilities can significantly reduce, if not eliminate, the need for cable operators to roll trucks in response to every service change request, as was the case for unidirectional services, such as analog cable transmissions.¹³

For cable operators serving rural areas, like many of ACA's members, the actual costs associated with truck rolls are even greater than those for cable operators in more densely populated areas. In rural areas the longer distances between the cable headend and customers' premises and between one customer and another increases the costs associated with dispatching technicians to

¹⁰ See NPRM at ¶¶ 7-8.

¹¹ See *id.* at ¶ 5; *Cablevision Systems Corporation's Request for Waiver of Section 76.630(a) of the Commission's Rules*, MB Doc. No. 09-168 (filed Aug. 19, 2009); *RCN Request* at pp. 3-5.

¹² NPRM at ¶¶ 5, 7, and 8.

¹³ *Id.* at ¶¶ 4-5, 8; see, also, e.g., *Cablevision Wavier Order, In the Matter of Waitsfield Cable Company, Petition for Waiver of Section 76.630(a) Basic Tier Scrambling*, Memorandum Opinion and Order, 16 FCC Rcd 18859 (2001); *In the Matter of Centennial Puerto Rico Cable TV Corp., Petition for Waiver of Section 76.630(a) Basic Tier Scrambling*, Memorandum Opinion and Order, 18 FCC Rcd 7736 (2003).

turn service on and off by increasing the time required for technicians to reach the customer premises, as well as the vehicle operation and maintenance costs.

The Commission is correct to recognize that the efficiencies available through the use of remote service management are significant and should be realized by operators with all-digital systems, without requiring them to first seek waivers of the Commission's current rules on a case-by-case basis.¹⁴ Because the proportional costs for truck rolls associated with turning service on or off is even higher for small and rural cable operators, the potential for efficiency gains among ACA's small and rural member companies resulting from basic tier encryption is even greater. It further warrants the Commission taking steps to ensure operators of an all-digital system can encrypt their basic tier.

While it is true that the Commission's current rules permit cable operators to obtain waivers of the prohibition on scrambling the basic tier, the mere availability of a waiver is insufficient, particularly for smaller cable operators.¹⁵ For many of ACA's smaller members, obtaining such waivers can be resource- and cost-prohibitive. Indeed, given the small size of many of ACA's members, the costs associated with filing for a waiver, including the legal fees and other expenses related to the collection and analysis of the data and information needed to satisfy the requirements for obtaining a release, combined with the uncertainty of receiving Commission approval, may discourage some small providers from seeking waivers. Moreover, to the extent that a small operator seeks to obtain a waiver, these costs can significantly reduce the long-term cost savings of basic tier encryption itself. As a result, the current waiver process is not an effective way to ensure that small system operators and their customers obtain the efficiency benefits available through the provision of digital remote service management techniques.

¹⁴ Because of the obvious efficiencies allowed by permitting basic tier encryption, the Commission should not wait for the completion of this present proceeding to act on any pending petitions seeking waiver of the basic tier encryption rules. Rather, ACA supports the timely resolution of these waiver petitions. For example, as noted in the NPRM, RCN filed a petition for waiver of Section 76.630(a). See NPRM ¶ 5 n. 23, *RCN Request* (filed Aug. 12, 2011). ACA encourages the Commission to address this waiver request in an expeditious manner, without waiting for the ultimate outcome of this proceeding.

¹⁵ 47 C.F.R. § 76.630(a).

For these reasons, ACA supports the Commission's proposal to remove the ban on basic tier encryption for digital systems on a voluntary basis for all providers, and not to continue with the existing waiver process that disadvantages operators with fewer resources to pursue such relief.

III. THE COMMISSION SHOULD MODIFY ITS PROPOSED RULES TO ENCOURAGE SMALLER AND RURAL OPERATORS TO ADOPT EFFICIENT SERVICE MANAGEMENT PRACTICES.

