



PUBLIC NOTICE

Federal Communications Commission
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DA 09-2094

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MEDIA BUREAU ACTION

MEDIA BUREAU SEEKS COMMENT ON CABLEVISION'S REQUEST FOR WAIVER OF THE PROHIBITION ON ENCRYPTION OF THE BASIC SERVICE TIER

MB Docket No. 09-168

Comment Date: October 22, 2009

Reply Comment Date: November 6, 2009

Cablevision Systems Corporation ("Cablevision") has filed a request pursuant to Section 76.7 of the Commission's rules¹ for waiver of Section 76.630(a) of the Commission's rules with respect to its New York City franchise areas.² Section 76.630(a) of the Commission's rules prohibits a cable operator from encrypting the Basic service tier. The Basic service tier contains local broadcast stations and Public, Educational, and Government access channels, and may contain other cable programming.

Cablevision's request describes its plans to convert its New York City franchise areas to an all-digital system, and asserts that grant of the requested waiver "will reduce costs, improve customer service, reduce fuel consumption and CO₂ emissions and have virtually no negative impact on customers."³ Cablevision argues that its requested waiver is justified by the benefits that will result from its transition, including allowing Cablevision to offer its subscribers an easier and more efficient way to activate and terminate service without appointments, and enhance security of the cable network.⁴ Cablevision also maintains that Commission precedent supports grant of the requested waiver.⁵

¹ 47 C.F.R. § 76.7.

² 47 C.F.R. § 76.630(a).

³ Waiver Request at 1.

⁴ *Id.* at 1, 3-6.

⁵ *Id.* at 5-8 (citing *Waitsfield Cable Company Petition for Waiver of Section 76.630(a) Basic Tier Scrambling*, 16 FCC Rcd 18859 (2001); *Liberty Cablevision of Puerto Rico, Inc. Petition for Waiver of Section 76.630(a) Basic Tier Scrambling*, 15 FCC Rcd 15064 (2000); *Centennial Puerto Rico Cable TV Corp. Petition for Waiver of Section 76.630(a) Basic Tier Scrambling*, 18 FCC Rcd 7736 (2003)).

Cablevision asserts the Commission has found that the purpose of the rule prohibiting encryption of the Basic tier is to limit the additional cost and inconvenience of the equipment that consumers would need to view encrypted analog programming in an otherwise rate-regulated tier. Cablevision emphasizes that if its waiver is granted, and it transitions to an all-digital system with an encrypted Basic tier, the issue of cost and inconvenience for subscribers would be moot because nearly all of its subscribers will have either a digital set-top box or CableCARD-equipped device to view digital programming, and by extension, encrypted programming.⁶ All of these devices have some form of conditional access.

Cablevision acknowledges, however, that grant of this waiver will affect subscribers with television sets equipped with digital cable tuners (quadrature amplitude modulation or “QAM” tuners) who subscribe only to broadcast Basic service.⁷ Currently, Basic tier subscribers, and some other subscribers who have additional television sets without set top boxes, can rely on the digital cable tuner in their television to receive Basic tier programming without the need to obtain a box. However, if the Basic tier is encrypted, these subscribers would need to buy or rent additional equipment (either a set-top box or a CableCARD)

We seek comment on Cablevision’s request.

This proceeding will be treated as “permit but disclose” for purposes of the Commission’s *ex parte* rules.⁸ As a result of the permit-but-disclose status of this proceeding, *ex parte* presentations will be governed by the procedures set forth in Section 1.1206 of the Commission’s rules applicable to non-restricted proceedings.⁹

Comments and oppositions are due October 22, 2009. All filings must be submitted in MB Docket No. 09-168. Pleadings sent via e-mail to the Commission will be considered informal and will not be part of the official record. Comments and oppositions filed must indicate that they have been served on Petitioner. All comments and oppositions must be served on counsel for Petitioner:

Howard J. Symons
Mintz Levin
701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Petitioner’s reply is due November 6, 2009.

Comments may be filed using: (1) the Commission’s Electronic Comment Filing System (ECFS), (2) the Federal Government’s eRulemaking Portal, or (3) by filing paper copies.¹⁰

Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.

For ECFS filers, in completing the transmittal screen, filers should include their full name, U.S. Postal service mailing address, and the applicable docket number: MB Docket No. 09-168. Parties may also

⁶ *Id.* at 2.

⁷ *Id.* at 7-8.

⁸ *See* 47 C.F.R. §§ 1.1200-1.1216.

⁹ 47 C.F.R. § 1.1206.

¹⁰ *See Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-113, Report and Order, 13 FCC Rcd 11322, 11326, para. 8 (April 6, 1998).

submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message: “get form”. A sample form and instructions will be sent in response.

Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.

The Commission’s contractor will receive hand-delivered or messenger-delivered paper filings for the Commission’s Secretary at 236 Massachusetts Avenue, NE, Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.

Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554.

One copy of each pleading must be sent to Brendan Murray, Media Bureau, Room 4-A737, 445 12th Street, S.W., Washington, D.C. 20554 or Brendan.Murray@fcc.gov.

Copies of the Waiver Request and any subsequently filed documents in this matter are also available for inspection in the Commission’s Reference Information Center:

445 12th Street, S.W.
Washington, D.C. 20554
(202) 418-0270

Alternate formats of this Public Notice (computer diskette, large print, audio recording, or Braille) are available to persons with disabilities by contacting the Consumer and Governmental Affairs Bureau at (202) 418-0530 or (202) 418-7365 (TTY).

For further information, contact Brendan Murray of the Media Bureau, (202) 418-2120. Press inquiries should be directed to David Fiske, (202) 418-0513. TTY: (202) 418-7172 or (888) 835-5322.