

**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
	)	

**REPLY COMMENTS OF  
COMCAST CORPORATION**

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**REPLY COMMENTS OF COMCAST CORPORATION**

Comcast Corporation (“Comcast”) hereby replies to the comments submitted in response to the Commission’s Notice of Proposed Rulemaking (“*Notice*”) that proposes to eliminate the basic service tier encryption prohibition in all-digital cable systems, subject to certain conditions.<sup>1</sup> A diverse group of parties has expressed strong support for the proposed rule change. Based on this record evidence, Comcast urges the Commission to act expeditiously to modify its rules.

**I. INTRODUCTION AND SUMMARY**

The *Notice* recognizes, and the record confirms, that substantial public interest benefits would result from allowing cable operators to encrypt the basic service tier in all-digital systems. Comcast described those benefits at length in its initial comments,<sup>2</sup> and a wide range of commenters have confirmed the substantial advantages of the rule change, including, among other things, operational efficiencies, customer convenience, pollution and traffic reduction, lower rates of service theft, enhanced network reliability, and incentives for operators to speed

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<sup>1</sup> *Basic Service Tier Encryption*, Notice of Proposed Rulemaking, 26 FCC Rcd 14870 (2011) (“*Notice*”).

<sup>2</sup> *See* Comcast Comments at 3-13. Unless otherwise noted, citations refer to comments filed in MB Docket No. 11-169 on or around November 28, 2011.

the transition to all-digital delivery. The record also demonstrates that these benefits will be achieved at no cost to consumers. Moreover, the *Notice* proposed reasonable conditions to ensure that the very small subset of customers affected by encryption in all-digital systems are provided with necessary equipment for a transitional period. Cablevision reports that it has implemented basic tier encryption in its New York City system without consumer complaint, and commenters generally agree that the Commission's proposed framework is appropriate, subject to a few minor changes. Finally, the Commission should reject certain commenters' proposals to expand vastly the equipment conditions or address issues that are well beyond the scope of this rulemaking.

**II. THE RECORD CLEARLY DEMONSTRATES THAT THE PROPOSED CHANGE TO THE BASIC TIER ENCRYPTION RULE WILL HAVE SUBSTANTIAL BENEFITS AND WILL IMPOSE NO CONSUMER HARMS.**

The Commission's proposal to permit encryption of the basic service tier in all-digital cable systems is strongly supported by a large, diverse group of commenters, including cable operators, public interest groups, and diversity organizations. The cable industry, including large and small operators, urban and rural operators, and associations representing hundreds of cable operators across the country, has persuasively made the case that, in an all-digital world, the rule is an unnecessary relic of the past. These operators have conclusively demonstrated that permitting encryption will deliver substantial operational *and* consumer benefits. For instance, Time Warner Cable noted that "[t]he public stands to benefit greatly from the dramatic reduction in service calls and associated costs that will flow from the flexibility that encrypted digital basic service will provide to cable operators."<sup>3</sup> In addition, RCN highlighted that, "[o]nly by

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<sup>3</sup> Time Warner Cable Comments at 3. *See also* BendBroadband Comments at 3 ("Thus, the need for installation and disconnection appointments and truck rolls delays service, costs money, degrades network (footnote continued...)

encrypting its basic tier programming . . . can RCN both prevent theft and spare consumers from having to wait for a technician when they wish to change or discontinue service.”<sup>4</sup> Cablevision confirmed that concrete public interest benefits have, in fact, resulted from encryption in its New York City system.<sup>5</sup>

Public interest groups, including Public Knowledge and Media Access Project, also “wholeheartedly and enthusiastically” support the proposed rule change because they recognize the pro-consumer benefits of the Commission’s proposal.<sup>6</sup> According to Public Knowledge and Media Access Project’s joint comments, the Commission’s “rules should be amended to allow for the encryption of the basic service tier of all-digital cable systems[,]” noting that “[t]he Commission should move as swiftly as possible to bring its rules into alignment with the developments in digital technology.”<sup>7</sup> Organizations representing the interests of diverse populations likewise embraced the proposed rule change. For example, the Minority Media and Telecommunications Council expressed its “strong support” for the proposal, noting that “allowing cable operators to encrypt the digital basic service tier will result in significant benefits for consumers by simplifying the process for receiving digital service” and urging the

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(...footnote continued

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.”).

