

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

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

**COMMENTS OF  
CONSUMER FEDERATION OF AMERICA, CONSUMERS UNION,  
FREE PRESS, MEDIA ACCESS PROJECT, NEW AMERICA FOUNDATION,  
AND PUBLIC KNOWLEDGE**

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## SUMMARY

In the present *Notice of Inquiry*, the Commission seeks comment on the clarity, accuracy and thoroughness of information available to consumers when they choose a communications service provider; choose a service plan; manage the use of their service plan; and decide to switch providers or plans. The *Notice of Inquiry* properly expands on past investigations, raising questions about not just billing practices but also sales practices more broadly, including point-of-sale disclosures that drive consumer purchase decisions.

Commenters believe that existing rules to protect truth in sales for communications services are insufficient. Consumers of all communications services – including wireline, wireless, and Internet access services – are routinely subject to a barrage of confusing and misleading information, from the initial phases of service provider selection through billing and ongoing service management. Consumers are left out of the loop on a wide range of service aspects, including typical service prices, usage limits and fees, actual performance and active imposed limitations, and other contract terms. Furthermore, voluntary guidelines are not proving nearly sufficient as a substitute for rules, as service providers routinely fail to disclose meaningful information and hide the information they do disclose in fine print below misleading “base rates” and “advertised speeds.” Consequently, consumers experience confusion and frustration when choosing a service provider and plan, when using limited or low quality services, and when receiving higher-than-expected bills. Substantial changes to the Commission’s existing rules are necessary to remedy these problems.

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The Consumer Federation of America, Consumers Union, Free Press, Media Access Project, the New America Foundation, and Public Knowledge (together, “Commenters”) respectfully submit these comments in response to the Commission’s *Notice of Inquiry* in the above-captioned docket.<sup>1</sup> In the *Notice*, the Commission seeks comment on the clarity, accuracy and thoroughness of information available to consumers when they choose a service provider; choose a service plan; manage the use of their service plan; and decide to switch providers or plans.<sup>2</sup> The Commission seeks comment on a broad range of services, including

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<sup>1</sup> *Consumer Information and Disclosure; Truth-in-Billing and Billing Format; IP-Enabled Services*, CG Docket No. 09-158, CC Docket No. 98-170, WC Docket No. 04-36, Notice of Inquiry, FCC 09-68 (rel. Aug. 28, 2009) (“*Notice*”).

<sup>2</sup> *Id.* at para. 4; see also *Truth-in-Billing and Billing Format*, CC Docket No. 98-170, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 7492 (1999) (*First Truth-in-Billing Order*); *Truth-in-Billing and Billing Format; National Association of State Utility Consumer Advocates’ Petition for Declaratory Ruling Regarding Truth-in-Billing*, CC Docket No. 98-170, CG Docket No. 04-208, Second Report and Order, Declaratory Ruling, and

telecommunications services, Internet access services, Voice over IP services, and bundled voice, video, and data services. The Commission also seeks comment on what information disclosure policies can empower consumers to make informed and meaningful marketplace decisions based on sufficient access to relevant service provider information.<sup>3</sup>

Commenters believe that existing rules to protect truth in sales for communications services, from wireline voice through wireless Internet access services, are insufficient. Service providers are not required to supply fundamental information needed by customers to make informed decisions, and in practice, service providers routinely fail to disclose limitations to services and hidden fees. Consequently, consumers experience substantial confusion and frustration when choosing a service provider and plan, when using unexpectedly limited or low quality services, and when receiving higher-than-expected bills. Substantial changes to the Commission's existing rules are necessary to remedy these problems. Finally, the Commission has clear authority and statutory obligations to strengthen current information disclosure policies, and must do so.

## **I. Introduction**

Commenters support the Commission's intent to take a more comprehensive view of information disclosure in the era of digital convergence. As more opportunities become available for consumers to access communications services through cable and fiber triple-play packages, as well as wireless voice and data plans, it is essential that consumers have accurate

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Second Further Notice of Proposed Rulemaking, 20 FCC Rcd 6448 (2005) (*Second Truth-in-Billing Order*).

<sup>3</sup> *Notice* at paras. 3-5.

and comparable information upon which they can make comparisons and smart marketplace decisions.<sup>4</sup> When consumers have the facts, they make informed choices.

Unfortunately, too often consumers do not have the facts. Consumers are bombarded with inconsistent and incomplete information when shopping for service providers or service plans, and they are subjected to misleading, confusing, and even anticompetitive billing practices once they choose a provider and a plan.

The explosion of new communications services has resulted in increased advertisements extolling the quality, speed, cost, and coverage area of wireline and wireless voice and data service. However, when trying to find clear information from providers about actual rather than advertised speeds; about the true cost of service over time; about the added fees and surcharges they might face each month; or about the costs and barriers to switching providers, most consumers can't get a clear signal through all the advertising noise. The Commenters submit that providers go to great lengths to create introductory rates, hidden monthly fees and surcharges, and other deliberate devices that bear no relation to the cost they claim to recover, but instead shield the true monthly cost and service quality that consumers need to know to make apples-to-apples comparisons.

In its original *Truth-in-Billing Order*, the Commission noted that the “review of the complaints received by this Commission plainly demonstrates that the difficulty consumers experience in trying to understand their bills for telecommunications services has been a significant, contributing factor in the growth of [ ] fraudulent activities.”<sup>5</sup> Little progress has

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<sup>4</sup> Furthermore, as the Commission notes, consumers spend more and more on these services, lending additional importance to informed choices. *Id.* at para. 3, n. 5.

<sup>5</sup> *First Truth-in-Billing Order*, 14 FCC Rcd at 7495, para. 3.

been made in the intervening decade – in fact, in addition to confusing bills, the confusion is now present from the moment a consumer starts to research services.

We urge the Commission to adopt protective and enforceable advertising and point-of-sale disclosure standards and truth-in-billing rules, for all communications services including wireless services, Internet access services, and service bundles. These should include requirements that providers *clearly* disclose base service prices including mandatory line-item charges and other required one-time and recurring fees; usage limits and overage charges; actual minimum network speeds; meaningful information about terms of service restrictions and actual actions that monitor and interfere with subscriber use of services; and obstacles to ending or transferring service including early termination fees and device locking mechanisms.

## **II. CARRIERS’ CONFUSING AND MISLEADING PRACTICES MERIT COMMISSION ACTION.**

The Commission has requested comment on “the information available to consumers at all stages of the purchasing process.”<sup>6</sup> The Commission has broken the stages of the purchasing process into four areas: choosing a provider; choosing a service plan; managing use of the service plan; and deciding whether and when to switch an existing provider or plan.<sup>7</sup>

In the current market, consumers are forced to choose and manage providers and services with minimal information. These problems begin with the initial research into service prices and features, as advertisements and point-of-sale information often fail to disclose hidden fees and limitations to the service. They continue with service usage and management, as information of importance to consumers is buried in the fine print and short on detail, particularly through the use of vague and overbroad terms of service. As the Commission noted, “It is widely understood

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<sup>6</sup> *Notice* at para. 4.

<sup>7</sup> *Id.*

that information buried deep in the ‘fine print’ is far less useful to consumers than information displayed clearly and prominently.”<sup>8</sup> And consumers are complaining as a result; as the Commission observes, both GAO surveys and consumer complaints filed with the FCC show a substantial and increasing volume of consumer complaints over billing practices.<sup>9</sup>

Below, Commenters provide detail on a subset of these problems, an illustrative but not exhaustive indication of the volume and severity of transparency problems demonstrated in communications markets.<sup>10</sup> These include problems with advertising of service performance and price; billing, including numerous line-item charges not included in base rates; and labeling, specifically vague and overbroad terms of service. Finally, Commenters explain how current voluntary codes of conduct are insufficient to address these problems.

#### **A. Consumers Face Ongoing and Substantial Problems with Service Advertising.**

- 1. Many services and service bundles are falsely advertised with “base rates” that fail to demonstrate the true cost of service.*

Service advertisements, whether in marketing materials or in the ordering process, do not give consumers a good indication of the true cost of service. Service providers deliberately obscure the true monthly cost of services through numerous strategies, including fees and surcharges, mandatory bundles, and promotional periods. By obscuring true cost, consumers cannot make meaningful comparisons when shopping for service, and instead will make decisions on the basis of misleading promotional prices. As some stratagems are not even

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<sup>8</sup> *Id.* at para. 6.

<sup>9</sup> *Id.* at para. 15.

<sup>10</sup> Although these comments focus in large part on the markets for Internet access and wireless services, a similar situation exists within the MVPD market. For example, as with Internet access service, consumers shopping for MVPD service must rely on misleading promotions that fail to adequately alert consumers that a service bundle is required to get the promotional price. Other “promotional deals” such as a premium content package for three months for free often turn into expensive services with little or no warning.

known to the consumer until long after taking service, consumers may be surprised later to learn of lengthy contracts (with substantial associated early termination fees), bundling requirements, one-time charges, recurring fees, and much higher non-promotional prices.

Advertising literature to “inform” consumers of Internet access services demonstrates a wealth of such obfuscations. Some examples of misleading mailings received by consumers are analyzed in Appendix B to these comments; a few are highlighted here for emphasis. One Verizon mailing trumpets a price of \$19.99 for DSL service.<sup>11</sup> However, a close read of the text reveals many problems with this “price”: the price does not include “taxes and fees” or a one-time charge of “up to \$55”; to get the promotional price, the customer must also purchase Verizon telephone service; the price will increase 60 percent following the first six months of service, and also requires a one-year contract, thus locking the customer into six months of paying for service at the higher rate; and finally, the consumer will be assessed a \$79 early termination fee if they leave before the one-year contract is up. Also, as highlighted in Appendix A to these comments, Verizon reserves the right to force a consumer to pay a higher fee if they drop their telephone service.<sup>12</sup> Thus, what was advertised as DSL service for \$19.99 is in reality something *far* different.

Similarly, an AT&T print advertisement for a netbook and wireless service demonstrates several disclosure problems.<sup>13</sup> The ad touts the netbook, with a \$199.99 price tag, although the service being advertised is first and foremost a mobile Internet access subscription that includes a subsidized netbook. More substantially, the touted \$200 device comes with many unclear or unstated limitations: first, as marginally noted in the ad, the up-front cost is \$300 with a \$100

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<sup>11</sup> Appendix B at Exhibit 4.

<sup>12</sup> Appendix A at 3.

<sup>13</sup> Appendix B at Exhibit 5.

mail-in rebate, which must be used in 120 days; second, purchase of the device requires a two-year contract for a service that costs \$40 or \$60 per month<sup>14</sup> backed by a pro-rated \$175 early termination fee;<sup>15</sup> third, the fine print notes a \$36 activation fee for service, a 60 day wait period for reimbursement, and at the very end AT&T states that usage of the wireless service plan “is not unlimited & substantial charges may be incurred if included allowance is exceeded.”<sup>16</sup>

Consumers expecting a great deal on a new computer are instead purchasing fees and risks.

This final fine print statement in AT&T’s ad hints at the particularly blatant problems of unexpected data usage overcharges in the wireless market. For example, one Chicago wireless subscriber reports being billed \$6,000 for one month’s overuse of his data connection.<sup>17</sup> Another was charged \$5,000 for routine use of a netbook with a \$60 per month data plan.<sup>18</sup> After crossing a small 5 gigabyte initial limit using mobile broadband service from AT&T, each additional gigabyte of data transfer costs up to \$490 – an extra \$2450 per month on a \$60 data plan if the customer merely doubles the base usage limit.<sup>19</sup> These hidden and severe charges greatly minimize the ability of consumers to make meaningful service purchase decisions, reducing the effectiveness of competition in the wireless market.<sup>20</sup>

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<sup>14</sup> See <http://www.wireless.att.com/cell-phone-service/cell-phone-plans/data-connect-plans.jsp> (accessed Oct. 12, 2009).

<sup>15</sup> It is worth noting that the only reason this ETF is now pro-rated is due to government pressure. See e.g. Office of Senator Amy Klobuchar, “Klobuchar Demands Action from Cell Phone Companies on Fair Consumer Fees,” Press Release, March 12, 2008.

<sup>16</sup> Appendix B at Exhibit 5.

<sup>17</sup> Weir, Bob. “Bears fan was billed \$28K to watch game.” *USA Today*, February 23, 2009. <http://www.usatoday.com/topics/post/People/Athletes/Golf/Tiger+Woods/63261805.blog/1>.

<sup>18</sup> Martin Perez, “AT&T, Radio Shack Sued For \$5,000 Netbook Bill,” *Information Week*, March 2, 2009, <http://www.informationweek.com/news/telecom/business/showArticle.jhtml?articleID=215600328>.

