

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Case Type: Civil
(Consumer Protection)

State of Minnesota, by its Attorney General,
Keith Ellison,

Court File No. 27-CV-18-20552
Hon. Laurie J. Miller

Plaintiff,

vs.

CONSENT JUDGMENT AND ORDER

Comcast Corporation d/b/a Xfinity, Comcast
Cable Communications, LLC, Comcast of St.
Paul, Inc., Comcast of Minnesota, Inc.,
Comcast of Minnesota/Wisconsin, Inc.,
Comcast of Arkansas/Florida/Louisiana/
Minnesota/Mississippi/Tennessee, Inc., and
Comcast of Arkansas/Florida/Louisiana/
Minnesota/Mississippi/Tennessee, LLC,

Defendants.

WHEREAS, Plaintiff, State of Minnesota, by its Attorney General Keith Ellison ("State" or "Attorney General's Office") filed a Complaint against Defendants Comcast Corporation d/b/a Xfinity, Comcast Cable Communications, LLC, Comcast of St. Paul, Inc., Comcast of Minnesota, Inc., Comcast of Minnesota/Wisconsin, Inc., Comcast of Arkansas/Florida/Louisiana/Minnesota/Mississippi/Tennessee, Inc., and Comcast of Arkansas/Florida/Louisiana/Minnesota/Mississippi/Tennessee, LLC (hereinafter, collectively "Comcast") on December 21, 2018, alleging violations of the Prevention of Consumer Fraud Act (Minn. Stat. § 325F.69, *et seq.*) and Deceptive Trade Practices Act (Minn. Stat. § 325D.44, *et seq.*);

WHEREAS, Comcast answered the State's Complaint by denying the allegations; and

WHEREAS, the State and Comcast (the “Parties”) have agreed to resolve Minnesota’s consumer protection claims raised in the Complaint by entering into this Consent Judgment.

NOW, THEREFORE, in the interest of resolving the State’s Complaint against Comcast, the Parties hereby stipulate and consent to entry of this Consent Judgment and Order as set forth below:

I. DEFINITIONS

For purposes of this Consent Judgment and Order, the following definitions shall apply:

1. **“Advertisement”** shall mean all public-facing print, digital (including Internet but subject to the below exclusion), audio, and television communications offering Comcast’s Residential Services to Minnesota consumers for a specified price. “Advertisement” shall not include information on Comcast’s Website Landing Page.

2. **“Clearly and Conspicuously”** shall mean that the statement is presented in such a manner, given its size, color, contrast, and proximity to any related information as to be readily noticed and understood by a reasonable Minnesota consumer. A statement is not clear and conspicuous if, among other things, it is ambiguous to a reasonable consumer, obscured by the background against which it appears to a reasonable consumer, or is not apparent to a reasonable consumer by its location within a lengthy disclosure of non-material information.

3. **“Disclosed Fees”** are mandatory additional fees applicable to a tier of service that Residential Services customers in Minnesota cannot bypass, including, for example, Comcast’s Broadcast TV fee and Regional Sports Network fee. For the avoidance of doubt, Disclosed Fees exclude charges or fees for a service separately added to a tier or package by a customer and charges or fees that Comcast collects to reimburse Comcast for its compliance obligations to any

governing regulatory authority or as reimbursement for any required or permitted governmental charge or payment obligation.

4. **“Early Termination Fees”** shall mean fees imposed by Comcast for the early termination or downgrading of any or all of a Minnesota consumer’s Residential Services subject to a Minimum Term Contract.

5. **“Minimum Term Contracts”** shall mean any and all contracts or agreements with Minnesota consumers by which Comcast requires or purports to require the consumer to continue to purchase its Residential Services for more than 30 days in duration, in order to avoid the imposition of an Early Termination Fee.

6. **“Online Buy Flow”** shall mean the series of webpages, excluding Website Landing Pages, where Minnesota consumers customize their purchase of Residential Services. The Online Buy Flow currently begins on the webpage after Comcast’s Website Landing Page and includes each subsequent webpage wherein a consumer customizes his or her purchase of Residential Services.

7. **“Residential Services”** shall mean any and all residential cable television services, internet services, and/or telephone services (but excluding cellphone services) offered or provided by Comcast, or any subsidiary of Comcast, to Minnesota consumers.

8. **“Residual Funds”** shall mean funds that were unclaimed by the Restitution Customers.

9. **“Value-Add Promotional Item”** shall mean promotional items, including but not limited to Visa prepaid cards that Comcast offered and/or promised to Minnesota consumers who entered into Minimum Term Contracts.

10. “**Website Landing Page**” shall mean any Comcast webpage that is linked from its homepage when a consumer selects a Residential Service on its homepage or clicks on a non-Comcast hosted advertisement. “Website Landing Page” shall not include any subsequent webpage after the landing page wherein a consumer customizes his or her purchase of a Residential Service.¹

II. INJUNCTIVE RELIEF

11. Comcast, including its principals, officers, directors, employees, agents, independent contractors, affiliates, subsidiaries, and successors—including those acting in concert or participation with Comcast who receive actual notice of this Consent Judgment—shall comply with the following injunctive terms and provisions:

12. Any time Comcast offers or displays a price in a print Advertisement for a Residential Service that does not include all Disclosed Fees associated with the Residential Service, Comcast shall Clearly and Conspicuously disclose, in close proximity to the price:

- a. That the price excludes the Disclosed Fees, or that the Disclosed Fees are “extra” or “additional,” or substantially equivalent language; and
- b. If the offer or display concerns a Minimum Term Contract, that the price of the Disclosed Fees may change during the course of the Minimum Term Contract.

13. Effective January 23, 2020, any time Comcast offers or displays a price for a Residential Service in a digital Advertisement or as part of its Online Buy Flow that does not include all Disclosed Fees associated with the Residential Service, Comcast shall Clearly and Conspicuously disclose, in close proximity to the price:

¹ Comcast’s current website landing page is located at xfinity.com/learn/offers.

- a. That the price excludes the Disclosed Fees, or that the Disclosed Fees are “extra” or “additional,” or substantially equivalent language; and
- b. If the offer or display concerns a Minimum Term Contract, that the Disclosed Fees may change during the course of the Minimum Term Contract.

14. In addition to paragraphs 12 and 13, each time Comcast offers or displays a price for a Residential Service in a print Advertisement, on its Website Landing Page, or on the xfinity.com home page that does not include all Disclosed Fees, Comcast shall disclose the current maximum price for all applicable Disclosed Fees associated with the Residential Service.

15. In all television and audio advertisements for Residential Services where Comcast offers or displays a price that does not include applicable Disclosed Fees associated with the Residential Service, Comcast shall state that the Disclosed Fees are excluded from, are extra, or are in addition to the advertised price, or use substantially equivalent language.

16. Comcast shall maintain a publicly-available website that describes all Disclosed Fees Comcast charges for its Residential Services for the length of this Consent Judgment. Comcast currently maintains such a website at: <https://www.xfinity.com/support/articles/most-common-taxes-fees-surcharges-on-your-bill>.

17. Comcast shall obtain and retain, in an accessible form, all Minimum Term Agreements with Minnesota consumers regarding the provision of Residential Services. Comcast shall retain all such Agreements for at least the length of time the consumer is required to maintain the Residential Services under the terms of the Minimum Term Agreement, unless the consumer voluntarily exits the Minimum Term Agreement prior to the expiration date.

18. Comcast shall provide written notice to the Attorney General's Office within thirty (30) calendar days if it changes its policy so that acceptance of a Minimum Term Agreement is no longer part of the customer consent process at the point of sale.

19. To the full extent applicable in the State of Minnesota, Comcast shall comply with the customer consent requirements of the Consent Decree in *In re Comcast Corporation*, FCC DA-16-1127A1 ("2016 FCC Consent Decree"). A copy of the 2016 FCC Consent Decree is attached as Exhibit A to this Consent Judgment and Order.

II. MONETARY PAYMENT

A. Debt Forgiveness.

20. Comcast represents and warrants that it has reviewed its records and identified all Minnesota consumers who Comcast believes currently owe a debt to Comcast that includes an Early Termination Fee imposed from June 1, 2015, through July 1, 2017, due to the involuntary termination of Residential Services for failure to pay amounts owed. Through this review, Comcast represents and warrants that it has identified approximately 16,000 such consumers. Comcast further represents and warrants that there are no reconnect or disconnect fees, beyond the Early Termination Fee, associated with the termination of Residential Services for failure to pay amounts owed.

21. Within thirty (30) calendar days of the date the Court enters this Consent Judgment and Order, Comcast shall cease all efforts to collect and shall forgive the debts incurred by the consumers identified in paragraph 20 for unpaid Early Termination Fees incurred during the Relevant Time Period in connection with their Residential Services (the "Forgiven Debts"). For the avoidance of doubt, the forgiveness of any debts by Comcast does not constitute an admission or finding of fact concerning the validity of the Forgiven Debts.

22. Within sixty (60) calendar days of the date the Court enters this Consent Judgment and Order, Comcast shall inform all third-party collection agencies to which Comcast has referred any of the Forgiven Debts that these debts have been satisfied.

