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Received & Inspected

JUL 30 2013

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FCC Mail Room

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
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 Ms. Dortch:

On or about July 1, 2013, I received at my residence an "Important Service Message" with my monthly invoice from Comcast regarding its intention to "start encrypting Limited Basic service on [my] cable system" beginning August 27, 2013. A copy of this notice, with my account information redacted, is annexed hereto as Attachment 1.

Because I subscribe to no premium cable channels, I do not have or need any Comcast-provided set-top boxes associated with my service. I do have three recently-purchased HDTV receivers each of which has a Clear QAM tuner, and thus am (currently) able to receive all local TV stations in full 1080p HD at the full HDTV 9x16 aspect ratio. I also have a third-party provided IP-enabled Clear QAM device that is connected to an Apple Macintosh computer via my home local area network (LAN), and which I use with third-party provided software to perform various digital video recording (DVR) functions. Because I was concerned that the loss of unencrypted Clear QAM could render all of these HDTV receivers and the third-party IP-enabled Clear QAM device useless, I reviewed the Commission's October 12, 2012 *Report and Order* (R&O) (FCC 12-126) in the above-referenced proceeding, and learned that the Commission had recognized these concerns and had adopted certain transitional measures designed to assure the continued utility of this equipment, at least for several years, following encryption of basic cable channels. At para. 20 of the R&O, the Commission provides that:

To mitigate any harm to the small group of consumers that may use such [third-party provided IP-enabled Clear QAM] devices, NCTA's six largest incumbent cable members – serving 86 percent of all cable subscribers – have committed to adopt, *prior to encrypting*, a solution that would provide basic service tier access to third-party provided IP-enabled clear QAM devices. Pursuant to this commitment, these six cable operators will make basic service tier channels

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available either via connection from operator-supplied equipment or by providing access to the operator's security technology. Specifically, these cable operators have proposed to either (i) provide a converter box with "standard home networking capability" that can provide IP-enabled clear QAM devices access to basic service tier channels on the same terms proposed in the Encryption NPRM ("Option 1"), or (ii) enable IP-enabled clear QAM devices to access basic service tier channels without any additional hardware through the use of commercially available software upgrades ("Option 2"). NCTA proposed to sunset these commitments three years after we adopt this Order unless the Commission extends them. ...¹

At footnote 93 in para. 20 of the R&O, the Commission specifically refers to the portion of the NCTA commitment, which provided that "[s]uch 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."² And at para. 23, the Commission "adopt[ed] these [NCTA] commitments *as required preconditions to encrypting by the top six incumbent cable operators* with slight modifications and clarifications."³

In his supporting Statement, Chairman Genachowski explicitly noted the linkage between basic cable encryption and the consumer protections included in the R&O, stating that by adopting these measures the Commission was:

ensur[ing] that encrypting cable signals won't limit consumers from using an ever-growing number of Internet-connected, third-party video devices, and keep barriers low for video device innovators. *We make clear that cable companies can only encrypt their signals so long as these important pro-consumer, pro-innovation protections remain in place* – to decouple the two components of the Order would shortchange consumers and innovators.⁴

In reliance upon the requirements adopted in the R&O and on (then) Chairman Genachowski's statement, on July 11 I contacted Comcast customer service to inquire as to the nature of the transitional devices that would be provided both with respect to existing HDTV Clear QAM receivers and third-party provided IP-enabled Clear QAM devices. I was required to speak to three (3) different people at Comcast in connection with this inquiry. From these conversations, I was informed that:

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1. R&O, at para. 20, footnote references omitted, emphasis supplied.
 2. *Id.*, fn. 93, emphasis supplied.
 3. *Id.*, at para. 23, emphasis supplied.
 4. *Id.*, Statement of Chairman Julius Genachowski re: Basic Service Tier Encryption, MB Docket No. 11-169, emphasis supplied.

