

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)	PP Docket No. 00-67
Consumer Electronics Equipment)	
)	
)	
)	

REPLY COMMENTS OF TIME WARNER CABLE INC.

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I. INTRODUCTION AND SUMMARY

Time Warner Cable Inc. (“TWC”) hereby submits these reply comments in the above captioned proceeding, in which the Commission proposes to modify Section 76.630(a) of its rules to permit cable operators to encrypt the basic service tier in all-digital cable systems.¹ The initial comments provide strong support for the NPRM’s proposal to eliminate the ban on basic encryption for all-digital systems.

Public interest groups,² minority advocates,³ state and local entities,⁴ trade associations⁵

¹ *Basic Service Tier Encryption*, Notice of Proposed Rulemaking, MB Docket No. 11-169, PP Docket No. 00-67, FCC 11-153 (Rel. Oct. 14, 2011) (“NPRM”). Unless otherwise indicated, all comments cited herein have been filed in MB Docket No. 11-169.

² See Comments of Public Knowledge and Media Access Project (filed Nov. 28, 2011) (“MAP Comments”).

³ See Comments of the Hispanic Technology & Telecommunications Partnership (filed Nov. 28, 2011) (“HTTP Comments”); Comments of the Minority Media and Telecommunications Council (filed Nov. 28, 2011) (“MMTC Comments”).

⁴ See Comments of the City of New York (filed Dec. 7, 2011); Letter from Carlos Hernandez, Mayor of Hialeah, FL to Julius Genachowski, FCC Chairman (Dec. 7, 2011) (“Hialeah Letter”); Letter from C. Kim Bracey, Mayor of York, PA, to Marlene H. Dortch, Secretary, FCC (Dec. 8, 2011) (“York Letter”); Letter from J. Richard Gray, Mayor of Lancaster, PA, to Julius Genachowski, FCC Chairman (Dec. 9, 2011) (“Lancaster Letter”); Letter from Tomas Regaldo, Mayor of Miami, FL, to Julius Genachowski, FCC Chairman (Dec. 12, 2011) (“Miami Letter”).

and cable operators of all sizes in locations throughout the country⁶ have elaborated on the public interest benefits of digital basic encryption that the Commission recognized in the NPRM. Some commenters opposing the NPRM's proposals raise concerns that are outside the scope of the proceeding or largely relate to the broader transition to digital cable service, a transition that the FCC has already recognized is in the public interest (and is fully consistent with existing rules). Others speculate about potential consumer harms without any evidentiary support or propose rules that are unnecessary, and in some cases, would exceed the FCC's statutory authority. In sum, the record provides more than ample support for allowing cable operators to encrypt the basic tier on all-digital systems.

II. THE RECORD STRONGLY SUPPORTS THE COMMISSION'S TENTATIVE CONCLUSION THAT THE BENEFITS OF ALLOWING ENCRYPTION OF DIGITAL BASIC SERVICE OUTWEIGH ANY POTENTIAL NEGATIVE EFFECTS.

In its initial comments, TWC described the many public interest benefits directly tied to allowing basic encryption of all-digital cable systems.⁷ These benefits include hastening the transition to all-digital cable service, dramatically improving service change response times, reducing service calls, eliminating the need for cumbersome and inefficient analog traps, providing environmental benefits (including reductions in energy and fuel usage), reducing service theft and enhancing public safety. The record strongly supports the public interest benefits identified by TWC regarding digital basic encryption and confirms the NPRM's

⁵ See Comments of the American Cable Association (filed Nov. 28, 2011); Comments of the National Cable & Telecommunications Association (filed Nov. 28, 2011) ("NCTA Comments").

⁶ See Comments of Bend Broadband (filed Nov. 28, 2011) ("Bend Comments"); Comments of Cablevision Systems Corporation (filed Nov. 28, 2011) ("Cablevision Comments"); Comments of Comcast Corporation (filed Nov. 28, 2011) ("Comcast Comments"); Comments of Inter Mountain Cable Inc. and Mikrotec CATV, LLC (filed Nov. 28, 2011); Comments of RCN Telecom Services, LLC at 3-5 (filed Nov. 28, 2011) ("RCN Comments").

