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**Barbara S. Esbin**  
Admitted in the District of Columbia

February 27, 2012

**Via ECFS**

Marlene Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> 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 23, 2012, Ross Lieberman, Vice President of Government Affairs, American Cable Association (“ACA”) and the undersigned, met with William Lake, Chief, Media Bureau, Michelle Carey, Alison Neplokh, Mary Beth Murphy, Steve Broecker, Brendan Murray and John Gabrysch also of the Media Bureau to discuss ACA’s concerns with the conditions proposed for cable operators wishing to avail themselves of the basic tier encryption waiver described in the Notice of Proposed Rulemaking (“NPRM”) in the above referenced docket.<sup>1</sup> During the meeting, ACA described how its members who are smaller cable operators would be disproportionately affected by the conditions compared to larger operators, and discussed ways to remedy this imbalance.

ACA reported that it had conducted a survey of its membership’s current and planned all-digital upgrades in December 2011 to help formulate its response to the conditions proposed in the NPRM. Of the 107 companies that responded to the survey<sup>2</sup>, half (49.5% or 53 in total) responded to survey questions affirming that they either operate a QAM-based all digital system, or will be upgrading to all-digital within three years.

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<sup>1</sup> *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”); *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; Ex Parte Letter from Barbara Esbin, Cinnamon Mueller, to Marlene Dortch, Secretary, Federal Communications Commission (Feb. 6, 2012)(“ACA Feb. 6 Ex Parte”).

<sup>2</sup> In total there were 116 respondents to the survey, but in order to provide the most accurate survey data, ACA omitted the responses provided by three respondents who failed to identify themselves or their company, and in six instances, in order to avoid double counting, ACA merged the responses when two individuals responded from the same company. When the responses of two respondents from the same company differed with respect to results that are presented in this ex parte, ACA specifically notes how it addressed the matter.

Of the 49.5 percent either operating a QAM-based all digital system or planning to upgrade to one within three years:

- 15.1% (8 in total) operate at least one QAM-based system.
- 81.1% (43 in total) plan on upgrading at least one QAM-based system to all digital within 3 years.
- 3.8% (2 in total) operate at least one QAM-based system and plan on upgrading at least one QAM-based system to all digital within 3 years.

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- 66.0% (35 in total<sup>3</sup>) said they would be interested in encrypting the basic tier of their current or planned all-digital system.
- 52.8% (28 in total) said that they would not be willing to satisfy the FCC's proposed conditions in order to be able to encrypt the basic tier.

Below is a sampling of comments discussed at the meeting from ACA members that said (1) they **would be interested** in encrypting the basic tier on an existing or future all-digital system; but (2) **would not be willing** to satisfy the conditions proposed in the NPRM. In other words, the operators quoted below would otherwise want to avail themselves of the benefits of basic tier encryption, benefits which extend to their subscribers, but would forgo doing so because of the burdensome costs associated with the proposed conditions.

- "No small cable company can afford these terms. Just the price in additional digital boxes would make us not encrypt the basic tier."
- "Offering all existing basic tier customers a CableCard or set-top box at no charge for 2 years would be a financial burden."
- "The cost of the STB is to [sic] high to offer the customer free STB's for 1 or 2 years."
- "We give senior discounts accross [sic] the board on all broadband services. Can not [sic] add additional free services or equipment for Medicaid subscribers."
- "The question of who qualifies for discounts (Medicaid concept) is burdensome and challenging to implement..."

ACA reiterated that the Commission can 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.<sup>4</sup> This would allow customers of cable operators, regardless of size,

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<sup>3</sup> In this total, ACA excluded two responses from individuals from same company in which one respondent said they would be interested in encrypting the basic service tier but the second representative said they would not be interested.

<sup>4</sup> 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 December 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

to benefit from this proposed relief, which is an action that the Commission should take in a timely manner.<sup>5</sup>

To this end, ACA again encouraged adoption of its proposal to permit smaller operators, defined as operators with 400,000 subscribers or fewer, to purchase and deploy the most inexpensive set-top boxes available on the market, which should include 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. Allowing these boxes to be utilized would lessen 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*,<sup>6</sup> particularly if the Commission permits the deployment of refurbished integrated set-top boxes solely for the purpose of satisfying the conditions contained in the proposed basic tier encryption waiver. ACA also reiterated its suggestion 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 under certain circumstances would be another means for smaller providers to have an equal opportunity to benefit from the efficiencies achievable through encrypting the basic service tier.<sup>7</sup>

Participants discussed how deploying refurbished boxes for the limited purpose of permitting smaller operators to avail themselves of the benefits of basic tier encryption in a manner proportional to larger operators could also directly benefit consumers by enabling them to receive a device with more features than a digital terminal adapter (DTA). ACA noted that the rationale behind the proposal to allow smaller cable operators to deploy refurbished set-top boxes with integrated security as a means of satisfying the Commission's proposed consumer protection measures is clearly explained in the survey response of one ACA member:

[W]e should be able to deploy non-cablecard boxes (built prior to 2007) for those customers that only want to subscribe to basic cable or fall into the [M]edicaid description. There is a big after-market for those type of boxes and if we're going to be required not to charge for two years, we need to be able to have access to cheap set tops with more functionality than DTA's in order to try and make a few bucks back off of PPV or VOD. I hope that makes sense.

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Marlene Dortch, Secretary, Federal Communications Commission (Jan. 31, 2012) ("ACA Jan. 31 Ex Parte Letter") at 2-4; ACA Feb. 6 Ex Parte at 2.

<sup>5</sup> 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)).

<sup>6</sup> See ACA Reply Comments at 9.

<sup>7</sup> See *id.* at 7.

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  
Cinnamon Mueller  
*Counsel to the American Cable Association*

cc (via email): William Lake  
Michelle Carey  
Alison Neplokh  
Mary Beth Murphy  
Steve Broeckaert  
Brendan Murray  
John Gabrysch