- (1) The decryption devices that would be provided without charge (for two years) for use with Clear QAM HDTV receivers would *not* provide an HDTV signal. Instead, they would provide a standard definition (SDTV) signal with a 3x4 aspect ratio. The output of these “Digital Transport Adapter” (“DTA”) devices is an *analog* signal that is transmitted to the television receiver via RF on either channels 3 or 4. I was advised that in order to continue to receive HDTV signals it would be necessary to rent an HD set-top box from Comcast for each TV set, at an additional monthly charge.
- (2) With respect to third-party provided IP-enabled Clear QAM devices, I was advised that Comcast had no equipment or software upgrades, available either without charge or on a fee basis, that would support the functionality of such devices, and was candidly advised by the customer service representative that this type of equipment would not work on the Comcast service once the encryption was put in place.

Assuming that the information provided by Comcast is accurate, I fail to see how Comcast could possibly be considered as being in compliance with the unambiguous requirements set out in the R&O and as underscored by the Chairman’s statement. Unless a customer accepts a substantial increase in his monthly cable bill, the customer will no longer be able to receive HDTV signals. *The effect of encryption of basic cable channels is thus to significantly degrade the quality of the video service that basic cable customers have been purchasing from Comcast or, alternatively, to impose a rate increase in order for the customer to retain the same HDTV capability.* And as for the third-party IP-enabled Clear QAM devices, Comcast’s apparent inability to provide a solution that will permit continued use of such equipment runs directly counter to the stated requirements and intent of the Commission’s *Order*.⁵

The encryption environment apparently being pursued by Comcast also runs counter to the Commission’s longstanding and oft-repeated goal of promoting competition and innovation in an open and broadly accessible Internet. In its 2010 *Net Neutrality Order*, the Commission reiterated this clear policy goal:

Just over a year ago, we launched a public process to determine whether and what actions might be necessary to preserve the characteristics that have allowed the

5. Notably, in an *ex parte* letter submitted to the Commission on June 27, 2012, Comcast expressly committed to “an initial and a long-term solution for consumers with retail IP-capable Clear QAM devices (‘third-party devices’) to access encrypted basic tier channels in Comcast’s all-digital cable systems once the Commission allows for such encryption.” The specific solutions consisted of “the development as soon as possible of a high-definition digital transport adapter with an ethernet connector (‘E-DTA’) [that] would enable a customer with a thir-party device to access basic tier channels directly through an ethernet input on such third-party device or via the home network, and to change channels remotely in the E-DTA via a DLNA protocol;” and a “long-term solution, which would follow shortly after the initial solution, [which] involves the creation of a licensing path for integrating DTA technology into third-party devices (‘Integrated DTA’). Such a device could access encrypted basic tier channels without the need for a cable operator-supplied DTA or set-top box.” Letter from Jonathan Friedman, Counsel for Comcast Corporation, to Marlene H. Dortch, Secretary, FCC, June 27, 2012. Commitments notwithstanding, it would appear that the promised “initial solution” will not have been implemented prior to basic cable encryption.

Internet to grow into an indispensable platform supporting our nation's economy and civic life, and to foster continued investment in the physical networks that enable the Internet. ... This process has made clear that the Internet has thrived because of its freedom and openness – the absence of any gatekeeper blocking lawful uses of the network or picking winners and losers online. Consumers and innovators do not have to seek permission before they use the Internet to launch new technologies, start businesses, connect with friends, or share their views. The Internet is a level playing field. Consumers can make their own choices about what applications and services to use and are free to decide what content they want to access, create, or share with others. This openness promotes competition. It also enables a self-reinforcing cycle of investment and innovation in which new uses of the network lead to increased adoption of broadband, which drives investment and improvements in the network itself, which in turn lead to further innovative uses of the network and further investment in content, applications, services, and devices. A core goal of this Order is to foster and accelerate this cycle of investment and innovation.⁶

It is, of course, possible that the information provided by the Comcast customer service representative was not accurate, in which case Comcast needs to take steps to advise its personnel as to the specific accommodations that Comcast has made in compliance with the R&O and assure that this information is made available to its customers. With this possibility in mind, I am sending a copy of this letter via Certified Mail, Return Receipt Requested, to counsel for Comcast so that the company will have an opportunity to indicate whether the information I received from its customer service representative was incorrect and, if so, to clarify the transitional measures that Comcast has adopted so as to “ensure that encrypting cable signals won't limit consumers from using an ever-growing number of Internet-connected, third-party video devices, and keep barriers low for video device innovators” as well as enabling customers with Clear QAM HDTV receivers to continue to receive full HDTV signals on basic cable channels without the need to incur additional set-top box charges.

