

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

In the Matter of	)	
	)	
Consumer Information and Disclosure	)	CG Docket No. 09-158
	)	
Truth-in-Billing and Billing Format	)	CC Docket No. 98-170
	)	
IP-Enabled Services	)	WC Docket No. 04-36

**REPLY COMMENTS OF THE  
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION**

The National Cable & Telecommunications Association (“NCTA”) hereby replies to the comments filed in response to the Notice of Inquiry in the above-captioned proceeding.<sup>1</sup> As demonstrated by the comments, cable operators are taking a variety of approaches to meet the informational needs of consumers. In fact, the competitive nature of the marketplace demands that cable operators do so or risk losing business to alternative providers. A fair examination of the record in this proceeding should lead the Commission to conclude that increasing regulatory burdens in this area on cable operators and their telephone and wireless affiliates would be unnecessary, costly, and risk stalling the roll-out of innovative new services.

The array of services and packages available to consumers from cable operators in today’s communications marketplace could hardly have been imagined only a few years ago. Not so long ago, cable operators typically offered only basic cable service, an optional enhanced basic tier, and several premium per-channel movie services. Just with respect to traditional cable television services, cable operators now offer not only the analog basic and enhanced basic programming tiers and premium movie services that have long been available, but also offer multiple tiers of

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<sup>1</sup> *In re Consumer Information and Disclosure; Truth-in-Billing Format; IP Enabled Services*, Notice of Inquiry, 24 FCC Rcd 11380 (2009) (*Notice*).

digital and high definition programming services, hundreds of pay-per-view and free on-demand programs, digital video recording, and digital music channels. In addition, cable operators offer high-speed Internet service options as well as wireless and wireline telephone service.

Consumers are presented with a multitude of options provided by their local cable operators – options regarding packages of cable service, and options with respect to bundled offerings of combinations of video, Internet access, and telephone service. Remarkably, some of the commenting parties in this proceeding suggest that these choices are a *bad* thing. They maintain not only that the multiplicity of offerings confuses consumers but also that the *purpose* of bundling is to confuse consumers and to conceal the actual prices of the underlying services. According to comments jointly filed by the Consumer Federation of America, Consumers Union, Free Press, and others (“CFA *et al.*”), for example, “[s]ervice providers deliberately obscure the true monthly cost of services through numerous strategies, including fees and surcharges, mandatory bundles, and promotional periods.”<sup>2</sup> This is simply not the case.

It may be true that the varied menu of choices in the marketplace now available from cable operators is confusing to some customers. But cable operators’ efforts, as their comments in this proceeding show, are directed at ameliorating and preventing such confusion. For example, Comcast reported that it dedicates substantial company resources to improving communications with customers, including “investing heavily in extensive customer outreach initiatives, such as surveys and focus groups, that allow Comcast to communicate directly with, and receive feedback from, more than *one million* of [its] customers each year.”<sup>3</sup> Likewise, as Time Warner Cable explains, it is “committed to making continual improvements to its

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<sup>2</sup> Consumer Federation of America, Consumers Union, Free Press, Media Access Project, New America Foundation, and Public Knowledge (“CFA *et al.*”) Comments at 8.

<sup>3</sup> Comcast Comments at 2.

marketing, customer care, and billing practices” and it acknowledges that its ability “to convey relevant information in an easily understandable manner will be vital to its long-term survival.”<sup>4</sup>

Cable operators continually update their communications to ensure that consumers can readily obtain accurate and relevant information regarding what is available to them and what they have chosen to purchase.<sup>5</sup> As the comments point out, alleviating consumer confusion cannot be achieved merely by listing all of the available options. Given all the options, it’s just as possible to confuse consumers by presenting too much information as by presenting too little. Each company has its own unique assortment of service offerings, bundles, and promotions. And each operator’s determination of the most appropriate format for describing those options on advertisements, websites, live calls, and bills reflects its own particular circumstances.

Cable operators recognize that consumers are entitled to a ready way to find the information that matters to them regarding the content and characteristics of the packages and services that are offered to them. Including *all* of the information important to *all* consumers in a standardized disclosure form in advertising materials or on monthly bills, however, would be unwieldy, confusing, and ultimately useless – if not annoying – to most customers.<sup>6</sup> That’s why

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<sup>4</sup> Time Warner Cable Comments at 7.

