

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

Inquiry Concerning the Deployment of	)	
Advanced Telecommunications Capability	)	
to All Americans in a Reasonable and	)	
Timely Fashion, and Possible Steps to	)	GN Docket No. 09-137
Accelerate such Deployment Pursuant to	)	
Section 706 of the Telecommunications	)	
Act of 1996, as amended by the Broadband	)	
Data Improvement Act	)	
	)	
A National Broadband Plan	)	GN Docket No. 09-51
For Our Future	)	
	)	
International Comparison and Survey	)	
Requirements in the Broadband	)	GN Docket No. 09-47
Data Improvement Act	)	

**COMMENTS OF THE  
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION  
ON NBP PUBLIC NOTICE #24**

The National Cable & Telecommunications Association (NCTA) hereby submits its comments in response to the Public Notice issued by the Commission in the above-captioned proceedings.<sup>1</sup>

**INTRODUCTION**

NCTA is the principal trade association for the U.S. cable industry, representing cable operators serving more than 90 percent of the nation’s cable television households and more than 200 cable program networks. The cable industry is the nation’s largest provider of high-speed Internet service (“broadband”) after investing over \$145 billion since 1996 to build two-way

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<sup>1</sup> See Public Notice, *Comment Sought on Broadband Measurement and Consumer Transparency of Fixed Residential and Small Business Services in the United States*, NBP Public Notice #24, DA 09-2474 (rel. Nov. 24, 2009) (“*Notice*”).

interactive networks with fiber optic technology. Cable companies also provide state-of-the-art competitive voice service to over 20 million customers.

With the *Notice*, the Commission seeks to gather additional information related to consumer transparency and measurement of fixed services.<sup>2</sup> As explained below, cable operators provide a great deal of information about their broadband services to consumers at every stage of the purchasing process. With respect to information regarding the “actual” speed of broadband services, we continue to encourage the Commission to consult with Internet engineering experts to develop measures that would be meaningful to consumers and not unduly burdensome to providers, rather than adopting new rules based on potentially flawed data or unwarranted assumptions.

### **1. Consumer Transparency**

The *Notice* requests information regarding “how to increase transparency (display, communication and comparability of information)” in fixed services.<sup>3</sup> Earlier this fall, NCTA filed comments in response to the Commission’s wide-ranging *Notice of Inquiry* examining whether truth-in-billing and consumer information regulation that applies to wireline and wireless services should be extended to other services, including subscription video and Internet services.<sup>4</sup> In our comments, NCTA described the myriad ways that the cable industry is working to meet the needs of consumers with respect to billing and information about service offerings,

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<sup>2</sup> *See id.* at 1-3.

<sup>3</sup> *Id.* at 1.

<sup>4</sup> *In re Consumer Information and Disclosure; Truth-in-Billing Format; IP Enabled Services*, Notice of Inquiry, 24 FCC Rcd 11380 (2009) (*Notice of Inquiry*). Unless otherwise designated herein, cites to comments and reply comments are to those filed on October 13, 2009 and October 28, 2009, respectively, in response to the *Notice of Inquiry* in CG Docket No. 09-158, CC Docket No 98-170, and WC Docket No. 04-36.

including broadband services.<sup>5</sup> Likewise, Comcast and Time Warner Cable submitted comments and reply comments demonstrating how they provide timely, accurate, and complete information to consumers about broadband services.<sup>6</sup> We incorporate these filings by reference and urge the Commission to consider the information contained therein as it formulates the National Broadband Plan.

Cable operators provide an extensive amount of information, in a variety of formats, to consumers to assist at all stages of the purchasing process, including choosing a provider, choosing a service plan, managing use of the service plan, and deciding whether and when to switch from an existing provider or plan.<sup>7</sup> To communicate with consumers, cable operators utilize direct mailings, advertising in mass media, billing inserts, toll-free numbers, and up-to-date, detailed information on their company websites.<sup>8</sup> As NCTA explained to the Commission,<sup>9</sup> 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>10</sup> For example, many cable operators are expanding the broadband service tools offered to consumers, including by

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<sup>5</sup> See Comments of the National Cable & Telecommunications Association (“*NCTA Consumer Information & Disclosures Comments*”) (attached). As noted in our comments, cable companies are already subject to billing and customer service standards at the federal, state, and local level. But the intensely competitive nature of the communications marketplace requires them to do more – to incorporate consumer-friendly practices in every aspect of their business in order to attract potential customers and keep existing ones, particularly with the advent of bundled video, voice, and Internet services. This means providing consumers with accurate information in a clear and understandable manner through a variety of means. *See id.* at 2.

<sup>6</sup> See generally Comcast Comments; Time Warner Cable Comments.

<sup>7</sup> See *NCTA Consumer Information & Disclosures Comments* at 9-11.

<sup>8</sup> See *id.* at 9-10.

<sup>9</sup> See Reply Comments of the National Cable & Telecommunications Association at 3 (“*NCTA Consumer Information & Disclosures Reply*”).

<sup>10</sup> See, e.g., *NCTA Consumer Information & Disclosures Comments* at 8-9; Comcast Comments at 5-11; Time Warner Cable Comments at 7-11, 13.

providing speed tests<sup>11</sup> and data usage meters.<sup>12</sup> Cable operators also continually 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, as well as web-based discussion forums, and by providing customer service assistance via online chats.<sup>13</sup>

As NCTA has explained previously, in the absence of clear evidence that cable operators are providing inadequate information and disclosure, there is no policy reason to impose new billing and consumer information regulation.<sup>14</sup> As Comcast observed, any Commission action in this area should be approached with caution, because “it risks disrupting marketplace-driven disclosure practices, impeding innovation, and overwhelming consumers with information they neither want nor need.”<sup>15</sup>

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<sup>11</sup> See, e.g., BendBroadband, *Internet Speed Test*, at [http://www.bendbroadband.com/residential/hsi\\_speed\\_test.asp](http://www.bendbroadband.com/residential/hsi_speed_test.asp) (last visited Dec. 14, 2009); Charter Communications, *Charter Speed Test*, at <http://speedtest.charter.com/> (last visited Dec. 14, 2009); Comcast Comments at 23 & n.34 (noting that “Comcast has launched a ‘speed test’ tool for Comcast high-speed Internet customers that allows them to measure their Internet connection speeds”). To the extent that a speed test accurately measures the performance a customer is receiving at a particular time, it may provide broadband subscribers some ability to assess how the actual speed they are experiencing compares to the advertised “up to” speed to which they subscribed. But, as explained below, data collected from these types of speed tests may be a poor tool to use for policymaking purposes.