<sup>19</sup> See <http://www.wireless.att.com/cell-phone-service/cell-phone-plans/data-connect-plans.jsp> (accessed Oct. 12, 2009).

<sup>20</sup> Comments of Consumer Federation of America, Consumers Union, Free Press, Media Access Project, New America Foundation and Public Knowledge, *In the Matter of Implementation of*

These problems are also present in the process of online ordering of services. Two examples of such processes are presented in Appendix B. For example, Comcast's online ordering process offers consumers a special price of \$19.99.<sup>21</sup> Yet, the ordering process fails to mention the \$99 installation fee, the \$5 per month cable modem lease fee (or the \$139 fee to purchase one), and the requirement to bundle the service with voice or cable service to receive that price.<sup>22</sup> Such tactics create great confusion for consumers throughout the process of choosing a service provider and a service plan.

2. *Internet Access Services are falsely labeled with theoretical maximum rather than actual speeds and other performance characteristics.*

In addition to hiding the true cost of service, advertisements for Internet access services mislead consumers on the actual performance of the services. As the Commission notes, “[m]aximum advertised speed is often cited, but actual is more useful.”<sup>23</sup> Actual speeds are more useful for consumers because, as the Commission has recognized, advertised speeds do not indicate the true performance of the service – at a recent Commission presentation, officials noted that during busy hours “[a]ctual median speeds lag advertised by ~50%”.<sup>24</sup> Other studies have found similar results.<sup>25</sup>

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*Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 - Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless including Commercial Mobile Services*, WT Docket No. 09-66, pp. 47-48 (Sept. 30, 2009).

<sup>21</sup> Appendix B at Exhibit 6.

<sup>22</sup> *Id.*

<sup>23</sup> Commission Open Meeting Presentation on the Status of the Commission's Processes for Development of a National Broadband Plan, Sept. 29, 2009, Slide 26.

<sup>24</sup> *Id.*

<sup>25</sup> See e.g. Sam Crawford, “Performance Monitoring Report,” SamKnows, Feb. 8, 2008, p. 29-32; Ofcom, “UK broadband speeds 2009: Research Report,” July 28, 2009, p. 8; Organization of Economic Co-operation and Development, “OECD Communications Outlook 2009,” August 2009, pp. 108-113.

Service providers routinely fail to disclose to potential subscribers that advertised speeds are not actual speeds – and where there is any form of disclosure, it takes the form of a vague “up to” disclaimer,<sup>26</sup> or the phrase “actual speeds may vary.”<sup>27</sup> Although the informational weaknesses are most blatant in wireline Internet access services, wireless services that provide a range of data transfer speeds<sup>28</sup> still miss the mark of realism, according to many studies.<sup>29</sup> These problems are exacerbated as consumers continue their migration to higher speed and higher cost tiers.<sup>30</sup> Artificial advertised speeds and a complete lack of disclosure of actual speeds leave consumers in the dark.

Recently a new wrinkle of additional deception as to true service speeds has appeared through increasing use and advertisement of “PowerBoost” speeds. The “PowerBoost” capacity offers customers “bursts of download and upload speeds for the first 10 MB and 5 MB of a file, respectively,” as explained deep in fine print.<sup>31</sup> This capacity is now being offered by Comcast, Time Warner Cable, and Cox, among others.<sup>32</sup> While this feature is useful for consumers

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<sup>26</sup> Even this vague term is not universal, as many ads assert that the speed *is* the advertised maximum, not even “up to” the maximum. See Appendix B at Exhibit 1.

<sup>27</sup> See e.g. Appendix B at Exhibit 3.

<sup>28</sup> See e.g. <http://www.wireless.att.com/businesscenter/usbconnect881/> (accessed Oct. 12, 2009).

<sup>29</sup> See e.g. Brian Nadel, “Review: Which 3G network is the best?” *Computerworld*, May 13, 2008; Wilson Rothman, “The Definitive Coast-to-Coast 3G Data Test,” *Gizmodo*, Dec. 17, 2008; Mark Sullivan, “A Day in the Life of 3G,” *PC World*, June 28, 2009; Brian X. Chen, “Verizon Lead, AT&T Runs Last in Wired.com’s 3G Speed Test,” *Wired*, July 10, 2009.

<sup>30</sup> See e.g. Comments of Free Press, In the Matter of *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act, A National Broadband Plan for Our Future*, WC Docket Nos. 09-137, 09-51, pp. 48-51; John Horrigan, “Home Broadband Adoption 2009,” Pew Internet & American Life Project, June 2009, p. 23.

<sup>31</sup> See e.g. <http://www.comcast.com/corporate/Learn/HighSpeedInternet/highspeedinternet.html> (accessed Oct. 12, 2009).

<sup>32</sup> See e.g. “Bright House Latest To Deploy PowerBoost – On heels of Comcast, Cox, Time Warner Cable and Shaw...” *DSL Reports*, Nov. 11, 2008.

streaming short videos, cable providers advertise the PowerBoost burst speed prominently, many times without even an “up to” qualifier, much less an explanation of the limitations of PowerBoost.<sup>33</sup>

As with service prices, misleading assertions of service speed continue during the purchasing process. Consumers traveling to their provider’s page will often see only the “up to” speed; no information on actual speeds provided by services. For example, Time Warner Cable characterizes the PowerBoost speed as the service speed.<sup>34</sup> In fact, the company fails to highlight the non-Powerboost speed anywhere in the online ordering process. Thus, a Time Warner Cable customer who recently ordered the “turbo” package (up to 22 Mbps) and expects to download a 6 GB HD movie would quickly find that speed capped at 15 Mbps.<sup>35</sup> And, under the approximate 50% formula for actual speeds asserted by the Commission, if this customer is attempting to watch the movie during primetime hours, the speed could easily drop to 7.5 Mbps, or *34 percent* of what the consumer ostensibly purchased.<sup>36</sup>

Internet access services are marketed and sold at one level of performance, and received at another, lesser level. As service speed is a crucial component of the consumer purchasing decision, failure to disclose true speeds frustrates the effective functioning of competition (such as it is) in the market for Internet access services.

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<sup>33</sup> See e.g. Appendix B at Exhibit 1.

<sup>34</sup> Appendix B at Exhibit 7.

<sup>35</sup> See e.g. Appendix B at Exhibit 1. Comcast pegs an HD movie at 6 GB. See e.g. <http://www.comcast.com/About/PressRelease/PressReleaseDetail.aspx?PRID=876> (accessed Oct. 13, 2009).

<sup>36</sup> Commission Open Meeting Presentation on the Status of the Commission's Processes for Development of a National Broadband Plan, Sept. 29, 2009, Slide 26.

## **B. Consumers Face Ongoing and Substantial Problems with Service Billing.**

Consumers face obstacles not only when trying to get clear up-front information while searching for a provider, but also when seeking to understand the confusing billing practices they face after they've signed up for service. In its latest survey of consumer experience in the telecommunications market, *Consumer Reports* found that forty three percent of wireline triple-play subscribers complained that the taxes and fees associated with their service made their monthly bills much more expensive than they were led to believe.<sup>37</sup> Substantial fees are attached by all service providers, both wireline<sup>38</sup> and wireless.<sup>39</sup> Some of these fees are

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<sup>37</sup> See Appendix D.

<sup>38</sup> AT&T charges its customers a .88% Administrative Expense Fee, a 2.34% Federal Regulatory Fee, and an unspecified Federal Access Recovery Fee and Property Tax Allotment.

[http://www.corp.att.com/access\\_reform/faqs.html](http://www.corp.att.com/access_reform/faqs.html)

Sprint charges its customers a monthly \$.99 Carrier Cost Recovery Charge, a \$1.99 In-State Access Charge, a Frequent Flyer Excise Charge for customers who participate in a Sprint-partnered frequent flyer program, and "other surcharges to recover amounts Sprint is required pay to [sic] in support of statutory or regulatory programs . . . as well as excise, sales, use, gross receipts or other similar taxes levied by a governing body on Sprint."

<http://www.sprint.com/ratesandconditions/residential/documents/feesandsurcharges.pdf>

Cavalier Telephone assesses various unspecified fees, including a Wholesale Cost Recovery fee that is charged "due to increased wholesale costs and the administrative costs to collect and remit taxes, charges and regulatory fees," a Regulatory Compliance Fee that "recovers the costs associated with regulatory advocacy and compliance, including administrative management costs," and a Network Compensation Charge "for costs associated with building and maintaining a local network, connecting customers to the network, and updating related company systems."

<http://support.cavtel.com/billing/42-documents/45-taxes-and-fees>

<sup>39</sup> AT&T Wireless charges "either a Regulatory Cost Recovery Charge of up to \$1.25 or a Regulatory Programs Charge of \$1.75 to help defray costs incurred to comply with State and Federal telecommunications regulations, such as E911 deployment, State and Federal Universal Service, and other government mandates on AT&T Mobility. These charges are not taxes or government required assessments on end-user customers. *AT&T Mobility has chosen to pass through these charges to its customers.*" (emphasis added)

<http://www.wireless.att.com/learn/articles-resources/wireless-terms.jsp>

Cricket Wireless, a subsidiary of Leap Wireless, charges customers a Regulatory Recovery and Administrative Fee of \$1.40 per month.

<http://www.mycricket.com/cricketsupport/faqs/details?id=845>

MetroPCS assesses customers a \$1.40 per month WNP/Regulatory Fee.

[http://www.metropcs.com/customer\\_support/faq.aspx](http://www.metropcs.com/customer_support/faq.aspx)

Qwest Wireless charges customers a Cost Recovery Charge of \$1.75 per month.

ostensibly required by FCC policies or state or federal taxes, but regardless of their merits, all such fees produce consumer bills that far exceed the advertised rate and the amount consumers reasonably expected to pay when they signed up for service.

### **C. Consumers Face Ongoing and Substantial Problems with Service Labeling.**

One of the most severe problems with disclosure in communications services lies in hidden terms of service. Nowhere is this more felt than in Internet access services. Most American consumers do not take the time to read through the terms of service for their Internet connection because of the legal verbiage, small text size, and hidden or non-prominent placement; nor should the Commission expect consumers to read and understand these obtuse documents as they are currently structured, either now or in the future. And yet, as with every legal document, the fine text can be extremely important. For example, a consumer interested in buying a carrier-subsidized netbook would need to scour marketing materials and fine print in

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<http://www.qwest.com/residential/products/wireless/termsandconditions/index.html>

Sprint Nextel levies a variety of fees on customers, including a monthly Federal Programs Cost Recovery Fee of \$2.83 and a \$1.15 Service Fee for former Nextel customers, and a \$.99 Administrative Charge and \$.20 Regulatory Charge for Sprint Wireless customers.

[http://www.nextel.com/en/support/billing/taxes\\_fees.shtml](http://www.nextel.com/en/support/billing/taxes_fees.shtml);

[http://support.sprint.com/support/article/Know\\_about\\_Sprint\\_surcharges\\_taxes\\_fees\\_and\\_other\\_charges/case-ib376964-20090810-135914](http://support.sprint.com/support/article/Know_about_Sprint_surcharges_taxes_fees_and_other_charges/case-ib376964-20090810-135914)

T-Mobile charges a monthly \$1.21 Regulatory Programs Fee to offset compliance with various federal, state, and local regulations.

<http://support.t-mobile.com/doc/tm22025.xml>

T-Mobile notes that “We may impose the fee whether or not the benefits of any or all of these mandates and programs are available to you in your location.”

<http://support.t-mobile.com/tm30205.pdf>

US Cellular charges its customers an unspecified Regulatory Cost Recovery Fee.

[http://www.uscc.com/uscellular/SilverStream/Pages/h\\_faq\\_details.html?Type=5#Q28](http://www.uscc.com/uscellular/SilverStream/Pages/h_faq_details.html?Type=5#Q28)

Verizon Wireless assesses customers \$.99 monthly for Regulatory and Administrative Charges. *See also* Jennifer Johnson, “Wireless Carriers Ban Together For Higher Fees,” *Hot Hardware*, July 19, 2009.

order to find out the service will have a 5 GB monthly cap with large overages.<sup>40</sup> Other oft-hidden terms include mandating binding arbitration, a process that takes away many legal rights of a subscriber and stacks the deck in favor of providers.<sup>41</sup> Service providers also often include a universal declaration that a customer's Internet usage can be monitored and interfered with.<sup>42</sup> Providers reserve the right to terminate Internet access at will, with "any or no reason."<sup>43</sup> Other service limitations hidden in terms of service include data caps, overage charges, restrictions on the type of applications that can be run, and off-network usage, among many others.

