

**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
)	

REPLY COMMENTS



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I. INTRODUCTION.

In the initial comments in this proceeding, ACA, together with the overwhelming majority of commenters, agreed with the Commission's tentative conclusion that cable operators should be permitted, *but not required*, to encrypt their basic tier services on all-digital systems.¹ In these reply comments, ACA supplements the record with data and information to show how the regulatory conditions proposed for all operators wishing to avail themselves of the new ability to encrypt their basic tier service fail to consider the disproportionate impact such measures will have on small operators. Providing free set-top boxes² for an extended period of time will place a disproportionate burden on small providers because the cost of acquiring, deploying, and installing set-top boxes is higher on a per-unit basis for providers with fewer subscribers. Small providers purchase set-top boxes in smaller quantities and therefore do not receive the same volume discounts as larger operators, and many must also pay monthly recurring costs associated with controlling the digital set-top boxes that larger providers do not have to pay. Moreover, smaller operators' costs to install these devices in their subscribers' homes are often higher, particularly for those serving smaller markets and rural areas, because their customers often reside at further distances. The Commission needs

¹ *In the Matter of Basic Service Tier Encryption Compatibility Between Cable Systems and Consumer Electronics Equipment*, MB Docket No. 11-169, Comments of the American Cable Association, at 2-5 (filed Nov. 28, 2011) ("ACA Comments"). See also, e.g., *In the Matter of Basic Service Tier Encryption Compatibility Between Cable Systems and Consumer Electronics Equipment*, MB Docket No. 11-169, Comments of Public Knowledge and Media Access Project, at 1 (filed Nov. 28, 2011); *In the Matter of Basic Service Tier Encryption Compatibility Between Cable Systems and Consumer Electronics Equipment*, MB Docket No. 11-169, Comments of Bend Broadband, at 1 (filed Nov. 28, 2011); *In the Matter of Basic Service Tier Encryption Compatibility Between Cable Systems and Consumer Electronics Equipment*, MB Docket No. 11-169, Comments of Comcast Corporation, at 3-12 (filed Nov. 28, 2011); *In the Matter of Basic Service Tier Encryption Compatibility Between Cable Systems and Consumer Electronics Equipment*, MB Docket No. 11-169, Comments of NCTA (filed Nov. 28, 2011) ("Comments of NCTA"); *In the Matter of Basic Service Tier Encryption Compatibility Between Cable Systems and Consumer Electronics Equipment*, MB Docket No. 11-169, Comments of Time Warner Cable Inc., at 3-8 (filed Nov. 28, 2011).

² The use of the term "set-top boxes" is intended to include equipment necessary to encrypt or descramble cable television signals and includes digital terminal adapters ("DTAs").

to take this into account and not adopt a “one-size-fits-all” approach to the conditions imposed on basic tier encryption in the final rule it adopts.

To avoid imposing disproportionate burdens on small cable operators, ACA urges the Commission to (i) reduce the timeframe that these operators must forgo charging eligible customers for set-top boxes or CableCards, and (ii) allow smaller operators to fulfill the requirement to provide free set-top boxes by using the least expensive equipment available for purchase in the market, including refurbished devices that have integrated conditional access security. Adopting these modifications to the Commission’s proposed rule will help ensure that all operators, including the small operators that make up the core of ACA’s membership, have an equal opportunity to realize the efficiency benefits made available through basic tier encryption.

ACA also supports the revisions to the proposed rules contained in the NPRM suggested by the National Cable and Telecommunications Association (“NCTA”) in its comments.³ These revisions are appropriate and necessary to ensure that the transmission of certain informational analog channels does not disqualify operators from encrypting their basic tier; to clarify that the offer of free set-top boxes need only be made for thirty days prior to, and thirty days after the date of encryption; and to ensure that the final rules are internally consistent so as to prevent uncertainty and confusion in the interpretation and application of these new rules.

Finally, ACA also explains that while it strongly supports the Commission’s proposal to allow basic tier encryption for digital systems, it would adamantly oppose any rule that *mandates* basic tier services be encrypted because this would impose a significant burden on some smaller operators and their customers.

³ Comments of NCTA at 11.

II. THE PROPOSED CONDITIONS ON BASIC TIER ENCRYPTION PLACE GREATER PROPORTIONAL COSTS AND BURDENS ON SMALL CABLE OPERATORS.