<sup>12</sup> See Todd Spangler, *Comcast Tests Data-Usage Meter In Oregon*, Multichannel News (Dec. 1, 2009) (reporting that Comcast is testing a data usage meter in Portland that will allow subscribers to monitor how much Internet bandwidth is used by their household), available at <http://www.multichannel.com/article/391268-Comcast-Tests-Data-Usage-Meter-In-Oregon.php>; see also BendBroadband, *High Speed Internet FAQs* (explaining that BendBroadband provides subscribers two methods to determine their monthly data consumption, monthly usage can be viewed at [www.bendbroadband.com/usage](http://www.bendbroadband.com/usage) and monthly billing statements indicate the bandwidth consumed by the household in the previous month), at [http://www.bendbroadband.com/residential/sp\\_faq.asp?pageID=bbbs&subID=sfaq&adct=3#](http://www.bendbroadband.com/residential/sp_faq.asp?pageID=bbbs&subID=sfaq&adct=3#) (last visited Dec. 14, 2009).

<sup>13</sup> See, e.g., *NCTA Consumer Information & Disclosures Comments* at 8-9, 11; Comcast Comments at 17-18; Time Warner Cable Comments at 9.

<sup>14</sup> See *NCTA Consumer Information & Disclosures Comments* at 2-3. Moreover, government mandates that limit cable operators’ flexibility risk ultimately harming consumers by imposing unnecessary costs and burdens that could ultimately reduce consumer choice and raise prices. See *id.* at 3.

<sup>15</sup> Comcast Reply Comments at 4-5.

## 2. Measurement of Fixed Services

As indicated in the *Notice*, the Commission also seeks to “understand how Fixed Services could be better measured in the future.”<sup>16</sup> These questions presumably are intended to help the Commission develop data to address the purported “Consumer Information Gap” identified by the Broadband team.<sup>17</sup> According to the presentation made by the Broadband team last month, there is a concern that consumers are receiving speeds slower than advertised and are provided with inadequate information about the performance of their broadband connections.<sup>18</sup>

It is unclear how the Broadband team reached conclusions about this purported information gap. Notwithstanding the principles of transparency generally followed by the Commission in this proceeding, the bases for these conclusions have not been publicly disclosed, nor, to our knowledge, subjected to peer review. Until data supporting these conclusions is publicly released and subject to review, such data should not be relied upon by the Commission in formulating the National Broadband Plan.

As NCTA has previously explained, and the Commission itself has recognized, there are significant challenges associated with measuring and reporting the speed of a particular user’s broadband connection.<sup>19</sup> The speed of any particular broadband connection varies for a number

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<sup>16</sup> *Notice* at 2.

<sup>17</sup> See *Broadband Gaps*, Presentation to the Federal Communications Commission by the Omnibus Broadband Initiative at 12 (Nov. 18, 2009) (“November FCC Presentation”) (asserting that average “sustained” speed is 56% less than maximum “up to” speed), available at [http://www.fcc.gov/openmeetings/2009\\_11\\_18-ocm.html](http://www.fcc.gov/openmeetings/2009_11_18-ocm.html).

<sup>18</sup> *Id.*

<sup>19</sup> See *In re Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscriber Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscriber Data*, Report & Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd 9691 ¶ 22 (2008) (“We agree with commenters who suggest that considerable potential value exists in knowing actual broadband connection speeds that consumers experience, but we note that the record indicates that collecting such information directly from providers may impose significant burdens, and that other methods for gathering this information may exist.”); see also *id.* ¶ 36 (“The record indicates that factors beyond the control of service providers may compromise the ability of service providers to report actual speeds experienced by consumers.”).

of reasons, some that are controlled by the provider (*e.g.*, the distance between a DSL customer and the closest central office or remote terminal; the number of subscribers sharing a network; the capacity of a network) and many that are not (*e.g.*, the type, configuration, and number of computers and home gateway devices used in the home; the use, configuration, and interference of any WiFi in the home; whether a home computer is infected with spyware, a bot, viruses, or other malware; the distance to, and quality of, the servers and websites accessed by the user).<sup>20</sup>

Moreover, the varying nature of speed tests themselves may make them an unreliable basis for adopting specific conclusions or recommendations in the National Broadband Plan. Speed tests conducted on the same computer at the same time will typically reveal varying results depending on which speed test is used. The different outcomes are largely the result of the design aspects of the particular speed test, such as the location of and load on the servers used for the test, the number of simultaneous threads or connections utilized in the test, the size of the files transmitted in the test, the protocols used in the test, the distance between the user and the test server, and the networks those servers rely upon. The variances in these factors can significantly alter a given speed test result.

Because broadband providers are unable to control all of the factors that can influence a customer's speed, both within the home and on other components of the Internet, and because web-based speed tests can provide varying results depending upon their configuration and equipment, most broadband providers advertise "up to" speeds that are based on how the consumer's broadband connection is provisioned in the broadband network. As Time Warner Cable ("TWC") explained to the Commission:

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<sup>20</sup> Comments of the National Cable & Telecommunications Association, GN Docket Nos. 09-137, 09-51, & 09-47 (filed Aug. 31, 2009) at 6-7 ("*NCTA Broadband Definition Comments*").

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. 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).<sup>21</sup>

Advertising “up to” speeds is useful to consumers because it enables rough comparisons among providers. But it does not, and is not intended to, capture the actual performance a consumer can expect at any given time -- which can be less than, equal to, or even greater than, the advertised “up to” speed.

Furthermore, aggregate data reported by a website performing speed tests typically does not capture information about the service level to which a particular customer is subscribed. Consequently, it is not clear how the Broadband team could have concluded, based on aggregate speed test data from comScore, that consumers were receiving 56 percent less speed than they should be receiving. Presumably, such a conclusion could only be reached by comparing the speeds captured using a speed test coupled with accurate information about the service tier purchased by those customers. We encourage the Broadband team to provide transparency as to how these data were developed and to disclose the data so that interested parties may assess its accuracy and comment on the assumptions underlying both the data and the Broadband team's conclusions.

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<sup>21</sup> Time Warner Cable Reply Comments at 3.

Notwithstanding the above, if the Commission intends to rely on compiled speed test results as part of the National Broadband Plan, it should detail and provide opportunity to comment on the specific processes used by the data provider to ensure that the information is meaningful and reliable. In particular, the Commission must describe how the speed test accounts for factors beyond the control of the broadband provider, including factors specific to a subscriber's computer (*e.g.*, the presence of viruses, automatic updating, low memory capacity, processor capabilities, the type and capabilities of the operating system, the version and configuration of the web browser software used), factors specific to a subscriber's household network (*e.g.*, the presence and capabilities of a router, whether several computers or other devices are accessing the Internet simultaneously, whether and what type of WiFi is used, whether other devices, such as cordless phones or adjacent networks, are in use which may cause interference with WiFi devices, the distance from the consumer's computer to the WiFi access point, whether and what type of WiFi encryption is used), and factors specific to the testing websites a subscriber visits.