In the attached appendix, Commenters analyze in greater detail the terms of service, subscriber agreements, and acceptable use policies for the Internet access offerings of AT&T, Verizon, Qwest, Comcast, Time Warner Cable, AT&T Wireless and Verizon Wireless.<sup>44</sup> These companies squeeze an abundant number of restrictions into the fine print, placing the burden on consumers to discover such revelations. These comments offer a comprehensive but certainly not complete rundown of the typically language found buried with these "agreements." The unchecked power these companies retain paints a troubling picture – a concern exacerbated by the hiding of this power within incomprehensible fine print legalese. Without being aware of and understanding these terms, consumers cannot make effective choices, further limiting the effectiveness of competition in an already uncompetitive market.

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<sup>40</sup> See e.g. Appendix B at Exhibit 5.

<sup>41</sup> See e.g. Joshua M. Frank, "Stacked Deck: A Statistical Analysis of Forced Arbitration," *Center for Responsible Lending*, May 2009.

<sup>42</sup> See Appendix A.

<sup>43</sup> Appendix A at 6.

<sup>44</sup> See Appendix A.

#### **D. Voluntary Codes of Conduct are Insufficient Substitutes for Disclosure Rules.**

As established, current industry behavior is demonstrably inadequate at providing consumers with information necessary to create an informed marketplace. Within the context of wireless services specifically, this is likely in part because the “consumer code for wireless service” established by the wireless trade association CTIA presents many weaknesses.<sup>45</sup> As a preliminary matter, voluntary commitments to the FCC without accountability (regardless of service provider or context) have historically presented a poor track record for their ability to protect consumers, particularly when those commitments are intended to avoid regulation.<sup>46</sup> Also, although some aspects of the CTIA Code show promise, not all providers follow its provisions. Furthermore, the language of the CTIA Code is sufficiently vague that even ostensible compliance by providers does not always meaningfully inform consumers.

Carriers are provided wide latitude to interpret the principles and the threshold for compliance. For example, the first principle states carriers “will make available to consumer in collateral or other disclosures at point of sale and on their web sites, at least the following information....”<sup>47</sup> Because this principle merely requires providers to “make available” the

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<sup>45</sup> The code was created in 2003 to much industry fanfare. *See e.g.* “Cingular Endorses Consumer Code for Wireless Service,” Cingular Press Release, Sept. 9, 2003. The Code is available online at [http://files.ctia.org/pdf/The\\_Code.pdf](http://files.ctia.org/pdf/The_Code.pdf) (“CTIA Code”).

<sup>46</sup> *See e.g.* Comments of Free Press, In the Matter of *Applications of Verizon Northwest Inc., Verizon Communications Inc. and Frontier Communications Corporation for Consent to Transfer Control of Domestic Section 214 Authority*, WC Docket No. 09-95, pp. 16-18 (2009).

<sup>47</sup> The specific information listed in the CTIA Code is “(a) the calling area for the plan; (b) the monthly access fee or base charge; (c) the number of airtime minutes included in the plan; (d) any nights and weekend minutes included in the plan or other differing charges for different time periods and the time periods when nights and weekend minutes or other charges apply; (e) the charges for excess or additional minutes; (f) per-minute long distance charges or whether long distance is included in other rates; (g) per-minute roaming or off-network charges; (h) whether any additional taxes, fees or surcharges apply; (i) the amount or range of any such fees or surcharges that are collected and retained by the carrier; (j) whether a fixed-term contract is required and its duration; (k) any activation or initiation fee; and (l) any early termination fee that applies

information, carriers can comply while highlighting or hiding any aspects of the specific information they see fit – the CTIA Code offers no model to standardize disclosure, or ensure prominence of essential information. Providers can and do “disclose” substantial information in legalese buried within the terms of service, presenting a substantial burden for consumer comprehension.

A similar lack of specificity is evident throughout other provisions, where providers can decide what constitutes “material” or “reasonable advance notice.”<sup>48</sup> The former of these is perhaps the most informative, and is located within the principle concerning “specific disclosures in advertising.”<sup>49</sup> Carriers agree to “disclose material charges and conditions related to the advertised prices.”<sup>50</sup> The purpose of this principle appears to be to ensure that consumers are aware of fees that may accrue in excess of the advertised base rate; but, in practice, the concepts of “meaningful” and “related to” support loose interpretations, as does the additional limitation “to the extent the advertising medium reasonably allows.”<sup>51</sup> Carriers typically comply with this principle by disclosing relevant pricing terms in small print (or not at all, where they can allege the medium doesn’t “reasonably allow” it). For example, in AT&T’s netbook advertisement, attached in Appendix B, a customer must squint to learn they may be charged an activation fee and up to a \$175 cancellation fee.<sup>52</sup> Worse, AT&T’s advertisement contains no disclosure of

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and the trial period during which no early termination fee will apply.” *CTIA Code* at 1. Although this is a comprehensive list of fee-related information, it also appears likely to deluge the customer with information in a non-standardized format that renders useful processing nearly impossible. Full compliance with this principle can be achieved while making it substantially difficult to comprehend the typical cost of usage of the plan, and to make meaningful comparisons among providers. *CTIA Code* at 1.

<sup>48</sup> See e.g. *CTIA Code* at 2, 3.

<sup>49</sup> *Id.* at 2.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> Appendix B at Exhibit 5.

substantial overage charges for data usage in excess of the service limit, even though these charges can accelerate rapidly.<sup>53</sup>

Another illustrative example is principle seven, which states:

Carriers will not modify the material terms of their subscribers' contracts in a manner that is materially adverse to subscribers without providing a reasonable advance notice of a proposed modification and allowing subscribers a time period of not less than 14 days to cancel their contracts with no early termination fee.<sup>54</sup>

This may sound nice on first read, but a deeper examination reveals its flaws. First, any unilateral change to the terms of an agreed-upon contract should be treated skeptically; allowing 14 days to get out of a mutual contract is hardly generous, as the wireless carrier is legally bound by the terms of the contract just like the customer, although they routinely “reserve the right” to engage in unilateral modifications. Second, there are loopholes in the trigger mechanism for the CTIA Code’s (minor) form of notice and consent – carriers are given complete freedom to decide what is “materially adverse” to subscribers, how to provide “advance notice” and in what way they allow subscribers “to cancel their contracts.” In practice, wireless carriers may have considerable incentive to be underinclusive in what they determine to be “materially adverse” to customers, given the customary nature of lengthy contracts and substantial early termination fees present in the wireless market. Additionally, sales and service staff who serve as the point of contact for consumers are provided with incentives to retain customers, and may engage in misleading behavior to avoid having to cancel a contract without penalty. For example, if an increase in overage rates occurs for voice, text, or data services, phone representatives may tell

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<sup>53</sup> *Id.*

<sup>54</sup> *CTIA Code* at 3.

consumers that the change doesn't affect them because they have not paid overage fees recently, and will resist canceling the service contract, even if the consumer has the right to do so.<sup>55</sup>

Finally, as terms of service (core to the contract) universally contain vague and extremely one-sided language,<sup>56</sup> carriers can “clarify” the broad protective language already in the contract without making “material” changes. For example, when AT&T determined that “redirecting television signals” was specifically prohibited for its wireless service, it treated the resulting language change as a “clarification” (although AT&T also states that they can revise the terms “at any time without notice by updating” the posted terms of service<sup>57</sup>). This seemingly major and material change – the explicit prohibition of a specific set of desirable consumer activities – was only detectable by continuously reading and rereading the terms of service posted online. After substantial consumer pressure (triggered by vigilant activists who discovered the changes and spread the word), AT&T stated the language had been removed, only to quietly add it back in a few weeks later.<sup>58</sup>

The language of the CTIA code bears substantial flexibility both in interpretation and in practice, and therefore in no way adequately protects or informs consumers. The CTIA Code is meant to provide a façade of transparency, while simultaneously providing companies with unlimited opportunities to leave consumers in the dark. Industry-driven voluntary commitments are no replacement for detailed and enforceable rules to ensure that consumers are provided with all relevant information, and the rights that they deserve.

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<sup>55</sup> See e.g. Ben Popken, “Tmobile Raising Overage Rates 9/01 – Cancel Without Fee,” *Consumerist*, Aug. 31, 2009.

<sup>56</sup> See e.g. Appendix A; see also *supra* Section II.C.

<sup>57</sup> Appendix A at 34.

<sup>58</sup> See e.g. Karl Bode, “AT&T Slingbox 3G Fine Print Returns...,” *DSL Reports*, April 29, 2009.

### **III. IN LIGHT OF ONGOING CONFUSING AND MISLEADING PRACTICES, THE COMMISSION SHOULD ESTABLISH CLEAR DISCLOSURE RULES.**

Clear disclosure rules are needed to remedy the ongoing consumer harms caused by vague and misleading sales practices. Specifically, the Commission should require concrete, complete, and comprehensible disclosure of the following:

- True service costs, including disclosure of mandatory line-item charges, non-promotional rates, and one-time and recurring fees;
- Limits on usage of voice, text, and data services, as well as standardized and meaningful representations of overage fees;
- Actual expected speeds of Internet access services in times of peak and non-peak usage, not theoretical maximums;
- Meaningful information about restrictions and provider rights asserted in the terms of service;
- Meaningful information about actual actions conducted by providers that monitor or interfere with subscriber use of services; and
- Obstacles to ending or changing service, and their purpose for being imposed, including in particular early termination fees and device locking mechanisms.

As explained in these comments, the Commission has the authority to adopt consumer protections applicable to a wide range of communications service providers, including those offering video and Internet access services, without regard to the technological platform used to provide such services.<sup>59</sup> Furthermore, the Commission encourages commenters to address how

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<sup>59</sup> *See infra* Section IV.

proposed regulations would meet the requirements of *Central Hudson*.<sup>60</sup> Briefly, all of the requested regulations would require the disclosure of information central to consumer purchase decisions, such as service speed, price, and usage limitations, and activities conducted by the provider that impact service usage. This “factual and uncontroversial” information should be evaluated under a lenient standard,<sup>61</sup> and should not in any way impinge on First Amendment rights of service providers.

**A. To Prevent Misleading Charges and Fees that Disguise the Cost of Service, the Commission Should Establish Clear Pricing Format Rules That are Consistent Across the Industry.**

*1. The Commission should re-establish rules to prevent the advertising and billing of “base rates” that exclude mandatory miscellaneous charges.*

In the original *Truth-in-Billing Order*, the Commission adopted several common sense approaches and implemented enforceable guidelines to help ensure consumers had reasonable access to the information they need to make informed choices with regard to billing practices.<sup>62</sup> These guidelines, though incomplete even at the time of their passage, have since been eroded substantially, leaving few meaningful safeguards behind. In particular, many of the original guidelines promoting clear disclosure of service prices were circumvented or eliminated when the Commission adopted the *USF Contribution Order* in 2002.<sup>63</sup> Although the Commission tried to take steps to curb the over-recovery of regulatory fees through mark-ups,<sup>64</sup> they created a large

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<sup>60</sup> *Notice* at paras. 21-22.

<sup>61</sup> *Id.* at para. 21.

<sup>62</sup> *First Truth-in-Billing Order*, 14 FCC Rcd at 7498-99, paras. 9-10.

<sup>63</sup> In the Matter of *Federal State Joint Board on Universal Service*, Docket No. 96-45, Report and Order and Second Further Notice of Proposed Rulemaking, FCC 02-329 (rel. Dec. 13, 2002) (“*Contribution Order*”).

<sup>64</sup> *Id.* at paras. 48, 50.

loophole for carriers to “recover any administrative or other costs they currently recover ... through another line item.”<sup>65</sup>

Under current Commission rules, line item charges and related fees need not be disclosed in the base monthly rate, the most heavily advertised price for service and the most comprehensible line in a confusing service bill, even when these charges are mandatory (in the sense that the consumer cannot opt out of paying them) and related to the basic cost of providing service. Excessive use of line item charges and fees creates a race to the bottom in perceived “base” prices, making it very difficult for consumers to make informed choices based on the true cost of service. It provides incentives for carriers to deceive consumers into selecting a service on advertised, but not actual, price, and then recover arbitrary and super-competitive profits through hidden fees and other line items once a subscriber is locked into a contract. This skews both competition, by disguising the comparable costs of service from different providers, and the consumer’s valuation of whether or not to choose to take service at all. Many, many consumer complaints regarding communications services of all varieties center around precisely this problem – unexpectedly high bills based on misleading “base” service prices.

We urge the Commission to prevent the exclusion of mandatory line-item charges, one-time fees, and recurring fees from the “base” rates, for all service providers, regardless of service or technology. Mandatory line-item charges and related fees should be prominently included in consumers’ bills as part of the base service rate. We particularly urge the Commission to extend these rules to advertisements, to make sure consumers are giving honest information about true costs up-front, before signing up for service.

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<sup>65</sup> *Id.* at para. 40.