⁷ See generally Comments of Time Warner Cable Inc. (filed Nov. 28, 2011) ("TWC Comments").

tentative conclusion that the benefits of allowing such encryption will outweigh any potential negative impact.⁸

The record shows that the basic encryption ban is a relic of a bygone era. As NCTA observed, the MVPD competitive landscape was dramatically different when the rule was adopted in 1994. At that time cable operators dominated the marketplace, but now DBS and telco IPTV providers, which encrypt all of their programming and require their subscribers to have set-top boxes to view their services on every set, serve approximately 40 percent of the marketplace.⁹ Moreover, cable service has changed dramatically in the intervening 17 years. Today, cable subscribers benefit from advanced service offerings like video-on-demand and interactive program guides that are only available on a digitized platform. Digital cable service is now the overwhelmingly predominant offering, with over 77 percent of cable customers subscribing.¹⁰ As a result, the vast majority of cable subscribers already have one or more devices in their homes capable of de-encryption.¹¹ As Public Knowledge and Media Access Project recognize, eliminating the basic encryption ban is necessary to “bring [the FCC’s] rules into alignment with the developments in digital technology.”¹²

It is notable that several non-cable affiliated commenters have acknowledged the “significant” and “tangible” benefits to consumers that will result from allowing basic encryption.¹³ The Hispanic Technology & Telecommunications Partnership (“HTTP”) lauds the

⁸ NPRM at ¶ 8.

⁹ NCTA Comments at 4. TWC agrees with NCTA that there is “no persuasive justification for continued disparate treatment in this area” given the “robustly competitive” marketplace for MVPD services. *Id.* at 4-5.

¹⁰ *Id.* at 3.

¹¹ NPRM at ¶ 4.

¹² MAP Comments at 2.

¹³ MMTC Comments at 2; Lancaster Letter at 1.

proposed rule's benefits of eliminating wait time for activation or deactivation appointments while decreasing traffic and pollution.¹⁴ Public Knowledge and Media Access Project recognize that digital basic encryption will "promote[] deployment of new services" and urge the Commission to "conclude this proceeding as expeditiously as possible."¹⁵ The City of Miami agrees, asking the FCC to "move expeditiously" to approve the proposed rule change and identifying "substantial pro-consumer benefits" including reduced service calls, reduction of traffic and pollution in the city and improvement in the security and reliability of cable service.¹⁶ The Minority Media and Telecommunications Council ("MMTC") also urge the FCC to act "expeditiously" to adopt the NPRM's proposals, citing the "demonstrated pro-consumer benefits" resulting from Cablevision's encryption of the basic tier of its all-digital system in New York City.¹⁷

The experience of Cablevision, which encrypted the digital basic tier of its New York City cable system pursuant to Commission waiver, provides compelling evidence of the public interest benefits that would result from the proposed rule change. Cablevision reports that as a result of basic encryption, it is now able to perform a staggering 99.5 percent of all service disconnections remotely across a household area of 401,000 homes.¹⁸ Remote service disconnections have allowed Cablevision to reduce its disconnect truck rolls by over 19,000, which in turn has led to reduced fuel consumption, traffic and carbon emissions associated with

¹⁴ HTTP Comments at 1.

¹⁵ MAP Comments at 1.

¹⁶ Miami Letter at 1; *see also* Hialeah Letter at 1 (explaining that "encryption . . . will provide significant benefits to consumers"); Lancaster Letter at 1 (stating that encryption "will result in better service, more efficient use of resources, and less traffic congestion on our streets.")

¹⁷ MMTC Comments at 1, 3.

¹⁸ Cablevision Comments at 12.

in-person service calls.¹⁹ They also have enabled Cablevision to substantially reduce the amount of actively used traps on its New York City system. Because remote service disconnections are far more prevalent, Cablevision can now perform more remote service activations – Cablevision is reporting that 39.5 percent of its drops on the New York City system were left “hot,” meaning that new customers in these areas will not require a service call to deal with traps upon activation of service.²⁰ These positive results will be experienced by other cable operators – and their customers – if basic tier encryption is permitted in all-digital systems as proposed by the NPRM.