23. For the consumers identified in Paragraph 20 of this Consent Judgment, within sixty (60) calendar days of the date the Court enters this Consent Judgment and Order, Comcast shall inform the three national Consumer Reporting Agencies (as defined under the Fair Credit Reporting Act, 15 U.S.C. § 1681, et seq.) that the Forgiven Debts have been satisfied and request that any negative reference concerning the Forgiven Debts be deleted and request that positive credit history reported on such accounts be maintained and not affected.

24. Should any of the consumers identified in Paragraph 20 of this Consent Judgment make payment toward the Forgiven Debts on or after the date the Court enters this Consent Judgment and Order, Comcast shall either:

- a. Return the funds to the consumer via check; or
- b. If the consumer is currently receiving Residential Services, credit the consumer's Comcast account in the amount of the payment.

To comply with this Paragraph, Comcast will review the accounts of the consumers identified in Paragraph 20 of this Consent Judgment within 300 calendar days after the Court enters this Consent Judgment and Order (the "Review"). To the extent any consumer identified in Paragraph 20 made a payment toward the Forgiven Debts on or after the date the Court enters this Consent Judgment and Order, Comcast will either return the funds or credit the consumer's Comcast account in the amount of the payment within sixty (60) calendar days of the Review. Except as provided by this Consent Judgment and Order, Comcast shall not otherwise be required to credit a customer's account or issue a cash payment to any customer.

25. Comcast shall not require consumers to make any affirmations or relinquish any rights in order to receive debt relief in accordance with paragraphs 20 through 24 of this Consent Judgment and Order. The treatment of the Forgiven Debts described above, however, shall not revive, reaffirm, or in any other way create any new rights to collect on any debt owed by a consumer entitled to relief under the provisions of this Consent Judgment and Order. However, no debt owed by any consumer for any unpaid liability to Comcast, aside from those expressly described in Paragraph 20 of this Consent Judgment, are forgiven under the terms of this Consent Judgment and Order.

26. Within ten (10) calendar days of complying with Paragraphs 20 - 23, Comcast shall provide to the Attorney General's Office with a certification attesting that it has complied with the provisions set forth in Paragraphs 20 - 23, providing the number of consumers whose debts it has forgiven, and providing the total amount of the debt that has been forgiven. Within ten (10) calendar days of complying with the Review pursuant to Paragraph 24, Comcast shall provide the Attorney General's Office with a certification attesting that it has complied with the provisions set forth in Paragraph 24. Comcast shall provide further information demonstrating its compliance with Paragraphs 20 - 24 upon the reasonable, written request of the Attorney General's Office.

B. Minnesota Consumer Refunds.

27. Comcast shall create a fund of \$1,140,000.00 (the "Restitution Fund") to provide restitution to Minnesota consumers (the "Restitution Consumers") as follows:

- a. For the time period January 1, 2013, through July 1, 2017, all consumers to whom Comcast did not provide a Value-Add Promotional Item because the consumer purportedly did not affirmatively accept the terms of the Minimum Term Contract. Comcast shall issue refund checks in the amount of \$80.00 per

consumer. Comcast represents and warrants that it has identified approximately 8,400 such consumers.

- b. For the time period January 1, 2014, through July 1, 2017, all consumers who were charged for a modem in conjunction with their receipt of Comcast's Residential Services, but returned the modem within three (3) months of receiving it without terminating or downgrading their Residential Services. Comcast shall issue refund checks in the amount of all modem charges paid by such consumers before returning the modem to Comcast. Comcast represents and warrants that it has identified approximately 2,000 such consumers.
- c. For the time period June 1, 2015, through July 1, 2017, all consumers whose Residential Services were involuntarily disconnected or who voluntarily downgraded their Residential Services, and, as a result, paid an Early Termination Fee to Comcast. Comcast shall issue refund checks in the amount of \$80.00 per consumer. Comcast represents and warrants that it has identified approximately 5,200 such consumers.

28. Within fifteen (15) calendar days of the date the Court enters this Consent Judgment and Order, Comcast shall perform a search using the National Change of Address ("NCOA") database to obtain the most recent available addresses for the Restitution Consumers. Within thirty (30) calendar days after the NCOA search, Comcast shall send (via email where Comcast has a valid email address or mail where it does not) claim forms—substantially in the form that has been agreed upon by the Parties—to the Restitution Consumers. The Restitution Consumers shall be provided ninety (90) calendar days to complete and return a claim form to Comcast or its designee. If, in response to the claim forms that it sends, Comcast receives any undeliverable mail or email with forwarding addresses, Comcast shall re-send the claim forms to the forwarding addresses provided.

29. Within sixty (60) calendar days after the completion of the ninety (90) day claim period referenced in paragraph 28, Comcast shall issue refund checks to all Restitution Consumers who submitted a claim to Comcast. If, in response to the refund checks that it sends,

Comcast receives any undeliverable mail with forwarding addresses, Comcast shall reissue the checks to the forwarding addresses provided. Comcast shall further reissue any refund check that has not been cashed if a Restitution Consumer contacts Comcast and/or the Attorney General's Office and Comcast has not yet complied with paragraph 30. Comcast shall have no further obligation to locate customers beyond those outlined herein.

30. Refund checks issued to Restitution Consumers pursuant to paragraph 29 who Comcast cannot locate or that are not cashed within 180 calendar days of the issuance of the check shall escheat in accordance with unclaimed property laws.

31. Comcast shall not require Restitution Consumers to make any affirmations or relinquish any rights in order to receive payment in accordance with paragraphs 27 through 30 of this Consent Judgment and Order beyond those set forth herein. Comcast may fulfill its obligations under paragraphs 27 through 30 directly or by retaining the services of a settlement administration company, subject to Comcast's supervision. Comcast remains legally responsible for fulfilling all of its obligations under the terms of this Consent Judgment and Order.

32. The Attorney General's Office is authorized to request and receive information regarding the progress of the restitution process from the settlement administration company, through counsel for Comcast, provided that personally identifiable information as defined by 47 U.S.C. § 551 is not provided to the Attorney General's Office.

33. Within ten (10) calendar days of complying with each of Paragraphs 27 – 30, Comcast shall provide the Attorney General's Office with a certification attesting that it has complied with the provisions set forth in Paragraphs 27 – 30 and providing: (a) the number of consumers who have submitted a claim form in accordance with Paragraph 28; (b) the number of consumers who have received a restitution check and the total amount of the restitution issued in

accordance with Paragraph 29; and (c) the number of consumers whose restitution funds escheated and the total amount of the restitution funds that escheated in accordance with Paragraph 30.

34. Within sixty (60) calendar days of the date of Comcast's certification in accordance with Paragraph 33(b) of this Consent Judgment and Order, any unclaimed funds remaining in the Restitution Fund (the "Residual Sum") shall be remitted to the State of Minnesota by a check made payable to the State of Minnesota and mailed to the Attorney General at the following address: Katherine Kelly, Assistant Attorney General, Minnesota Attorney General's Office, 445 Minnesota Street, Suite 1200, St. Paul, MN 55101. All or any portion of the Residual Sum may be used for any lawful purpose by the State, including, but not limited to, distribution to consumers by the Attorney General in his sole discretion pursuant to Minn. Stat. § 8.31. Monies from the Residual Sum may also be used for settlement administration expenses, including payment to a settlement administrator. Any remaining funds shall be remitted to the general fund of the State of Minnesota pursuant to Minn. Stat. § 8.31.

C. Monetary Payment to the State.

35. Comcast shall pay to the Attorney General the sum of \$160,000.00 (the "Settlement Sum") pursuant to Minn. Stat. § 8.31, no later than fifteen (15) calendar days after the date on which the Court enters this Consent Judgment and Order. All or any portion of the Settlement Sum may be used for any lawful purpose, including, but not limited to, distribution to consumers by the Attorney General in his sole discretion pursuant to Minn. Stat. § 8.31. Monies from the Settlement Sum may also be used for settlement administration expenses, including payment to a settlement administrator. Any remaining funds shall be remitted to the general fund of the State of Minnesota pursuant to Minn. Stat. § 8.31.

36. The Settlement Sum shall be sent by a check made payable to the State of Minnesota and mailed to the Attorney General at the following address: Katherine Kelly, Assistant Attorney General, Minnesota Attorney General's Office, 445 Minnesota Street, Suite 1200, St. Paul, MN 55101.

IV. GENERAL TERMS

37. Nothing in this Consent Judgment shall relieve Comcast of its obligation to comply with all applicable laws and regulations.

38. In consideration of the stipulated relief, the sufficiency of which is acknowledged, the Attorney General, by execution of this Consent Judgment, and contingent upon the Court's entry of this Consent Judgment and Order, hereby fully and completely releases Comcast and its officers, employees, agents, independent contractors, and affiliates of any and all claims raised or which could have been raised in connection with or arising out of the allegations in the above-captioned action, up to and including the date of this Consent Judgment. The Attorney General through this Consent Judgment does not settle, release, or resolve any private causes of action, claims, and remedies, including, but not limited to, private causes of action, claims, or remedies provided for under Minn. Stat. § 8.31, against Comcast.

39. This Consent Judgment is neither an admission nor a denial of the State's allegations set forth in its Complaint and does not create any rights or otherwise benefit any nonparties to this Judgment beyond those individuals specified herein.

40. This Consent Judgment may be executed in counterparts, each of which constitutes an original, and all of which shall constitute one and the same agreement.

