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

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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 TIME WARNER CABLE INC.

Time Warner Cable Inc. ("TWC") hereby submits this reply to the opening comments filed in response to the Commission's Notice of Inquiry in the above-captioned proceedings.[1] TWC is proud of its customer communications, and the record indicates that TWC's consumer-friendly disclosures and transparent pricing policies compare favorably to many service providers' business practices. The wide variation in providers' disclosure practices, together with the demonstrated need for flexibility in an industry sector marked by constant change, confirms that industry participants and consumers would benefit from the development of best practices. Many commenters endorse such an approach. While a handful of interest-group commenters attack the disclosure practices of leading broadband providers, including TWC, such complaints are misplaced and fail to justify new regulatory mandates.

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[1] *Consumer Information and Disclosure; Truth-in-Billing and Billing Format; IP-Enabled Services*, Notice of Inquiry, CG Docket No. 09-158, CC Docket No. 98-170, WC Docket No. 04-36 (rel. Aug. 28, 2009) ("NOI").

DISCUSSION

I. THE COMMISSION SHOULD USE THIS PROCEEDING TO HIGHLIGHT AND ENHANCE THE DISCLOSURE PRACTICES THAT ALREADY EXIST IN THE MARKETPLACE

The record demonstrates that TWC and many other service providers supply consumers with an abundance of product-related information at each stage of the purchasing process. Indeed, most service providers filing comments recognize that their marketplace survival rests on their ability to meet consumer demand for relevant and timely information.[2] TWC likewise places great value on transparency and the need to empower customers to make informed purchase decisions, and it remains committed to providing clear and comprehensible information to consumers. As described at length in its opening comments, TWC employs a variety of technologies and distribution channels to distribute information to consumers, including a website that also offers valuable plan management tools.[3]

Many commenters recognize that comparing and contrasting such business practices would offer a valuable opportunity to determine which approaches best serve customers' interests, while preserving the flexibility needed to differentiate services in the competitive marketplace.[4] Perhaps the best argument for voluntary best practices can be found in ill-advised

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[2] *See, e.g.*, Comcast Corporation ("Comcast") Comments at 1-4; AT&T Inc. ("AT&T") Comments at 9-11; DISH Network L.L.C. Comments at 2-4; Verizon and Verizon Wireless ("Verizon") Comments at 14-16; SouthernLINC Wireless Comments at 1-2.

[3] *See* TWC Comments at 7-13.

[4] *See, e.g.*, Verizon Comments at 49-63; Qwest Communications International Inc. ("Qwest") Comments at 50-55; Comcast Comments at 23-29; AT&T Comments at 36-44; Rural Cellular Association Comments at 11-17; *see also* Mobile Marketing Association ("MMA") Comments (discussing generally the MMA's Consumer Best Practices Guidelines and other industry models for best practices); Cellular Telecommunications Industry Association ("CTIA") Comments at 20-24 (describing how the CTIA Consumer Code evolves to provide standard and best practices for wireless carriers).

calls for rigid mandates that would merely foster confusion. For example, some commenters argue that Commission intervention is needed to force broadband providers to disclose the "actual" download and upload speeds a subscriber will experience, rather than the maximum available throughput speeds.[5] The reality is that TWC and other broadband providers publicize maximum speeds because that is the clearest available benchmark for consumers to assess broadband performance capabilities. When TWC designs and builds broadband facilities, the key metric it employs is maximum throughput during periods of peak performance, as the actual speeds that will be achieved at any given time depend on many variables that are extremely difficult to predict.[6] Indeed, because actual speeds depend on factors beyond the broadband provider's knowledge or control, and thus are likely to vary from website to website and from hour to hour, predictions of actual throughput run the risk of being unreliable and confusing. By contrast, the standard industry practice of describing maximum performance capabilities—much like the EPA fuel ratings or 0-60 acceleration times of automobiles—enables consumers to make apples-to-apples assessments regarding relative performance of a provider's service, irrespective of the fact that real-world conditions may make it difficult to achieve those maximum capabilities in certain circumstances (a fact that TWC clearly and conspicuously discloses to its subscribers).