In crafting its new basic tier encryption rules, the Commission must take into account the fact that cable operators come in a variety of sizes – serving anywhere from fewer than 100 subscribers to more than 23 million – operate a diverse array of network architectures with differing capabilities, and have access to different levels of financial, operational and manpower resources. Yet, despite this reality, the Commission’s proposed consumer protection measures apply a “one size fits all” approach to cable operators. While the Commission’s proposed conditions may be suitable for many larger and mid-sized operators, for smaller operators they would impose higher costs and burdens that would limit the benefit of basic tier encryption. By adding some flexibility to its rules to take into account the different circumstances faced by smaller operators, the Commission can ensure that the benefits of basic tier encryption are available to all operators, not just the larger operators for whom the proposed conditions were initially crafted.

The rules proposed in the NPRM would require all operators, including the small operators represented by ACA, as a condition of encrypting the basic tier to provide free boxes or CableCARDS to consumers for not less than one year, and up to 5 years.⁴ Specifically, cable operators would have to provide basic tier subscribers that receive service without the use of a set-top box or CableCARD up to two set-top boxes or CableCARDS for two years.⁵ Subscribers that receive service with a set-top box or CableCARD on one television set, but have additional television sets that receive only basic service without a set-top box or CableCARD must be given one set-top box or CableCARD for one year.⁶ Subscribers that receive Medicaid who also only subscribe to basic tier services and who

⁴ *In the Matter of Basic Tier Encryption Compatibility Between Cable Systems and Consumer Electronics Equipment*, Notice of Proposed Rulemaking, MB Doc. No. 11-169, PP Doc. No. 00-67, at Appendix A (rel. Oct. 14, 2011) (“NPRM”) (setting forth proposed language for amending 47 C.F.R. § 76.630).

⁵ *Id.* (proposed rule 76.630(a)(1)(i)).

⁶ *Id.* (proposed rule 76.630(a)(1)(ii)).

do not use a set-top box or CableCARD must be given up to two free set-top boxes or CableCARDS for a maximum period of five years.⁷

While these conditions may have been suitable for larger cable operators in the context of waiver petitions, they are less so for smaller ones. Indeed, in the two instances in which the Commission has granted a waiver of its basic service tier encryption rules, the Commission has required markedly different conditions for different-sized operators. The conditions proposed in the NPRM were originally established in the context of a waiver petition submitted by Cablevision Systems Corporation (“Cablevision”), the 9th largest multichannel video programming distributor (“MVPD”) in the country, serving over 3.2 million subscribers.⁸ However, in approving a similar waiver of its basic tier encryption rule for Liberty Cablevision of Puerto Rico, which at the time served just over 108,600 subscribers, the Commission required only that the operator *forego any set-top-box installation charges* required by the basic tier encryption.⁹ The small operator was not required to provide *any* free set-top boxes. Thus it is evident that, when evaluating the waiver petitions of differently situated operators, the Commission has chosen to impose consumer protection measures of varying costs to each operator. ACA urges the Commission to conduct a similar evaluation in this industry-wide rulemaking, and consider modifying the conditions that would be imposed on small

⁷ *Id.* (proposed rule 76.630(a)(1)(iii)).

⁸ *Cablevision Systems Corporation’s Request for Waiver of Section 76.630(a) of the Commission’s Rules*, 25 FCC Rcd. 134, ¶¶ 5, 15 (2010) (“*Cablevision Waiver Order*”). See National Cable and Telecommunications Association, Top 25 Multichannel Video Programming Distributors as of June 2011, available at <http://www.ncta.com/Stats/TopMSOs.aspx> (last viewed Dec. 8, 2011) (note this ranking includes satellite providers and incumbent LECs). The Cablevision subscriber number cited above includes 320,000 subscribers that Cablevision acquired through the purchase of Bresnan Communications, Co. in December 2010. This acquisition occurred after release of the *Cablevision Waiver Order*. Thus, at the time it was granted a waiver of the basic tier encryption prohibition, Cablevision served approximately 2.9 million subscribers. See Mark Harden, *Cablevision closes on \$1.4 billion Bresnan Communications Buy*, Denver Business Journal (Dec. 15, 2010), available at <http://www.bizjournals.com/denver/news/2010/12/15/bresnan.html> (last viewed Dec. 12, 2011).

⁹ *Liberty Cablevision of Puerto Rico, Inc., Petition for Waiver of Section 76.630(a) Basic Tier Scrambling*, 15 FCC Rcd. 15064, ¶¶ 6 n. 16, 8 (2000) (identifying operator as having 108,642 subscribers) (“We believe that subscribers who did not need a set-top box prior to basic tier scrambling should not be charged for the installation of the box after scrambling begins . . .”).

cable operators in light of the disproportionate impact imposed on them by the proposed conditions as compared to larger operators.

