

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Basic Service Tier Encryption)	MB Docket No. 11-169
)	
Compatibility Between Cable Systems and)	PP Docket No. 00-67
Consumer Electronics Equipment)	
)	
)	
)	

COMMENTS OF THE CITY OF NEW YORK

The City of New York (“City”) hereby submits the following comments in response to the Federal Communications Commission’s (“the Commission”) Notice of Proposed Rulemaking (“Notice”) in the above-captioned proceeding.¹ In the Notice, the Commission tentatively concludes that allowing cable operators to encrypt the basic service tier in all-digital systems will not substantially affect compatibility between cable service and consumer electronics equipment for most subscribers.² Nevertheless, the Commission recognizes that there is at least a small group of consumers who will be affected by this change in policy, and proposes certain transitional consumer protection measures to minimize disruption to these subscribers.³

The City provides below its recommendations on how such a change in policy should be implemented. In the City’s view, a temporary, as opposed to permanent,

¹ *In the Matters of Basic Service Tier Encryption*, MB Docket No. 11-169 and *Compatibility Between Cable Systems and Consumer Electronics Equipment*, PP Docket No. 00-67 (rel. Oct. 14, 2011) (“Notice”).

² *Notice* at ¶ 1.

³ *Id.*

removal of the basic-tier only encryption ban for all-digital systems would be more appropriate, with an opportunity to revisit the issue after a set time-period. Irrespective of whether the ban is lifted on a temporary or permanent basis, the City supports the transitional customer protection measures proposed by the Commission, along with certain modifications.

Given the dynamic nature of the consumer electronics market, the City recommends that any lifting of the encryption prohibition be done on a temporary basis. Historically, the Commission's prohibition on basic tier encryption was based on the assumption that a significant number of subscribers were negatively affected by basic tier encryption. Indeed, because standard television technology was based for decades on analog signal reception, many subscribers who chose to receive basic tier-only service could conveniently receive such service using widely available, standard television equipment without the additional expense and inconvenience of cable operator-provided set-top boxes (or similar operator-supplied overlay equipment). In the Commission's view, the burden of encryption on such subscribers, who would lose the ability to access basic tier signals directly through their standard television consumer electronics equipment, generally outweighed the benefits of encryption. As a result, the Commission found that the balancing of interests called for in 47 U.S.C. §544a (Consumer Electronics Compatibility) suggested that encryption of basic tier signals should generally be barred.

In the current Notice, the Commission states that, with the move to all-digital systems, certain changes have effectively limited the number of subscribers that might be impacted by lifting the encryption ban.⁴ The reasoning is that in an all-digital

⁴ Notice at ¶¶ 3-4.

environment, basic tier encryption would only affect those customers with digital TVs (i.e., those that enable reception of non-encrypted digital signals without a set-top box) who subscribe only to the basic tier. According to the Commission, subscribers to higher tiers need a device from the cable operator, because many of the programs on the cable programming service tier (“CPST”) are encrypted, as per agreements with the programmers.⁵ Those who subscribe only to the basic service tier, but have older televisions (i.e., those without QAM tuners) also need a device to view the basic service tier in an all-digital system. Thus, the Commission tentatively concludes that in all-digital systems, where the cable operator has implemented the appropriate customer protection requirements, the costs of retaining the cable encryption ban (e.g., scheduling service appointments, costs of truck rolls, etc.) outweigh the benefits of retaining it (e.g., ensuring the continued utility of devices with clear-QAM tuners).⁶

However, this reasoning only holds when an extremely small number of subscribers have purchased equipment that would allow a basic tier-only customer to view non-encrypted digital television signals without a set-top box. The flat screen television industry and related consumer electronics technology providers continue to refine off-the-shelf equipment with added features and dropping prices. It is thus likely that over a relatively short span of time a significant number of basic tier customers (and others) will be able to obtain new television sets with QAM tuners, or similar digital-signal-compatible technology, as a standard or requested feature. If this happens, the burden of acquiring a set top box or similar operator-provided technology to access the

⁵ Notice at ¶ 3.

⁶ Id. at ¶ 8.

basic tier-only may affect a greater number of subscribers, warranting a future review of the issue to ensure consistency with 47 U.S.C. 544a.