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[5] *See, e.g.*, Comments of Consumer Federation of America ("CFA"), Consumers Union, Free Press, Media Access Project, New America Foundation, and Public Knowledge ("Comments of CFA *et al.*") at 25; New America Foundation, Open Technology Initiative, "Broadband Truth-in-Labeling," at 1.

[6] *See, e.g.*, What Affects Speed? | Time Warner Cable | Carolinas, *at* http://www.timewarnercable.com/Carolinas/learn/hso/whataffectsspeed.html (listing factors that affect actual speeds, including the quality of the customer's equipment and the volume of data traffic at any given time on the network); Verizon Comments at 23-24, 34 (citing Verizon | FiOS Internet: FAQs, *at* http://www22.verizon.com/residential/fiosinternet/faq/faq.html#answer_1_4); Qwest, Internet Help | Connections | Troubleshooting | Slow Connections, *at* http://www.qwest.com/internethelp/connections/slow_connection_landing.html.

TWC will continue to refine its communications regarding broadband capabilities and other service attributes, as it must to keep pace with technical and other developments.[7] And best practices can help all providers find more effective ways to communicate. But, as the foregoing discussion illustrates, one-size-fits-all solutions are unlikely to be of any use in this rapidly changing industry sector. Tellingly, this same cautionary note has been sounded elsewhere by some of the very parties that urge the Commission to adopt regulation in this context. For example, Public Knowledge has opposed legislation that would, among other things, impose disclosure obligations in connection with peer-to-peer applications, specifically complaining that the legislation would limit flexibility and interfere with the development of new applications.[8] Putting aside the apparent inconsistency of advocating regulation for one category of participants in the broadband arena while opposing it for another, such assessments merely underscore the difficulty of crafting rules in this area and the value of relying on voluntary best practices instead.

II. COMMENTERS' ISOLATED CLAIMS THAT BROADBAND PROVIDERS MISLEAD THEIR CUSTOMERS ARE UNAVAILING

In addition to assailing broadband providers' use of maximum available broadband speeds, CFA and allied groups assert that TWC mischaracterizes the capabilities of its PowerBoost feature and, more generally, they criticize the Acceptable Use Policies established by leading broadband providers. Those attacks are misplaced.

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[7] Thus, to the extent that technological tools enable TWC to convey information about actual throughput speeds in a clear and helpful manner, TWC is eager to explore such measures.

[8] *See, e.g.*, *HR 1319, the P2P Bill is Back and Ready for Markup, at* http://www.publicknowledge.org/node/2674 (stating that the proposed "Informed P2P User Act," among other things, is both under- and over-inclusive, would legislate software development, and would force costly updates to existing products).

First, CFA's claim that TWC portrays the PowerBoost speed as the maximum throughput speed associated with a Road Runner tier is simply false. PowerBoost is an innovative technology that temporarily boosts download speeds above the listed maximum speed for the Road Runner Standard or Turbo tier at no additional charge. Specifically, where sufficient capacity is available at the node, PowerBoost jumpstarts delivery of large files and thereby reduces overall download times. Thus, PowerBoost enables a customer purchasing Road Runner Standard, with a usual maximum download speed of 10 Mbps, to enjoy an initial burst of speed up to 16 Mbps when downloading large files, such as video content.

While TWC naturally touts this significant benefit in advertisements and on its website, it does so in a truthful and non-misleading manner. Specifically, TWC's communications make plain that the temporary PowerBoost speeds exceed the maximum speeds that apply to the service tier more generally. In its comments, CFA alludes to a TWC webpage to support its claim of deception,[9] but the isolated text at issue is taken entirely out of context. CFA ignores the preceding description that makes abundantly clear that PowerBoost speeds are available only temporarily and only when sufficient capacity is available. A screen shot of a recent description of PowerBoost is attached as Exhibit A hereto; it makes clear that TWC's ordering process lists the maximum speeds associated with the relevant tiers, rather than the temporary speeds enabled by the PowerBoost feature, and it prominently describes that feature as offering "an extra burst of speed when downloading big files."[10]

Second, CFA's broadside on Acceptable Use Policies and other terms of service fares no better. In fact, in claiming that TWC (among others) imposes "excessive restrictions on a

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[9] *See* Comments of CFA *et al.* at 12-13 & Appendix B at Ex. 7.