2. *The Commission should require prominent and concrete disclosure of usage limits and overage charges for wireless services in billing and advertising.*

As with all services, wireless voice, text, and data service bundles are heavily advertised on the “base” service price, even though each of these services comes with a usage limit and a steep overage fee for use above that limit. Without clear and upfront disclosure of these limits at the point-of-sale, customers can rapidly exceed the limits and face unexpectedly high bills. Although voice service minutes and overage fees are often disclosed, wireless consumers frequently report high overage charges for exceeding text message and data usage limits.<sup>66</sup>

Clear disclosure of usage limits and potential charges at point-of-sale, and dynamic notification when consumers approach their monthly limits, could help consumers avoid steep and unexpected bills. We ask the Commission to require wireless carriers to disclose at point-of-sale and in advertisements more detailed and clear information on service usage limits, particularly for data services. At a minimum, carriers should clearly and prominently disclose usage limits in gigabytes transferred per month, along with the cost per gigabyte of data transferred in excess of that usage limit; carriers should not be permitted to disguise overage costs by listing misleading amounts such as the cost per kilobyte transferred, and in particular should not be permitted to deviate from standard disclosure formats to avoid ready consumer comparison. Carriers should also be required to provide notifications directly to a subscriber when approaching monthly usage limits, for voice, text, and data services; where possible, this notification should take the form of a free text message, the method already used by many providers to supply other information such as when new services become available. Such requirements would parallel similar truth-in-billing laws that require banks to notify card holders at the point-of-sale when they are in danger of being charged over the limit fees.

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<sup>66</sup> *See supra* Section II.A.

## **B. The Commission Should Require Clear Disclosure Of Service Quality and Limitations and Service Contract Terms.**

Internet access service subscribers are confronted with confusing and often inaccurate information regarding service quality when making choices between providers. The (few) customers who have access to more than one broadband provider are often unaware of the true speed they can expect to experience on an average basis during peak Internet usage hours, because actual speed differs greatly from advertised speed.<sup>67</sup> Consumers are also often unaware at the point-of-sale – and even while using an Internet access service – whether their particular provider will block or prioritize particular kinds of Internet applications of software that compete with their business model, or whether the provider engages in any other network management practices that may interfere with their Internet experience.<sup>68</sup> And finally, particularly but not exclusively for wireless services, consumers commit to lengthy contract terms for service without any understanding of the full ramifications of that decision. Consumers should be able to choose providers based on truthful information detailing speed, cost, quality, and limitations of their service, as well as any obstacles they may face should they later change their minds.

*1. The Commission should require prominent disclosure of actual – not just theoretically maximum – service speeds for all Internet access services.*

As described above, service providers currently fail to disclose real-world speeds that consumers can expect to receive for their Internet access services.<sup>69</sup> To provide meaningful information to consumers making choices among services providers, and to provide consumers with a reasonable expectation of the capacity of their services, the FCC should require broadband

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<sup>67</sup> The Commission has recognized this explicitly. *Notice* at para. 26, n. 49.

<sup>68</sup> Free Press has called on the Commission to remedy this problem before. *See Ex Parte of Free Press, In the Matter of Broadband Industry Practices*, WC Docket No. 07-52 (Oct. 24, 2008).

<sup>69</sup> *See supra* Section II.A.

access providers to disclose clearly the actual levels of bandwidth and latency typically provided by the service, at both peak and non-peak hours. One mechanism to achieve this can be through the development of a simple “Schumer Box” – a consumer-friendly format to provide specific and easily comprehensible information, standardized across service providers to enable easy comparison. Some parties have already proposed such a device; we attach one example as an appendix to these comments.<sup>70</sup> As this information is fundamental to consumer choice, the FCC should bring enforcement actions against those broadband providers who do not disclose this information, or who misrepresent the features or quality of their service.

2. *The Commission should require prominent and concrete disclosure from all service providers clarifying vague and overbroad terms of service, and the activities they conduct in practice that impact service usage.*

Consumers should be able to access and read information on terms of service in a convenient, easy-to-read and easy to understand format. Consumers routinely agree to contracts for services without having read the legal document outlining the terms of those services, within which service providers hide numerous substantial restrictions. As a matter of good consumer protection policy, describing binding terms and conditions of the service in 8 point font legalese on the back of a brochure is not sufficient to alert potential customers to the restrictions adherent to the service.

The Commission should require service providers to disclose, in simple and non-technical but comprehensive terms, any limitations on the assumed freedom of consumers to access the services and content of their choice available on the Internet asserted in their terms of

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<sup>70</sup> See Appendix C. This proposal offers consumers a variety of relevant information in a standardized easy-to-consume format with links to more detailed information on any restrictions and other policies.

service. The Commission should also specifically require service providers to disclose any and all actions that actively monitor or interfere with subscriber use of the Internet access service.<sup>71</sup>

*3. The Commission should require prominent disclosure from wireless service providers of obstacles to ending or changing service.*

Wireless customers face substantial obstacles should they choose to terminate or change service providers, and they are not made fully aware of these obstacles when taking service. Specifically, early termination fees and limitations on keeping and reusing wireless devices are not clearly disclosed to consumers.

One of the biggest costs in switching providers is the ubiquitous early termination fee (ETFs). Early termination fees – penalties – by wireless carriers create artificial barriers to open competition in the wireless market and present difficult choices for consumers. These penalties do not save consumers money by protecting the feasibility of device subsidies as carriers claim,<sup>72</sup> but instead are intended primarily to make it more difficult for consumers to switch carriers, preventing the consumer and societal benefits that an open and competitive market would otherwise bring. At the same time, service providers describe these fees as recovery for the costs of subsidies – perhaps to avoid problems with contract law. Generally, liquidated damages clauses *can* be used to recover actual damages, but they *cannot* be used as arbitrary penalties designed to prevent consumers from switching companies. In practice, early termination penalties the wireless industry is charging consumers are so far and above the value of subsidies

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<sup>71</sup> See Ex Parte of Free Press, In the Matter of *Broadband Industry Practices*, WC Docket No. 07-52 (Oct. 24, 2008).

<sup>72</sup> Evidence was presented at a trial in California (*Ayyad v. Sprint*, in CA Superior Court, Alameda County) that one carrier’s early termination fee program actually cost them more money to implement than they recovered from it. Further, according to internal memos, the company performed exactly one calculation in determining the amount of the ETF: the effect on subscriber churn. That is, they did not examine whether they fully recovered the device “subsidies” they offered consumers; they simply calculated an amount that would make it harder for consumers to switch. Clearly, this is about penalizing consumers for voting with their feet and pocketbooks, not about saving them money.

provided that the fee appears to serve as more of a penalty than recoupment of costs.<sup>73</sup> Although consumers would prefer that service providers voluntarily reduce their penalties substantially (not merely “pro-rate” by \$5 per month), at a minimum the Commission should prevent these fees from being described to consumers as a recoup of subsidy costs. The Commission should also require clear and complete description of the amount of penalty the consumer must pay for each individual month for the duration of the service contract.

In addition to paying substantial penalties, consumers are often forced to abandon their equipment investments to switch service providers, because the phone they purchased with their initial plan may be chained to a particular provider through an exclusivity contract or software that locks the phone to the network (or both). In fact, wireless service providers continue to argue before the U.S. Copyright Office against the use of various means of device unlocking.<sup>74</sup> Again, although Commenters would prefer direct resolution of this problem, at a minimum the Commission should require wireless providers to clearly disclose any necessary steps that a consumer must take, or any limitations or restrictions that a consumer must be aware of, if the consumer seeks to take their wireless device with them to another provider.

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<sup>73</sup> \$14.33 is the average phone subsidy provided to the consumer. In data submitted by the wireless carriers to the International Trade Commission, the average value of wireless handsets in 2006 was \$115. The wireless industry’s trade association (CTIA) says that the average price paid for phones in 2006 was \$65.67, and the carriers also charge a \$35 activation fee that they treated as handset revenues on their books, for a total of \$100.67 paid by the average consumer for their handset. That leaves \$14.33 in average upfront savings. Consumers may “pay that off” through service profits in their first month of service, or in a few months. Certainly, recouping \$14.33 does not take two full years. If the carriers were to reduce their ETFs to \$14.33, or even triple that amount, disclosure problems would be substantially reduced to the point of being trivial. But these penalties (often starting at \$175) are more than 12 times the average subsidy, and seem intended as hidden penalties for any consumer seeking to change providers.

<sup>74</sup> See Library of Congress, U.S. Copyright Office, In the Matter of *Exemption to the Prohibition of Circumvention of Copyright Protection Systems For Access Control Technologies*, Docket No. RM 2008-08.

**C. The Commission Should Establish Meaningful Processes for Consumers to Receive Relief Through Complaints over Misleading or Dishonest Behavior.**

The Commission notes in the NOI that consumer complaints at the FCC relating to billing with regard to both wireline and wireless services have increased 10 percent and 24 percent, respectively, since 2006.<sup>75</sup> The FCC's ability to clearly and consistently handle consumer complaints has become an important method for consumers to seek redress, despite an ongoing lack of widespread awareness of the process – the GAO found a striking 34% of wireless consumers do not know where to complain should they encounter problems with their service provider.<sup>76</sup> Moreover, as Commenters illustrate, consumers are encountering greater problems as telecommunications services are bundled and as more features are made available, making ease of use and general knowledge of FCC complaint processes ever more important.

Substantial ambiguities in current FCC procedures to address consumer complaints frustrate and confuse a subscriber's ability to seek redress.<sup>77</sup> First, although pre-empted in several instances, states retain authority to regulate the terms and conditions of wireless phone service providers as common carriers.<sup>78</sup> However, there are no clear guidelines on how the Commission may coordinate with appropriate state agencies to address consumer complaints.

Second and more significantly, the Commission's process often leaves consumers with no real resolution. Although the Commission's stated goal for its processes is "facilitating informed choice in the marketplace," in practice little redress is made for consumer harms, and

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<sup>75</sup> Notice at para. 15.

<sup>76</sup> GAO, Preliminary Observations about Consumer Satisfaction and Problems with Wireless Phone Service and FCC's Efforts to Assist Consumers with Complaints (June 17<sup>th</sup>, 2009).

<sup>77</sup> The FCC's rules establish the process by which the Commission receives and addresses consumer complaints. 47 C.F.R. § § 1.711-1.736.

<sup>78</sup> See 47 U.S.C. § 332(c)(3)(A). The House Committee Report on the Omnibus Budget Reconciliation Act of 1993, in reference to section 332(c)(3)(A), explained that "other terms and conditions" of wireless service, which are regulated by the states, "include such matters as customer billing information and practices and billing disputes and other consumer protection matters."

many complaints are dismissed by the FCC without granting satisfaction to the consumer. As the GAO reports, “Once FCC receives a response from the carrier, the agency reviews the response, and if FCC determines the response has addressed the consumer’s complaint, marks the complaint as closed.”<sup>79</sup> The heavy emphasis in this process is on assuming that the carrier can and will address the consumer’s complaint without FCC action, even if the complaint relates to a fundamental deception in advertising or billing practices.

The Commission should engage more closely in consumer complaints, and should declare the process to be over when the consumer is satisfied or when no more action is appropriate, not when a service provider offers a generic explanation for its behavior. And, to the extent such complaints reveal widespread problems with disclosure in advertising or billing practices, the Commission should engage in broader remedies, as appropriate.

#### **IV. THE COMMISSION HAS BOTH THE AUTHORITY AND THE STATUTORY OBLIGATION TO PROTECT CONSUMERS FROM CONFUSING AND MISLEADING PRACTICES.**

Competition in communications markets is most effective when consumers have access to accurate and meaningful information. To that end, several provisions of the 1934 Act and the 1996 Act provide the Commission with the tools necessary to ensure that wireline and wireless providers (even in the context of their video and broadband Internet access service offerings) engage in practices that are honest, consistent, and easy to understand. One of the principal goals of the Communications Act (hereinafter, “the Act”) always has been to ensure the charges carriers impose on consumers for telecommunications services are “just” and “reasonable.”<sup>80</sup>

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<sup>79</sup> GAO, Preliminary Observations about Consumer Satisfaction and Problems with Wireless Phone Service and FCC’s Efforts to Assist Consumers with Complaints, at 10 (June 17<sup>th</sup>, 2009).

<sup>80</sup> 47 U.S.C. § 201(b).

More generally, the statutory language that establishes the broad authority of the Commission directs it to ensure that all consumers have available to them “adequate” communications services at “reasonable charges.”<sup>81</sup>

In order to empower consumers, and to ensure competition in both the wireless and wireline telecommunications service markets as well as other communications services markets regulated by the Commission, the Commission can and should establish clear rules with regard to transparent disclosure at point-of-sale and enforceable billing guidelines. Consumers today can purchase an array of formerly separate voice, video, and data services from a single provider offering them on either a wireless or wireline platform – often paying for all such services on a single bill. The Commission therefore should apply uniform standards for each type of service and technological platform, protecting consumers equally without respect to arbitrary distinctions based on historically disparate regulatory treatment of former service “silos.” As the Commission found more than a decade ago, “[i]n a world of bundled packages and multiple service providers, clear and truthful bills are paramount.”<sup>82</sup> Multiple provisions of the Communication Act grant the Commission the authority and the obligation to establish protective rules and practices for each such delivery platform and service that the Commission regulates.