The record also shows that allowing digital basic encryption might be a matter of competitive survival for some cable operators. Bend Broadband reports that the costs of analog traps and the need for trucks rolls to complete activations and deactivations places the company at a significant competitive disadvantage vis-à-vis its DBS rivals, which provide their all-digital service to customers completely encrypted without the need for service calls or traps.²¹ As Bend and RCN make clear, without the ability to digitally encrypt, cable operators that have invested the resources to enhance their subscribers’ viewing experience by upgrading their systems to all-digital face the unenviable choice of continuing to deploy outdated and inefficient analog traps or risk being extremely vulnerable to service theft.²² Currently, when an all-digital cable system remotely disconnects a customer’s video service without installing a trap, an individual with a clear-QAM set need only connect their television to the cable to steal basic cable service.²³ If

¹⁹ *Id.*

²⁰ *Id.* at 12-13.

²¹ Bend Comments at 2-3.

²² See Bend Comments at 2-3; RCN Comments at 3-5. Comcast reports that it experiences a rate of service theft of approximately 5 to 10 percent, a rate that it anticipates “would likely drop into the very low single digits” if encryption of digital basic were permitted. Comcast Comments at 9.

²³ See Bend Comments at 2; RCN Comments at 3.

cable systems are forced to continue to rely on traps to prevent service theft after transitioning to all-digital, one of the key potential efficiencies of upgrading to digital will be eviscerated.

The record also provides ample evidence that the impact of all-digital basic encryption will be minimal, despite the unfounded claims of a few commenters. As an initial matter, cable operators that have undertaken the far more significant step of converting their entire systems to digital are experiencing overwhelmingly positive results. As TWC previously reported, its all-digital transition on its Augusta, ME system is proceeding extremely smoothly with virtually no negative feedback from customers.²⁴ Similarly, Bend Broadband has experienced an increase in overall customer satisfaction since its transition to all-digital despite the fact that only 55 percent of its customers had a set top box at the time the conversion effort started.²⁵

Given the general absence of customer disruption in these larger scale efforts to convert whole systems to digital, the Commission can reasonably anticipate that the far more modest steps needed to ensure customers to an all-digital system have access to an encrypted basic tier can be accomplished without upsetting customers or their expectations. This certainly has proven to be the case for Cablevision, which has been able to achieve the aforementioned public interest benefits with minimal customer disruption. After the basic tier was encrypted, a miniscule 0.1 percent of Cablevision's subscribers asked for the free set-top box or CableCARD being offered to decrypt the newly encrypted basic tier.²⁶ Cablevision also reports that it has received no complaints arising from the full encryption of the New York City system.²⁷ As TWC stated in its initial comments, and as HTTP and MMTC agree, to the extent any minimal

²⁴ TWC Comments at 3.

²⁵ Bend Comments at 4.

²⁶ Cablevision Comments at 14.

²⁷ *Id.*; see also New York City Comments at 4 ("it appears that the Cablevision transition to encryption of the basic tier led to minimal subscriber disruption").

disruptive effects occur, they should be fully addressed by the transitional equipment measures the NPRM proposes.²⁸

III. THE COMMISSION SHOULD MOVE FORWARD WITH THE NPRM'S PROPOSALS WITHOUT SIGNIFICANT MODIFICATIONS.

While there is broad and well-documented support for the Commission's proposal to modify Section 76.630(a) to permit cable operators to encrypt the basic service tier of all-digital systems, a handful of local franchising authorities, a group representing PEG access channels, and the Consumer Electronics Association ("CEA") have urged the Commission either not to change the current rule or to permit all-digital systems to encrypt the basic tier only upon compliance with extensive and burdensome new conditions. The positions advocated by these commenters suffer from one or more of the following flaws: they raise issues and concerns that are outside the scope of this proceeding; they are based on predictions of harm to consumer interests for which they provide no evidence and which are contradicted by the record; or they propose new conditions that are unnecessary and, in some instances, would exceed the Commission's statutory authority. In short, these commenters have failed to make the case for the Commission to substantially depart from the proposal outlined in the NPRM.