<sup>4</sup> RCN Comments at 2.

<sup>5</sup> Cablevision Comments at 11 (“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.”).

<sup>6</sup> Public Knowledge and Media Access Project Comments at 14.

<sup>7</sup> *Id.* at 1-2.

Commission to “move expeditiously to allow cable operators to encrypt the basic service tier[.]”<sup>8</sup>  
The Hispanic Technology & Telecommunications Partnership also voiced its support and  
“urge[d] the FCC to adopt the proposed rules expeditiously so that consumers across the country  
can realize . . . benefits.”<sup>9</sup>

Commenters also recognize that there will be minimal adverse effects as a result of the  
Commission’s proposal because the universe of consumers affected by encryption in all-digital  
systems will be very small. As RCN noted, “permitting RCN as an all-digital cable provider to  
encrypt the basic tier will not harm subscribers because all legitimate RCN video subscribers  
already use set-top boxes or CableCARDS to access cable service, both of which will be able to  
decrypt the basic tier.”<sup>10</sup> ACA confirmed that “only a very small percentage of cable customers  
served by an all-digital system would be affected by basic tier encryption.”<sup>11</sup> Again,  
Cablevision’s real-world experience provides proof that very few customers in all-digital  
systems are affected by encryption.<sup>12</sup>

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<sup>8</sup> Minority Media and Telecommunications Council Comments at 1-2. The Consumer Electronics Association has no substantive objections to the rule change, but rather devotes its entire comment to discussing a long list of unrelated issues. Its comments should be disregarded as completely outside the scope of this proceeding.

<sup>9</sup> Hispanic Technology & Telecommunications Partnership Comments at 1-2.

<sup>10</sup> RCN Comments at 2.

<sup>11</sup> ACA Comments at 2. *See also* Time Warner Cable Comments at 6 (“TWC agrees with the NPRM’s prediction that the number of customers that will be impacted by allowing encryption of digital basic service will be ‘small.’”).

<sup>12</sup> *See* Cablevision Comments at 11

### **III. THE FRAMEWORK FOR THE PROPOSED EQUIPMENT CONDITIONS IS REASONABLE, BUT CERTAIN MODIFICATIONS SHOULD BE IMPLEMENTED TO CLARIFY THE RULES.**

For the small subset of customers in all-digital systems that receive basic tier service without equipment, the Commission has proposed a reasonable framework for providing such customers with necessary equipment on a transitional basis. Comcast supports the Commission's approach with certain minor modifications proposed by other parties to ensure that the conditions match the intent of the *Notice*.

First, the Commission should adopt NCTA's proposal to treat a system as "all-digital" even if the system retains an informational or barker channel transmitted in analog.<sup>13</sup> Second, the final rules should adopt the minor editorial changes that NCTA proposed, which conform and clarify the language in the conditions.<sup>14</sup> Third, as several parties suggested, the Commission should specify that required equipment offers be made available to existing subscribers from 30 days prior to the date of encryption until 30 days after the date of encryption.<sup>15</sup>

Comcast respectfully requests that the Commission adopt these reasonable and relatively minor proposed modifications to its rules. NCTA's proposals make no substantive changes to the Commission's equipment conditions and ensure that the conditions are consistent with the intent of the *Notice* and can be effectively implemented.

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<sup>13</sup> NCTA Comments at 10-11 & App. *See also* Mikrotec and Inter Mountain Comments at 3 (explaining that the key factor should be whether all "*programming* on the basic tier [is] transmitted in a digital modulation" (emphasis in original)); Public Knowledge and Media Access Project Comments at 13 ("Secondary analog components of a primarily digital service – such as an analog channel that only provides information on how to subscribe to a service, or an analog channel that provides emergency information, should not prevent a system from being considered, for regulatory purposes, all-digital.").

<sup>14</sup> NCTA Comments at 11 & App.

<sup>15</sup> *Id.* at 11-12 & App. ACA, BendBroadband, and Cablevision also suggested this clarification. *See* ACA Comments at 6; BendBroadband Comments at 7; Cablevision Comments at 15.