Other information is relevant as well to provide for an accurate accrual of data. Speed test data should be compiled from a representative sample of broadband users and from a diversity of testing sites that are each located within a relative proximity to each of the broadband connections being tested. The process must also be conducted in a transparent and independent manner. The testing procedures should be made public and the entity conducting the testing should have no stake in any Commission proceeding on which the data will be used.<sup>22</sup>

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<sup>22</sup> For example, an entity like Measurement Lab, which purports to provide speed test data, raises questions in this regard. M-Lab was founded by several parties, including New America Foundation and Google, who are pursuing specific policy and regulatory outcomes in this proceeding. *See* Measurement Lab, *Welcome to Measurement Lab, Who We Are*, at <http://www.measurementlab.net/who> (last visited Dec. 14, 2009).

Another possibility is the approach taken last year by regulators in the United Kingdom. Ofcom, the regulatory agency in the U.K., hired a third party (SamKnows) to conduct an independent survey to measure broadband speeds. The Ofcom survey was based on a representative sample of 1600 users who were outfitted with monitoring equipment on their home networks for a period of six months.<sup>23</sup>

Although it has issues of its own, the Ofcom approach addresses a number of the problems with speed tests. For example, because SamKnows utilized a uniform testing device at all locations, connected via wired Ethernet, the results were not affected by limitations with the user's home equipment or network.<sup>24</sup> Furthermore, a market research company was commissioned to ensure that the report would reflect a statistically significant, representative panel of UK broadband users.<sup>25</sup> This approach may be costly to implement, however, and while it eliminates distortions caused by the user's home equipment and network, the results may be affected by other networks involved in the transmission of traffic.

As the above discussion demonstrates, there is no simple solution to the question of how best to measure and report information on broadband speeds. In light of these challenges, NCTA previously recommended that the Commission work with the Internet engineering community to develop an approach to measurement that would produce consistent, reliable, and accurate results.<sup>26</sup> We reiterate that suggestion here.

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<sup>23</sup> See News Release, Ofcom, *Clarity For Consumers on Broadband Speeds, UK's First Authoritative Survey Under Way* (June 5, 2008), available at [http://www.ofcom.org.uk/media/news/2008/06/nr\\_20080605](http://www.ofcom.org.uk/media/news/2008/06/nr_20080605); Ofcom Research Report, *UK Broadband Speeds 2009, Consumers' Experience of Fixed-Line Broadband Performance*, July 28, 2009, at 2 ("*Ofcom Report*"), available at [http://www.ofcom.org.uk/research/telecoms/reports/broadband\\_speeds/broadband\\_speeds/broadbandspeeds.pdf](http://www.ofcom.org.uk/research/telecoms/reports/broadband_speeds/broadband_speeds/broadbandspeeds.pdf).

<sup>24</sup> See *Ofcom Report* at 17-18 (explaining the broadband performance methodology of the study).

<sup>25</sup> See *id.* at 16-17 (summarizing the survey methodology of the study).

<sup>26</sup> *NCTA Broadband Definition Comments* at 6-7.

## CONCLUSION

As explained herein, cable operators already provide a great deal of information about their broadband services to consumers at every stage of the purchasing process. With respect to information regarding the “actual” speed of broadband services, we continue to encourage the Commission to consult with Internet engineering experts to develop measures that would be meaningful to consumers and not unduly burdensome to providers.

Respectfully submitted,

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December 14, 2009

**ATTACHMENT**

**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

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

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

The National Cable & Telecommunications Association (“NCTA”) hereby submits its comments on the Notice of Inquiry in the above-captioned proceeding.<sup>1</sup> NCTA is the principal trade association representing the cable television industry in the United States. Its members include cable operators serving more than 90% of the nation’s cable television subscribers, as well as more than 200 cable programming networks and services. NCTA’s members also include suppliers of equipment and services to the cable industry. The cable industry is the nation’s largest broadband provider of high-speed Internet access after investing more than \$145 billion since 1996 to build out two-way interactive networks with fiber optic technology.

**INTRODUCTION AND SUMMARY**

The Commission’s wide-ranging *Notice* examines whether truth-in-billing and consumer information regulation that has been applied to wireline and wireless services should be extended to other services, including subscription video and Internet services. The Commission asks whether, with the advent of newer services, such as broadband Internet and Voice over Internet

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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*).

Protocol (VoIP), as well as new pricing plans for bundled services, the amount of information in the marketplace is confusing consumers.

In light of the explosion in new services, the *Notice* seeks information on “cost effective best practices in information disclosure from within the communications sector.”<sup>2</sup> NCTA appreciates this opportunity to illustrate the myriad ways that the cable industry is working to meet the needs of consumers with respect to billing and information about service offerings. Indeed, to make informed choices in today’s competitive marketplace, consumers increasingly need and demand the availability of comprehensive information – in print, online, and over the phone – about their ever-increasing array of options. As detailed below, the cable industry is at the forefront of communicating effectively with its existing customers and in reaching out to attract new customers.

Cable companies are already subject to billing and customer service standards at the federal, state, and local level. But the intensely competitive nature of the communications marketplace requires them to do more – to incorporate consumer-friendly practices in every aspect of their business in order to attract potential customers and keep existing ones, particularly with the advent of bundled video, voice and Internet services. This means providing consumers with accurate information in a clear and understandable manner through a variety of means.

In the absence of clear evidence that cable operators are providing inadequate information and disclosure, there is no policy reason to impose new billing and consumer information regulation. As the Commission recognized in the *Notice*, truth-in-billing regulation arose to address specific instances of “slamming, cramming and other telecommunications

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<sup>2</sup> *Notice* ¶ 4.

fraud.”<sup>3</sup> The lack of significant evidence of a problem in cable billing practices demonstrates that market forces are driving cable responsiveness to consumers. Government mandates that limit cable operators’ flexibility will only harm consumers and impose unnecessary costs and burdens that could ultimately reduce consumer choice and raise prices.

In these circumstances and in light of the realities of the dynamic and competitive marketplace that cable operators face, additional regulation of cable operators is not warranted, wholly apart from the constitutional and statutory pitfalls that would accompany a new regulatory regime.

