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The Honorable Julius Genachowski
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Basic Service Tier Encryption; Compatibility Between Cable Systems and Consumer Electronics Equipment, MB Docket No. 11-169, PP Docket No. 00-67.

Dear Chairman Genachowski:

Throughout this proceeding, the cable industry has expressed its strong support for the Commission's proposal to eliminate the prohibition on encryption of the basic tier for all-digital cable systems.¹ The record clearly demonstrates that this rule change would be pro-consumer and pro-innovation and should be adopted as quickly as possible.

We recognize, however, that some parties have raised concerns regarding the ability of IP-enabled Clear QAM devices to obtain access to programming on the Basic Service Tier once it is encrypted. We continue to believe that those concerns are misplaced, particularly because manufacturers of such devices could build their devices with CableCARD slots – the Commission's preferred solution for decrypting cable content in retail devices.² Nonetheless, the cable industry is prepared to make additional commitments set forth below in order to provide further assurances regarding access to the Basic Service Tier.

Commitments

Subject to the timeframe discussed below, the six largest incumbent cable operators ("Cable Operators") commit to offer one of the Options set forth below in their all-digital cable systems that encrypt the Basic Service Tier ("Encrypted Systems"). The solution the Cable Operator chooses shall be in addition to the transitional equipment measures addressed by the NPRM and NCTA in the pending rulemaking ("Transitional Equipment Measures"). These

¹ See, e.g., NCTA Comments, MB Dkt. No. 11-169, PP Dkt. No. 00-67 (Nov. 28, 2011); NCTA Reply Comments, MB Dkt. No. 11-169, PP Dkt. No. 00-67 (Dec. 12, 2011); Letter from Neal M. Goldberg, General Counsel, NCTA, to Marlene H. Dortch, Secretary, FCC, Dkt. No. 11-169 (Feb. 7, 2012); Letter from Neal M. Goldberg, General Counsel, NCTA, to Marlene H. Dortch, Secretary, FCC, Dkt. No. 11-169 (Feb. 21, 2012).

² As the Commission recognized as recently as 2010, "CableCARD is a realized technology – consumer electronics manufacturers can build to and are building to the standard today," and therefore "the Commission must strive to make the existing CableCARD standard work." *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, Third Report and Order and Order on Reconsideration, 25 FCC Rcd 14657, 14662 ¶ 8 (2010).

solutions shall apply exclusively to retail IP-enabled Clear QAM devices as such devices are used to access the Basic Service Tier by cable subscribers. *These commitments do not apply, nor relate in any way, to subscriber access to any other tier of video programming or any other cable services.* These commitments also do not apply to any cable systems that have already received waivers of the Commission's Basic Service Tier encryption prohibition.

- **Option 1:** Cable Operators shall be permitted to encrypt their Basic Service Tiers in Encrypted Systems at such time as they offer to basic tier subscribers with retail IP-enabled Clear QAM devices in such systems an Operator-supplied set-top box, digital transport adapter ("DTA") or other Operator-supplied equipment with standard home networking capability (e.g., equipment with a DLNA-enabled Ethernet connector or Wi-Fi capability). Such Operator-supplied equipment will be offered pursuant to the terms of the Transitional Equipment Measures regarding notice to consumers and availability of equipment at no charge for a limited period of time. In Encrypted Systems that utilize DTA security, Cable Operators will support the delivery of the Basic Service Tier to an IP-enabled Clear QAM Device with embedded DTA security ("Retail DTA") without the need for Operator-supplied equipment. Such Cable Operators will have no duty to offer Operator-supplied equipment to a customer with a Retail DTA in such Encrypted Systems.
- **Option 2:** Subject to the procedure described in this paragraph, Cable Operators shall be permitted to encrypt their Basic Service Tiers in Encrypted Systems in which they enable IP-enabled Clear QAM Devices to access the Basic Service Tier without the need for an Operator-supplied set-top box, DTA, or CableCARD. In enabling such access, such Cable Operators shall use commercially available security technology that is licensable on a non-discriminatory basis to manufacturers of such retail devices. Any Cable Operator that pursues this option agrees to make publicly available the requirements necessary (including any authentication processes) for such a device to access the Basic Service Tier and submit a copy of such requirements to the Commission. Cable Operators who elect this option shall be permitted to encrypt their Basic Service Tiers three months after submitting such requirements to the Commission.

Given the ever-changing state of technology and the robust competition in today's video marketplace, the commitments outlined above shall sunset on the third anniversary of the effective date of an Order modifying the Basic Service Tier Encryption prohibition, unless the Commission determines that an extension is warranted. In making such determination, the Commission will consider Cable Operator and consumer costs, the services available from other video platforms and providers, the competitive disparity created by application of the commitments only to cable and not to other video distribution platforms, and the state of technology and the marketplace.

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We hope that the above commitments resolve any remaining concerns regarding access to the Basic Service Tier by certain retail devices. In light of the cable industry's commitment to offer these additional solutions, we urge the Commission to permit all cable operators other than those Cable Operators subject to the above commitments to encrypt the Basic Service Tier in all-digital systems upon adoption of a Basic Service Tier encryption Order. The fact is that encryption is ubiquitous in the video marketplace. All satellite and IPTV providers encrypt all of their programming, and the same is true for online video distributors. There is no valid basis for continuing to hold back cable innovation in today's dynamic and competitive marketplace. Indeed, each day that passes without Commission action delays the significant benefits that will come from the Commission's proposed rule change and subjects cable operators to further theft of service from broadband-only customers that could have been prevented by a rule change. We therefore urge the Commission to act swiftly on its proposal.

Sincerely,

/s/ Michael K. Powell

Michael K. Powell

cc: Marlene H. Dortch (for inclusion in MB Docket No. 11-169 and PP Docket No. 00-67)