Public Knowledge and Media Access Project have proposed that the equipment condition relating to low-income subscribers be broadened to cover customers who qualify for the Lifeline/Link Up program under the Commission's federal eligibility rules, instead of being linked solely to Medicaid eligibility.<sup>16</sup> Comcast believes that the Commission's Medicaid-based proposal is reasonable given that it is easy to administer for low-income customers and operators alike – i.e., the customer provides documentation showing that he or she participates in Medicaid, and the operator provides the promotional equipment based on that documentation. In the event that the Commission adds certain specified low-income programs to the list of eligibility criteria, it must do so without adding unnecessary complexity to the administration of the equipment condition. Specifically, any equipment eligibility criteria must be based on participation in another federal program that can be verified readily, similar to how Medicaid participation can be verified with a Medicaid card. In contrast, Comcast would oppose any equipment eligibility criterion based solely on income, as also permitted under the federal Lifeline/Link Up eligibility criteria,<sup>17</sup> because any such criterion would require the operator to make income determinations for individual subscribers. To implement income-based eligibility, carriers that participate in the Lifeline/Link Up program must evaluate tax returns or pay stubs to assess customers' incomes. Comcast does not conduct these types of income determinations today, and cable operators should not be required to collect and review this type of information because of the significant administrative burdens it would create. Thus, any eligibility criteria

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<sup>16</sup> Public Knowledge and Media Access Project Comments at 7-8. Given that Public Knowledge and Media Access Project advocate a "national rule," *id.* at 7, it appears that they favor applying eligibility criteria nationwide, rather than any state-specific criteria. *See* 47 C.F.R. § 54.409(a). Comcast agrees that eligibility criteria should be uniform nationwide.

<sup>17</sup> 47 C.F.R. § 54.409(b).

for the equipment program must be based solely on readily verifiable participation in another low-income program.

Public Knowledge and Media Access Project also propose that low-income customers that have received promotional equipment under the condition be given notice when the five-year promotional period is about to expire and that such notice advise customers of what new charges will apply when they roll off the promotion.<sup>18</sup> Comcast shares Public Knowledge and Media Access Project's expectation that cable operators will act in good faith in administering the equipment conditions, as operators will have strong incentives to ensure that the transition for impacted customers goes smoothly and that such customers are provided information about the terms of the equipment conditions, including the condition for low-income customers. Once again, Cablevision's real-world experience is instructive, as Cablevision has implemented its program without complaint in New York City.<sup>19</sup> Nonetheless, Comcast appreciates Public Knowledge and Media Access Project's interest in ensuring that customers are reminded that the equipment promotion is about to end and informed of any new charges, and does not object to the proposal.<sup>20</sup>

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<sup>18</sup> Public Knowledge and Media Access Project Comments at 10-11.

<sup>19</sup> Cablevision Comments at 2 ("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.*" (emphasis in original)); City of New York Comments at 4 ("Indeed, based on information available to the City, it appears that the Cablevision transition to encryption of the basic tier led to minimal subscriber disruption.").

<sup>20</sup> Public Knowledge and Media Access Project also ask the Commission to require that "the monthly charge for any equipment provided to eligible low-income consumers under the transition should be the lowest rental fee the cable operator generally charges for its lowest-functionality box." Public Knowledge and Media Access Project Comments at 11. In markets where Comcast goes all-digital, it provides basic tier customers with DTAs, which are Comcast's most limited-function, lowest-cost device. Comcast fully intends that, when a low-income basic tier customer rolls off the five-year promotion under the equipment condition, that DTA customer would be charged whatever rate might then apply to DTAs.

Public Knowledge and Media Access Project also propose that the Commission clarify that “the box provided by the cable operator must be genuinely free for the transition period.”<sup>21</sup> Comcast fully intends to abide by the terms of the equipment conditions and will not charge qualifying customers for equipment during the relevant promotional period.<sup>22</sup>

#### **IV. THE CONCERNS RAISED BY CERTAIN COMMENTERS ARE UNSUPPORTED AND/OR UNRELATED TO THE CORE ISSUE AT HAND.**

A few parties raise concerns with the Commission’s proposal, and some attempt to link basic tier encryption to unrelated and wholly separate issues. For the reasons explained below, the Commission should reject these proposals.

A handful of commenters raise concerns about the effect of basic tier encryption on institutional buildings, and some seek to extend the equipment conditions to cover these buildings.<sup>23</sup> In past orders granting waivers of the encryption rule, the Media Bureau has refrained from imposing such obligations, and the Commission should follow the same approach here. Like other operators, Comcast addresses the equipment needs of a particular franchising authority on a case-by-case basis through the franchise agreement negotiation process. Of course, different communities will have different needs for their institutional buildings, and the franchise negotiation process is the best avenue for addressing a particular community’s situation. Establishing a single national standard to cover all institutional buildings would interfere with the individualized processes that have served operators and communities well and inhibit the flexibility to meet a particular community’s needs based on the preferences of that

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<sup>21</sup> *Id.* at 10 (seeking statement in final order, but not modification of the rule).

