

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 THE CITY OF BOSTON, MASSACHUSETTS

By and through its Attorney

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The City of Boston, Massachusetts (“City”) submits the following reply comments in response to the Commission’s Notice of Proposed Rulemaking (“NPRM”) released October 14, 2011, in the above-captioned proceeding. The City urges the Commission to ensure that any new rule allowing cable operators to encrypt the basic service tier would: not raise costs for institutional users, incorporate adequate measures to protect consumers for the long term, and ensure that the benefits of any rule granted to cable operators are not severable from any consumer protections included in the rule.

I. THE COMMISSION SHOULD ENSURE THAT ITS PROPOSED RULE DOES NOT RAISE COSTS FOR INSTITUTIONAL USERS.

Neither the Notice of Proposed Rulemaking nor the industry’s opening comments address how the Commission’s proposed rule would impact institutional users. While such a challenge is not something facing Boston,¹ allowing cable operators to encrypt the basic service tier in other

¹ The City would like to call to the Commission’s attention that its cable operators (Comcast and RCN) provide service to the City’s institutional users including schools, libraries, fire and police station. Each of these viewers receives a complimentary level of service equivalent to an Expanded Basic Tier and has done so for over 25 years. Over the last four years, both RCN and Comcast have provided and installed set-top boxes at each outlet in order to maintain this level of service.

communities could require many basic service tier viewers in government institutions such as schools, hospitals, police and fire stations, and local government administrative agencies to obtain additional equipment, at additional cost.² The City has a significant number of institutional viewers³ and is fortunate that its cable operators have already addressed this challenge. Boston suspects, however, that other communities would not be in a position to bear the additional expense of purchasing or leasing set top boxes merely to continue receiving the basic tier of service.

II. THE COMMISSION SHOULD ADOPT ENHANCED CONSUMER PROTECTION MEASURES AND ENSURE THEY ARE NOT SEVERABLE FROM THE RELIEF GRANTED THE CABLE INDUSTRY.

As opening commenters urge,⁴ the Commission must enhance the proposed rule to ensure that it would protect consumers for as long as it will benefit cable operators. While the cable industry threatens that any additional consumer-protection requirements could be subject to legal challenge, the Commission should not be deterred.⁵ Instead, the Commission should craft its rule

² See Comments of the City of Boston, Massachusetts, at 5 (Nov. 28, 2011); Comments of Montgomery County, Maryland, at 4 (Nov. 28, 2011).

³ The City estimates that it has potentially 1,400 cable outlets in governmental institutions throughout our jurisdiction, most with set-top boxes provided by either Comcast or RCN.

⁴ Boston Comments at 3; Montgomery County Comments at 7; Initial Comments of the New Jersey Division of Rate Counsel at 5 (Nov. 28, 2011).

⁵ The cable industry suggests but does not specify how measures designed to ensure that consumers would be kept whole would run afoul of Section 623 or raise constitutional concerns. See, e.g., Comments of Cablevision System Corporation at 11 n.23 (Nov. 28, 2011) (“[C]onditioning 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 also Comments of National Cable & Telecommunications Association at 14 (“[C]onstitutional or statutory objections plainly could be raised if regulators, for example, attempted to require regulates to provide free equipment to a large number of customers. Such requirements could become tantamount to prohibited rate regulation or confiscation if those requirements, for example, were unbounded in time or cost.”) (Nov. 28, 2011). The Commission should not be swayed. First, the industry fails to show how a measure that helps only a small number of consumers would be lawful, but one that assists consumers more broadly would not. Moreover, these consumer protection measures

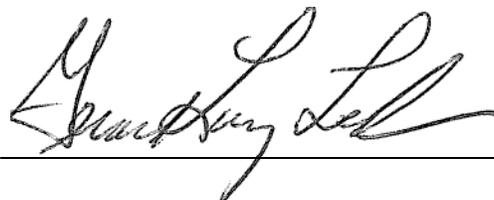
to make certain that cable operators cannot benefit from the new rule until the *entire* rule—its benefits and its obligations—is deemed lawful.⁶ This would prevent the industry from gaining regulatory relief tied to consumer safeguards, only to later challenge those safeguards in court.

III. CONCLUSION

For the reasons indicated above, the Commission should at minimum amend the proposed rule to enhance consumer protections and ensure that such protections cannot be severed from the relief granted.

Respectfully submitted,

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December 12, 2011

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would not confiscate equipment or regulate equipment under Section 623; they would be requirements arising out of and incidental to the Commission's approach to encryption.

⁶ The Commission should clarify that the mitigation measures it proposes are not severable from the portion of the rule allowing cable operators to encrypt the basic service tier.