If, however, Comcast confirms the accuracy of the information that was provided by its customer service representative regarding these matters – or if the company declines to respond to this letter – I would respectfully request that the Commission consider and pursue the following specific actions:

- (1) **FIND** that Comcast is not in compliance with the specific consumer protection requirements as adopted in the R&O;
- (2) **ISSUE AN ORDER** staying further implementation of basic cable encryption, and requiring the removal of already-implemented basic cable encryption, by Comcast and by any of the

6. *Preserving the Open Internet*, GN Docket No. 09-191; *Broadband Industry Practices*, WC Docket No. 07-52, Report and Order FCC 10-201, Adopted December 21, 2010, Released December 23, 2010, at paras. 2-3.

other five MSOs whose transitional solutions do not comply with the consumer protection provisions of the R&O; and

- (3) **INITIATE A FURTHER NOTICE OF PROPOSED RULEMAKING** for the purpose of undertaking a detailed technical analysis of the consumer and competitive benefits of continued unencrypted Clear QAM transmission of non-premium basic cable channels so as to encourage continued investment and innovation in these technologies and ensure robust competition in all cable-related customer premises equipment (CPE) markets.

For the various reasons that were well-stated by a number of parties submitting comments in response to the NPRM,⁷ the elimination of unencrypted basic cable services and Clear QAM is extremely detrimental to consumers and to firms producing IP-enabled Clear QAM devices, while offering limited operational benefits to the MSOs few of which would likely be flowed through to their customers in this highly concentrated market where rates are not set in relation to the underlying costs of the cable services. The apparent failure of Comcast, and perhaps other MSOs as well, to adhere to the modest and temporary commitments the cable operators themselves had made to the Commission serves only to underscore the critical importance, at this time, of reviewing and reopening the decision to allow the MSOs to proceed with encryption of their basic cable services.

Respectfully submitted,



Dr. Lee L. Selwyn
President
Economics and Technology, Inc.

Attachment

c.c.: Jonathan Friedman, Counsel for Comcast Corporation
William T. Lake, Chief, Media Bureau
Nancy Murphy, Associate Chief, Media Bureau
Alison Neplokh, Chief Engineer, Media Bureau
Steven Broeckert, Senior Deputy Chief, Policy Division, Media Bureau
Brendan Murray, Attorney Advisor, Media Bureau

7. See, in particular, *Reply Comments of Hauppauge Computer Works, Inc.* December 22, 2011; Letter from Julie M. Kearney, Vice President, Regulatory Affairs, Consumer Electronics Association, to Marlene H. Dortch, Secretary, FCC, March 15, 2012; *Comments of the City of Boston, Massachusetts*, November 28, 2011.



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ATTACHMENT 1

IMPORTANT SERVICE MESSAGE:

On August 27, 2013, Comcast will start encrypting Limited Basic service on your cable system.

If you have a set-top box, digital adapter, or a retail CableCARD™ device connected to each of your TVs, you will be unaffected by this change. However, if you are currently receiving Comcast's Limited Basic service on any TV without equipment supplied by Comcast, you will lose the ability to view any channels on that TV.

If you are affected, you should contact Comcast at **855-860-8989** to arrange for the equipment you need to continue receiving your services. In such case, you are entitled to receive equipment at no additional charge or service fee for a limited period of time. The number and type of devices you are entitled to receive, and for how long, will vary depending on your situation:

- If you are a Limited Basic customer and receive the service on your TV without Comcast-supplied equipment, you are entitled to up to two devices for two years (five years if you also receive Medicaid).
- If you subscribe to a higher level of service and receive Limited Basic service on a secondary TV without Comcast-supplied equipment, you are entitled to one device for one year.

You can learn more about this equipment offer and eligibility at comcast.com/digitaladapterinfo or by calling 855-860-8989.

To qualify for any equipment at no additional charge or service fee, you must request your equipment between July 28, 2013 and December 24, 2013 and satisfy all other eligibility requirements.

You can learn more about this equipment offer and eligibility at comcast.com/digitaladapterinfo or by calling 855-860-8989.