41. The person signing this Consent Judgment for Comcast warrants that he or she has been duly delegated authority to execute this Consent Judgment, that Comcast has been fully

advised by its counsel before entering into the Consent Judgment, and that he or she executed this Consent Judgment in an official capacity that binds Comcast.

42. This Consent Judgment constitutes the full and complete terms of the agreement entered into by Comcast and the State. This Consent Judgment and Order may not be changed, altered, or modified except by written agreement between the parties and approval of the Court.

43. This Court shall retain jurisdiction of this matter for purposes of enforcing this Consent Judgment and Order. The State may make such application as appropriate to enforce or interpret the provisions of this Consent Judgment and Order or, in the alternative, maintain any action within its legal authority for such other and further relief as it determines is proper and necessary for the enforcement of this Consent Judgment and Order. The parties agree that, in any action brought by the State to enforce the terms of this Consent Judgment and Order, the Court shall have authority to award equitable relief, including but not limited to specific performance of this Consent Judgment and Order.

44. If the State believes Comcast has failed to comply with the terms in this Consent Judgment and Order, the State will first provide written notice to Comcast of the alleged failure to comply and Comcast shall have ten (10) calendar days of the notice to provide a good faith written response. After receiving Comcast's written response, if the State believes the response is unsatisfactory, Comcast and the State shall have the opportunity to meet and confer within seven (7) calendar days regarding the alleged violation. The State shall not commence an action against Comcast alleging a violation of this Consent Judgment and Order until at least fifteen (15) calendar days after the State provided written notice to Comcast, or until after the deadline for the parties to meet and confer, whichever date is later. Comcast shall have the right to

request a reasonable extension of the deadlines contained in this paragraph and the State shall not unreasonably withhold its agreement to the extension.

45. Service of notices required by this Consent Judgment shall be served on the following persons, or any person subsequently designated by the parties to receive such notices:

If to the State of Minnesota:

Katherine T. Kelly
Assistant Attorney General
Office of the Minnesota Attorney General
445 Minnesota Street, Suite 1200
St. Paul, Minnesota 55101

If to Comcast:

General Counsel,
c/o Joseph W. Clark
Vice President & Senior Deputy General Counsel, Government Investigations
Comcast Corporate
1701 JFK Boulevard
Philadelphia, PA 19103

46. The failure of a party to exercise any rights under this Consent Judgment shall not be deemed to be a waiver of any right or any future rights.

47. This Consent Judgment, including any issues relating to interpretation or enforcement, shall be governed by the laws of the State of Minnesota.

48. Nothing in this Consent Judgment shall be construed to limit the power or authority of the State of Minnesota or the Attorney General except as expressly set forth herein.

49. Each of the parties is represented by counsel, participated in the drafting of this Consent Judgment and agrees that its terms may not be construed against or in favor of any of the parties by virtue of draftsmanship.

50. Comcast shall not state or imply, directly or indirectly, that the State has approved of, condones, or agrees with any conduct or actions by Comcast except as to Comcast's obligations required by this Consent Judgment and Order.

51. The terms of this Consent Judgment and Order shall remain in effect for a period of five (5) years from the date this Consent Judgment is entered by the Court.

52. Each party shall perform such further acts and execute and deliver such further documents as may reasonably be necessary to carry out this Consent Judgment.

53. The Parties consent to entry of the foregoing judgment, which shall constitute a final judgment as to the State's claims against Comcast.

Dated: _____

1/15/2020

KEITH ELLISON
Attorney General
State of Minnesota


KATHERINE T. KELLY
Assistant Attorney General
Atty. Reg. No. 0337535

JAMES W. CANADAY
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Attorneys for Plaintiff, State of Minnesota

Dated: _____

12-18-19



LYNN R. CHARYTAN

Executive Vice President & General Counsel

Comcast Cable

1701 JFK Boulevard

Philadelphia, PA 19102

For Comcast Cable

ORDER

Based upon the foregoing Consent Judgment, it is SO ORDERED.

Date: _____

THE HONORABLE LAURIE J. MILLER
JUDGE OF DISTRICT COURT

LET JUDGMENT BE ENTERED ACCORDINGLY.

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of

Comcast Corporation

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)
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)
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File No.: EB-IHD-15-00018079¹
Acct. No.: 201632080013
FRN: 0015401581

ORDER

Adopted: October 11, 2016

Released: October 11, 2016

By the Chief, Enforcement Bureau:

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission has entered into a Consent Decree to resolve its investigation into whether Comcast Corporation (Comcast) improperly charged its subscribers for services or equipment that they never requested and, in so doing, burdened them with the responsibility to discover such wrongful charges and seek corrective action.

2. “Negative option billing” is the practice of charging cable subscribers for services or equipment that they did not affirmatively request.² It is equivalent to the illegal practice known as “cramming” (the unauthorized placement of charges on telephone bills).³ In place for over 20 years, the negative option billing prohibition has been interpreted and enforced as a customer service rule, and the “Commission as well as state and local governments have concurrent jurisdiction to regulate cable operators’ negative option billing practices.”⁴

3. Congress enacted Section 623(f) of the Communications Act of 1934, as amended (Act), to ensure that customers would not have to pay for cable services or equipment without affirmatively requesting those services or equipment.⁵ The Commission subsequently implemented the negative option billing prohibition by adopting Section 76.981(a) of the Commission’s rules (Rules) in 1993.⁶

¹ The investigation began under File No. EB-IHD-14-00017459 and was subsequently assigned File No. EB-IHD-15-00018079. Any future correspondence with the Commission concerning this matter should reflect File Number EB-IHD-15-00018079.

² 47 U.S.C. § 543(f); 47 CFR § 76.981.

³ See, e.g., *AT&T Services, Inc.*, Order, DA 16-771 (EB Aug. 8, 2016), 2016 WL 4182923; *OneLink Communications, Inc., et al.*, Notice of Apparent Liability for Forfeiture, 31 FCC Rcd 1403 (2016).

⁴ *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation Buy-Through Prohibition*, Third Order on Reconsideration, 9 FCC Rcd 4316, 4363, para. 130 (1994) (*Third Order on Recons.*), *aff’d*, *Time Warner Entm’t Co. v. FCC*, 56 F.3d 151 (D.C. Cir. 1995). Although the negative option billing prohibition appears in Section 3 of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, § 3, 106 Stat. 1460 (1992) (Cable Act of 1992), the section of the statute governing rate regulation, the Commission has determined that “the negative option billing provision is not limited in its application to those cable services and cable operators subject to rate regulation. Rather, the unqualified negative option billing prohibition applies to all cable services offered by all cable operators. . . .” *Third Order on Recons.*, 9 FCC Rcd at 4361, para. 127.

⁵ 47 U.S.C. § 543(f); *Petition for a Declaratory Ruling Regarding Negative Option Billing Restrictions of Section 623(f) of the Communications Act and the FCC’s Rules and Policies*, Declaratory Ruling, 26 FCC Rcd 2229, 2230, para. 4 (MB 2011); see also *Third Order on Recons.*, 9 FCC Rcd at 4361-62, para. 128 & n.83; 138 Cong. Rec.

(continued....)

4. Under Section 623(f) of the Act, “[a] cable operator shall not charge a subscriber for any service or equipment that the subscriber has not affirmatively requested by name.”⁷ Section 76.981(a) of the Rules mirrors this prohibition⁸ and elaborates on the type of subscriber consent required. It specifies that the required affirmative request is not satisfied by a subscriber’s mere *failure to refuse* a cable operator’s offer to provide new services or equipment.⁹ At the same time, the Commission does not require that a subscriber recite the particular names of services or equipment when requesting those services or equipment.¹⁰ So long as “the offered services and equipment and their prices have been adequately explained and identified” by the cable operator,¹¹ the subscriber may “knowingly accept[] the offered services and equipment by affirmative statements or actions.”¹²

5. The negative option billing prohibition protects consumers not only from intentionally deceptive practices, but from “having to take on the burden of identifying and negatively responding to charges for services that appear on a bill that are not desired and for which no request has been made,” as well as the “inadvertent payment of such charges and from becoming contractually bound for them.”¹³ The negative option billing prohibition therefore relieves subscribers of the need to spend significant time and effort in seeking redress for any unwanted service or equipment, which is often manifested in long telephone wait times, unreturned phone calls from customer service, unmet promises of refunds, and hours of effort wasted while pursuing corrections.¹⁴

6. The prohibitions on negative option billing allow cable operators to make certain adjustments to subscribers’ services and rates, provided that they “do not constitute a fundamental change in the nature of an existing service or tier of service and are otherwise consistent with applicable regulations.”¹⁵ Cable operators enjoy the freedom to offer their customers beneficial upgrades and, when appropriately justified, to expand system capacity.¹⁶

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S14248 (daily ed. Sept. 21, 1992) (statement of Sen. Gorton); 138 Cong. Rec. S567-S568 (daily ed. Jan. 29, 1992) (statement of Sen. Gorton).

⁶ See *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992 Rate Regulation*, Report and Order and Further Notice of Proposed Rulemaking, 8 FCC Rcd 5631 (1993) (*Rate Regulation Order*).

⁷ 47 U.S.C. § 543(f).

⁸ 47 CFR § 76.981(a) (providing that “[a] cable operator shall not charge a subscriber for any service or equipment that the subscriber has not affirmatively requested by name”). See *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, Sixth Order on Reconsideration, 10 FCC Rcd 1226, 1296, Appendix B, para. 4 (1994) (*Sixth Order on Recons.*).