**A. Congress Established Clear Authority and the Obligation for the Commission to Set Disclosure Rules.**

The Commission has previously – and correctly – determined that it has the necessary jurisdiction to protect and promote consumer awareness regarding billing practices for both

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<sup>81</sup> *Id.* § 151; *see, e.g., In the Matter of Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units and Other Real Estate Developments*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCCRcd 20235, ¶ 47 (2007) (citing Section 151 as a basis for adopting rules that promote competition in communications services marketplaces).

<sup>82</sup> *See First Truth-in-Billing Order* at para. 14.

wireline and wireless services.<sup>83</sup> Pursuant to the Communications Act, the Commission is required to ensure that carriers' practices and charges are "just" and "reasonable."<sup>84</sup> The Act also requires the Commission to establish verification procedures so that consumers do not unwittingly or unknowingly change their carrier of choice.<sup>85</sup> The Act further authorizes the Commission to, on its own initiative, "determine and prescribe what will be the just and reasonable charge...and what classification, regulation, or *practice* is or will be just, fair, and reasonable...."<sup>86</sup> Thus, the Commission clearly has the authority and obligation to ensure that consumers have the necessary and relevant information regarding telecommunications services offered by wireline and wireless carriers.

The Commission's authority also extends to subscription video services and broadband Internet access service, and any rules adopted in this inquiry also must apply to those services as offered by wireline and wireless providers. As noted by the Commission in the *Notice*, it has previously adopted rules regarding cable billing practices.<sup>87</sup> Pursuant to its continuing Section 632 authority, which authorizes the Commission to "establish standards by which cable operators may fulfill their customer service requirements," the Commission should extend any new requirements adopted in this proceeding, where appropriate, to all services provided by cable operators, including video.<sup>88</sup> Similarly, the Commission should extend any new rules to satellite

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<sup>83</sup> See *Second Truth-in-Billing Order* at para. 5.

<sup>84</sup> See 47 U.S.C. §§ 201(b), 332(c)(1)(A).

<sup>85</sup> See 47 U.S.C. §§ 258, 332(c).

<sup>86</sup> See 47 U.S.C. §§ 205(a) (emphasis added).

<sup>87</sup> *Notice* at para. 14.

<sup>88</sup> See 47 U.S.C. § 552(b)(3) (granting the Commission the authority to establish requirements governing "communications between the cable operator and the subscriber (including standards governing bills and refunds)").

video services, pursuant to its ample authority under Section 335 to adopt for satellite service providers “public interest or other requirements for providing video programming.”<sup>89</sup>

Finally, the Commission has Title I authority to extend its rules to all such providers of broadband Internet access service. Pursuant to the *Computer I* inquiries, the D.C. Circuit has affirmed the Commission’s Title I authority to regulate “enhanced services” and sale of customer premise equipment (CPE) previously regulated under Title II and later reclassified under Title I:

Several parties attack the validity of this assertion of ancillary jurisdiction by the Commission. In *United States v. Southwestern Cable Co.*, 392 U.S. 157, 88 S.Ct. 1994, 20 L.Ed.2d 1001 (1968), it was settled beyond peradventure that the Commission may assert jurisdiction under section 152(a) of the Act over activities that are not within the reach of Title II.... In designing the Communications Act, Congress sought “to endow the Commission with sufficiently elastic powers such that it could readily accommodate dynamic new developments in the field of communications.” Congress thus hoped “to avoid the necessity of repetitive legislation.” In *Computer II* the Commission took full advantage of its broad powers to serve the public interest by accommodating a new development in the communications industry, the confluence of communications and data processing. Because the Commission’s judgment on “how the public interest is best served is entitled to substantial judicial deference,” the Commission’s choice of regulatory tools in *Computer II* must be upheld unless arbitrary or capricious. Our review of the Commission’s decision convinces us that the Commission acted reasonably in defining its jurisdiction over enhanced services and CPE.<sup>90</sup>

Generally, the Commission can use its ancillary jurisdiction in circumstances where:

(1) the Commission’s general jurisdictional grant under Title I covers the subject of the regulations and (2) the regulations are reasonably ancillary to the Commission’s effective performance of its statutorily mandated responsibilities.<sup>91</sup> Title I clearly grants the Commission jurisdiction to adopt rules that govern the practices of broadband Internet access providers. The

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<sup>89</sup> *Id.* § 335(a); *see also id.* § 309(a) (granting the Commission authority to determine whether the granting of any license serves the public interest).

<sup>90</sup> *Computer and Communications Industry Association v. FCC*, 693 F.2d 198, 213 & n.80 (D.C. Cir. 1982) (Affirming use of ancillary authority, noting that “[o]ne of those responsibilities is to assure a nationwide system of wire communications services at reasonable prices”).

<sup>91</sup> *See Am. Library Ass’n v. FCC*, 406 F.3d 689, 700 (D.C. Cir. 2005).

Commission explicitly stated in its Internet Policy Statement that although broadband Internet access was no longer considered a Title II service, the Commission would assert jurisdiction over broadband services pursuant to Title I, and would not hesitate to impose obligations “necessary to ensure that providers of telecommunications for Internet access or Internet Protocol-enabled (IP-enabled) services” operate in a manner that delivers services made “affordable, and accessible to all consumers.”<sup>92</sup> The Supreme Court also noted that the Commission “remains free to impose regulatory duties on facilities-based ISPs under its Title I ancillary jurisdiction.”<sup>93</sup>

Adopting consumer protections is reasonably ancillary to the Commission’s effective performance of its statutorily mandated responsibilities. As the Commission has noted even in the context of classifying various broadband services as information services, “consumer protection remains a priority” for these services, and the foundation for such protections is “the Commission’s Title I ancillary jurisdiction to ensure that consumer protection needs are met by all providers of broadband Internet access services regardless of the underlying technology, including providers of [wireline and] wireless broadband Internet access services.”<sup>94</sup> Thus, the Commission has “recognize[d] that both of the predicates for ancillary jurisdiction are likely satisfied for any consumer protection...obligation that we may subsequently decide to impose on wireline broadband Internet access service providers.”<sup>95</sup>

The Commission has the authority to require all communications service providers issuing bills to subscribers to adopt just, fair, and reasonable practices for such customer communications. The Commission should exercise that authority to eliminate the customer

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<sup>92</sup> Internet Policy Statement, 20 FCC Rcd 14986 at para. 4 (2005) (“Internet Policy Statement”).

<sup>93</sup> *National Cable & Telecom. Ass’n v. Brand X Internet Svcs.*, 545 U.S. 967 (2005).

<sup>94</sup> *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, Declaratory Ruling, 22 FCC Rcd 5901, at para. 70 (2007).

<sup>95</sup> *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853, at para. 109 (2005).

confusion readily apparent from the data presented in these comments, adopting rules to ensure that carriers and other entities provide consumers with the information necessary to make informed decisions when purchasing and using the wireless, wireline, video, and broadband Internet access services of their choice.

**B. The Commission Must Set Clear Disclosure Rules to Promote Competition.**

As the Commission found when it last adopted significant new consumer protections in its *Second Truth-in-Billing Order*, rules that “allow consumers to better understand their telephone bills [and] compare service offerings” work directly to “promote a more efficient competitive marketplace.”<sup>96</sup> In fact, as the Commission correctly concluded, “the proper functioning of competitive markets is predicated on consumers having access to accurate, meaningful information in a format that they can understand.”<sup>97</sup> In the context of broadband Internet service, the Commission has concluded that “consumers are entitled to competition among network providers, application and service providers, and content providers.”<sup>98</sup> The only way for the Commission to ensure that consumers benefit from the effective competition to which they are entitled is requiring competitors to provide accurate and meaningful information about the communications services they offer.

At base, the Telecommunications Act of 1996 directed the Commission to promote competition generally, and further instructed the Commission to facilitate overall broadband deployment by using “measures that promote competition.”<sup>99</sup> As the Commission has noted in its past Truth-in-Billing orders, efficient competition depends on the availability of sufficient

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<sup>96</sup> *Second Truth-in-Billing Order* at para. 3.

<sup>97</sup> *Id.*

<sup>98</sup> Internet Policy Statement at para. 4.

<sup>99</sup> See Telecommunications Act of 1996, Section 706(a), *codified at* 47 U.S.C. § 1302(a).

information about competitive offerings.<sup>100</sup> Even if markets might otherwise be deemed competitive based on measures such as market structure and provider conduct, “disclosure rules are needed to protect consumers.”<sup>101</sup> The Commission long ago rejected the notion that competition removes the need for consumer information disclosure requirements, recognizing the fact that the free flow of information to potential customers is the bedrock for such competition. Therefore, the Commission likewise “reject[ed] the threshold arguments that certain classes of carriers should be wholly exempted from” consumer protection guidelines “solely because competition exists in the markets in which they operate,” explaining that “one of the fundamental goals of our truth-in-billing principles is to provide consumers with clear, well-organized, and non-misleading information so that they may be able to reap the advantages of competitive markets.”<sup>102</sup>

## V. CONCLUSION

Consumers of communications services are routinely subject to a barrage of confusing and misleading information, from the initial phases of service provider selection through service billing and ongoing service management. Clearly, existing rules and voluntary guidelines are not proving nearly sufficient, as service providers routinely fail to disclose meaningful information, and hide the information they do disclose in fine print below misleading “base rates” and “advertised speeds.” Consequently, consumers experience substantial confusion and frustration and find themselves using limited or low quality services, and receiving higher-than-expected

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<sup>100</sup> See *First Truth-in-Billing Order* at para. 2 (“Unless consumers are adequately informed about the service choices available to them and are able to differentiate among those choices, they are unlikely to be able fully to take advantage of the benefits of competitive forces.”).

<sup>101</sup> *Id.* at para. 7.

<sup>102</sup> *Id.* at para. 14.

bills. Commenters urge the Commission to make substantial changes to existing rules, changes well within the Commission's authority, to remedy these problems.

Respectfully submitted,

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## Appendix A – Analysis of Terms of Service for Major Internet Access Providers

### AT&T

An analysis of AT&T’s Subscriber Agreement and Acceptable Use Policy (AUP) reveals a wide variety of limitations placed on customers.

AT&T:

- Retains the power to monitor any and all traffic.
- Declares the right to block and remove any content.
- Reserves the right to terminate service for interfering with the “integrity” of the network.
- Monitors the transmission speed and can modify it at any time.
- Does not guarantee a minimum Internet speed.

*AT&T does not pre-screen Content, but AT&T and its designees shall have the right (but not the obligation) to monitor any and all traffic routed through the Service, and in their sole discretion to refuse, block, move or remove any Content that is available via the Service.*

*Partial credit is not given to customers who change their price plan to another price plan, disconnect, cancel or are suspended from the service during a billing month.*

-AT&T DSL Service Subscriber Agreement

AT&T provides itself with far-reaching powers over a customer’s Internet connection. The company can not only monitor all traffic routed through its lines, but also can block any content they deem “objectionable” or “offensive,” and terminate a customer’s account if the content originated with them. AT&T, “in its sole discretion,” also reserves for themselves the right to “refuse, block, move or remove any Content that is available.” They also assert their ability “at any time, with or without prior notice to you” to restrict or suspend the service “to maintain session control.”

Although the most concerning language in the terms center around AT&T’s ability to play gatekeeper, other features may also weigh on a customer’s purchasing decision because they implicate service price and quality. Consumers who spend the time and energy to comb through these agreements would discover that they will be subject to a \$39.99 activation fee, that AT&T will obtain a customer’s credit information, and that if a customer cancels in the middle of a billing term the final bill will not be prorated. Furthermore, AT&T reveals it does not guarantee a minimum Internet speed and can even change a customer’s current connection speed at any time and without notice.

Through their legal terms, AT&T exerts an unacceptable level of control over their customer’s Internet usage. Many of the facts buried in these documents are likely to play a role in consumer purchase decisions. Many would anger consumers, such as an activation fee or paying a full month’s bill after two weeks of service.

## Verizon

Verizon, as outlined in their Terms of Service Agreement, has many unreasonable restrictions that are for the most part unbeknownst to customers.