<sup>5</sup> NCTA Comments at 7-8 (explaining, among other things, that cable operators “frequently review and revise bill formats as necessary to provide clear and prominent information to customers and address any areas of potential confusion” and that “cable operators dedicate significant resources to the development of consumer-friendly websites in response to consumer input”); Comcast Comments at 4 (stating that Comcast is “constantly [] looking for new and innovative ways to improve the customer experience, respond to customer needs, and empower customers to make informed decisions regarding their service”); Time Warner Cable Comments at 14 (noting that Time Warner Cable “constantly evaluates its procedures and solicits feedback from customers so it can make refinements”).

<sup>6</sup> As Comcast explains,

Ads typically focus on the features that customer find most helpful for understanding the service and distinguishing among various service providers’ options. For example, with respect to our high-speed Internet service, our advertisements typically focus on price and provisioned connection speeds because these are the key facts that consumers tell us they want to know.

Comcast Comments at 5.

cable operators continually work to enhance their websites and other consumer-facing materials with easier ways to obtain information of particular importance to consumers.<sup>7</sup> And they make efforts to clarify their bills to provide consumers not only the itemized price and terms of the services (and promotions) they have chosen, but also the web address where they can find any additional information and the phone number they can call to speak to a customer service representative for additional details.<sup>8</sup> As described in the comments, cable operators continue to innovate their customer service practices in response to consumer demand, as exemplified by the use of web-based services such as Twitter to identify and resolve issues, and by providing customer service assistance via online chats.<sup>9</sup>

While some commenters suggest that consumer disclosures should be standardized in order to enable accurate comparisons of service offerings,<sup>10</sup> such one-size-fits-all templates are not suitable for the ever-changing variety of packages and ever-evolving array of services offered by cable operators. One size-fits-all disclosures are best suited for standardized products – such as credit cards, where disclosures focus on interest rates and annual fees. But where cable

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Telecommunications For The Deaf & Hard Of Hearing, Inc., *et al.* (“TDI”) argue that “information about closed captioning and other access features for subscription television services must be available and accessible in order to adequately inform consumers, so that they are able to make informed decisions about products and services.” TDI Comments at 8. They assert that “most cable set-top boxes (with the exception of set-top boxes for the highest tier of high definition television services) do not have the capacity to decode and deliver digital closed captions as part of the digital video stream for display on televisions, including analog televisions” and that consumers need to be informed of this alleged deficiency. In fact, in almost all cases, captioning information is delivered to consumers’ televisions and can readily be displayed using the closed captioning capabilities of such televisions. Only in limited circumstances is it necessary for the set-top box to decode the captioning information for display on the television – and in all such cases, the box *is* capable of doing so. To the extent that there are issues of how best to ensure that consumers understand how to use this set-top feature in those limited circumstances, the Commission’s Technical Advisory Committee is already addressing the matter. *See* Public Notice, FCC, *FCC Announces Establishment of Technical Working Group to Study Digital Closed Captioning and Video Description Issues, Appointment of Members, Agenda for First Meeting*, DA 09-995 (May 1, 2009), available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DA-09-995A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-09-995A1.pdf).

<sup>7</sup> *See, e.g.*, NCTA Comments at 8-9; Comcast Comments at 5-11; Time Warner Cable Comments at 7-11, 13.

<sup>8</sup> *See, e.g.*, NCTA Comments at 4-6, 7-8; Comcast Comments at 12-15; Time Warner Cable Comments at 11-13.

<sup>9</sup> *See, e.g.*, NCTA Comments at 8-9, 11; Comcast Comments at 17-18; Time Warner Cable Comments at 9.