⁹ 47 CFR § 76.981(a). The rule also provides that the required consent may be made orally or in writing. *Id.*

¹⁰ See *2011 Declaratory Ruling*, 26 FCC Rcd at 2234, para. 10.

¹¹ *Id.*

¹² *Id.* at 2236, para. 14.

¹³ *Monmouth Cablevision, Monmouth County, New Jersey*, Memorandum Opinion and Order, 10 FCC Rcd 9438, 9440, para. 11 (Cable Servs. Bur. 1995).

¹⁴ Cf. *Warner Cable Communications, Milwaukee, Wisconsin*, Letter of Inquiry—Negative Option Billing Issue, 10 FCC Rcd 2103, 2105, para. 13 (Cable Servs. Bur. 1995) (describing the negative option billing prohibition’s role as “a consumer protection mechanism”).

¹⁵ 47 CFR § 76.981(b).

¹⁶ As the Commission has explained, the negative option billing prohibition does not apply to “a change in the mix of channels in a tier, including additions or deletions of channels . . . unless they change the fundamental nature of the tier” or to rate increases unless the “price change is accompanied by a fundamental change in service, such as the addition of a new tier.” *Rate Regulation Order*, 8 FCC Rcd at 5906, para. 440; see *2011 Declaratory Ruling*, 26 (continued....)

7. Comcast provides cable, telephone, and Internet services to customers throughout the United States and charges its subscribers monthly for these services and related equipment. As noted above, subject to limited exceptions, federal law requires that cable operators such as Comcast charge subscribers only for services or equipment that the customer affirmatively requested. A cable operator may not infer that a subscriber accepted the addition of new services or equipment from the subscriber's failure to refuse them.

8. The Commission received numerous complaints from consumers alleging that Comcast imposed charges for equipment and services that customers did not order. Although the specific details vary, many complaints allege that Comcast added services or equipment to subscribers' cable service without their knowledge or permission. Some complaints claim that services or equipment were added or upgraded after subscribers specifically declined an offer by Comcast representatives to do so. Many of the complaints describe multiple attempts by subscribers to obtain clarification or redress of billing issues during hours-long and repeated phone calls; allege unhelpful or abusive behavior by customer service representatives (such as unexplained disconnections, refusal to transfer calls to supervisory personnel, threats of service interruptions, or assertions that subscribers bore the responsibility to know how much their bill ought to be); and allege repeated, unmet promises by Comcast employees to apply credits or billing adjustments. The following examples are representative of the many consumer complaints received by the Commission that led the Bureau to undertake an investigation of Comcast.¹⁷

9. *Subscriber A.*¹⁸ On August 5, 2015, Subscriber A, a Florida resident, filed a complaint with the Commission. Subscriber A stated that on August 4, 2015, she called Comcast's automated bill payment line and was informed she owed more than \$300. According to Subscriber A, she had been receiving the same services from Comcast (digital starter cable service and essential Internet access service) in her more than nine years as a subscriber; the only change, she stated, was the addition of the TV Latino service, priced at \$9.99 per month, in May 2015. After the call, Subscriber A wrote, she logged into her Comcast account and "noticed that my bill showed services that I did not have. . . . [an] Xfinity 3450 Latino triple play Bundle with a two year agreement" that "includes voice service with international calling." She also alleged that she was being charged for "equipment that was mailed to me according to the Comcast bill." Subscriber A claimed that she then called Comcast to ask for an explanation; the service representative allegedly stated that the changes to her account were made on July 18, but he was unable to say how or why the changes occurred. The representative reportedly told Subscriber A to call the billing department as they alone could add or remove services from her account. Subscriber A claimed she then requested to speak with a supervisor, but was informed that none were available:

I was told that all supervisors were on a call and that my name can be added to a list and someone would call me back within 48hours. I said no that I would hold and I was told I that I was not able to wait on the line. The process was for him to provide me with the telephone number and for me to call because he's transfer bottom was not working, by now I have been on the phone for almost an hour. I insisted on staying on the line and the representative told me that he was going to hang up on me.

(Continued from previous page)

FCC Rcd at 2231, para. 5. Similarly, system-wide equipment upgrades are excluded from the negative option billing prohibition so as not to "deter beneficial upgrades" and thereby undermine the Cable Act of 1992's goal of "ensur[ing] at cable operators continue to expand, where economically justified, their capacity." *Rate Regulation Order*, 8 FCC Rcd at 5908, para. 442 (quoting Cable Act of 1992 § 2(b)(3)).

¹⁷ We cite to complaints filed by Comcast subscribers with the Commission without identifying any of the complainants by name. In addition, complainant quotes are reproduced precisely without inserting [sic] for any errors, except that references to specific Comcast employees are redacted.

¹⁸ See Complaint 448664 (on file in EB-IHD-00018079).

Subscriber A stated that she then called the billing department and, after a 15-minute wait, informed another representative of her account issues:

After placing me on hold a couple of times he was not able to find a reason for the changes. He stated that he had reviewed a system where the customer voice are recorded consenting to any changes to their accounts, and there was not recording or calls from me in their system requesting any upgrades or changes to my account.

Subscriber A was then reportedly transferred to the resolution team due to the billing department representative's inability to alter her account:

The person that I spoke to in this department was sarcastic had not customer service skills, show no empathy for my situation. She had the nerve to ask me if I enjoyed the new service, I was so upset at this question that I asked her how was I suppose to enjoy something I didn't even know I had her answer was that I should've known.

According to Subscriber A, the resolution team representative was also unable to resolve her account issues:

[The customer service representative] offered to changed back my account but was not able to help me with the internet service I had to contact a different department to help me with that. She did not know why the changes were made and didn't really care. I requested to speak to a supervisor and I was told that there was no supervisor available until Thursday. I requested to have my service change back to what I had and to have my service cancel, I was told she was only allow one transaction per day. After spending over 3 hours on the phone with [the customer service representative] from the Customer resolution team transferred me to a fax machine.

10. *Subscriber B.*¹⁹ On August 8, 2015, Subscriber B, a Colorado resident, filed a complaint with the Commission, claiming that Comcast had wrongfully billed him for an extra cable box for over two-and-a-half years. According to Subscriber B, he located the extra charge after eighteen months had passed, and repeatedly and unsuccessfully attempted to obtain a refund over the course of the following year:

For the last year after I noticed the overcharge, I have been regularly calling to ask them to fix it they have not fixed it they have been putting it off and putting it off and putting it off. Then finally I told two weeks ago that their computers only go back six months. I went to the service center they told me the same thing so for a long time they put me off and said they were working on it and going to fix the problem just to have me wait long enough that they can only go back six months and they don't have to ever pay me back therefore I have a large outstanding bill that I owe them and was told it would be looked into. I feel completely taken advantage of! I do not want to pay what I now owe because of the 2+ years I have been overcharged (through no fault of my own). The bills are so confusing the extra charge was hard to find. Please help. I have spent close to 15 hours on the phone with comcast and now close to five hours in person.

¹⁹ See Complaint 457187 (on file in EB-IHD-00018079).

11. *Subscriber C.*²⁰ On June 10, 2015, Subscriber C, a Florida resident, filed a complaint with the Commission, claiming that he was charged for a pay-per-view boxing match that he never ordered. According to Subscriber C, he informed a Comcast representative of this and was told that a one-time courtesy refund would be applied. Apparently, the credit was denied and the refund was never applied, compelling Subscriber C's wife to spend over two hours on the phone with a customer service representative "who cannot transfer us to a supervisor."

12. *Subscriber D.*²¹ On July 20, 2015, Subscriber D, a Florida resident, filed a complaint with the Commission. Subscriber D alleged that although he had been a Comcast customer for only three months, the bill was "always wrong" with "services added I didn't order, contract price change without my consent." Subscriber D stated that "when I call to fix they give me credits to fix, so I pay bill and next month there is money owed from previous bill. and when I call on that the notes for credits are mysteriously gone."

13. *Subscriber E.*²² On June 11, 2014, Subscriber E, a District of Columbia resident, filed a complaint with the Commission, which stated:

I have been being charged for showtime by Comcast for over a year despite the fact that I never asked for it, and can't even access it! When I called in to inquire and have the charges removed, I was told they would only go back 6 months! I explained to them that I never asked for it not did I or could I use it and they still refused to refund me for all the months I've paid for it! I explained to them that it went unnoticed simply because I open the bill, look at the amount, pay it and trash it!

14. The Bureau subsequently launched an investigation of Comcast's compliance with the negative option billing prohibition and other requirements under the Act and the Rules. Comcast cooperated in the investigation.

15. To settle this investigation, Comcast has agreed to pay a civil penalty of \$2,300,000 to the United States Treasury. The Consent Decree will also require Comcast to, among other things: develop and implement a five-year compliance plan, including procedures designed to obtain customers' affirmative informed consent prior to charging them for new services or equipment; send customers an order confirmation, separate from any other bill, that clearly and conspicuously describes newly added services and equipment and their associated charges; offer mechanisms to customers that, at no cost, enable them to block the addition of new services or equipment to their accounts; implement a detailed program for redressing disputed charges in a standardized and expedient fashion; limit adverse actions (such as referring an account to collections or suspending service) while a disputed charge is being investigated; designate a senior corporate manager as a compliance officer; and implement a training program to ensure customer service personnel resolve customer complaints about unauthorized charges.

16. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the referenced investigation regarding Comcast's compliance with Section 623(f) of the Act²³ and Section 76.981(a) of the Rules.²⁴ The Bureau and Comcast have negotiated the terms of the Consent Decree that resolves these matters. The Consent Decree is attached hereto and incorporated by reference.

²⁰ See Complaint 333638 (on file in EB-IHD-00018079).

²¹ See Complaint 412884 (on file in EB-IHD-00018079).

²² See Complaint 335794 (on file in EB-IHD-00018079).

²³ 47 U.S.C. § 623(f).

²⁴ 47 CFR § 76.981(a).

17. In the absence of material new evidence relating to this matter, we conclude that our investigation raises no substantial or material questions of fact as to whether Comcast possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

18. Accordingly, **IT IS ORDERED**, pursuant to Section 4(i) of the Communications Act of 1934, as amended,²⁵ and the authority delegated by Sections 0.111 and 0.311 of the Commission's rules,²⁶ the attached Consent Decree **IS ADOPTED** and its terms incorporated by reference.

19. **IT IS FURTHER ORDERED** that the above-captioned matter **IS TERMINATED**.

20. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first-class mail and certified mail, return receipt requested, to David H. Solomon, Esq., and J. Wade Lindsay, Esq., Attorneys for Comcast Corporation, Wilkinson Barker Knauer, LLP, 1800 M Street, NW, Suite 800 N, Washington, DC 20036.

FEDERAL COMMUNICATIONS COMMISSION

Travis LeBlanc
Chief, Enforcement Bureau

²⁵ 47 U.S.C. § 154(i).

²⁶ 47 CFR §§ 0.111, 0.311.

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of

Comcast Corporation

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File No.: EB-IHD-15-00018079¹

Acct. No.: 201632080013

FRN: 0015401581

CONSENT DECREE

1. The Enforcement Bureau of the Federal Communications Commission and Comcast Corporation, by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau's investigation into Comcast Cable Communications, LLC's compliance with Sections 623(f) and 632 of the Communications Act of 1934, as amended, and Sections 76.309(c)(1)(i)-(iv) and (3), 76.981, and 76.1619 of the Commission's rules, conducted by means of a subpoena issued January 30, 2015, File No. EB-IHD-15-00018079, and a supplemental subpoena issued October 2, 2015, under the same file number.

I. DEFINITIONS

2. For the purposes of this Consent Decree, the following definitions shall apply:
- (a) "Act" means the Communications Act of 1934, as amended.²
 - (b) "Adopting Order" means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) "Affiliate" shall have the same meaning as Section 3(2) of the Act.³
 - (d) "Affirmative Informed Consent" means an affirmative act or statement or series of acts or statements evidencing that a Customer affirmatively requested to acquire or subscribe to a Product whose description and price have been disclosed to the Customer prior to, or at the time of, or contemporaneous with, ordering, or which are otherwise disclosed in accordance with the Rules or applicable law. For purposes of this Consent Decree, "act or statement" may include (i) an oral or written (including electronic) statement or (ii) other conduct that reasonably connotes an affirmative request to acquire or subscribe to such Product in accordance with applicable law (e.g., the purchase of an on-demand movie via a remote control and set-top box).
 - (e) "Bill" means a Customer's invoice (paper, electronic, video, or other means) issued by Comcast.
 - (f) "Blocking" means a restriction, which may include security PINs, passwords, or similar authentication measures, that a Customer, at the Customer's election, may place on the Customer's account that limits the ability of non-authorized persons to purchase new Products.

¹ The investigation began under File No. EB-IHD-14-00017459 and was subsequently assigned File No. EB-IHD-15-00018079. Any future correspondence with the Commission concerning this matter should reflect File Number EB-IHD-15-00018079.

² 47 U.S.C. § 151 *et seq.*

³ *Id.* § 153(2).

- (g) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
- (h) “Clear and Conspicuous” means a statement is disclosed in such size, color, contrast, and/or location that it is readily noticeable, readable, and understandable.
- (i) “Comcast” means Comcast Cable Communications, LLC and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest that provide cable services, and to the extent they are providing such services.
- (j) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
- (k) “Communications Laws” means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which Comcast is subject by virtue of its business activities, including but not limited to the Negative Option Billing Laws.
- (l) “Compliance Plan” means the compliance obligations, program, and procedures described in this Consent Decree at paragraph 15.
- (m) “Customer(s)” means a Comcast residential account holder, subscriber, or any Person to whom Comcast provides cable service, cable equipment, or cable modems for which charges are or were placed on the Customer’s Bill. For purposes of this Consent Decree, a Person who is authorized by the Customer to make changes to the Customer’s account in accordance with Comcast’s reasonable procedures may, if the context warrants, also be deemed a Customer. “Customer” does not include any business entity or any state, federal, local, or other governmental entity if the business entity or government, and not the employees or individuals working for or with that business entity or government, is solely liable to Comcast for payment of all charges billed on an account. “Customer” may include a former customer, if such former customer has a dispute with Comcast regarding an Unauthorized Product Charge that is subject to the terms of this Consent Decree as of or after the time such customer terminated service with Comcast.
- (n) “Customer Complaint” means any complaint, inquiry, or other notification, whether made orally or in writing, alleging the existence of an Unauthorized Product Charge and for which Comcast creates a complaint ticket and opens a work log to track progress in handling the complaint. These include: (1) formal written consumer complaints that Comcast receives from consumer protection and regulatory agencies, such as the Better Business Bureau, state attorneys general, and the FCC; (2) customer contacts that Comcast customer care agents or vendors serving Comcast’s divisions or regions and the “We’re On It” program forward to Comcast’s Executive Customer Relations (ECR) team; (3) customer contacts made to the office of the Senior Vice President, Customer Experience, via the Comcast website, that are forwarded to the ECR team; and (4) customer contacts made through Comcast’s social media platforms that are forwarded to the ECR team.
- (o) “Effective Date” means the date by which both the Bureau and Comcast have signed this Consent Decree.
- (p) “Investigation” means the inquiry conducted by the Bureau in File No. EB-IHD-15-00018079 (formerly EB-IHD-14-00017459) regarding Comcast’s compliance with Sections 623(f) and 632 of the Act and Sections 76.309(c)(1)(i)-(iv) and (3), 76.981, and 76.1619 of the Rules, as conducted by means of a subpoena issued

January 30, 2015, under File No. EB-IHD-15-00018079, and a supplemental subpoena issued October 2, 2015, under the same file number.

- (q) “Negative Option Billing Laws” means Section 623(f) of the Act, Section 76.981(a) of the Rules, and Commission orders related to such provisions.
- (r) “Newly Acquired Entities” means any entities Comcast acquires in the future.
- (s) “Parties” means Comcast and the Bureau, each of which is a “Party.”
- (t) “Person” shall have the same meaning as Section 3(39) of the Act.⁴
- (u) “Product” means any cable service, cable equipment, or cable modem for which charges are placed on the Customer’s Bill.
- (v) “Rules” mean the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (w) “Unauthorized Product Charge” means a charge for new cable services, new cable equipment, or a new cable modem that is placed on a Customer’s Bill without the Customer’s Affirmative Informed Consent. “Unauthorized Product Charge” does not include rate adjustments made in accordance with applicable law, including any charges for or adjustments made to any taxes or fees imposed by a governmental entity, after notice is given to Customers in accordance with Commission Rules or applicable law, and the additions, deletions, restructurings, or divisions described in Section 76.981(b) of the Rules as provided by and subject to the terms of Section 76.981(b) of the Rules.

II. BACKGROUND

3. Comcast is one of the nation’s largest providers of cable, high-speed Internet, and voice services. It has 27.7 million customers, of which 22.3 million are cable subscribers.⁵ Comcast charges its subscribers monthly for cable, voice, and Internet services, and related equipment. Since December of 2014, the Bureau has been investigating Comcast’s compliance with Sections 623(f) and 632 of the Act and Sections 76.309(c)(1)(i)-(iv) and (3), 76.981, and 76.1619 of the Rules. In connection with that investigation, the Bureau has reviewed consumer complaints, including complaints alleging that Comcast charged its subscribers for cable-related services and equipment that customers did not request. Comcast cooperated in the Investigation and provided the Bureau with additional Customer Complaints.

4. Although specific circumstances differ, Customer Complaints reviewed by the Bureau contain allegations that Comcast added charges for new Products to their Bills without authorization, including Unauthorized Product Charges for premium channels⁶ and additional cable boxes, digital video

⁴ *Id.* § 153(39).

⁵ See Comcast, Comcast Reports 4th Quarter and Year End 2015 Results (Feb. 3, 2016), <http://www.cmcsa.com/releasedetail.cfm?ReleaseID=953074>.