**I. IN A COMPETITIVE AND DYNAMIC MARKETPLACE, CABLE OPERATORS ARE PROVIDING TRUTHFUL AND EXPANSIVE INFORMATION IN ORDER TO ATTRACT AND RETAIN CUSTOMERS**

Cable operators face fierce competition for every service they offer. In a recent action vacating the Commission’s restriction on ownership of cable systems, the United States Court of Appeals for the District of Columbia Circuit found:

the record is replete with evidence of ever increasing competition among video providers: Satellite and fiber optic video providers have entered the market and grown in market share since the Congress passed the 1992 Act, and particularly in recent years. Cable operators, therefore, no longer have the bottleneck power over programming that concerned the Congress in 1992.<sup>4</sup>

With respect to broadband services, the Commission has received numerous submissions, from NCTA and others, documenting the thriving, competitive, and dynamic nature of the broadband marketplace.<sup>5</sup> As observed by J.D. Power director of telecommunications Frank Perazzini,

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<sup>3</sup> *Id.* ¶ 13.

<sup>4</sup> *Comcast Corp. v. FCC*, No. 08-1114, slip op. at 14 (D.C. Cir. Aug. 28, 2009); *see also* Comments of the National Cable & Telecommunications Association (“NCTA”), Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, MB Docket No. 07-269 (filed May 20, 2009); NCTA Reply Comments, MB Docket No. 07-269 (filed June 22, 2009); NCTA Further Comments, MB Docket No. 07-269 (filed July 29, 2009); NCTA Further Reply Comments MB Docket No. 07-269 (filed Aug. 28, 2009).

<sup>5</sup> *See, e.g.*, Comments of NCTA, Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such

“Competition in the industry is at an all-time high, as providers are offering a variety of technologies to vie for increasingly savvy customers.”<sup>6</sup> Operating in such an environment provides cable operators every incentive to ensure that consumers are provided with the information that they need in a clear and consumer-friendly format.

**A. Cable Operators Provide Clear, Concise, and Understandable Information On Bills**

Cable operators – large and small – have carefully designed their bills to enable customers to easily understand the charges for every service, what to do to make inquiries, and their options for payment. Of course, the typical cable bill prominently displays key information including account number, amount due, due date, and customer service contact information.<sup>7</sup> And cable operators provide lots of other useful information. For example, Comcast has recently launched a new bill, providing key information in a “One-Stop Shop” Box, explaining “[w]ith larger type size and the right level of detail, we redesigned our bill to make it easier for you to quickly find the important information you need.”<sup>8</sup> Similarly, Cox displays important

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Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act; A National Broadband Plan for Our Future, GN Docket Nos. 09-137 & 09-51 (filed Sept. 4, 2009) at 6-7.

<sup>6</sup> Todd Spangler, *Cox Tops East, West Regions On J.D. Power Phone Survey*, Multichannel News, Sept. 16, 2009 (reporting that cable operators “swept J.D. Power and Associates’ 2009 residential phone service survey for the third year running, with Cox Communications ranking highest in the East and West regions”), available at [http://www.multichannel.com/article/354211-Cox\\_Tops\\_East\\_West\\_Regions\\_On\\_J\\_D\\_Power\\_Phone\\_Survey.php?rssid=20059&q=cox+tops+east](http://www.multichannel.com/article/354211-Cox_Tops_East_West_Regions_On_J_D_Power_Phone_Survey.php?rssid=20059&q=cox+tops+east).

<sup>7</sup> See, e.g., Comcast Corporation, *Explanation of Your Bill*, at <http://www.comcast.com/Corporate/Customers/Membership/Bill/BillExplanation.html> (last visited Oct. 13, 2009); Bright House Networks Central Florida, *How To Read Your Statement*, at [http://cfl.brighthouse.com/customer\\_care/statements/default.aspx](http://cfl.brighthouse.com/customer_care/statements/default.aspx) (last visited Oct. 13, 2009); Cox Communications Inc., *How To Read Cox Bill*, at <http://www.cox.com/support/fairfax/billingsupport/readbill.asp> (last visited Oct. 13, 2009); Time Warner Cable, *Your Monthly Statement Has a New Look*, available at <http://www.timewarnercable.com/MediaLibrary/4/144/Content%20Management/Documents/support/CarolinaBillingStatement2009.pdf> (last visited Oct. 13, 2009); Midcontinent Communications, *How to Read Your New Monthly Statement!*, available at <http://www.midcocomm.com/classlibrary/page/resourcecenter/files/27.pdf> (last visited Oct. 13, 2009).

<sup>8</sup> See Comcast Corporation, *Explanation of Your Bill*, at <http://www.comcast.com/Corporate/Customers/Membership/Bill/BillExplanation.html> (last visited Oct. 13, 2009); Comcast Corporation, *Making Life a Little Less Complicated* (2008) (Comcast explanatory pamphlet).

information on the first page of its bills, including customer messages and how much a customer has saved by subscribing to a service bundle.<sup>9</sup> Time Warner prominently sets forth information on the first page of its bill about important messages, reminders and offers, including special events, savings opportunities, news, and promotions.<sup>10</sup> Midcontinent includes much of the information described above, and also includes a frequently asked questions section to assist customers in understanding the charges listed on their statement.<sup>11</sup>

Although consumers can always call a cable operator for assistance in understanding their billing statements, many cable operators also maintain detailed information on their websites to help consumers understand their billing statements. For example, Charter provides a video, in both English and Spanish, describing its billing statement.<sup>12</sup> Several cable operators provide explanatory pamphlets as bill inserts and/or make the pamphlets downloadable on-line.<sup>13</sup>

The entire industry benefits from The Cable Center's "Customer Care Central," a collection of programs and initiatives that provide the cable industry with tools and resources to improve customer experiences and customer care management, including billing practices.<sup>14</sup>

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<sup>9</sup> See Cox Communications Inc., *How To Read Cox Bill*, at <http://www.cox.com/support/fairfax/billingsupport/readbill.asp> (last visited Oct. 13, 2009).

<sup>10</sup> See Time Warner Cable, *Your Monthly Statement Has a New Look*, available at <http://www.timewarnercable.com/MediaLibrary/4/144/Content%20Management/Documents/support/CarolinaBillingStatement2009.pdf> (last visited Oct. 13, 2009).

<sup>11</sup> See Midcontinent Communications, *How to Read Your New Monthly Statement!*, available at <http://www.midcocomm.com/classlibrary/page/resourcecenter/files/27.pdf> (last visited Oct. 13, 2009).

<sup>12</sup> See Charter Communications, *Understanding Your Charter Statement*, at <http://www.charter.net/video/?vendid=38&vid=220521> (last visited Oct. 13, 2009).