Verizon:

- Reserves the right to refuse, move, or remove any content that the company determines is “objectionable”.
- Insists on having “sole discretion to deny or restrict...suspend or terminate” a customer’s Internet service.
- Monitors a customer’s Internet connection.
- Retains the power to increase the cost or terminate Internet service if a customer cancels their Verizon telephone service.
- Asserts the right to deny service or terminate existing service for many reasons including if a customer:
  - o Generates excessive amounts (as determined by Verizon) of Internet traffic,
  - o Uses the service in a way that is “objectionable”,
  - o Transmits information that is “defamatory” or “deceptive”,
  - o Uses any name or mark of Verizon as a hypertext link to any Web site, or
  - o Uses the service to “violate any rule, policy or guideline of Verizon”.

*Verizon reserves the sole discretion to deny or restrict your Service, or immediately to suspend or terminate your Service, if the use of your Service by you or anyone using it, in our sole discretion, violates the Agreement or other Verizon policies, is objectionable*

-Verizon Terms of Service

Verizon through its Terms of Service exerts tremendous power over customers. By insisting on the authority to monitor and block or remove any content that Verizon determines “in its sole discretion...is objectionable,” Verizon holds a firm grip over the online activities and even speech of its customers. Furthermore, a Verizon customer can be denied service for any number of reasons. The most egregious is worth quoting in full: “Verizon reserves the right to change, limit, terminate, modify or temporarily or permanently cease providing the Service, without prior notice if we elect to change the Service or a part thereof or if you violate the terms of this Agreement.”

Verizon also “reserves the right to change any of the features, Content or applications of the Service at any times with or without notice to you.” Many consumers would certainly find utility in knowing that Verizon can change any aspect of what is being marketed at any time. Verizon goes on to highlight specific circumstances that they believe warrant service termination. A particularly chilling cause for termination is by violating “any rule, policy or guideline of Verizon.” A customer is forced to guess what all these rules, policies and guidelines are. Other acts that give Verizon the right to terminate an account

include to using the service in a way Verizon deems “objectionable”, “engage in conduct that is defamatory”, and “generate excessive amounts of Internet traffic”. The last restriction is more concerning when considering Verizon never tells customers what constitutes excessive, only that a customer “may not exceed the bandwidth usage limitations that Verizon may establish from time to time”.

Verizon also employs a number of strategies to keep preserve a customers monthly payments. For example, if a consumer decides to purchase both Internet and telephone service through Verizon and then decides to do away with their Verizon landline phone for Skype, Verizon states they can “terminate your service” and “you agree to pay any higher monthly fee that may apply to your new service agreement”.

Through their terms of service, Verizon exerts an unacceptable level of control over their customers Internet activities. Given their placement, format and lack of visibility of their legal policies, this control is not adequately disclosed to consumers yet includes numerous facts that could weigh on a consumer’s view of the service.

## Qwest

An analysis of Qwest’s Subscriber Agreement and Acceptable Use Policy exposes a number of controls placed on consumers who choose to use the service.

Qwest:

- Monitors material accessed through their service.
- Retains the power to block any “defamatory” or “inappropriate” material.
- Asserts the right to restrict use for a variety of reasons.
- Restricts you from connecting any equipment without approval.

*Qwest may assign this Agreement and your rights and obligations under this Agreement, in whole or in part, at any time without notice to you and you agree to make all subsequent payments as directed*

*You may not attach or connect anything to the Qwest facilities or equipment unless authorized by Qwest*

-Qwest Subscriber Agreement

Qwest includes numerous assertions of power that would likely make consumers wary of the service if known. For example, Qwest asserts for themselves the right to “restrict your use of or interrupt the Service without notice ... to ensure the provision of acceptable service levels to all Qwest customers.” Subscribers may receive no further information as to how their service may be restricted. Customers are also subject to suspension or termination if, “as reasonably determined by Qwest”, they transmit material or engage in activity deemed “inappropriate”. This presumes a substantial ability to monitor and restrict consumer speech on the Internet. Few customers are likely aware that Qwest claims the right to monitor a customer’s connection for content at all, let alone at any time Qwest sees fit. And, any information discovered through such monitoring may be disclosed when “Qwest reasonably determines that it is necessary,” including to “protect itself”.

This control also extends to equipment. Qwest states that a customer “may not attach or connect anything to the Qwest facilities or equipment unless authorized by Qwest.” If a customer does so, Qwest can remove them and the customer’s service “may be suspended or terminated.” In fact, the litany of assertions by Qwest covers almost every aspect of the service. Rather than provide clear and comprehensible disclosure, consumers are expected to process and interpret numerous complex documents if they would like to be aware of the various restrictions attached to their connections or to understand the broad rights retained by Qwest. This is an unacceptable situation for consumers who are forced to subscribe to Qwest service for lack of any other options, and for those “fortunate” enough to choose between Qwest DSL and cable modem service.

## Comcast

An analysis of Comcast's legal policies reveals that the company places a variety of unreasonable restrictions on customers. However, it is worth noting the company improved the *format* of its acceptable use policy. These changes were due, in large part, to the consumer anger and subsequent Commission investigation of the Company's hidden blocking of peer-to-peer connections.

Comcast:

- Retains the power to block any content it deems inappropriate or undesirable.
- Asserts the right to change the rates, functionality, hours of availability, speed and upstream/downstream bandwidth limitations without notice.
- Monitors bandwidth, usage, transmissions, and content including email and IP audio and video.
- Reserves the right to terminate service based on Comcast's sole judgment that a customer represents an overly large burden on the network.

*Comcast shall have no obligation to monitor postings or transmissions made in connection with HSI. However, you acknowledge and agree that Comcast and its agents have the right to monitor, from time to time, any such postings and transmissions, including without limitation e-mail, newsgroups, chat, IP audio and video, and Web space content... We reserve the right to refuse to upload, post, publish, transmit or store any information or materials, in whole or in part, that, in our sole discretion, is unacceptable, undesirable or in violation of this Agreement.*

- Comcast Acceptable Use Policy

Comcast reserves the right to block any content it deems to be inappropriate or undesirable. To do so, Comcast must also provide themselves with the ability to monitor transmissions or postings "including, but not limited to, e-mail, file transfer, blog, newsgroup, and instant message transmissions". Further, if Comcast, in its sole judgment, deems a customer to be an "overly large burden on the network" or to exceed the bandwidth limitations (where Comcast's determination is not disputable), they can suspend or terminate service. Comcast also provides itself broad rights regarding changes to service:

Subject to applicable law, we have the right to change our Services, Comcast Equipment and rates or charges, at any time with or without notice. We also may rearrange, delete, add to or otherwise change programming or features or offerings contained in the Services, including but not limited to, content, functionality, hours of availability, customer equipment requirements, speed and upstream and downstream rate limitations...if you continue to receive Service(s) after the change, this will constitute your acceptance of the change.

While Comcast has improved, to some extent, the format in which this information is presented, most customers are still unaware of the numerous restrictions and lack of rights that come with the service. Certainly, this information is of interest to prospective customers, and is not adequately disclosed.

## Time Warner Cable

An examination of Time Warner Cable's Subscriber Agreement and Acceptable Use Policy reveals excessive restrictions on a customer's service.

Time Warner Cable:

- May terminate a customer's service for "any or no reason".
- Reserves the right to modify or delete any aspect of the Internet service including content.
- Retain the ability to change the speed of any service tier with customer acceptance coming from continued use.
- Monitors a customer's usage to ensure compliance and manage the network.
- Asserts the right to suspend or reduce the speed of Internet service.
- Reserves the right to edit, block or remove any "unacceptable" material.
- Disallows transmitting content that infringes on the dignity of others.

*I agree that TWC or ISP may change the speed of any tier by amending the price list or Terms of Use. My continued use of the HSD Service following such a change will constitute my acceptance of any new speed. I also agree that TWC may use technical means, including but not limited to suspending or reducing the speed of my HSD Service, to ensure compliance with its Terms of Use and to ensure that its service operates efficiently.*

*Either TWC or I may terminate all or any portion of my Services at any time for any or no reason, in its sole discretion, in accordance with applicable law.*

- Time Warner Cable Subscriber Agreement

Time Warner Cable through their subscriber agreement and acceptable use policy asserts the right to monitor and control consumer usage however they see fit. The cable provider can "modify, or delete any aspect, feature or requirement of the Services (including content, price, equipment and system requirements)". In addition, Time Warner Cable may "change the speed of any tier by amending the price list or Terms of Use." The customer, through their "continued use" of the Internet service, consents to these changes. Time Warner Cable can reduce or suspend the speed of a customer's Internet access to ensure that "its service operates efficiently".

By granting themselves the right to monitor a customer's "usage patterns", Time Warner Cable opens the door to peer into a user's online activities. And while monitoring consumer speech online, Time Warner Cable asserts the right to terminate service for numerous online activities. A customer would violate Time Warner Cable's acceptable use policy by transmitting any materials that infringe on the "dignity of others". Moreover, Time Warner Cable can terminate a customer's Internet access "for any or no reason". The company also claims the "right...to edit, refuse to post or transmit...or remove or block any material transmitted through, submitted to or posted on the HSD Service, if it determines in its discretion that the material is unacceptable". This material includes "personal home pages".

Another provision of considerable interest to customers is Time Warner Cable's asserted right to spam its customers. By activating service they "consent to TWC emailing me, at any address...that I provide...for any purpose, including the marketing of TWC's current and future Services." The same goes any phone numbers provided to the cable operator. Time Warner Cable makes clear that being included in "any state or federal "do not call" registry will not be sufficient" to escape these marketing calls.

Through their Subscriber Agreement and Acceptable Use Policy, Time Warner Cable exerts considerable power over customer activities. In order to be conscious of these restrictions, a subscriber must sit down with a magnifying glass, good lighting and a great deal of patience. This situation is unacceptable for consumers who are routinely surprised by charges and restriction, let alone marketing calls.

## AT&T Wireless (Mobile and Fixed)

An examination of AT&T Wireless's legal terms reveals excessive restrictions on a customer's service.

AT&T Wireless:

- Disallows using access for everything but the "most common uses" as defined by AT&T.
- Reserves the right to modify or deny any aspect of the Internet service.
- Retains the ability to "exercise editorial control over any material transmitted".
- Monitors its customer's online activities.
- Asserts the right to "modify or discontinue" the service without notice.
- Reserves the right to suspend or terminate subscribers who "interfere with the integrity" of the network or "otherwise pose a risk to AT&T".
- Disallows using the service to transmit "deceptive", "inflammatory...or otherwise harmful" content, as defined by AT&T.

*Accordingly, AT&T reserves the right to (i) deny, disconnect, modify and/or terminate Service, without notice, to anyone it believes is using the Service in any manner prohibited or whose usage adversely impacts its wireless network or service levels or hinders access to its wireless network*

-AT&T Wireless Terms and Conditions

*AT&T reserves the right to act immediately and without notice to suspend or terminate IP Service(s)...when AT&T determines, in its sole discretion, that the conduct may... cause harm to or interfere with the integrity or normal operations of AT&T's network(s) or facilities...[or] otherwise present a risk of harm to AT&T*

-AT&T Terms of Service & Acceptable Use Policy

AT&T Wireless (or AT&T) assumes overarching power of its customers' mobile wireless service. The Company states unequivocally that "data sessions may be conducted only for the following purposes: (i) Internet browsing; (ii) email; and (iii) intranet access". AT&T goes on to state "You may not use the Services other than as intended by AT&T". The Company reserves the ability to "monitor your compliance...with AT&T's terms, conditions, or policies." This practice leads AT&T to "terminate Service, without notice, to anyone it believes is using the Service in any manner prohibited".

AT&T's fixed wireless service (Wi-Fi) similarly states customers cannot transmit material that AT&T deems "offensive or threatening". The company also reserves the right "to monitor or exercise any editorial control over such material". AT&T retains sole discretion to suspend or terminate service for conduct deemed to cause network harm, interfere with other's use of the service or "otherwise present a risk of harm to AT&T". Going one step further, AT&T states that customers are responsible for checking the AT&T website or AT&T email address for any changes to these terms.

Clearly, regardless of the service, AT&T ensures it has the ability to do whatever it likes, while customers retain no such luxury.

## Verizon Wireless

An analysis of Verizon Wireless's legal terms policy reveals numerous restrictions on a customer's service.

Verizon Wireless:

- Chooses which online services customers can enjoy.
- Reserves the right to modify, deny or terminate service to anyone Verizon believes "adversely impacts our network."
- Reserves the right to eliminate any information transmitted that it deems "unacceptable".
- Monitors customer's transmissions including content.
- Asserts the right to "limit, suspend or end your service" for any "good cause".
- Reserves the right to "temporarily limit your service for any governmental or operational reason".