Chief among the concerns for small operators is the cost of the set-top boxes that they will be required to provide for free to subscribers in order to take advantage of basic tier encryption. Holding all other factors equal, the per-set-top box fee that a cable operator is able to negotiate with device manufacturers generally depends on the volume of boxes to be purchased. Therefore, as a general matter, a cable operator serving a larger number of subscribers is better able to negotiate a lower per-set-top box fee than a cable operator serving fewer subscribers. As a result, larger cable operators typically pay the lowest set-top box fees, and smaller cable operators pay the highest. ACA's discussions with its members suggest that smaller operators pay on average at least 20% more for set-top boxes (and DTAs) than larger operators, and the number might be even greater on a case-by-case basis depending on the relative size difference between the smallest and the largest.¹⁰

In addition to having to pay more for the equipment, many smaller operators also incur monthly recurring service fees for every additional box they deploy. Specifically, most digital cable systems require equipment to control the digital boxes used on their systems, such as the Motorola's Digital Addressable Control ("DAC").¹¹ ACA members report that a DAC system starts at about \$250,000 plus annual service fees. This equipment is expensive for a small provider and most small operators are not able to afford to own it. Instead, small operators typically contract with third-party providers for the provision of remote DAC services, such as Motorola's National Authorization

¹⁰ The universal use of non-disclosure clauses in navigation device contracts severely limits the amount of publicly available evidence on the magnitude of set-top box fees and how they vary between cable operators of different sizes.

¹¹ Information regarding Digital Addressable Control Systems available at <http://www.motorola.com/web/Business/Products/TV%20Video%20Distribution/Conditional%20Access%20Elements/DAC6000/Documents/Static%20Files/DAC6000.pdf?pLibItem=1&localeId=95> (last viewed Dec. 8, 2011).

Service (NAS).¹² ACA members report that the recurring charges for these remote DAC services can range up to \$0.40 per set-top-box per month.¹³ Larger operators who can afford to purchase DAC equipment do not experience these added fees. As a result of these recurring fees, the cost burden associated with a condition not to charge subscribers for set-top boxes for a set period of time will disproportionately burden operators that utilize remote DAC services, which are typically small operators.

Finally, the actual costs associated with installing set-top boxes in their customers' homes can be higher for smaller rural operators than larger urban ones. ACA's members report that many customers insist on service calls when changing out set-top boxes. In rural areas, the greater distances between the cable headend and customers' premises, and between one cable customer and another, increases the costs associated with dispatching technicians to install set-top boxes by increasing the time required for technicians to reach the customer premises, as well as the vehicle operation and maintenance costs. Keeping all other variables the same, the cost for smaller operators that serve less densely populated areas to install each set-top box is greater than for larger operators that serve higher density areas. As a result, meeting the conditions in the Commission's proposed rules will require ACA's small rural members to incur disproportionately higher costs due to truck rolls than larger urban cable operators.

In sum, a one-size-fits-all obligation to provide free boxes disproportionately burdens small operators because set-top boxes are more expensive for them to purchase, deploy, and install. As a consequence of the higher cost for small operators in meeting the consumer protection measures

¹² See, e.g., Information regarding Motorola NAS-RAC service available at http://www.motorola.com/staticfiles/Video-Solutions/Products/Device-Security/Conditional-Access-Elements/NAS-RAC/Documents/Static_files/NAS-RAC_Brochure_US-EN.pdf (last viewed Dec. 12, 2011).

¹³ See, e.g., Information regarding Motorola NAS-DAC service conversion available at <http://www.motorola.com/web/Business/Documents/Specifications/Static%20Files/Data%20Sheet%20DVS%20NAS2DAC.pdf?pLibItem=1&localeId=33> (last viewed Dec. 12, 2011) (stating that a benefit of converting from their National Authorization Service (NAS) to their Digital Addressable Controller (DAC) is "lower costs through the elimination of NAS fees.").

proposed by the Commission in exchange for the right to encrypt the basic service tier, smaller operators will find encrypting their basic tier less beneficial under the proposed rules than will larger operators. To lessen the burden on smaller operators and thereby ensure that all operators have an equal opportunity to realize the efficiency benefits that encrypting their basic tier services creates, the Commission should establish alternative conditions for smaller cable operators to reduce their cost impact. For this purpose, a small operator should be defined as a cable company with 400,000 or fewer subscribers.¹⁴

III. THE COMMISSION SHOULD LIMIT THE SCOPE OF THE CONDITIONS APPLICABLE TO SMALL CABLE OPERATORS BY DECREASING THE TIMEFRAME IN WHICH THEY CANNOT CHARGE FOR SET-TOP BOXES OR CABLECARDS AND BY PERMITTING SMALL OPERATORS TO PROVIDE THE LEAST EXPENSIVE BOXES AVAILABLE.

