



A Professional Limited Liability Company

1333 New Hampshire Ave., NW, Fl 2
Washington, DC 20036
Telephone: (202) 872-6811
Facsimile: (202) 683-6791

Chicago
307 North Michigan Ave., Suite 1020
Chicago, Illinois 60601
Telephone: (312) 372-3930
Facsimile: (312) 372-3939

St. Louis
1714 Deer Tracks Trail, Ste 215
St. Louis, MO 63131

Barbara S. Esbin
Admitted in the District of Columbia

February 6, 2012

Via ECFS

Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: American Cable Association Notice of Ex Parte Communications; In the Matter of the Basic Service Tier Encryption, Compatibility Between Cable Systems and Consumer Electronics Equipment, MB Doc. No 11-169, PP Doc. No. 00-67

Dear Ms. Dortch:

On February 6, 2012, Ross Lieberman, Vice President of Government Affairs, American Cable Association (“ACA”) and the undersigned, counsel to ACA, met via telephone with Sherrese Smith, Chief Counsel and Legal Advisor to Chairman Genachowski and Jessica Almond, Special Counsel to Chairman Genachowski to discuss ACA’s concerns with the conditions proposed for smaller providers wishing to avail themselves of the basic tier encryption waiver described in the pending Notice of Proposed Rulemaking (“NPRM”) in the above referenced docket.¹

During the meeting, ACA reiterated the positions reflected in its filings in this docket supporting the Commission’s proposal to permit, but not require, cable operators to encrypt their basic tier services on all-digital systems.² Specifically, meeting participants discussed the consumer protection measures that the Commission proposed applying to cable operators who seek to encrypt their basic service tier. ACA urged the Commission not to adopt a “one-size-fits-all” approach, but instead to adopt ACA’s proposed alternative measures for smaller operators to ensure that the relative burden imposed on smaller providers are no greater than that imposed on larger ones. As described in more detail in ACA’s Jan. 31 Ex Parte Letter, ACA explained how smaller operators pay higher per-unit fees than larger providers to acquire set-top boxes, and, unlike larger operators, incur recurring monthly per-unit fees when additional

¹ *In the Matter of the Basic Service Tier Encryption, Compatibility Between Cable Systems and Consumer Electronics Equipment*, Notice of Proposed Rulemaking, 26 FCC Rcd 14870 (2011) (“NPRM”).

² *See 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 1 (filed Nov. 28, 2011) (“ACA Comments”); *In the Matter of Basic Service Tier Encryption Compatibility Between Cable Systems and Consumer Electronics Equipment*, Reply Comments of the American Cable Association, PS Docket MB Docket No. 11-169, at 1-2 (filed Dec. 12, 2012) (“ACA Reply Comments”); *In the Matter of Basic Service Tier Encryption Compatibility Between Cable Systems and Consumer Electronics Equipment*, Ex Parte Letter from James N. Moskowitz, Cinnamon Mueller, to Marlene Dortch, Secretary, Federal Communications Commission (Jan. 31, 2012) (“ACA Jan. 31 Ex Parte Letter”).

set-top boxes are deployed and utilized by their customers. Moreover, the cost for the smaller operator who serves less densely populated areas to send an employee out to install a set-top box at the subscriber's premises is often higher than that incurred by larger operators that typically serve more dense areas. ACA explained that the Commission will provide smaller and larger providers with an equal incentive to take advantage of the benefits of basic tier encryption if, after taking these factors into account, it adopts an alternative set of conditions for smaller operators that will reduce the costs of moving to basic tier encryption.³ This would allow customers of cable operators, regardless of size, to benefit from this proposed relief, which is an action that the Commission should take in a timely manner.⁴

To this end, ACA encouraged adoption of its proposal to permit smaller operators to purchase refurbished set-top boxes with integrated security that have previously been deployed in the market, rather than new devices that are permissible under the integration ban, as means of lessening the burden the NPRM's proposed consumer protection measures would otherwise impose on smaller operators. ACA suggested that the impact of its proposal on the development of a marketplace for retail set-top boxes would be *de minimis*,⁵ particularly if the Commission permits the deployment of refurbished integrated set-top boxes solely for the purpose of satisfying the conditions proposed in the NPRM. Finally, ACA reiterated that in addition to allowing smaller cable operators to deploy refurbished set-top boxes with integrated security, reducing the time frames that free set-top boxes would need to be made available to subscribers would be another means for smaller providers to have an equal opportunity to benefit from the efficiencies achievable through encrypting the basic service tier.⁶

If you have any questions, or require further information, please do not hesitate to contact me directly. Pursuant to section 1.1206 of the Commission's rules, this letter is being filed electronically with the Commission.

Sincerely



Barbara S. Esbin

cc (via email): Sherrese Smith
Jessica Almond

³ See ACA Jan. 31 Ex Parte Letter at 1-4.

⁴ In particular, if the Commission cannot complete the instant rulemaking promptly, it should independently consider approval of the Petition for Waiver of the Basic Service Tier Encryption rules filed by RCN Telecom Services, Inc. See, ACA Comments at 4 (*citing In the Matter of RCN Telecom Services, Inc.'s Petition for Waiver of Section 76.630(a) of the Commission's Rules*, File No. CSR-8525-Z (filed Aug. 12, 2011)).

⁵ See ACA Reply Comments at 9.

⁶ See *id.* at 7.