*[W]e reserve the right to deny, modify or terminate service, with or without notice, to anyone we believe is using Data Plans or Features in a manner that adversely impacts our network*

*You can use our Data Plans and Features for accessing the Internet and for such uses as: (i) Internet browsing; (ii) e-mail; (iii) intranet access (including accessing corporate intranets, e-mail and individual productivity applications made available by your company); (iv) uploading, downloading and streaming of audio, video and games; and (v) Voice over Internet Protocol (VoIP).*

-Verizon Wireless Terms and Conditions

Verizon Wireless includes numerous restrictions and admissions in the legal documents subscribers ostensibly agree to. Unfortunately few subscribers are aware of such facts. Verizon Wireless outlines the specific uses that customers should expect from the service and provides examples of the many uses that are prohibited. The company provides itself numerous excuses to "limit, suspend or end your service" including for any "good cause". Verizon Wireless goes further to reserve "the right to modify, reject or eliminate any information residing on or transmitted to its server that it, in its sole discretion, believes is unacceptable".

Many subscribers would like to know the litany of egregious terms included in these agreements before choosing service. However, as these terms are largely incomprehensible, consumers are afforded no such opportunity. Instead, they discover these limits to their rights when Verizon Wireless decides to employ them.

## **AT&T:**

The following are excerpts from AT&T's DSL Subscriber Agreement [*emphasis added and removed*], available at: <http://worldnet.att.net/general-info/terms-dsl-data.html>

**Activation Fee. A Service Activation Fee of \$39.99 will be applied to your first billing statement.**

**Monthly recurring charges are not prorated. Partial credit is not given to customers who change their price plan to another price plan, disconnect, cancel or are suspended from the service during a billing month.**

**Speed of Service. The actual speed of the Services experienced by you may vary and depends on a number of factors, such as the location of your residence, the amount of traffic on the Internet, the ability of your computer to process data, environmental factors, and other factors beyond the control of AT&T. AT&T reserves the right to monitor or change your current plan speed at any time. No minimum level of speed is guaranteed.**

**Improper Use. You agree to comply with the "ABCs of AT&T Worldnetiquette," which are described in Section 10. You cannot create a network (whether inside or outside of your residence) with AT&T DSL Service using any type of device, equipment, or multiple computers unless AT&T has granted you permission to do so and you use equipment and standards acceptable to AT&T. AT&T may cancel, restrict, or suspend the Services and this Agreement under Section 11 below for violating these provisions.**

### **ABCs OF AT&T WORLDNETIQUETTE**

To maintain an informative and valuable service, AT&T has established the ABCs of AT&T Worldnetiquette. **While it is not our intent to control your online communication or monitor its content, we may edit or remove content that we become aware of and determine to be harmful, offensive or otherwise in violation of these ABCs.** Violation of these ABCs may also result in the termination or suspension of your account. These ABCs apply to all content provided to or through the Service, including e-mail messages, newsgroup postings, chat, and personal web pages.

**You may not use your Service connection to host a dedicated Internet server site.**

**Monitoring and Removal of Content. AT&T does not pre-screen Content, but AT&T and its designees shall have the right (but not the obligation) to monitor any and all traffic routed through the Service, and in their sole discretion to refuse, block, move or remove any Content that is available via the Service. Without limiting the foregoing, we shall have the right to**

**remove any Content that violates this Agreement or is otherwise objectionable.** You agree that you must evaluate, and bear all risks associated with, the use of any Content, including any reliance on the accuracy, completeness, or usefulness of such Content. In this regard, you acknowledge that you may not rely on any Content created by us or submitted to us.

AT&T Cancellation for Violation of the Agreement. **We may immediately suspend, restrict, or cancel the Services and this Agreement, should you violate any of the terms of this Agreement.** If the Services are suspended, restricted, or cancelled under this Section (11.b.), any fees and charges will accrue through the date that AT&T fully processes the suspension, restriction, or cancellation.

Binding Arbitration. The arbitration process established by this section is governed by the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1-16. You have the right to take any dispute that qualifies to small claims court rather than arbitration. **All other disputes arising out of, or related to, this Agreement (whether based in contract, tort, statute, fraud, misrepresentation or any other legal or equitable theory) must be resolved by final and binding arbitration.** This includes any dispute based on any product, service or advertising having a connection with this Agreement and any dispute not finally resolved by a small claims court. The arbitration will be conducted by one arbitrator using the procedures described by this Section. If any portion of this Dispute Resolution Section is determined to be unenforceable, then the remainder shall be given full force and effect.

**The following are excerpts from AT&T's Acceptable Use Policy [emphasis added and removed], available at: <http://www.corp.att.com/aup/>**

**General Prohibitions: AT&T prohibits use of the IP Services in any way that is unlawful, harmful to or interferes with use of AT&T's network or systems, or the network of any other provider, interferes with the use or enjoyment of services received by others, infringes intellectual property rights, results in the publication of threatening or offensive material, or constitutes Spam/E-mail/Usenet abuse, a security risk or a violation of privacy.**

Threatening Material or Content: IP Services shall not be used to host, post, transmit, or re-transmit any content or material (or to create a domain name or operate from a domain name), that harasses, or threatens the health or safety of others. In addition, for those IP Services that utilize AT&T provided web hosting, AT&T reserves the right to decline to provide such services if the content is determined by AT&T to be obscene, indecent, hateful, malicious, racist, defamatory, fraudulent, libelous, treasonous, excessively violent or promoting the use of violence or otherwise harmful to others.

AUP Enforcement and Notice

**Customer's failure to observe the guidelines set forth in this AUP may result in AT&T taking actions anywhere from a warning to a suspension or termination of Customer's IP Services.** When feasible, AT&T may provide Customer with a notice of an AUP violation via e-mail or otherwise allowing the Customer to promptly correct such violation.

**AT&T reserves the right, however, to act immediately and without notice to suspend or terminate affected IP Services in response to a court order or government notice that certain conduct must be stopped or when AT&T reasonably determines, that the conduct may: (1) expose AT&T to sanctions, prosecution, civil action or any other liability, (2) cause harm to or interfere with the integrity or normal operations of AT&T's network or networks with which AT&T is interconnected, (3) interfere with another AT&T Customer's use of IP Services or the Internet (4) violate any applicable law, rule or regulation, or (5) otherwise present an imminent risk of harm to AT&T or AT&T Customers.**

AT&T has no obligation to monitor content of any materials distributed or accessed using the IP Services. However, **AT&T may monitor content of any such materials as necessary** to comply with applicable laws, regulations or other governmental or judicial requests; or **to protect the AT&T network and its customers.**

## **Verizon:**

The following are excerpts from Verizon's Terms of Service [*emphasis added and removed*], available at: [http://www.verizon.net/policies/vzcom/tos\\_popup.asp](http://www.verizon.net/policies/vzcom/tos_popup.asp)

From time to time we will make revisions to this Agreement and the policies relating to the Service. **We will provide notice of such revisions by posting revisions to the Website Announcements page, or sending an email to your primary verizon.net email address, or both. You agree to visit the Announcements page periodically to review any such revisions.** We will provide you with at least thirty (30) days notice prior to the effective date of any increases to the monthly price of your Service or Bundled Service plan (excluding other charges as detailed in Sections 8.1(a)-(d)); revisions to any other terms and conditions shall be effective on the date noted in the posting and/or email we send you. **By continuing to use the Service after revisions are effective, you accept and agree to abide by them.**

Restrictions on Use. The Service is a consumer grade service and is not designed for or intended to be used for any commercial purpose. You may not resell the Service, use it for high volume purposes, or engage in similar activities that constitute such use (commercial or non-commercial). If you subscribe to a Broadband Service, you may connect multiple computers/devices within a single home to your modem and/or router to access the Service, but only through a single Verizon-issued IP address. **You also may not exceed the bandwidth usage limitations that Verizon may establish from time to time for the Service, or use the Service to host any type of server. Violation of this section may result in bandwidth restrictions on your Service or suspension or termination of your Service.**

Service and Bandwidth Availability and Speed. The Service you select may not be available in all areas or at the rates, speeds, or bandwidth generally marketed, and some locations may not qualify for the Service even if initial testing showed that your line was qualified. We will provision qualified HSI lines at the maximum line rate available to your location based on our standard line qualification procedures, unless you have selected a level of service with a lower maximum line rate. Bandwidth is provided on a per-line (not a per-device) basis. The bandwidth available to each device connected to the network will vary depending upon the number, type and configuration of devices using the Service and the type of use (e.g., streaming media), among other factors. The speed of the Service will vary based on network or Internet congestion, your computer configuration, the condition of your telephone line and the wiring inside your location, among other factors. **We and our suppliers reserve the right, at any time, with or without prior notice to you, to restrict or suspend the Service to perform maintenance activities and to maintain session control.**

Changes to your local voice telephony service. **If you change your local telephone company or discontinue your local telephone service, we may in our discretion either terminate your Service or continue to provide Broadband Service without local Verizon voice service at the then-current rates, terms and conditions applicable to your new Service plan and you agree to pay any new or higher monthly fee that may apply to your new Service plan.** If we elect to terminate your Service under this Section 6.2, then we reserve the right to charge any early termination fees and to apply the Equipment return terms under Section 9.

Conversion from DSL Service to Verizon FiOS Internet Service. **When Verizon is able to provision Service utilizing fiber optic technologies, we may in our discretion terminate your DSL Service and cease offering DSL Service to your location.** In such case, we will offer you Verizon FiOS Internet Service at the then applicable rates and terms, which may differ from your previous DSL Service rates and terms.

Changes to Service or Features. **Verizon reserves the right to change any of the features, Content or applications of the Service at any time with or without notice to you.** This includes the portal services we may make available as part of the Service or for an additional charge.

Termination and/or Suspension by Verizon. **Verizon reserves the right to change, limit, terminate, modify or temporarily or permanently cease providing the Service or any part of it with or without prior notice if we elect to change the Service or a part thereof or if you violate the terms of this Agreement.** If Verizon terminates your Service under this Section 9.1.3, you must immediately stop using the Service and you will be responsible for the applicable fees and/or Equipment charges set forth in Sections 8.5, 9.1.1, or 9.1.2. If the termination is a result of violation by you of the terms of this Agreement, you also shall be liable to pay the ETF. If your Service is reconnected, a reconnection fee may apply.

Content and Data Management by Verizon: **We reserve the right to: (a) use, copy, display, store, transmit and reformat data transmitted over our network and to distribute such content to multiple Verizon servers for back-up and maintenance purposes; and (b) block or remove any unlawful content you store on or transmit to or from any Verizon server.** We do not guarantee the protection of your content or data located on our servers or transmitted across our network (or other networks) against loss, alteration or improper access.

Monitoring of Network Performance by Verizon. **Verizon automatically measures and monitors network performance and the performance of your Internet connection and our network.** We also will access and record information about your computer and Equipment's profile and settings and the installation of software we provide. **You agree to permit us to access your**

**computer and Equipment and to monitor, adjust and record such data, profiles and settings for the purpose of providing the Service. You also consent to Verizon's monitoring of your Internet connection and network performance, and to our accessing and adjusting your computer settings, as they relate to the Service, Software, or other services, which we may offer from time to time.** We do not share information collected for the purpose of network or computer performance monitoring or for providing customized technical support outside of Verizon or its authorized vendors, contractors and agents.

**You understand and agree that if you type a nonexistent or unavailable Uniform Resource Locator (URL), or enter a search term into your browser address bar, Verizon may present you with an advanced web search page ("AWS Page") containing suggested links based upon the query you entered in lieu of your receiving an NXDOMAIN or similar error message.** Verizon's provision of the AWS Page may impact applications that rely on an NXDOMAIN or similar error message and may override similar browser-based search results pages. If you would prefer not to receive AWS Pages from Verizon, you should follow the opt-out instructions that are available by clicking on the "About the Search Results Page" link on our AWS Page.