⁶ See, e.g., Letter from David H. Solomon, Esq., Counsel to Comcast Corporation, to Jeffrey G. Gee, Chief, Investigations and Hearings Division, FCC Enforcement Bureau (Oct. 30, 2015) (on file in EB-IHD-15-00018079), Exhibit 1 at COM-COM-00010020-00010024 (alleging that Comcast added premium channels to subscriber’s account; account adjusted and customer credited); COM-COM-00008737 (customer placed in promotional package that included premium channels for price equivalent to the package she was interested in having, but customer alleges she was unaware of premium channels in package; customer placed on new promotional package that was even less expensive); COM-COM-00014241-00014243 & 0014250-0014251 (alleging that Comcast added premium package to customer’s account; Comcast had added a premium package in error and the charge was removed and backdated, and credit issued for inconvenience). We do not identify any of the complainants discussed here by name. In addition, we cite to particular documents relating to these complainants by the index numbers provided by Comcast in its subpoena responses. Letter from David H. Solomon, Esq., Counsel to Comcast Corporation, to

(continued....)

recorders (DVRs), or cable modems.⁷ Some Customers alleged they specifically declined the new Products offered by Comcast but were nonetheless charged for the unrequested Product on their Bills, while others simply alleged that they had no knowledge of changes made to their accounts until they received an email notifying them that changes were made, they received new equipment in the mail, or after they read their Bills and saw the charges for new Products.⁸ And, some Customers alleged that they were unable to obtain redress from Comcast without substantial time and effort, including allegedly long telephone wait times, allegedly unreturned calls from Comcast customer service representatives, allegedly unmet promises of refunds, alleged travel to local Comcast offices to return unrequested equipment, and hours allegedly spent disputing charges while pursuing refunds.

5. Comcast asserts that, in the vast majority of these instances, the charges were authorized and that in other instances, when it was notified of such concerns, it took corrective action where appropriate such as removing items from bills and refunding customers. Further, Comcast's response to the Bureau's October 2 Subpoena indicated that Comcast has a Customer account audit and reconciliation process to adjust for any errors with installed equipment and to ensure that customers are paying only for the services and equipment they are receiving. According to Comcast, the process includes daily reviews of orders and technician receipts to ensure that the equipment matches the service that the customer ordered. To accomplish this, Comcast states that it runs a report of all orders that have received an installation of equipment to identify accounts where the equipment on the account does not match the service. According to Comcast, this reporting tool catches ordering errors that are proactively and automatically corrected, and equipment errors are given top priority for resolution. To the extent that this process finds charges for services or equipment not ordered or received, Comcast asserts that it issues a credit and notifies the Customer. To the extent that this process may result in charges being reinstated, Comcast states that typically provides the customer written notice before the charge is reinstated.⁹

6. The Bureau takes the position that the Customer Complaints and other facts adduced during the Investigation are evidence of violations of Section 623(f) of the Act and Section 76.981 of the Commission's Rules. Section 623(f) of the Act prohibits negative option billing, stating:

A cable operator shall not charge a subscriber for any service or equipment that the subscriber has not affirmatively requested by name. For purposes of this subsection, a subscriber's failure to refuse a cable operator's proposal to provide such service or equipment shall not be deemed to be an affirmative request for such service or equipment.¹⁰

Section 76.981(a) of the Rules mirrors this prohibition, stating:

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Jeffrey J. Gee, Acting Chief, Investigations and Hearings Division, FCC Enforcement Bureau (Feb. 11, 2015) (on file in EB-IHD-15-00018079).

⁷ See, e.g., *id.* at COM-COM-00021064 (alleging that Comcast billed subscriber for two cable boxes she did not want or have after Comcast performed a service call and the customer renewed); COM-COM-00010202 (alleging that Comcast charged customer for two additional cable boxes that she replaced, but Comcast had failed to give her a time to return the replaced boxes); COM-COM-00020642 (due to an incorrect rate code on the account, Comcast billed subscriber for renting a cable modem when subscriber had own cable modem).

⁸ See, e.g., *id.* at COM-COM-00003813 (alleging that Comcast charged account for HD after giving her an HD box as a replacement despite subscriber's specific rejection of offer); COM-COM-00018688 (alleging that subscriber's bill higher due to service added without authorization after customer told the technician during a service call that Comcast had cut out 50 channels that she was receiving and asked the technician to add the 50 channels back onto her account, which resulted in her being moved to a higher tier of service than she expected); COM-COM-00016691 (alleging third-party upgraded service to Triple Play despite subscriber's specific refusal).

⁹ Comcast Response to October 2, 2015 Subpoena at 30.

¹⁰ 47 U.S.C. § 543(f).

A cable operator shall not charge a subscriber for any service or equipment that the subscriber has not affirmatively requested by name. A subscriber's failure to refuse a cable operator's proposal to provide such service or equipment is not an affirmative request for service or equipment. A subscriber's affirmative request for service or equipment may be made orally or in writing.¹¹

Section 76.981(b) clarifies that such prohibitions do not preclude certain rate adjustments, the addition or deletion of specific programs from service offerings, the addition or deletion of specific channels from existing tiers or services, or the restructuring of tiers of service, provided such changes do not constitute a "fundamental change in the nature of an existing service or tier of service."¹² The "Commission as well as state and local governments have concurrent jurisdiction to regulate cable operators' negative option billing practices."¹³

7. The Bureau interprets Section 623(f) of the Act and Section 76.981 of the Rules as constituting a *per se* prohibition on a cable operator's billing cable subscribers for any services or equipment that they did not affirmatively request, and as the functional equivalent of the prohibited practice known as "cramming" (unauthorized placement of charges on telephone bills) with respect to common carriers. In the Bureau's view, negative option billing harms subscribers by forcing them to detect and correct the cable operator's erroneous placement of unauthorized charges.¹⁴ The Bureau believes that such subscribers find themselves in an unpredictable environment where some have charges corrected while others experience persistent efforts to enforce payment of unauthorized charges. The Bureau believes that such actions cause consumer harm by requiring subscribers to spend considerable time making telephone calls to customer service agents, escalating their complaints to supervisors, or having to travel to a customer service location to return wrongly delivered equipment. Thus, the Bureau contends that Comcast, through the course of conduct described above, violated Section 623(f) of the Act and Section 76.981(a) of the Rules by charging its Customers for new Products they had not affirmatively requested.

8. Comcast disputes this contention and the Bureau's interpretation of the Negative Option Billing Laws. Comcast notes that the Commission has cautioned against an expansive application of the Negative Option Billing Laws, stating that a broad reading of the rule could lead to harmful consequences, such as obligating cable operators to obtain affirmative consent "before making any change in offerings, including even relatively minor changes . . ."¹⁵ Indeed, based on Commission

¹¹ 47 CFR § 76.981(a).

¹² *Id.* § 76.981(b).

¹³ *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation Buy-Through Prohibition*, Third Order on Reconsideration, 9 FCC Rcd 4316, 4361, para. 130 (1994), *aff'd*, *Time Warner Entm't Co. v. FCC*, 56 F.3d 151, 194 (D.C. Cir. 1995).

¹⁴ *Monmouth Cablevision, Monmouth County, New Jersey*, Memorandum Opinion and Order, 10 FCC Rcd 9438, 9440, para. 11 (Cable Servs. Bur. 1995) (concluding that the cable operator had violated the negative option billing prohibition when it automatically billed its customers the \$5.00 sale price of a remote control, which had previously been leased to customers for \$1.00/month unless the customer took action to remove the charge).

¹⁵ *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, Sixth Order on Reconsideration, Fifth Report and Order, and Seventh Notice of Proposed Rulemaking, 10 FCC Rcd 1226, 1263, para. 107 (1994); *see also Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, Report and Order and Further Notice of Proposed Rulemaking, 8 FCC Rcd 5631, 5907, para. 440 (1993) (emphasis added) (*Rate Regulation Order*) ("We do not believe subscribers also need the additional protection of the negative option billing provision for every proposed rate increase, unless a price change accompanies a fundamental change in service, such as the addition of a tier."); *Petition for Declaratory Ruling Regarding Negative Option Billing Restrictions of Section 623(f) of the Communications Act and the FCC's Rules and Policies*, Declaratory Ruling, 26 FCC Rcd 2229, 2231, para. 5 (MB (continued....))

precedent, Comcast contends that the Negative Option Billing Laws are not *per se* prohibitions, but instead are targeted only at affirmatively deceptive conduct on the part of cable operators,¹⁶ and Commission enforcement requires a demonstrated pattern of violation.¹⁷ As such, Comcast asserts that erroneous charges, including those occasioned by employee error, which do not involve deceit or the company's intentionally "duping" customers, cannot constitute prohibited negative option billing within the meaning of relevant authority or Commission precedent. Comcast believes that this is particularly true where, as here, the company took actions such as removing items from bills and making refunds to customers and where the company had effective audit processes.

9. The Bureau and Comcast desire to resolve this Investigation and the related disputes without engaging in further litigation on the terms and subject to the conditions hereinafter set forth.

III. TERMS OF AGREEMENT

10. **Adopting Order.** The provisions of this Consent Decree shall be incorporated by the Bureau in an Adopting Order.

11. **Jurisdiction.** Comcast agrees that the Bureau has jurisdiction over it, the matters that were the subject of the Investigation, and the enforcement of this Consent Decree and has the authority to enter into, adopt and enforce this Consent Decree.

12. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become operative on the Effective Date. As of the Effective Date, the Adopting Order and this Consent Decree shall have the same force and effect as any other order of the Commission. For Newly Acquired Entities, Comcast shall have a reasonable period of time, which in no event shall exceed twelve (12) months, in which to bring said entities into compliance with this Consent Decree. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order. The Bureau retains the right to take additional action or seek modification of this Consent Decree if the Bureau determines that Comcast made any material misrepresentation or material omission relevant to the resolution of this Investigation.

13. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of the Investigation, Comcast agrees to the terms, conditions, and procedures contained herein. The Parties, by and through their counsel, have agreed that this Consent Decree fully and finally resolves all issues between them arising from or related to the Investigation and all other matters addressed in this Consent Decree (including with respect to claims or issues of Unauthorized Product Charges, claims or issues of unauthorized charges or overcharges for other service or equipment, including modems, and credit and collections conduct or

(Continued from previous page)

2011) (*2011 Declaratory Ruling*) (noting that Commission has rejected an "expansive reading of the statute" that would "require[] affirmative consent prior to any change in service, no matter how minor") (citation omitted); *Comcast Cablevision, Tallahassee, Florida Letter of Inquiry – Negative Option Billing Issue*, Memorandum Opinion and Order, 10 FCC Rcd 2106, 2107-08, paras. 8-10 (Cable Servs. Bur. 1995) (finding that Comcast's practice of automatically subscribing its customers to (a) individual a la carte channels or an a la carte package, depending upon their previous level of service, and (b) a wire maintenance service plan, did not, on the facts of that case, violate the negative option billing provisions because such changes did not propose any fundamental change in the nature of the existing tiers or service or impose an additional expense); *Warner Cable Communications Milwaukee, Wisconsin Letter of Inquiry – Negative Option Billing Issue*, Memorandum Opinion and Order, 10 FCC Rcd 2103, 2104-05, para. 10 (Cable Servs. Bur. 1995) (same).

¹⁶ *2011 Declaratory Ruling*, 26 FCC Rcd 2229, 2230, 2234-35, paras. 4, 10, 12-13 (references to the negative option billing prohibition as protecting customers from being "duped").

¹⁷ See *Rate Regulation Order*, 8 FCC Rcd at 5905, para. 439.

policies associated with customer charges), for all time periods up to the date of entry of this Consent Decree, and precludes further investigations, litigation, or enforcement action between the Commission and Comcast on the resolved issues except for purposes of enforcing this Consent Decree.¹⁸

14. **Compliance Officer.** Within thirty (30) days of the Effective Date, Comcast shall designate a senior corporate manager with the requisite corporate and organizational authority to serve as Compliance Officer. The Compliance Officer shall be responsible for developing, implementing, and administering the Compliance Plan and ensuring that Comcast complies with the terms and conditions of the Compliance Plan and this Consent Decree. In addition to the general knowledge of the Communications Laws necessary to discharge his or her duties under this Consent Decree, the Compliance Officer shall have relevant knowledge of the matters addressed in this Consent Decree prior to assuming his or her duties.

15. **Compliance Plan.** Comcast shall implement and comply with the following processes and procedures with respect to Products sold after the Effective Date of this Consent Decree:

- (a) **Authorization of New Products.** To the extent that it has not already done so, Comcast shall develop one or more processes or procedures, which processes or procedures shall be fully implemented by Comcast (except as indicated otherwise below) no later than July 1, 2017, through which Comcast shall obtain Affirmative Informed Consent from a Customer before a Customer is billed for any new Product. Such processes or procedures, whether individually or taken together, shall cover every sales channel including, but not limited to, online orders, telephone orders, set-top box orders, and field technician-generated orders. Beginning no later than December 31, 2017, Comcast shall retain sufficient information and documentation to allow such Affirmative Informed Consent to be verified for a period of not less than twelve (12) months (or five (5) months in the case of telephone recordings). A Customer may provide Affirmative Informed Consent either to Comcast or to a Person or entity responsible to Comcast for receiving such Affirmative Informed Consent. If Affirmative Informed Consent is not directly obtained by Comcast, Comcast shall implement reasonable policies and practices to confirm that Affirmative Informed Consent is appropriately obtained and documented by that Person or entity responsible to Comcast before that Customer is billed for any new Product and to confirm that such Person or entity retains sufficient information and documentation consistent with the requirements of this subparagraph. Comcast shall monitor and enforce those policies and practices to confirm that Affirmative Informed Consent is appropriately obtained and documented, and where Affirmative Informed Consent has not been appropriately obtained and documented, Comcast shall require remedial action by the Person or entity responsible for doing so (which may include, for example, suspension of employment, proactive credits for subscribers, or employee retraining) or cease billing for such new Product.
- (b) **Purchase Confirmation for Products.** To the extent that it does not already do so, by July 1, 2017, Comcast shall implement processes or procedures through which Comcast shall send Customers an order confirmation separate from any Bill or other invoice for any new Product. Such purchase confirmation must Clearly and Conspicuously describe the Product, the price charged, and the length of any trial or promotional period, and shall be delivered by any reasonable means through which the Customer is capable of receiving such confirmation, including via U.S.

¹⁸ The Bureau and Comcast agree that this Consent Decree does not purport to resolve the Parties' differing interpretations of the Negative Option Billing Laws.

mail or email to the physical or email address provided by the Customer or associated with the account, or accessible via electronic means such as on-screen confirmations for orders made through set-top boxes, or by making such confirmation notices available online and expressly referring Customers who will not provide an email address or do not have an email address to such online confirmation. Such purchase confirmation shall be sent or made available online expeditiously and no later than three (3) days following the time a new Product is purchased.

- (c) **Billing Redress for Unauthorized Product Charges.** By July 1, 2017 (except as indicated otherwise below), Comcast shall implement billing redress processes or procedures to include the following requirements:
- i. For Products ordered on or after the Effective Date and before December 31, 2017, in the event a Customer disputes a charge for a new Product as an Unauthorized Product Charge, Comcast shall make the determination as to whether a charge is an Unauthorized Product Charge based on the content, presence, or absence of any record, documentation, affirmative conduct, or other evidence of Affirmative Informed Consent (including the purchase confirmation provided under subparagraph 15(b), provided that the Customer had the ability to reject or rescind approval before the Customer was billed for the Product). Upon determining that such charge is an Unauthorized Product Charge, Comcast shall timely provide the Customer with a refund or credit of the Unauthorized Product Charge consistent with the terms and conditions of the Comcast Agreement for Residential Services.
 - ii. For Products ordered on or after December 31, 2017, in the event a Customer disputes a charge for a new Product as an Unauthorized Product Charge, (1) such charge shall not be deemed an Unauthorized Product Charge if Comcast has any record contemplated under subparagraph 15(a) documenting the Customer's Affirmative Informed Consent, and (2) in circumstances where the documentation of the Customer's Affirmative Informed Consent under subparagraph 15(a) is a telephone recording and Comcast no longer retains that recording, Comcast may make its determination as to whether a charge is an Unauthorized Product Charge based upon Customer conduct that reasonably connotes an affirmative request for such service or charge after a Product had been ordered and the charges and terms have been confirmed to the Customer in any written (including electronic) communication. In any disputed charge case not covered by (1) or (2) of this subparagraph, there shall be a rebuttable presumption that such disputed charge is an Unauthorized Product Charge if Comcast does not have any record required by subparagraph 15(a); provided, however, that Comcast may rebut this presumption based on other records, documentation, affirmative conduct, or evidence that reasonably connotes an affirmative request for such service or charge after a Product had been ordered and the charges and terms have been confirmed to Customer in any written (including electronic) communication. In the event a Customer disputes a charge for a new Product as an Unauthorized Product Charge and Comcast determines that such charge is an Unauthorized Product Charge under this subparagraph 15(c)(ii), Comcast shall timely provide the Customer with a refund or credit of the Unauthorized Product Charge. In instances in which it is technically feasible for Comcast to determine whether the Customer made actual use of the Product that is the subject of the dispute and Comcast is able to confirm such use, the associated refund or credit may be limited, in Comcast's discretion, to the prior 120 days of related charges to the Customer

for such Product. In instances in which it is technically feasible for Comcast to determine whether the Customer made actual use of the Product that is the subject of the dispute and Comcast is unable to confirm such use, the associated refund or credit may be limited, in Comcast's discretion, to the prior 1,095 days of related charges to the Customer for such Product. In instances in which it is not technically feasible for Comcast to determine whether the Customer made actual use of the Product that is the subject of the dispute, the associated refund or credit may be limited, in Comcast's discretion, to the prior 730 days of related charges to the Customer for such Product. The foregoing shall not prejudice any rights, claims, or defenses either a Customer or Comcast may otherwise have under applicable law.