While ACA fully supports the Commission's proposal to permit all-digital operators to encrypt basic tier programming, it urges the Commission to: (i) modify the conditions it proposes on all cable operators by limiting the amount of time these conditions will be in effect; and (ii) consider alternative conditions for smaller providers that would be less burdensome for them to implement and administer.

The NPRM notes that if a cable operator begins to encrypt digital programming, customers who previously viewed basic programming on secondary or tertiary television set without a set-top box will need to obtain a set-top box to be able to continue to do so.¹⁶ The Commission proposes to protect consumers from this consequence by requiring cable operators to provide free set-top boxes for a period of time.¹⁷ However, the construction of the rule is unclear as to how long operators must make this offer available. The language of the proposed rule could be interpreted as requiring cable operators to make the offer of free set-top boxes available for one, two, or five years, depending on the circumstances of the subscriber.¹⁸

ACA encourages the Commission to make clear in any rule lifting the basic tier encryption prohibition that operators are only required to offer free set-top boxes to subscribers for a period of days, rather than the one to five years set forth in the Commission's proposal.¹⁹

¹⁶ NPRM at ¶¶ 11-13.

¹⁷ *Id.* at ¶¶ 12-13.

¹⁸ *See Id.* at ¶ 12, Appendix A.

¹⁹ *Id.* at Appendix A.

ACA suggests that at most, the free set-top box offer should be available only for the period thirty days before and thirty days after the date of basic tier encryption. In addition, the free set-top box mandate should only apply if the customer had the additional television set as of the date of encryption. The administrative burden and expense of the proposed rule would 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.

ACA also urges the Commission to take into account the costs the proposed conditions will place on small cable operators and their customers, and take steps to decrease the impact of these conditions on small operators. As noted above, the Commission has recognized that only a very small percentage of cable subscribers will be affected by basic tier encryption.²⁰ In Section 624A(c)(1)(B) of the 1992 Cable Act, Congress specifically required the Commission to weigh the costs and benefits of its compatibility regulations. The NPRM itself concedes 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.²¹

The record reflects that when the Commission imposed conditions on Cablevision that are similar to those proposed in the NPRM, Cablevision was required to deploy free set-tops only to one-tenth of one percent of the relevant customers.²² The customer base of ACA members is significantly smaller than the subscribership of Cablevision, and one-tenth of one percent of ACA members' subscribers could amount to no more than a handful of customers per provider. In contrast to the small number of customers that will be affected by these conditions, the costs ACA's members must incur to comply with the conditions are significant. These costs include those associated with making changes to billing systems to keep track of customers with

²⁰ *Id.* at ¶ 4.

²¹ *Id.* at ¶ 11, n. 56.

²² *Cablevision Waiver Order*, n. 20.

free set-top boxes and their relevant expiration dates, training sales representatives and installers to identify and verify customers that are eligible to receive the free equipment, publishing explanations and notices to subscribers, and responding to customer inquiries. In fact, these conditions are very likely to have a disproportionate impact on ACA's members because they do not have the same resources to implement and administer these requirements, and have fewer subscribers over which to spread the cost. To minimize these costs for smaller cable operators, the Commission should make changes and clarifications to the proposed conditions to decrease the impact on small cable operators.

IV. CONCLUSION.

ACA applauds the Commission's efforts in this proceeding and views its proposals as appropriate measures for ensuring that the efficiencies available through digital networks are fully realized by all operators and are not blocked by rules that may have become outmoded. Removing the ban on basic tier encryption for all-digital systems as suggested in the NPRM has the potential to significantly reduce or even eliminate many costs associated with signal theft and service activation.

At the same time, the Commission must seek to avoid imposing onerous conditions on smaller operators that seek to encrypt basic tier services, as this will blunt the impact of the changes that the Commission has correctly identified as necessary. Accordingly, the Commission should modify the conditions placed on basic tier encryption by limiting the timeframes associated with those conditions for all cable operators, and adopting alternative conditions for small cable operators. If this is done, these proposed rule changes will offer significant benefits for small and rural system operators, helping them to overcome some of the higher operational costs they face.

Respectfully submitted,

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