Consequently, if the Commission lifts the ban, the City urges that this be done on a temporary basis with a review in a reasonable time, such as three (3) years, to evaluate the burden on basic-tier only subscribers.⁷ At that time, the Commission can review whether the facts underlying its current tentative conclusion are still the same.

The City recommends that any lifting of the ban, temporary or otherwise, be accompanied by the type of consumer protection measures the Commission proposes in the Notice, along with certain modifications. In the Notice, the Commission refers to the transitional customer protection measures implemented in a previous waiver of the ban granted to Cablevision.⁸ The Commission states that similar measures are “appropriate and necessary for purposes of relaxing the encryption ban”⁹ Indeed, based on information available to the City, it appears that the Cablevision transition to encryption of the basic tier led to minimal subscriber disruption. Consequently, the City recommends implementation of similar customer protection measures to the extent the encryption ban is now waived more generally as contemplated in the Notice.

As may currently be the case with other cable systems in the country, Cablevision was transmitting its basic tier in analog at the time that its waiver petition was pending

⁷ The City also notes that basic tier subscription and reception issues remain relevant even in an effective competition environment. As the City has previously observed (City of New York, *In the Matter of Comments Regarding Petitions for Declaratory Ruling Regarding Public Educational, and Governmental Programming Channels, Comments of the City Of New York* (2009)), the plain language of 47 U.S.C. §543(7)(A) requires that each cable operator must provide its subscribers with a separately available basic service tier and this subsection, unlike other subsections of Section 543, does not include or incorporate by reference any sunset in conditions of effective competition.

⁸ See Notice at ¶ 12 (discussing *Cablevision Systems Corporation’s Request for Waiver of Section 76.630(a) of the Commission’s Rules*, 25 FCC Rcd 134 (2010) (“*Cablevision Waiver Order*”).

⁹ Notice at ¶ 12.

with the Commission.¹⁰ Thus, the Cablevision Waiver Order addressed two forms of customer disruption. Both the disruption associated with the initial conversion of the basic tier to digital, as well as that stemming from the subsequent encryption of the basic tier.

For those basic-only subscribers with analog televisions, Cablevision, in conjunction with its transition to all-digital committed to offer: “(a) current basic-only subscribers up to two set-top boxes or CableCARDS without charge for up to two years, (b) digital subscribers who have an additional television set currently receiving basic-only service one set-top box or CableCARD without charge for one year, and (c) current qualified low-income basic-only subscribers up to two set-top boxes or CableCARDS without charge for five years.”¹¹ In addition, to mitigate any harm to consumers that might result from encryption of the basic tier, Cablevision committed to provide its existing basic-only subscribers with clear-QAM devices up to two set-top boxes or CableCARDS without charge for up to ten years.¹²

Given the current economic climate, the City urges the Commission to double the time periods for the transitional customer protection measures listed above that would apply to those basic-only subscribers with analog television sets. At a time when many due to economic hardship are having to “make do” with less, subscribers should not be penalized for their decision not to “upgrade” their consumer electronics devices or to limit their service orders.

¹⁰ See Reply Comments of Cablevision Systems Corporation, MB Docket No. 09-68, at n.1 (filed Nov. 16, 2009) (“Reply Comments of Cablevision”).

¹¹ See *Cablevision Waiver Order* at ¶ 5; and Reply Comments of Cablevision, at 2.

¹² *Cablevision Waiver Order* at ¶ 5.

Finally, the *Cablevision Waiver Order* also contained certain reporting requirements, which the Commission should adopt if it opts to lift the basic-tier encryption ban in all-digital environments, either on a permanent or temporary basis.¹³ This will enable the Commission to monitor how cable operators on a nationwide basis are handling the transitions associated with lifting of the ban.

¹³ *Notice* at n.37.

CONCLUSION

In short, the City recommends that, in light of rapid changes in the consumer electronics market, the Commission should revisit after a set time-period any decision to lift the encryption prohibition for the basic service tier in all-digital systems. To the extent the prohibition is lifted, the City supports the implementation of the transitional customer protection measures contained in the *Cablevision Waiver Order*, with the longer time periods discussed above.

Respectfully submitted,

/s/ _____

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