- iii. In the event Comcast determines that such charge is not an Unauthorized Product Charge, Comcast shall provide the Customer with a clear explanation of its determination and, solely with respect to disputes raised by the Customer within 120 days of the charge first appearing on a Bill, Comcast shall also: (1) offer to the Customer to confirm such determination in writing, including a description of the rationale and documentation on which such determination was based, by email or, if the Customer is unable or unwilling to provide an email address, by any other reasonable means by which the Customer is capable of receiving such determination, including U.S. mail, and (2) afford the Customer at least thirty (30) days to either pay or make payment arrangements for such charge, or twenty (20) days in which to request an escalated review of the matter by Comcast. Any such escalated review shall be resolved within thirty (30) days, and Comcast shall confirm the outcome of such resolution to the Customer in writing, including any documentation on which such resolution was based.
- iv. After a Customer has alleged the existence of an Unauthorized Product Charge for which an investigation is undertaken, and pending Comcast's final determination as to whether such charge is an Unauthorized Product Charge, Comcast shall not: (1) require the Customer to pay the disputed charge, including any related late fee or penalty (provided that this shall not excuse the Customer from timely paying all other charges due on such Bill, and the Customer may be assessed late fees and penalties with respect to any such other charges); (2) send the Customer's account to collections solely with respect to such disputed charge or any related late fee or penalty; (3) make any adverse credit report based solely upon nonpayment of the disputed charge or any related late fee or penalty; or (4) suspend, cancel, or take any action that may adversely affect the Customer's service for any reason solely related to nonpayment of the disputed charge or any related late fee or penalty; provided, however, that, subject to subparagraph 15(c)(v), during the pendency of the investigation, Comcast shall not be required to reverse any action already undertaken or reverse any charge or refund any payment previously made, and that if a Customer evidences, in Comcast's reasonable determination, a clear pattern of abusive or bad faith engagement in such dispute process and failure to demonstrate that charges are Unauthorized Product Charges, Comcast may undertake any of the above actions without restriction. Upon Comcast's final determination that such charge is not an Unauthorized Product Charge, Comcast may require the Customer to pay any related interest charge, late fee, or penalty that would otherwise have accrued during the pendency of the investigation.

- v. In any case where a Customer claims that a Product charge was not authorized and Comcast (1) has already initiated an action covered by (iv) of this subparagraph, and (2) intends to exercise or exercises its rights under (ii) of this subparagraph to deny or investigate the refund claim (other than in a circumstance in which a Customer evidences, in Comcast's reasonable determination, a clear pattern of abusive or bad faith engagement in such dispute process and failure to demonstrate that charges are Unauthorized Product Charges), Comcast shall endeavor to suspend such action covered by (iv) of this subparagraph and shall inform the Customer that Comcast is reviewing the claim, that the Customer does not have to pay the disputed charge while it is being reviewed (if it has not yet been paid), and that Comcast will notify the Customer of the determination of its review of the claim, and of the Customer's ability to contest the determination pursuant to the provisions of subparagraph 15(c)(iii). If, as a result of its review, Comcast determines that a refund is owed to the Customer, Comcast shall promptly reverse any action covered by (iv) of this subparagraph that it previously initiated.
- (d) **Customer Dispute Escalation Process.** By July 1, 2017, Comcast shall establish and implement improved processes and/or procedures for expediting Customer Complaints for timely redress of any Unauthorized Product Charges.
- (e) **Information on Account Protection.** By July 1, 2017, Comcast shall:
- i. implement systems to permit a Customer to initiate and establish Blocking to help prevent Unauthorized Product Charges that Customers may elect to opt into at no charge to Customers; and
 - ii. Clearly and Conspicuously disclose Blocking options, in a written or electronic form or via a link to electronically accessible information, at or near the time of subscribing to or purchasing a Product but in any event within thirty (30) days of subscribing to or purchasing a Product. Customers shall not incur any Charges for receiving or accessing the information as discussed herein.
- (f) **Customer Account Audit and Reconciliation Processes.** For the duration of this Consent Decree, Comcast shall maintain the Customer account audit and reconciliation processes described in paragraph 5 hereto or substantially similar or substantially equivalent process.
- (g) **Training.** By July 1, 2017, Comcast shall, for five (5) years from the Effective Date, conduct a training program at least annually with its customer service representatives and all relevant managers and employees regarding the requirements of this Consent Decree and direct all relevant employees and managers, including its customer service representatives, to complete such training at least annually. Comcast shall require additional re-training of any employee or group of employees that placed Unauthorized Product Charges on Customer Bills to a materially disproportionate extent compared to statistical expectations for such employee(s) within a calendar year.
- To the extent any customer service, account management, or sales activities are conducted by outside vendors or non-Comcast employees, Comcast shall direct such parties to conduct a training program at least annually and to monitor the completion of such training.
- (h) **Record Keeping.** By July 1, 2017, Comcast shall implement systems, processes, and procedures designed to:

- i. maintain records for each Customer documenting Comcast's receipt of the Customer's Affirmative Informed Consent for new Product purchases;
 - ii. maintain records of Customer Complaints, including information relating to the nature and resolution of such Customer Complaints;
 - iii. maintain records on the number of individual employees or group of employees that have completed training and re-training required under this Consent Decree;
 - iv. maintain records sufficient to allow Comcast to identify employees or group of employees that placed Unauthorized Product Charges on Customer Bills to a materially disproportionate extent compared to statistical expectations, and whether Comcast took remedial action against such employees; and
 - v. maintain such records for periods in accordance with Comcast's ordinary course of business and at least twelve (12) months (or five (5) months in the case of telephone recordings) from the date of a record's creation.
- (i) **Reporting Requirements.** Comcast shall for five (5) years provide reports to the Bureau documenting its compliance with the requirements of the Compliance Plan. Comcast may request that such reports be withheld pursuant to the provisions of 47 CFR §§ 0.457 and 0.459. The first such report shall be submitted within ninety (90) days of the Effective Date and additional reports shall be submitted every twelve (12) months (Annual Reports) thereafter.
- i. Each Annual Report shall include a detailed description of Comcast's efforts during the relevant period to comply with the terms and conditions of this Consent Decree. In addition, each Annual Report shall include a certification by the Compliance Officer, as an agent of and on behalf of Comcast, stating that the Compliance Officer has personal knowledge that (1) Comcast has established and implemented the Compliance Plan, and (2) he or she is not aware of any instances of material noncompliance with the terms and conditions of this Consent Decree.
 - ii. Annual Reports also shall include reporting to the Bureau: (1) the number of Customer Complaints and the resolution of such Customer Complaints; and (2) the total amount of refunds and credits issued pursuant to such claims.
 - iii. The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and shall comply with Section 1.16 of the Rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein.¹⁹
 - iv. If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of Comcast, shall provide the Commission with a detailed explanation of the reason(s) why and describe fully: (1) each instance of material noncompliance; (2) the steps that Comcast has taken or will take to remedy such noncompliance, including the schedule on which proposed remedial actions will be taken; and (3) the steps that Comcast has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.

¹⁹ 47 CFR § 1.16.

- v. Annual Reports shall be submitted to the Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, Room 4-C330, 445 12th Street, SW, Washington, DC 20554, with a copy submitted electronically to Guy Benson at Guy.Benson@fcc.gov, Joy M. Ragsdale at Joy.Ragsdale@fcc.gov, Kenneth Scheibel at Kenneth.Scheibel@fcc.gov, Matthew L. Conaty at Matthew.Conaty@fcc.gov, and Jeffrey J. Gee at Jeffrey.Gee@fcc.gov.

- (j) In reviewing Comcast's compliance with the requirements of this paragraph 15, the Bureau shall consider Comcast's implementation and maintenance of the processes and procedures set forth herein in light of the totality of the circumstances.

16. **Termination Date.** The provisions of this Consent Decree shall expire five (5) years from the Effective Date.

17. **Civil Penalty.** Comcast will pay a civil penalty to the United States Treasury in the amount of two million three hundred thousand dollars (\$2,300,000.00) within thirty (30) calendar days of the Effective Date. Comcast shall send electronic notification of payment to Guy Benson at Guy.Benson@fcc.gov, Joy M. Ragsdale at Joy.Ragsdale@fcc.gov, Kenneth Scheibel at Kenneth.Scheibel@fcc.gov, Matthew L. Conaty at Matthew.Conaty@fcc.gov, Jeffrey J. Gee at Jeffrey.Gee@fcc.gov, and fccebaaccess@fcc.gov on the date said payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the Account Number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.²⁰ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions that should be followed based on the form of payment selected:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payment (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

Questions regarding payment procedures should be addressed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

18. **Waivers.** As of the Effective Date, Comcast waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal, or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order. Comcast shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party

²⁰ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

(or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Consent Decree or the Adopting Order, neither Comcast nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Comcast shall waive any statutory right to a trial *de novo*. Comcast hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act²¹ relating to the matters addressed in this Consent Decree.

19. **Severability.** The Parties agree that if any of the provisions of the Consent Decree shall be held unenforceable by any court of competent jurisdiction, such unenforceability shall not render unenforceable the entire Consent Decree, but rather the entire Consent Decree shall be construed as if not containing the particular unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly.

20. **Invalidity.** In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

21. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent Rule or Order adopted by the Commission (except an Order specifically intended to revise the terms of this Consent Decree to which Comcast does not expressly consent), that provision will be superseded by such Rule or Order.

22. **Successors and Assigns.** Comcast agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

23. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation. Except as expressly provided in this Consent Decree, this Consent Decree shall not prevent the Commission from investigating new evidence of noncompliance by Comcast with the Communications Laws.

24. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

25. **Paragraph Headings.** The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

26. **Authorized Representative.** Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree. Each person signing this Consent Decree on behalf of a Party hereby represents that he or she is fully authorized by the Party to execute this Consent Decree and to bind the Party to its terms and conditions.

²¹ See 5 U.S.C. § 504; 47 CFR §§ 1.1501-1.1530.

27. **Counterparts.** This Consent Decree may be signed in counterpart (including electronically or by facsimile). Each counterpart, when executed and delivered, shall be an original, and all of the counterparts together shall constitute one and the same fully executed instrument.

Travis LeBlanc
Chief
Enforcement Bureau

Date

Francis M. Buono
Senior Vice President, Legal Regulatory Affairs
& Senior Deputy General Counsel
Comcast Corporation

Date