First, commenters such as the City of Boston, Montgomery County, Maryland, the New Jersey Division of Rate Counsel ("NJRC"), and the Alliance for Community Media ("ACM") focus their attention not so much on the consequences of encrypting the basic tier of an all-digital cable system as on their concerns about the elimination of analog simulcasts that is an inevitable part of the migration of cable systems to all-digital service.²⁹ However, the transition of cable

²⁸ TWC Comments at 6; HTTP Comments at 1; MMTC Comments at 2. For the reasons advanced by NCTA in its initial comments, TWC supports NCTA's minor modifications to the equipment provisions in the proposed rules. *See* NCTA Comments at 11-12.

²⁹ Comments of the Alliance for Community Media at 3 (filed Nov. 28, 2011) ("ACM Comments"); Comments of the City of Boston, Massachusetts at 4-6 (filed Nov. 28, 2011) ("City of Boston Comments"); Comments of

systems to all-digital platforms is not before the Commission in this proceeding and is not relevant to the question of whether, and upon what conditions, a system that has made that transition should be permitted to encrypt its basic tier. As TWC pointed out in its initial comments, the Commission has been consistent in recognizing the consumer-related benefits of all-digital service and it would be wholly inappropriate for the Commission to take any action here that would impede those operators who have not yet upgraded their platforms to all-digital from doing so.³⁰

Second, the commenters that oppose or seek to substantially modify the Commission's proposal argue that, as currently crafted, only cable operators, not the public, will benefit from the encryption of the basic tier.³¹ However, these commenters ignore the benefits that several consumer groups and local governments have recognized. Those benefits – including making the connection and disconnection of service more convenient and less expensive for consumers, encouraging the deployment of all-digital platforms, reducing the consumption of fossil fuels, and removing theft of service as an impediment to the offering of high quality content on basic – will accrue not just to cable operators, but also to subscribers and to the public at large.³² As

Montgomery County, Maryland at 4 (filed Nov. 28, 2011) (“Montgomery County Comments”); Initial Comments of the New Jersey Division of Rate Counsel at 4-6 (filed Nov. 28, 2011) (“NJRC Comments”).

³⁰ TWC Comments at 5. Similarly, it would be inappropriate for the Commission to delay the transition of cable systems to all-digital by deferring action on the proposed NPRM pending resolution of the unrelated AllVid proceeding, as advocated by CEA. *See* Comments of the Consumer Electronics Association at 3-5 (filed Nov. 28, 2011). As Public Knowledge and the Media Access Project note, “The Commission’s lack of action in AllVid . . . should not delay the deployment of all digital systems,” which the NPRM’s proposals will assist in doing. MAP Comments at 2.

³¹ *See* ACM Comments at 1-2; City of Boston Comments at 2; NJRC Comments at 5; Montgomery County Comments at 4.

³² *See, e.g.*, MMTC Comments at 3 (citing the “demonstrated pro-consumer benefits” of allowing all-digital systems to encrypt the basic tier); HTTP Comments at 1 (describing benefits accruing to subscribers from proposed change in rules); York Letter at 1; Miami Letter at 1; Lancaster Letter at 1; Hialeah Letter at 1.

Public Knowledge and Media Access Project state, “elimination of the prohibition on encryption of the basic tier offers significant public interest benefits.”³³

Moreover, as discussed above, Cablevision has supplied the Commission with concrete, quantitative evidence of the savings produced by its encryption of the basic service tier of its New York City system and has established that consumer complaints about the encryption of basic were essentially non-existent.³⁴ In contrast, commenters such as ACM, Montgomery County and Boston offer nothing more than speculation that the encryption of basic may harm consumers. For example, each of those commenters contends that the Commission should impose additional conditions on cable operators when they encrypt the basic tier of service provided to institutional customers.³⁵ Yet, no such additional protection was afforded to Cablevision’s institutional customers in New York and there is not the slightest evidence that those customers were adversely impacted.³⁶ In addition, arrangements between institutional customers and cable operators vary from system to system and a one-size fits all approach would be both unnecessary and inappropriate.

³³ MAP Comments at 14.