The first measure the Commission should adopt to lessen the burden on small operators is to reduce the time period during which small operators must provide free set-top boxes or CableCARDS. ACA proposes the following: (i) small cable operators be required to provide basic tier subscribers who receive service without the use of a set-top box or CableCARD a maximum of two set-top boxes or CableCARDS for six months;¹⁵ (ii) subscribers that receive basic tier service using a set-top box or CableCARD on one television set and have additional television sets that receive only basic service without a set-top box or CableCARD must be given one set-top box or CableCARD for three months; and (iii) subscribers that receive Medicaid who also only subscribe to basic tier services and who do not use a set-top box or CableCARD must be given a maximum of two free set-top boxes or CableCARDS for a maximum period of fifteen months. By shortening the time period in which smaller operators must forego recouping the cost of purchasing and installing set-top boxes, and the recurring fees associated with adding them to its networks, small operators will have an equal opportunity to benefit from basic tier encryption as is afforded larger operators.

¹⁴ See 47 C.F.R. § 76.901(e).

¹⁵ *NPRM* at Appendix A (proposed rule 76.630(a)(1)(i)).

The second measure the Commission should adopt is to allow smaller operators to use *any* Part 15 certified set-top box that permits the display of digital basic tier services when providing free set-top boxes under Section 76.630(a)(1) of the Commission's proposed rules. Because the purpose of providing set-top boxes at no cost to customers that would be impacted by basic tier encryption is to ensure continued access to basic tier services and nothing else, and because smaller cable operators pay higher prices for set-top boxes than larger cable operators, smaller cable operators should be permitted to minimize their financial outlay by obtaining and deploying the most inexpensive set-top boxes on the market that achieves this purpose. This should include set-top boxes with integrated conditional access security.¹⁶ The Commission previously has recognized that the integration ban may be uniquely burdensome for small and rural operators who serve fewer subscribers per mile than their larger urban counterparts.¹⁷ The same reasoning supports ACA's request that small operators be permitted to economize as best as possible by providing the least

¹⁶ The Commission should permit an exception to Section 76.1205(a)(1) of its rules for this purpose.

¹⁷ See *In the Matter of Bend Cable Communications, LLC d/b/a BendBroadband; Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules; Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices*, Memorandum Opinion and Order, 22 FCC Rcd 209, ¶7(2007) (citing ACA's support of a waiver and quoting ACA's comments "banning the DCT-700 or requiring the addition of CableCARD slots in these boxes will raise the price of all-digital services beyond the reach of many subscribers and significantly slow the digital transition. . . . the DCT-700 allows smaller cable operators to 'provide all-digital services to their subscribers at such attractive prices that they are experiencing unprecedented gains in digital penetration.'"); *id.* ¶10 (conditionally granting Bend's waiver request and recognizing "we understand the difficulties that small cable operators may face in complying with the July 1, 2007 deadline, particularly since manufacturers may prioritize orders from the largest cable operators."). See also *In the Matter of Great Plains Cable Television, Inc; James Cable LLC; RCN Corporation; WideOpenWest Finance, LLC d/b/a WOW!, Internet Cable and Phone; Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules; Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices*, Memorandum Opinion and Order, 22 FCC Rcd 13414, ¶10 (2007) ("The ACA also echoes Great Plains' concern for its financial situation, claiming that Great Plains' financial hardship is even more severe than Charter's and thus justifies a waiver. The ACA also states that all of Great Plains' systems are rural as opposed to only 57% of Charter's."); *id.* at ¶15 ("The ACA also echoes James Cable's concern for its financial situation, claiming that James Cable's financial hardship is even more severe than Charter's and thus justifies a waiver. The ACA also states that all of James Cable's systems are rural as opposed to only 57% of Charter's, and that James Cable's facilities pass only 40 homes per mile versus Charter's facilities, most of which pass over 55 homes per mile."); *id.* at ¶ 40 (granting limited one-year waivers of the integration ban and recognizing that "in these specific cases imposition of the integration ban may present a financial burden so great as to drive the Petitioners out of business.").

expensive set-top boxes for free in order to avail themselves of the same opportunity to encrypt their basic tier service as larger operators.