[10] *See, e.g.*, Speed Levels | Time Warner Cable | Carolinas, *at* http://www.timewarnercable.com/Carolinas/learn/hso/roadrunner/speedpricing.html.

customer's service,"[11] CFA reveals its true objective of criticizing the *substance* of broadband usage policies, as opposed to the *accuracy or sufficiency of the disclosures* (*i.e.*, the subject matter of this proceeding). Thus, even apart from the fact that the complained-about restrictions may seldom (if ever) be invoked, and leaving aside that eliminating all restrictions (as CFA seems to propose) would be unwise from the standpoint of providing good service to customers and potentially dangerous, CFA's complaints are entirely beside the point.

In an apparent attempt to tie its attacks to the subject matter of this proceeding, CFA asserts that broadband providers hide their restrictions in "fine print legalese."[12] But TWC's disclosures prominently describe the usage restrictions at issue in the same font size as the remainder of the policy, and in plain English. Moreover, TWC's reservation of rights is similar to the terms of service commonly employed by popular providers of online applications and services (about which CFA apparently has no concern).[13] Whatever the merit of CFA's transparent effort to eliminate broadband use restrictions (and TWC submits that there is none), its trumped-up allegation of inadequate disclosures rings especially hollow.

Finally, CFA's assertion that TWC "spams" its customers and prevents them from refusing telephone solicitations is pure fiction.[14] Like most businesses, TWC communicates with its customers by e-mail and telephone. But, consistent with the premium TWC places on

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[11] Comments of CFA *et al.*, Appendix A at 6.

[12] Comments of CFA *et al.* at 15.

[13] *See, e.g.*, Google Terms of Service (describing various usage restrictions, unilateral termination provisions, liability limitations, and the like), *available at* http://www.google.com/accounts/TOS.

[14] *See* Comments of CFA *et al.*, Appendix A at 7.

customer choice and control, TWC allows customers to terminate either form of communication for marketing purposes, and nothing in its policies suggests otherwise.[15]

CONCLUSION

TWC believes that its customer communications set a standard of excellence, and the opening round of comments demonstrates that most other service providers adequately respond and adapt to consumer demands for service-related information. The Commission can facilitate information-sharing and further improvements in disclosure practices by overseeing the development of best practices. TWC stands ready to work with the Commission on such a public-private collaboration.