<sup>13</sup> See, e.g., Time Warner Cable, *Your Monthly Statement Has a New Look*, available at <http://www.timewarnercable.com/MediaLibrary/4/144/Content%20Management/Documents/support/CarolinaBillingStatement2009.pdf> (last visited Oct. 13, 2009); Cox Communications Inc., *How To Read Cox Bill*, at <http://www.cox.com/support/fairfax/billingsupport/readbill.asp> (last visited Sept. 30, 2009); Mediacom Communications Corp., *Understanding Your Bill*, at [http://www.mediacomcc.com/customer\\_your\\_bill.html](http://www.mediacomcc.com/customer_your_bill.html) (last visited Oct. 13, 2009); Bright House Networks Central Florida, *How To Read Your Statement*, at [http://cfl.brighthouse.com/customer\\_care/statements/default.aspx](http://cfl.brighthouse.com/customer_care/statements/default.aspx) (last visited Oct. 13, 2009).

<sup>14</sup> See Press Release, The Cable Center, *Cable Center's Learning and Development Group Offers a Variety of Classes for Industry Professionals* (Apr. 29, 2009), available at

Customer Care Central includes the Cable Center Customer Care Committee, a group of cable customer-care executives who conduct monthly Webinars and meet face-to-face twice a year to share best practices, conduct networking, and bring in outside experts to discuss how to better serve customers.<sup>15</sup>

## **B. Cable Operators Are Responsive To Consumer Demand for Relevant Information**

As discussed below, the Commission's rules set forth a number of standards related to customer care, including standards governing billing statements.<sup>16</sup> However, simply satisfying the standards in the Commission's rules is not enough. To attract and retain subscribers, marketplace realities demand that cable operators do more.

Cable operators strive to meet this demand in a variety of ways. Time Warner Cable, for example, recently added specially-trained customer-care staff to its employee ranks to collect customer feedback and provide information about its services.<sup>17</sup> The company is "constantly looking for ways to improve [its] customer service."<sup>18</sup> Cox Communications is regularly a leader in customer service satisfaction. As C. Scott Wise, Cox's Vice President of Customer Care notes, competitors are constantly upping the ante on customer care, and "[a]n intense focus on the customer is our company culture."<sup>19</sup> Cox has been recognized for its customer service by

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<http://www.cablecenter.org/press/pressReleasesDetail.cfm?id=334>. The Cable Center is a nonprofit organization "that is a leading resource for information, education and expertise on cable telecommunications." *Id.*

<sup>15</sup> See K.C. Neel, *Endowment Makes Care 'Central'*, Multichannel News, Sept. 26, 2009, available at [http://www.multichannel.com/article/355495-Doing\\_Right\\_by\\_Customers.php](http://www.multichannel.com/article/355495-Doing_Right_by_Customers.php).

<sup>16</sup> See *infra* at 12-13.

<sup>17</sup> See Jeff Drew, *Telecom Giant in Process of Adding 200 Triangle Jobs*, Triangle Bus. J., Aug. 5, 2009, available at <http://triangle.bizjournals.com/triangle/stories/2009/08/03/daily34.html>.

<sup>18</sup> See *id.* (citing Melissa Buscher, director of media relations for Time Warner's Carolinas region).

<sup>19</sup> K.C. Neel, *Doing Right by Customers*, Multichannel News, Sept. 28, 2009, available at [http://www.multichannel.com/article/355495-Doing\\_Right\\_by\\_Customers.php](http://www.multichannel.com/article/355495-Doing_Right_by_Customers.php).

J.D. Power and P.C. Magazine.<sup>20</sup> In 2008, Cablevision was awarded the J.D. Power award for customer satisfaction, which included, among other things, customer service and billing criteria.<sup>21</sup> And for the fourth consecutive year, Bright House Networks won J.D. Power accolades, ranking highest in customer satisfaction among U.S. telephone service providers in the South.<sup>22</sup>

Many 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, particularly with the advent of bundled services. Changes to billing formats and other customer service practices are often prompted by feedback received directly from subscribers during service calls, from the results of customer surveys, and from convening and studying focus groups. For example, as noted above, in response to inquiries from customers, Comcast and Cox recently revised their billing statements. In designing its new bill, Cox solicited feedback from customers, customer care representatives, and outside consultants. After the launch, Cox did a second round of customer feedback sessions and will implement additional enhancements based on this information. Among other improvements, Comcast billing statements now clearly indicate the amount a subscriber is saving by taking advantage of promotions or discounts.<sup>23</sup>

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<sup>20</sup> See, e.g., Press Release, Cox Communications, *Cox Communications Receives J.D. Power and Associates' Highest Honor in Telephone Customer Satisfaction in the East and West* (Sept. 16, 2009) (noting that this is "the seventh consecutive year that Cox's residential telephone service has ranked highest in overall customer satisfaction in the West and the third J.D. Power and Associates honor for Cox in the Eastern region"), available at <http://cox.mediaroom.com/index.php?s=43&item=445>.

<sup>21</sup> See Press Release, Cablevision Systems Corporation, *Optimum Online Ranked Top High-Speed Internet Service Provider in the East by J.D. Power and Associates in 2008 Internet Service Provider Residential Customer Satisfaction Study* (Oct. 30, 2008), available at <http://www.cablevision.com/about/news/article.jsp?d=103008>.

<sup>22</sup> See Press Release, Bright House Networks, *For Home Phone, Bright House Networks Continues to Rank Highest In Customer Satisfaction in the South* (Sept. 17, 2009), available at [http://tampabay.brighthouse.com/uploadedFiles/Divisions/Tampa\\_Content/PRs/jdpower2009.pdf](http://tampabay.brighthouse.com/uploadedFiles/Divisions/Tampa_Content/PRs/jdpower2009.pdf).

<sup>23</sup> See Comcast Corporation, *Explanation of Your Bill*, at <http://www.comcast.com/Corporate/Customers/Membership/Bill/BillExplanation.html> (last visited Oct. 13, 2009).

Cablevision initially launched an easy-to-read bill design in 2004 and is now refreshing its design for launch early next year. Other companies are conducting similar review of their customer and general consumer information and making modifications.

In the area of web design, cable operators dedicate significant resources to the development of consumer-friendly websites in response to consumer input. Cox, for example, recently redesigned its website to make it easier for customers to use. Research activities for the redesign alone totaled nearly 1400 personnel hours and included examination of how customers use the website, call center listen-ins, concept testing, branding strategy, and comparing the Cox website to the websites of peer companies.