<sup>22</sup> Customers routinely self-install their equipment. *See* Comcast Comments at 5.

<sup>23</sup> Alliance for Community Media Comments at 2; City of Boston Comments at 5-6; Montgomery County Comments at 4.

community. Comcast highly values its relationships with local franchise authorities and is proud of its longstanding and considerable record of negotiating mutually acceptable agreements with a large number of communities that address the particular needs of each community.

The City of Boston expressed concerns about the effect of the encryption equipment conditions on certain programs that it has negotiated with its franchised cable operators, including Comcast.<sup>24</sup> The City's concerns are unfounded. Comcast will continue to abide by the terms of the contractually-negotiated program. The equipment conditions in the *Notice* do not supersede or otherwise affect Comcast's obligations, and Comcast would not object to the Commission affirming that point.

Montgomery County, Maryland suggested that encryption will have significant adverse effects on subscribers, particularly with regard to the need for additional equipment. The County is mistaken. To support its point that the effects of encryption will be larger than the *Notice* presumes, Montgomery County cites a statistic that "only 77% of subscribers have even one digital STB or other CableCARD device."<sup>25</sup> But that statistic pertains to *all* cable subscribers in all types of systems and simply is not relevant here. In an all-digital system – which is the only type of system where the encryption rule change would apply – the portion of subscribers with digital equipment would be close to 100%.<sup>26</sup> In Montgomery County itself, Comcast has recently completed the transition to all-digital service and, as part of that effort, has provided basic tier customers with the necessary equipment to access digital basic channels. As a result, almost all Comcast customers in Montgomery County will be unaffected by encryption since

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<sup>24</sup> See City of Boston Comments at 4.

<sup>25</sup> Montgomery County Comments at 2-3.

<sup>26</sup> See, e.g., Comcast Comments at 14; RCN Comments at 2; BendBroadband Comments at 4.

these customers will *already* have equipment to access encrypted channels. Any remaining customers who are using QAM TVs to access digital basic channels and therefore will be affected by encryption will be covered by the Commission's proposed transitional equipment conditions. As noted, that population of customers will be very small.

New Jersey Rate Counsel has raised similar concerns about the impact of encryption on consumers.<sup>27</sup> Like Montgomery County, New Jersey Rate Counsel appears to conflate the separate issues of digitization and encryption. These commenters seem to be attempting to expand the scope of this proceeding to address the digitization of channels, rather than the encryption of the basic service tier in all-digital systems. As noted, encryption will only be permitted in systems that have completed the transition to all-digital delivery, and in such systems, the overwhelming majority of consumers will be unaffected by encryption because they already will have equipment that enables them to view encrypted channels. With respect to an operator's transition to all-digital service, the Commission has explicitly stated that the operators can recover equipment-related costs associated with that transition.<sup>28</sup>

## V. CONCLUSION

The record unambiguously demonstrates that the Commission's proposal to amend the basic service tier encryption prohibition in all-digital cable systems should be adopted, subject to the modifications described above. Multiple parties have shown that consumers stand to reap significant benefits, and that the rule change will accelerate cable's migration to all-digital service. Importantly, commenters have confirmed that the considerable benefits that will

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<sup>27</sup> See New Jersey Rate Counsel Comments at 4-7.

<sup>28</sup> See *In the Matter of Carriage of Digital Television Broadcast Signals*, Third Report and Order and Third Further Notice of Proposed Rulemaking, 22 FCC Rcd 21064 ¶ 42 (2007) (“[N]othing in this order precludes [cable operators] from recovering the costs of those boxes from subscribers.”).

accompany the rule change will be achieved with minimal costs. Only a small subset of customers in all-digital systems will be affected by encryption, and the Commission's equipment proposals (with a few relatively minor modifications) will ensure that these few customers are protected. Therefore, consistent with the requests of multiple, diverse parties in this proceeding, Comcast respectfully requests that the Commission act expeditiously to amend its rules.

Respectfully submitted,

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