

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

In the Matter of:

Basic Service Tier Encryption

Compatibility Between Cable Systems and
Consumer Electronics Equipment

MB Docket No. 11-169

PP Docket No. 00-67

REPLY COMMENTS OF RCN TELECOM SERVICES, LLC

RCN Telecom Services, LLC (“RCN”) urges the Commission not to delay in adopting the proposed rule permitting all-digital cable operators to encrypt basic tier programming.¹ Basic tier encryption would permit digital cable companies to remotely provision cable without risking high rates of theft, bringing significant financial and environmental benefits to all. By contrast, the primary objections to the Commission’s rule overstate the adverse effects of the change on public institutions and individual subscribers—at least with respect to cable operators similarly situated to RCN. Like many cable operators, RCN already provides schools and other public buildings that receive its cable service with a complimentary cable box for every television. The concerns about the possible effects of the proposed rule also undervalue the mitigation that cable companies can offer. Although RCN believes that few individual subscribers will be affected by the rule change, RCN believes that a full year of mitigation will appropriately protect those few

¹ *Basic Service Tier Encryption Compatibility Between Cable Systems and Consumer Electronics Equipment*, Notice of Proposed Rule Making, 76 Fed. Reg. 66666 (2011) (“Notice”).

consumers who presently use additional televisions to legally receive basic cable in the clear. In the interest of moving this rulemaking forward and to demonstrate its good faith, however, RCN does not object to a mitigation period that extends a reasonable amount of time beyond a single year under appropriate circumstances. However, mitigation should not extend permanently or for a substantial duration, because that would freeze technological development in a rapidly innovating marketplace. Finally, RCN urges the Commission to disregard the objections by the Consumer Electronic Association, which are irrelevant to this proceeding.

I. RCN's Public Institutional Customers will not be Affected by the Proposed Rule Change

Several commenters have expressed concern that public institutions may be harmed by the proposed rule change.² Yet, at least for institutions served by RCN, this concern has already been addressed. It should not significantly slow the adoption of the new rule.

RCN believes that the concerns described by commenters Montgomery County, MD and the City of Boston concerning public institutional customers do not reflect the broader reality of the cable industry. RCN, which operates in both of those markets, provides complimentary digital cable service to public institutional customers, including schools. RCN further provides these customers with free cable boxes for every television they use. RCN believes this is standard industry practice for all digital service providers.³

² See Comments of Montgomery County, Maryland at 2–4; Comments of the City of Boston, Massachusetts at 5–6; Comments of the Alliance for Community Media at 2, n.6. Unless otherwise indicated, all comments cited in this Reply were filed in MB Docket No. 11-169 and PP Docket No. 00-67 on Nov. 28, 2011.

³ To the extent that other all digital cable operators do not make similar provisions, RCN would not oppose additional mitigation measures to ensure that schools and other public buildings are not unfairly burdened by this rule change.

II. Cable Operators Should Provide Mitigation for a Reasonable but Limited Period

As RCN set forth more fully in its initial comments, the Commission’s proposed rule change will permit remote provisioning without risking high rates of cable theft.⁴ This, in turn, will save time and money for providers and consumers, and will reduce pollution that affects the general public. This is RCN’s primary motivation for supporting the Commission’s new rule.

Nevertheless, several of the objectors focus on the potential costs of the rule change to consumers watching basic-tier programming with QAM tuners. RCN suggests that these concerns about the impact on such a small number of subscribers should not delay the benefits of this rule change. These commenters give little weight to the significant benefits the rule change would bring to industry and customer alike.⁵ They also undervalue the mitigation proposed by the Commission, which RCN views as entirely sufficient.

However, rather than delaying the rule change by exhaustively debating the appropriate length of mitigation—or worse, conducting a lengthy and costly study of the number of consumers in this category⁶—RCN could support mitigation beyond a single year under appropriate circumstances. In this way, even if the number of consumers legally viewing basic cable with QAM tuners were larger than predicted, mitigation would be more than adequate. By contrast, RCN does not view permanent mitigation to be a reasonable solution, nor does it view mitigation that lasts for an extended number of years to be reasonable.⁷ As the Commission

⁴ See Comments of RCN Telecom Services, LLC at 3–6.

⁵ See, e.g., Initial Comments of the New Jersey Division of Rate Counsel at ii (recognizing the benefits of the rule change to the cable industry, but failing to recognize the significant benefits of the rule change for the vast majority of consumers).

⁶ See Comments of Montgomery County, Maryland at 3 (urging the Commission not to assume that the number of consumers affected by the rule change is small “without analyzing specific data”).

⁷ Initial Comments of the New Jersey Division of Rate Counsel at 5.

knows, cable television is a constantly and rapidly evolving industry. Permanent or long-duration mitigation would ossify a single type of provisioning.

Finally, as the Commission is aware, RCN presently has pending a request for a waiver of the basic tier encryption ban for its all-digital cable service in certain of its markets.⁸ RCN urges the Commission to grant RCN's waiver request pending the present rulemaking. Prompt action in that proceeding will both allow tens of thousands of RCN's Chicago and New York consumers to benefit immediately from a grant of the waiver, and enable RCN to provide monthly data to the Commission regarding how a lift of the encryption ban is affecting consumers. As RCN's waiver would in any case be subject to the Commission's final rule change, there is no risk that granting RCN's waiver expeditiously will limit the Commission's ability to carefully consider the contours of the permanent rule.

III. CEA Raises Issues That Are Not Relevant Here

The Consumer Electronics Association ("CEA") has submitted comments in this proceeding that address issues well beyond the scope of this rulemaking.⁹ The CEA offers no substantive opposition to the Commission's proposed rule, and in fact states that it will oppose the rule only if its other, unrelated concerns are not met.¹⁰ Whatever the merits of the CEA's views on those other proceedings, such a position should carry no weight here.

⁸ 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.

⁹ Comments of the Consumer Electronics Association.

¹⁰ Id. at 3 ("Accordingly, CEA must oppose the action proposed in this NPRM unless it is taken in the context of additional, proactive rulemakings to address the *other* complexities and potential efficiencies that are posed by developments in the markets and technologies for digital services and devices.") (emphasis in original).

IV. Conclusion

Lifting the encryption ban will bring significant benefits to cable providers and consumers, and none of the comments offered to the Commission present a serious obstacle to the adoption of the Commission's proposed rule. 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,

/s/

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