There is also continued innovation in customer service practices, with cable operators responding to new types of consumer activity. For example, several cable operators are now identifying (and working to solve) issues raised by consumers on web-based services such as Twitter.<sup>24</sup> As explained in a recent press story:

Comcast's deft use of Twitter underscores what is becoming a staple in modern-day customer service. . . . The popular communications technology has helped companies quickly and inexpensively respond to customer complaints, answer questions and tailor products and services. It has supplemented current customer services, easing the load on call centers and expensive mailers that most consumers abhor.<sup>25</sup>

According to recent figures from Comcast, to date, the company has helped over 100,000 customers using Twitter, Facebook, forums, blogs, and other social networking sites as customer

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<sup>24</sup> See Jon Swartz, *Businesses Use Twitter to Communicate with Customers*, USA Today, June 25, 2009 (noting that when a Stanley Cup broadcast was interrupted, Comcast subscribers learned via Twitter that the problem was caused by a lightning storm and that the transmission would be restored soon), available at [http://www.usatoday.com/money/industries/technology/2009-06-25-twitter-businesses-consumers\\_N.htm](http://www.usatoday.com/money/industries/technology/2009-06-25-twitter-businesses-consumers_N.htm).

<sup>25</sup> *Id.* Twitter has become "an early warning system" where customers will "tweet" about a problem before calling customer service. See Mary Hayes Weier, *Comcast's Twitter Team Coaching Salesforce.com*, InformationWeek, Mar. 25, 2009 (describing Comcast customer service representative's Twitter initiative), available at [http://www.informationweek.com/news/internet/social\\_network/showArticle.jhtml?articleID=216300318](http://www.informationweek.com/news/internet/social_network/showArticle.jhtml?articleID=216300318).

service tools. Other cable operators, such as Time Warner, Cox and Cablevision, are tracking and aggregating customer complaints and concerns from social networking sites, while developing innovative ways to find and address customer issues online.<sup>26</sup>

Indeed, consumers are empowered through ready access to information and commentary on any communications service, including unfiltered forums, websites, chat rooms, blogs, and email. Independent reviews are available to consumers to assist them in evaluating what service provider might best serve their needs.<sup>27</sup> Online services also assist consumers by providing comparisons, including pricing and features, of video, high-speed internet, telephone, and service bundles, tailored to a consumer's specific address.<sup>28</sup>

### **C. Cable Operators Provide a Wealth of Information to Consumers In a Variety of Formats**

Cable operators provide an extensive amount of information to consumers to assist at all stages of the purchasing process, including choosing a provider, choosing a service plan, managing use of the service plan, and deciding whether and when to switch an existing provider or plan.<sup>29</sup>

Cable operators communicate information to consumers about their plans and packages through a variety of formats, including direct mailings, advertising in mass media, billing inserts, and providing up-to-date, detailed information on their company websites. Typically, company

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<sup>26</sup> See, e.g., Tim Barker, *Companies Use Twitter, Social Networks, to Reach Out to Customers*, St. Louis Post-Dispatch, Sept. 20, 2009 (noting that Charter monitors Twitter and other websites), available at <http://www.stltoday.com/stltoday/business/stories.nsf/story/A1D32A685F7119B98625763600078283?OpenDocument>.

<sup>27</sup> See, e.g., Consumer Search, Inc., *ISPs: Reviews*, Mar. 2009 (providing independent comparisons of internet service providers, including links to various reviews of a selection of services), at <http://www.consumersearch.com/isp> (last visited Oct. 13, 2009); Consumer Reports, *TVs and Services, Get the Best TV Service*, Mar. 2007 (comparing video offerings provided by cable operators, telephone companies, and satellite providers), available at [http://www.consumerreports.org/cro/electronics-computers/tvs-services/service-providers/tv-services/get-the-best-tv-service-3-07/overview/0307\\_cable\\_ov.htm](http://www.consumerreports.org/cro/electronics-computers/tvs-services/service-providers/tv-services/get-the-best-tv-service-3-07/overview/0307_cable_ov.htm) (last visited Oct. 13, 2009).

<sup>28</sup> See, e.g., White Fence, at <http://www.whitefence.com/category/television-service> (last visited Oct. 13, 2009).

<sup>29</sup> See Notice ¶ 16.

websites prominently display information about price and the duration of any applicable promotions.<sup>30</sup> Most cable operators provide detailed information about service and package availability, including channel line-ups, broadband speed offerings, and other details, by street address or zip code.<sup>31</sup> After inputting their home address or zip code, most cable operator websites allow consumers to view the services and packages, including special offers, available to them.<sup>32</sup> Cable operators typically provide links to copies of their subscriber policies and terms and conditions online.<sup>33</sup> For example, in just one “click” from the Bright House Networks home page, customers can access the Bright House Networks Customer Privacy Notice, Agreement for Residential Services, and High Speed Data Acceptable Use Policy.<sup>34</sup>

In addition to the materials regarding billing described above, cable operators provide substantial amounts of information to consumers about how to obtain assistance with their services. Most cable operators dedicate large portions of their websites to customer service. For example, Comcast offers Comcast customerCentral, a customer service portal.<sup>35</sup> Cable operators

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<sup>30</sup> See, e.g., Comcast Corporation (providing scrolling information about promotions on its home page), at <http://www.comcast.com/> (last visited Oct. 13, 2009). Customers can learn the full details about all of Comcast’s services in the “Shop” section of the Comcast website. See Comcast Corporation, *Residential Products* (providing details about the products and allowing consumers to enter their specific address to learn about the prices and offers available to them), at <http://www.comcast.com/Corporate/Shop/ProductOverview.html?lid=5ShopAllProducts&lpos=Nav> (last visited Oct. 13, 2009).

<sup>31</sup> For example, consumers can access a “Bundle Builder” offered by Charter on its home page. See Charter Communications, *Bundle Builder*, at <https://connect.charter.com/bundlebuilder/> (last visited Oct. 13, 2009).

<sup>32</sup> See *id.*

<sup>33</sup> See, e.g., Time Warner Cable, *Account & Billing Support* (providing links to Time Warner Cable subscriber policies, including the Subscriber Agreement, Operator Acceptable Use Policy, and ISPs Subscriber Privacy Notices), at <http://www.timewarnercable.com/SanDiego/support/accountandbilling.html> (last visited Oct. 13, 2009).

<sup>34</sup> See Bright House Networks Tampa Bay, *Our Policies, Bright House Networks Customer Policies and Agreements*, at [http://tampabay.brighthouse.com/customer\\_care/our\\_policies/default.aspx](http://tampabay.brighthouse.com/customer_care/our_policies/default.aspx) (last visited Oct. 13, 2009) The Bright House homepage also has a “quick answers” link under customer support.