³⁴ Cablevision Comments at 12-13.

³⁵ See ACM Comments at 2; City of Boston Comments at 5-6.; Montgomery County Comments at 4.

³⁶ As support for singling out institutional customers, ACM and Boston both point to technical problems that some older government buildings and schools had in receiving PEG channels when some of TWC’s systems in South Texas converted those channels from analog to digital. See ACM Comments at 2 n.2; City of Boston Comments at 5-6 n.16. However, the problems referenced by ACM and Boston had absolutely nothing to do with encryption – the signals in question were available “in the clear” both before and after digitization. Rather, the source of these problems was that the wiring in the buildings – which, in the vast majority of cases, was installed and maintained by the affected institution, not TWC – was not up to the task of delivering the digital signals due to the age of the plant, substandard shielding and other factors. Even though the internal wiring in many of those buildings was not TWC’s responsibility, TWC voluntarily took it upon itself to work with the communities to overcome the technical issues, including replacing wiring, installing amplifiers, etc. Nothing about that situation provides any basis for imposing additional obligations on cable systems that elect to encrypt the digital basic service provided to an institutional customer.

Finally, several of the proposals put forward by the franchising authorities would require the Commission to take actions that are unwarranted and likely go beyond the scope of its statutory authority. For example, a few local franchising authorities urge the Commission to force cable operators that encrypt the basic tier of an all-digital system to provide eligible subscribers with free or discounted equipment for an indefinite period of time.³⁷ In the NPRM, the Commission states that conditioning the right to encrypt basic-tier on the provision of free equipment “for a limited time” is a legitimate exercise of its authority to protect consumers under Section 624A and does not raise any statutory or constitutional constraints.³⁸ Assuming *arguendo* that is the case, imposing a permanent requirement for free or below-cost equipment is unwarranted and would raise serious questions under both the plain language of Section 623 and under the Fifth Amendment to the Constitution.³⁹

NJRC also suggests that, if the Commission allows the period during which equipment must be provided at no charge to end, the rates thereafter charged for such equipment should be governed by the Form 1205 methodology.⁴⁰ TWC has no objection to the requested clarification to the extent that it is limited to systems that are not subject to effective competition as defined in Section 623 and that are regulated by a local franchising authority that has been duly certified under the Commission’s implementing rule. It is clear from the Act and the Commission’s rules that the rates charged by such systems for equipment used to receive the basic tier are subject to

³⁷ NJRC Comments at 7; *see also* City of Boston Comments at 2-3; Montgomery County Comments at 7.

³⁸ NPRM at ¶ 14.

³⁹ The Commission also should reject NJRC’s suggestion that the cost of equipment used by subscribers to decrypt the basic service tier should be “shared with and by Internet and telephone customers.” NJRC Comments at 7.

⁴⁰ NJRC Comments at 7.

Form 1205 regulation.⁴¹ However, the Commission has no authority to engage in any form of ongoing regulation of the rates charged for equipment by cable operators that are subject to effective competition.⁴²

IV. CONCLUSION

For the foregoing reasons and those expressed in its initial comments, TWC supports the adoption of the NPRM's proposed rules with the modifications as proposed by NCTA.

Respectfully submitted,

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⁴¹ See, e.g., 47 U.S.C. § 623(b)(3); 47 C.F.R. § 76.923. There is no basis in the record for the imposition of burdensome, ongoing reporting requirements as suggested by several franchising authorities. See Montgomery County Comments at 3; NJRC Comments at 5.

⁴² TWC also wishes to note for the record that the City of New York is mistaken in its suggestion that the "minimum basic tier" requirement in Section 623(b)(7) of the Act applies to all cable systems, even those that are subject to effective competition. City of New York Comments at 4 n.7. On its face, Section 623(b)(7) describes the components of the basic tier "subject to rate regulation." Moreover, the Commission has previously acknowledged that the requirements of Section 623(b)(7) do not apply to cable systems that are exempt from rate regulation. *Carriage of Digital Television Broadcast Signals, First Report and Order and Further Notice of Proposed Rulemaking*, 16 FCC Rcd 2598 at ¶ 102 (2001).