<sup>10</sup> *See, e.g.*, CFA *et al.* Comments at 21; Nat’l Ass’n of State Util. Consumer Advocates Comments at 33.

operators compete by offering different service packages – or even different services – standardized disclosure forms, such as the so-called “Schumer Box” proposals that some parties support, are unlikely to facilitate accurate (or otherwise helpful) comparisons.<sup>11</sup>

Some parties appear to recognize that the uniform disclosures they favor would require uniform service offerings – a requirement that may make sense for simple, no-frills, standalone products or services but certainly not for the broad array of packages and services offered by cable operators. Citizens Utility Board, for example, proposes not only that “all companies providing local phone service be required to offer at least four standard, basic calling plans -- often referred to as ‘plain vanilla’ plans” but also that “these uniform plans be the *only ones offered* to new customers when establishing service, with the provision that after the first month’s bill they can opt out and choose a more expensive plan.”<sup>12</sup> Requiring that all service providers offer their customers only certain, specified packages of communications services would, to be sure, facilitate price comparisons among competing providers. But such a requirement would certainly result in much dissatisfaction among consumers, and would stifle competition and innovation in the development, selection, and packaging of such services – even if it were not utterly impractical and beyond the scope of the Commission’s authority.<sup>13</sup>

Indeed, the Commission’s authority to adopt and enforce *any* uniform requirements and standards in this area for competing providers of video, Internet access, and telephone services is

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<sup>11</sup> The Commission has requested comment on a more detailed set of proposed disclosures for broadband Internet service providers in another proceeding. *See In re Preserving the Open Internet, Broadband Industry Practices*, Notice of Proposed Rulemaking, FCC No. 09-93, Dkt Nos. 09-191 and 07-52 ¶¶118-32 (rel. Oct. 22, 2009). We will be providing comment on those proposals in that docket.

<sup>12</sup> Citizens Util. Bd. Comments at 4 (emphasis added).

<sup>13</sup> Disclosure rules that effectively dictate the content and the packaging of video programming services would also, of course, be directly at odds with the First Amendment and with Title VI of the Communications Act, which precludes the Commission and state and local governments from imposing such requirements. *See, e.g.*, 47 U.S.C. § 544.

much murkier and problematic than the proponents of such requirements suggest. CFA *et al.*, for example, suggests that the Commission has ample authority to impose regulations on the provision of video programming services pursuant to Section 632 of the Communications Act, of telecommunications services pursuant to Title II, and of Internet service and non-Title II telephone services pursuant to ancillary jurisdiction under Title I.<sup>14</sup> But it is not that simple.

For example, Section 632 of the Act provides that *franchising authorities* “may establish and enforce customer service requirements of the cable operator.”<sup>15</sup> The Commission’s authority is limited to establishing standards by which operators “may fulfill” any such requirements.<sup>16</sup> Assuming the Commission could adopt, pursuant to Section 632, a comprehensive set of standards governing bills and other disclosures regarding pricing and packaging of video, Internet access, and telephone services provided by a cable operator, any such standards would not automatically lead to uniform enforcement by the Commission but would be subject to discretionary (and non-uniform) enforcement by franchising authorities. This is just one example of the thicket of jurisdictional issues that the Commission would face were it to attempt to adopt uniform disclosure requirements in this area.

For all these reasons, efforts to establish one-size-fits-all rules in this area would be problematic for providers, of dubious value to consumers, and raise difficult jurisdictional and constitutional issues. Nevertheless, many providers – including cable operators who filed comments in this proceeding – have suggested an openness to joining together in inter- and intra-industry efforts to exchange ideas and perhaps develop voluntary guidelines and best practices for ensuring that consumers have access to the information they want and need in the most

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<sup>14</sup> See CFA *et al.* Comments at 30-35.

<sup>15</sup> 47 U.S.C. § 552(a).

<sup>16</sup> 47 U.S.C. § 552(b).

helpful and least confusing way.<sup>17</sup> The intense competition among providers of video, Internet access, and telephone service has resulted not only in efforts by cable operators to offer consumers the greatest value at the best price but also in efforts to win and keep customers with superior customer service.

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As indicated by their support for “best practices” initiatives, cable operators are already committed to finding the best ways to provide – not to obscure – the information that their customers need and want. Before embarking on a counterproductive path towards rulemaking that might result in additional regulatory burdens for cable operators, the Commission should continue to monitor the cable industry’s ongoing efforts to improve and clarify their communications with their customers. The record in this proceeding suggests that those efforts will produce satisfactory results that would only be frustrated and impeded by the imposition of additional regulatory requirements for cable operators.

Respectfully submitted,

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<sup>17</sup> See, e.g., Time Warner Cable Comments at 14-20; see also AT&T Comments at 33-36; U.S. Telecom Ass’n Comments at 9-11.