<sup>35</sup> See Comcast, *customerCentral* (explaining that the website allows you to “view and pay your bill, and manage all your Comcast product features and settings”), at <https://customer.comcast.com/Public/Home.aspx> (last visited Oct. 13, 2009).

also typically provide “Frequently Asked Questions” (“FAQs”) documents on their websites, offering information on a variety of topics, including service options and billing.<sup>36</sup> In the event that the information provided does not answer a consumer’s question, information is provided detailing various ways that consumers may reach the cable operator, including by telephone, live chat, and email.<sup>37</sup>

In today’s competitive and rapidly-changing communications marketplace, cable operators must be responsive to consumer demand. As explained by Brian Roberts, Comcast’s Chairman and Chief Executive Officer:

[W]e’re committed to delivering the best customer experience, end to end – from the first phone call, through the installation, and beyond. At Comcast, we have over 300 million customer interactions every year. That’s 300 million opportunities to make an impression – good or bad. We want to get it right the first time. But if we don’t . . . I am personally committed to making sure that we always show respect for our customers – so if we mess up, we fess up. Our customer service must reach new levels of excellence.<sup>38</sup>

## **II. THE INFORMATION AND BILLING PRACTICES OF CABLE OPERATORS REFLECT EXISTING FEDERAL, STATE AND LOCAL CUSTOMER SERVICE STANDARDS AND THE DEMANDS OF A COMPETITIVE AND RAPIDLY-CHANGING COMMUNICATIONS MARKETPLACE**

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In 1992, at a time when cable operators served 96% percent of the multichannel video programming marketplace, Congress instructed the Commission to set standards by which cable

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<sup>36</sup> See, e.g., Comcast Corporation, *Comcast FAQs* (including FAQs on a variety of topics such as products, billing and account management, privacy policies, and channel line-ups), at <http://www.comcast.com/Corporate/Customers/FAQs.html?lid=4CustomersFAQs&pos=Nav> (last visited Oct. 13, 2009); Cox, *Billing & Account Frequently Asked Questions*, at <http://www.cox.com/support/fairfax/billingsupport/faq.asp> (last visited Oct. 13, 2009); Mediacom Communications Corporation, *Electronic BillPay FAQ*, at [http://www.mediacomcc.com/customer\\_billpaying\\_faq.html](http://www.mediacomcc.com/customer_billpaying_faq.html) (last visited Oct. 13, 2009).

<sup>37</sup> See, e.g., Charter Communications, *Support Overview* (providing Charter contact information, including, among other things, access to an online chat feature and a toll-free number), at <http://www.charter.com/customers/support.aspx> (last visited Oct. 13, 2009).

<sup>38</sup> Brian L. Roberts, Chairman and Chief Executive Officer, Comcast Corporation, Keynote Remarks at the 2008 Consumer Electronics Show 5 (Jan. 8, 2008), available at <http://www.ncta.com/DocumentBinary.aspx?id=687>.

operators may fulfill their customer service requirements.<sup>39</sup> Section 632 of the Communications Act specifically addresses requirements governing cable system office hours, telephone availability; installations, outages and service calls; and “communications between the cable operator and the subscriber (including standards governing bills and refunds).”<sup>40</sup>

With regard to billing, the Commission’s implementing rules set standards requiring cable operators to satisfy specific information and disclosure mandates. For example, cable bills must:

- (1) be clear, concise and understandable;
- (2) be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges; and
- (3) clearly delineate all activity during the billing period, including optional charges, rebates and credits.<sup>41</sup>

In addition, in case of a billing dispute, the cable operator must respond to a written complaint from the subscriber within 30 days.<sup>42</sup> The statute and the rules authorize a cable franchise authority to enforce the foregoing customer service standards against cable operators and many have done so.<sup>43</sup>

The Commission’s rules also address a variety of written notices and information that cable operators are required to give customers at the time of installation, annually, and any time upon request, including prices and options for programming services and conditions of subscriptions, billing and complaint procedures, dispute resolution, and rate and service

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<sup>39</sup> See 47 U.S.C. § 552; *In re Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Second Annual Report, 11 FCC Rcd 2060 at App. G, Table 1 (1995).

<sup>40</sup> 47 U.S.C. § 552.

<sup>41</sup> 47 C.F.R. § 76.309.

<sup>42</sup> 47 C.F. R. § 76.1619(b).

<sup>43</sup> See, e.g., Arlington County Code § 41.2-9(f) (Arlington County, VA); Carroll County Code of Ordinances § 93-16 (Carroll County, MD); Ann Arbor City Code § 2:126(8) (Ann Arbor, MI).

changes.<sup>44</sup> And, as pointed out in the *Notice*, the rate rules permit cable operators to list separate line items for franchise fees, other fees or taxes and the cost of compliance with certain franchise obligations, which further define exactly what customers are paying for.<sup>45</sup>

Furthermore, as the statute and rules make clear, cable operators are subject to obligations imposed by local franchising authorities and federal and state consumer protection laws of general applicability.<sup>46</sup> For example, franchise authorities have adopted billing standards in city ordinances or codes (often mirroring the Commission’s standards), such as requiring cable operators to provide “clear, concise and understandable”<sup>47</sup> or “clear, accurate and understandable” statements or statements that “state clearly the charge” for each category of service and equipment.<sup>48</sup> In addition, some cable systems operate under state regulations that require specific language and information on customer billing.<sup>49</sup> Other local governments require, for example, an initial response to a written billing complaint within five days of receipt and a final response within 30 days.<sup>50</sup>

While the above customer service standards remain in place today, it is largely market forces in an era of robust competition, not government mandates, that drive cable operators to

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<sup>44</sup> 47 C.F.R. § 76.1602 *et seq.*

<sup>45</sup> 47 C.F.R. § 76.985.

<sup>46</sup> *See* 47 U.S.C. § 552(d)(1)-(2); 47 C.F.R. § 76.309(b).

<sup>47</sup> *See, e.g.*, Arlington County Code § 41.2-9(f) (Arlington County, VA); Carroll County Code of Ordinances § 93-16 (Carroll County, MD); Ann Arbor City Code § 2:126(8) (Ann Arbor, MI).

<sup>48</sup> *See, e.g.*, 220 Ill. Comp. Stat. 5/70-501(c) (setting forth billing requirements applicable to “cable or video providers”); Cal. Govt. Code § 53088.2(f) (requiring “[a]ll video providers [to] render bills that are accurate and understandable”).

<sup>49</sup> *See, e.g.*, Vermont Pub. Serv. Board Rule 8.342(B) (requiring, among other things, that cable bills “shall include a statement that the company should be called first for problem resolution”); N.J. Admin. Code § 14:18-3.7(a) (2009) (requiring several items to be included on cable bills, including details about the length of time that a promotional price is in effect); Conn. Dept. of Pub. Util. Control Regulations § 16-333-9e (requiring specific information to be included on CATV service bills).