Although the Commission has banned the sale and deployment of set-top boxes with integrated security since 2007,¹⁸ many cable operators in the United States still have a substantial stock of these devices in warehouses. If smaller operators could purchase refurbished versions of these set-top boxes with integrated security from larger domestic cable operators, the cost of obtaining and deploying such devices would be significantly less expensive than obtaining new ones.¹⁹ According to ACA members, a refurbished set-top box with integrated security, such as the Motorola DCT-2224 or 2244, can be obtained for as little as \$25 per box, which is less expensive than the lowest priced DTA available to small cable operators through the NCTC, and presumably close to the same price that the largest cable operator can purchase its DTAs. Provided that the Commission permits the deployment of integrated set-top boxes solely for the purpose of satisfying the conditions contained in proposed Section 76.630(a)(1), the impact on the development of a marketplace for a retail set-top boxes would be *de minimis*.²⁰ In furtherance of this point, ACA

¹⁸ 47 C.F.R. § 76.1204(a)(1) (providing that “no multichannel video programming distributor subject to this section shall place in service new navigation devices for sale, lease, or use that perform both conditional access and other functions in a single integrated device.”) See Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices, Second Report and Order, 20 FCC Rcd 6794, 6810, ¶ 31 (2005) (deferring ban on integrated equipment to July 1, 2007).

¹⁹ See, e.g., *Adams Cable Equipment Inc. Request for Waiver of 47 C.F.R. § 76.1204(a)(1)*, CSR-8537-Z, CS Doc. No. 97-80 (filed Oct. 25, 2011) (seeking a waiver of the ban on integrated set-top boxes to permit the sale of refurbished equipment).

²⁰ In the aggregate, operators with 400,000 or fewer subscribers serve approximately 6 million cable subscribers. In a market of roughly 60,000,000 cable subscribers, small operators defined in this manner would serve approximately 10 percent of the total cable market. SNL Kagan estimates that there are 79 million set-top boxes in customers’ homes, and there are 27 million digital terminal adapters, amounting to approximately 106 million devices. Assuming that customers of small cable operators avail themselves of the free set-top box offer at the same rate as customers of Cablevision pursuant to its waiver -- 1/10 of 1% -- it can be estimated that approximately 6,000 customers would avail themselves of the free set-top box offer. Also assuming that each of these customers seek on average 1-1/2 devices, the total number of integrated set-top boxes deployed in furtherance of basic tier encryption would represent approximately 9,000 out of the 106 million devices in today’s market. This represents the theoretical maximum number of customers who would request free boxes. In practice, not every cable operator with 400,000 or fewer subscribers will choose to go all digital and not all who do will seek to encrypt the basic

suggests that small cable operators only be permitted to obtain and deploy set-top boxes that have previously been deployed in the market, rather than new devices.²¹ Moreover, ACA does not suggest that small cable operators who qualify for the right to offer set-top boxes with integrated conditional access be relieved of the obligation to offer CableCARDs upon request by customers. Taking all of these factors into account, the Commission should allow the use of integrated set-top boxes for this limited purpose of supplying free set-top boxes to eligible subscribers as a condition of encrypting their basic tier service.

Reducing the timeframes over which small operators cannot charge for set-top boxes distributed to eligible customers and allowing them to use the lowest cost set-top boxes available will help ensure that smaller cable operators are not disproportionately burdened by the conditions compared with larger operators. By making these limited changes to its proposed rules, the Commission will allow small operators to reap the same benefits of basic tier encryption as larger operators.

IV. ACA SUPPORTS THE CLARIFICATIONS TO THE PROPOSED RULE SUGGESTED BY NCTA.

In addition to the proposed changes ACA identified above, ACA supports the clarifications to the proposed rule suggested by NCTA in its comments.²² These revisions to the Commission's proposal are appropriate and necessary to ensure that the each section of the rules is consistent with the other sections and to prevent uncertainty and confusion in the interpretation and application of these new rules.

tier, and so the number of subscribers and devices deployed would be even smaller. ACA concludes that reintroducing approximately 9,000 set top boxes with integrated security into a market that includes more than 106 million devices and growing year-over-year would not have any significant impact the development of a retail set top box market.

²¹ Allowing the resale, reuse, and refurbishing of integrated set-top boxes for the limited purpose described within can also have the additional benefit of reducing electronic waste, a problem that can cause serious health and pollution problems.