Respectfully submitted,

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October 28, 2009

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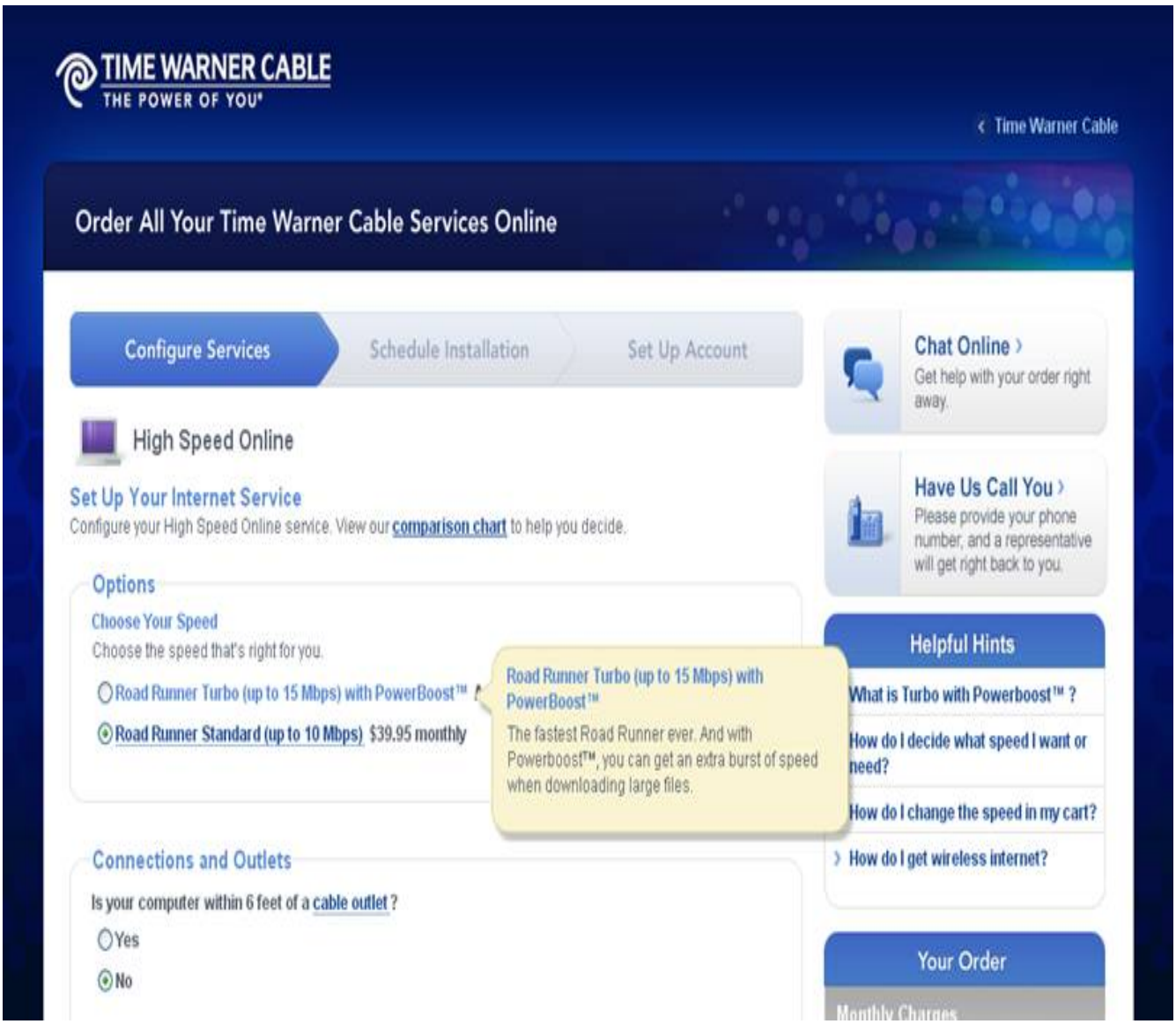
[15] TWC's policy correctly indicates that the presence of the subscriber's number on the national Do Not Call Registry will not signal an intention to curtail communications from TWC, in light of the established business relationship rule; for that reason, TWC advises customers who do not wish to receive telephone solicitations to request placement on its company-specific do-not-call list, in accordance with the Commission's rules.

Exhibit A


TIME WARNER CABLE
THE POWER OF YOU®
Time Warner Cable
Order All Your Time Warner Cable Services Online
Configure Services
Schedule Installation
Set Up Account
Chat Online
Get help with your order right away.
High Speed Online
Have Us Call You
Please provide your phone number, and a representative will get right back to you.
Set Up Your Internet Service
Configure your High Speed Online service. View our comparison chart to help you decide.
Options
Choose Your Speed
Choose the speed that's right for you.
Road Runner Turbo (up to 15 Mbps) with PowerBoost™
Road Runner Standard (up to 10 Mbps) $39.95 monthly
Road Runner Turbo (up to 15 Mbps) with PowerBoost™
The fastest Road Runner ever. And with Powerboost™, you can get an extra burst of speed when downloading large files.
Helpful Hints
What is Turbo with Powerboost™ ?
How do I decide what speed I want or need?
How do I change the speed in my cart?
How do I get wireless internet?
Connections and Outlets
Is your computer within 6 feet of a cable outlet ?
Yes
No
Your Order