<sup>50</sup> Arlington County Code § 41.2-9(f)(2) (Arlington County, VA). In addition, as the *Notice* points out, cable customers (and any consumer) experiencing problems with their service provider have recourse through the Commission’s informal complaint process. *See Notice* ¶¶ 51, 60.

adopt highly effective consumer information and disclosure practices.<sup>51</sup> Moreover, most cable operators offer multiple services, including video, voice, and high-speed Internet, and make it easy for customers to receive one bill for all services. The various customer billing rules which today apply to cable and telecommunications service are typically reflected in billing practices for other services such as high-speed Internet.

In evaluating all stages of consumer information in the purchasing process, the Commission is appropriately mindful of the importance of identifying disclosure policies that have a “high ratio of consumer benefit to industry cost.”<sup>52</sup> Any such cost-benefit analysis must start with the recognition that cable operators are already following a myriad of disclosure practices at no small cost to the industry. When these existing practices are considered in conjunction with the incentives cable operators have to maintain and acquire customers in today’s competitive marketplace, the disclosure standards currently in place, and the enormous amount of information available to consumers, there must be a strong showing of an existing problem for the Commission to impose additional regulation. Given the lack of any significant evidence of consumer confusion regarding the cable industry’s information and disclosure practices, any government mandates applicable to the cable industry would only serve to impose significant and unnecessary costs for very little, if any, consumer gain.<sup>53</sup>

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<sup>51</sup> In addition to the FCC’s cable-specific rules and other consumer protection rules applied to other communications service providers under the Communications Act, the Federal Trade Commission has a range of laws, regulations and enforcement authority at its disposal to address marketplace failures in the area of consumer protection. In interpreting Section 5 of the Act, the FTC has stated that “advertisements must be truthful and not mislead consumers in ways that affect consumers’ behavior or decisions about the product or service.” Comments of the Federal Trade Commission, GN Docket No. 09-51 (filed Sept. 4, 2009) at 9.

<sup>52</sup> *Notice* ¶ 5.

<sup>53</sup> The *Notice* indicates that that Commission has previously concluded that consumers were experiencing significant confusion regarding their bills, and that “available evidence suggests that this remains true today.” *Notice* ¶ 2. However, the *Notice* provides scant evidence of a problem with respect to confusion about cable-provided consumer information and disclosures.

Moreover, the Commission should not operate under the misimpression that additional disclosure obligations are among the “least intrusive” regulatory measures.<sup>54</sup> New regulatory requirements have the potential to make information more confusing to consumers.

The Commission asks, for example, whether there should be a consistent format across the “wide variety” of communications platforms and services.<sup>55</sup> But a uniform, standardized framework – or “one-size-fits-all” approach to fixed voice, wireless voice and data, broadband Internet access, and subscription video services – raises a host of concerns. First, a critical part of the competitive equation for all providers is the distinct “look and feel” of bills and other consumer information. As discussed above, the terminology and language on bills and other consumer information undergoes significant study, testing and customer feedback to not only ensure that the information is accurate and understandable but that the consumer has a positive experience.

Second, the idea of imposing an across-the-board consistent format would be difficult to implement when the services are so different and the standard language may not reflect evolving service options. Given that service offerings frequently change, service providers need flexibility to modify billing statements, promotional material, and other consumer information. For example, some companies add value to their product by offering security software standard with their high-speed Internet product. Others offer on-line storage. These types of value-added features make a product-to-product comparison difficult.

Regulation of bill language also could add unnecessary costs and burdens. The limited space on the billing statement is valuable real estate where every character counts and where

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<sup>54</sup> *Notice* ¶ 5.

<sup>55</sup> *Id.* ¶ 23.

every character has meaning.<sup>56</sup> Implementing content and format uniformity of customer bills implicates software, billing and operational systems, and personnel training. And one-size-fits-all verbiage is difficult to implement given that operators utilize different vendors with different capabilities and size limitations.

Moreover, standardized formats and display information for video, voice and Internet services could have unintended consequences, such as limiting the variety of options available to consumers – options that might ultimately save consumers money. It could disrupt ongoing efforts to achieve billing efficiencies, such as e-bills and one-stop-shopping for bundled services.

As long as the consumer is provided with clear and concise information on the bill and knows where to turn for more information, such as the service provider’s website, bill inserts and other sources of information, there is no reason to straitjacket every provider into one format or one set of terms. And as long as the terminology among providers is clearly understandable to consumers and, where changes are made, such changes are made clear to customers so that they know what they are paying for with regard to services, fees and any other charges on their bills, there is no reason to adopt additional regulatory burdens.

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The Commission acknowledges that many of the proposals set forth in the *Notice* implicate First Amendment concerns and raise issues about the limits of the Commission’s

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<sup>56</sup> Regulatory requirements already consume limited space on billing statements. *See, e.g.*, 47 C.F.R. § 76.952(a)-(b) (requiring cable operators to provide the name, mailing address, and phone number of the franchising authority on monthly subscriber bills (unless the franchising authority in writing requests the cable operator to omit the information) and the FCC community unit identifier); *In re Closed Captioning of Video Programming; Closed Captioning Requirements for Digital Television Receivers*, Declaratory Ruling, Order & Notice of Proposed Rulemaking, 23 FCC Rcd 16674 ¶ 33 (2008)(pending approval by the Office of Management & Budget, requiring that video programming distributors on billing statements include contact information for the receipt and handling of closed captioning concerns raised by consumers).

statutory authority to promulgate new regulations.<sup>57</sup> As noted above, however, it is not necessary for the Commission to reach those thorny issues regarding cable operators because, statutory and Constitutional issues aside, there is no public policy basis for adopting additional regulations applicable to cable operators. As demonstrated above, cable operators are taking a variety of approaches to meet the needs of consumers, and the competitive nature of the marketplace demands that they do so or risk losing them to alternative providers.

### **CONCLUSION**

Today's communications marketplace is a battlefield where cable operators must skirmish for every potential subscriber. In such an environment, consumers demand truthful, concise, and understandable information about the services presented to them. To survive, cable operators must deliver. In response to consumer demand, cable operators provide extensive amounts of information to consumers, in a wide range of formats, in order to win and retain their business. An analysis of these realities will prove that the Commission should refrain from increasing regulatory burdens on cable operators that are unnecessary, costly, and risk stalling the roll-out of innovative new services.

Respectfully submitted,

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<sup>57</sup> See Notice ¶¶ 21-22, 61-64.