²² Comments of NCTA at 11.

Specifically, NCTA suggested that the Commission revise its proposed Section 76.630(a)(i) to allow cable operators to encrypt their basic tier signals where certain specified analog channels, such as “Barker” and “informational” channels, remain on their systems.²³ ACA believes this is a sensible exception and is consistent with the concerns expressed by a number of commenters in this proceeding that the new rules not interfere with the continued availability of these common analog services.²⁴ By adopting this clarification, the Commission will make the rule more flexible and better able to address the needs of cable operators that provide “barker,” public, educational, and governmental (“PEG”), and other non-commercial analog channels, as well as the customers they serve.

NCTA also proposes that the Commission adopt a new Section 76.630(a)(v),²⁵ which makes the important clarification that the offer of free set-top boxes is only required to be made thirty days before, and thirty days after the date of encryption.²⁶ This proposal addresses the concerns about how long the offer of free set-top boxes must be made, which was raised by ACA and others in comments in this proceeding.²⁷ As ACA noted in its comments, the Commission’s original formulation of the proposed rule appeared to require that new set-top boxes be made available for

²³ *Id.* at 10.

²⁴ *In the Matter of Basic Service Tier Encryption Compatibility Between Cable Systems and Consumer Electronics Equipment*, MB Docket No. 11-169, Comments of the City of Boston, at 6-7 (filed Nov. 28, 2011); *In the Matter of Basic Service Tier Encryption Compatibility Between Cable Systems and Consumer Electronics Equipment*, MB Docket No. 11-169, Comments of Mikrotec CATV, LLC, at 3 (filed Nov. 28, 2011).

²⁵ Comments of NCTA at 11-12.

²⁶ *Id.*

²⁷ ACA Comments at 5-6; *In the Matter of Basic Service Tier Encryption Compatibility Between Cable Systems and Consumer Electronics Equipment*, MB Docket No. 11-169, Comments of Cablevision, at 15 (filed Nov. 28, 2011).

the period of years identified in each section of the proposed rule.²⁸ The Commission must revise its rule to make clear that this is not the case.

ACA encourages the Commission to adopt NCTA's sensible proposals, in addition to making other changes to its proposed rules to accommodate the other concerns ACA identifies above.

V. THE COMMISSION MUST NOT REQUIRE BASIC TIER ENCRYPTION.

Finally, ACA wishes to make clear that while it strongly supports the Commission efforts to allow all operators to encrypt their basic tier signals on digital networks, this support is premised on the notion that basic tier encryption be voluntary, rather than mandatory. ACA would strongly oppose any mandate, either in this proceeding or elsewhere in the future, that would require cable operators to encrypt their basic tier services. As discussed, all smaller cable operators pay higher fees than larger operators to obtain set-top boxes, many pay remote DAC fees for each device deployed, and many pay higher fees to install these boxes in their customers' homes. To manage these significant costs, some ACA members have established their cable business premised on minimization of the use of set-top boxes. These operators offer a robust unencrypted basic service tier that permits its customers with television sets containing QAM tuners to view the basic tier without the need for a set-top box. While many of ACA's members can and will benefit from basic tier encryption if permitted to roll it out on a schedule of their choosing, mandating basic tier encryption would immediately up-end the business models of some smaller cable operators who rely on the right to offer an unencrypted service by requiring them to deploy set-top boxes.²⁹ The Commission was correct to propose that basic tier encryption be voluntary, and it should maintain this policy in any final rule promulgated in this proceeding.

²⁸ ACA Comments at 5.

²⁹ In addition to opposing Commission action that would mandate basic service tier encryption, ACA urges the Commission to clarify that a broadcaster that elects retransmission consent must not take away a cable operators' right not to encrypt their basic service tier by demanding that its signal be encrypted in exchange for the right to obtain retransmission consent.

VI. CONCLUSION.

For the reasons set forth herein, ACA urges the Commission to reduce the amount of time in its proposed rules that small operators must provide free set-top boxes or CableCARDS to eligible subscribers, and to allow smaller operators to fulfill the requirement to provide consumers with free set-top boxes by using the least expensive set-top boxes available, without regard to the Commission's existing ban on the sale of integrated devices. Adopting these changes, along with the clarifications suggested by NCTA, to the Commission's proposed rules will help ensure that all operators, including the small operators that make up the core of ACA's membership, can realize the efficiency benefits made available through basic tier encryption.

Respectfully submitted,

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