**You are not authorized to use any Verizon name or mark as a hypertext link to any Verizon Web site or in any advertising, publicity or in any other commercial manner without the prior written consent of Verizon Licensing Company.**

**VERIZON DOES NOT WARRANT THAT THE SERVICE OR EQUIPMENT PROVIDED BY VERIZON WILL PERFORM AT A PARTICULAR SPEED, BANDWIDTH OR DATA THROUGHPUT RATE, OR WILL BE UNINTERRUPTED, ERROR-FREE, SECURE, OR FREE OF VIRUSES, WORMS, DISABLING CODE OR CONDITIONS, OR THE LIKE.**

**You may not assign or otherwise transfer this Agreement, or your rights or obligations under it, in whole or in part, to any other person. Any attempt to do so shall be void. We may freely assign all or any part of this Agreement with or without notice and you agree to make all subsequent payments as directed.**

ATTACHMENT A  
ACCEPTABLE USE POLICY

**General Policy: Verizon reserves the sole discretion to deny or restrict your Service, or immediately to suspend or terminate your Service, if the use of your Service by you or anyone using it, in our sole discretion, violates the Agreement or other Verizon policies, is objectionable or unlawful, interferes with the functioning or use of the Internet or the Verizon network by**

**Verizon or other users, or violates the terms of this Acceptable Use Policy ("AUP").**

Specific Examples of AUP Violations. The following are examples of conduct which may lead to termination of your Service. Without limiting the general policy in Section 1, it is a violation of the Agreement and this AUP to: (a) access without permission or right the accounts or computer systems of others, to spoof the URL, DNS or IP addresses of Verizon or any other entity, or to penetrate the security measures of Verizon or any other person's computer system, or to attempt any of the foregoing; (b) transmit uninvited communications, data or information, or engage in other similar activities, including without limitation, "spamming", "flaming" or denial of service attacks; (c) intercept, interfere with or redirect email or other transmissions sent by or to others; (d) introduce viruses, worms, harmful code or Trojan horses on the Internet; (e) post off-topic information on message boards, chat rooms or social networking sites; (f) **engage in conduct that is defamatory, fraudulent, obscene or deceptive**; (g) violate Verizon's or any third party's copyright, trademark, proprietary or other intellectual property rights; (h) **engage in any conduct harmful to the Verizon network, the Internet generally or other Internet users**; (i) **generate excessive amounts of email or other Internet traffic**; (j) **use the Service to violate any rule, policy or guideline of Verizon**; (k) use the service in any fashion for the transmission or dissemination of images containing child pornography or in a manner that is obscene, sexually explicit, cruel or racist in nature or which espouses, promotes or incites bigotry, hatred or racism; or (l) use the Service in Cuba, Iran, North Korea, Sudan and Syria or any other E:1 Country as designated by the Department of Commerce.

Usenet Policy and Posting Restrictions. **Verizon Usenet may not be accessed via any other network. You may open no more than five simultaneous connections to newsgroups at any one time. We reserve the right in our sole discretion, with or without notice to you, to add or subtract Usenet Newsgroups and to modify or restrict the bandwidth available to download content from our Usenet Newsgroup services, or to suspend or terminate our Usenet Newsgroup services (or portions thereof) at any time, with or without notice.**

**Verizon may, but is not required to, monitor your compliance, or the compliance of other subscribers, with the terms, conditions or policies of this Agreement and AUP. You acknowledge that Verizon shall have the right, but not the obligation, to pre-screen, refuse, move or remove any content available on the Service, including but not limited to content that violates the law or this Agreement.**

## **Qwest:**

The following are excerpts from Qwest's Subscriber Agreement [*emphasis added and removed*], available at:

[http://www.qwest.com/legal/highspeedinternetsubscriberagreement/files/HSI\\_Subscriber\\_Agreement\\_ENG\\_v22\\_090909.pdf](http://www.qwest.com/legal/highspeedinternetsubscriberagreement/files/HSI_Subscriber_Agreement_ENG_v22_090909.pdf)

Qwest Facilities and Equipment to Provide Service; Licenses. Certain Qwest facilities and equipment used to provide you high-speed Internet service may be located on your premises. These facilities and equipment are the property of Qwest and must be installed, relocated, rearranged, tested, inspected, and maintained only by Qwest. You are responsible for damage to such facilities and equipment resulting from your negligence (including failure to reasonably prevent damage by others) or willful conduct. **You may not attach or connect anything to the Qwest facilities or equipment unless authorized by Qwest. Any unauthorized attachments or connections may be removed or disconnected by Qwest and your Service may be suspended or terminated as a result.** You agree to provide Qwest access to your premises at reasonable hours if necessary to terminate or cancel Service or to maintain or remove the facilities and/or equipment. Qwest is not liable for defacement or damage to your premises resulting from the existence of Qwest facilities or equipment and associated wiring, or from the installation or removal thereof, when such defacement or damage is not the result of Qwest negligence. You may be required to provide, install, and maintain, at your expense, certain items such as appropriate space and power, and rights or licenses, to receive high-speed Internet service, if such items are not already in place. These items may include without limitation suitable commercial power, power wiring and outlets, housing, heat, light, and ventilation for the operation of telephone facilities, rights to use or install pathways, shafts, risers, conduit, telephone closets, interior wiring, service areas, racks, cages, utility connections, entries and/or trench (for purpose of providing entrance facilities into multi-unit housing complexes, commercial properties or business developments to reach points of termination).

Traffic Allowance. Traffic limits are located at <http://sitecontrol.qwestoffice.net>. **If you exceed your traffic allowance, you will be charged a traffic overage charge depending on the resources utilized, and you may be given the option to either (a) reduce the resources used to an acceptable level, or (b) upgrade your Service to a higher priced plan.**

Limits on Use. **You agree not to use the Service for high volume or excessive use, in a business or for any commercial purpose if your Service is a residential service, or in a way that impacts Qwest network resources or Qwest's ability to provide services.** You agree not to: (i) offer public information services (unlimited usage or otherwise), (ii) permit more than one dial-up log-on session to be active at one time, or (iii) permit more than one high-speed Internet log-on session to be active at one time, except if using a roaming dial-up account when traveling, in which case 2 sessions may be active.

A log-on session represents an active connection to your Internet access provider. The active session may be shared to connect multiple computers/devices within a single home or office location or within a single unit within a multiple dwelling unit (e.g., single apartment or office within an apartment complex) to your modem and/or router to access the Service (including the establishment of a wireless fidelity (“WiFi”) hotspot), but the Service may only be used at the single home or office location or single unit within a multiple dwelling unit for which Service is provisioned by Qwest. **You may not use a WiFi hotspot in violation of this Agreement or in a way that circumvents Qwest’s ability to provide Service to another customer (e.g., you cannot use a WiFi hotspot to provide Service outside your single home or office location or outside your single unit within a multiple dwelling unit and you cannot resell Service provided over a WiFi hotspot).** You may not use more than one IP address for each log on session unless an advanced service allocating you more than one IP address has been purchased. Service may only be used in the U.S. Service may be used to host a server, personal or commercial, as long as such server is used pursuant to the terms and conditions of this Agreement applicable to Service and not for any malicious purposes. Malicious purposes include without limitation Spam, viruses, worms, Trojans, etc. **Qwest may restrict your use of or interrupt the Service without notice for: (i) maintenance activities; (ii) equipment, network, or facility upgrades or modifications; and (iii) to ensure the provision of acceptable service levels to all Qwest customers.** Qwest is not responsible or liable for any Service deficiencies or interruptions caused by such events.

Monitoring and Testing the Service. **Qwest may, but is not obligated to, monitor the Service.** You are responsible for monitoring your accounts for access to newsgroups and Web sites that may contain improper material. You will notify Qwest of the continual receipt of e-mail that you view as illegal or that is unsolicited. You must not design or provide systems used for the collection of information about others without their express knowledge and consent. Qwest may also test Service for maintenance purposes to detect and/or clear trouble.

No Resale, Distribution, Transfer, or Assignment. You agree not to resell or distribute, transfer or assign this Agreement and/or the Service via any means including but not limited to wireless technology, except with Qwest’s prior consent and according to Qwest’s policies and procedures; provided that you may establish a WiFi hotspot as provided above, but may not resell Service provided over the WiFi hotspot. This Agreement is intended solely for you and it will not benefit or be enforceable by any other person or entity. **Qwest may assign this Agreement and your rights and obligations under this Agreement, in whole or in part, at any time without notice to you and you agree to make all subsequent payments as directed.** If we do that, we have no further obligations to you.

Arbitration Terms. **You agree that any dispute or claim arising out of or relating to the Services, Equipment, Software, or this Agreement (whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory) will be resolved by binding arbitration.** The sole exceptions to arbitration are that either party may pursue claims: (1) in small claims court that are within the scope of its jurisdiction, provided the matter remains in such court and advances only individual (non-class, non-representative, non-consolidated) claims; and (2) in court if they relate solely to the collection of any debts you owe to Qwest.

**The following are excerpts from Qwest's Acceptable Use Policy [emphasis added and removed], available at: <http://www.qwest.com/legal/usagePolicy.html>**

Qwest has formulated this Acceptable Use Policy ("AUP") in order to encourage the responsible use of Qwest's networks, systems, services, web sites and products (collectively, the "Qwest Network and Services") by our customers and other users of the Qwest Network and Services (collectively, "Users"), and to enable us to provide Users with secure, reliable and productive services. **By using the Qwest Network and Services, Users consent to be bound by the terms of this AUP. Qwest reserves the right to modify this AUP in its discretion at any time. Such modifications will be effective when posted. Any use of the Qwest Network and Services after such modification shall constitute acceptance of such modification.**

Suspension; Termination. Any User which Qwest determines to have violated any element of this AUP may be subject to a suspension or termination of service. Qwest will suspend service for violation of the AUP on the most limited basis as Qwest determines is reasonably practical under the circumstances to address the underlying violation. Qwest will attempt to notify Customer prior to suspending service for violation of the AUP (which may be via email or any other notification); provided, however, **Qwest may suspend service without notice if Qwest becomes aware of a violation of any applicable law or regulation or activity, including but not limited to a violation of the AUP, that exposes Qwest to criminal or civil liability or that exposes the Qwest network or Qwest customers' network or property to harm.** Such harm to a network may include, but is not limited to, risk of having an IP address placed on blacklists. Qwest may take such further action as Qwest determines to be appropriate under the circumstances to eliminate or preclude repeat violations, and Qwest shall not be liable for any damages of any nature suffered by any Customer, User, or any third party resulting in whole or in part from Qwest's exercise of its rights under this AUP.

Inappropriate Content. **Users shall not use the Qwest Network and Services to transmit, distribute or store material that is inappropriate, as reasonably determined by Qwest, or material that is obscene (including child pornography), defamatory, libelous, threatening, abusive, hateful, or excessively violent.**

Email and Unsolicited Messages. Users shall not use the Qwest Network and Services to transmit unsolicited e-mail messages, including, without limitation, unsolicited bulk email, where such emails could reasonably be expected to provoke complaints ("spam"). Further, Users are prohibited from using the service of another provider to send spam to promote a site hosted on or connected to the Qwest Network and Services. In addition, Users shall not use the Qwest Network and Services in order to (a) send e-mail messages which are excessive and/or intended to harass or annoy others, (b) continue to send e-mail messages to a recipient that has indicated that he/she does not wish to receive them, (c) send e-mail with forged TCP/IP packet header information, (d) send malicious e-mail, including, without limitation, "mailbombing", (e) send or receive e-mail messages in a manner that violates the use policies of any other Internet service provider, or (f) **use an e-mail box exclusively as a storage space for data.**

Responsibility for Content. Qwest takes no responsibility for any material created or accessible on or through the Qwest Network and Services. **Qwest is not obligated to monitor such material, but reserves the right to do so.** Qwest will not exercise any editorial control over such material. In the event that Qwest becomes aware that any such material may violate this AUP and/or expose Qwest to civil or criminal liability, **Qwest reserves the right to block access to such material and suspend or terminate any User creating, storing or disseminating such material.**

## **Comcast:**

The following are excerpts from Comcast's Agreement for Residential Services [*emphasis added and removed*], available at: <http://www.comcast.net/terms/subscriber.jsp>

Subject to applicable law, we have the right to change our Services, Comcast Equipment and rates or charges, at any time with or without notice. We also may rearrange, delete, add to or otherwise change programming or features or offerings contained in the Services, including but not limited to, content, functionality, hours of availability, customer equipment requirements, speed and upstream and downstream rate limitations. If we do give you notice, it may be provided on your monthly bill, as a bill insert, in a newspaper or other communication permitted under applicable law. If you find a change in the Service(s) unacceptable, you have the right to cancel your Service(s). However, if you continue to receive Service(s) after the change, this will constitute your acceptance of the change. Please take the time to read any notices of changes to the Service(s). We are not liable for failure to deliver any programming, services, CHANGES TO SERVICES features or offerings except as provided in Section 11e.

**You agree that the Services and the Comcast Equipment will be used only by you and the members of your immediate household living with you at the same address and only for personal, residential, non-commercial purposes, unless otherwise specifically authorized by us in writing. You will not use the Comcast Equipment at any time at an address other than the Premises without our prior written authorization.** You agree and represent that you will not resell or permit another to resell the Services in whole or in part. You will not use or permit another to use the Comcast Equipment or the Service(s), directly or indirectly, for any unlawful purpose, including, but not limited to, in violation of any posted Comcast policy applicable to the Services. Use of the Comcast Equipment or Services for transmission, communications or storage of any information, data or material in violation of any U.S. federal, state or local regulation or law is prohibited.

Prohibited Uses of HSI. **You agree not to use HSI for operation as an Internet service provider, a server site for ftp, telnet, rlogin, e-mail hosting, "Web hosting" or other similar applications, for any business enterprise, or as an end-point on a non-Comcast local area network or wide area network.** You agree to indemnify, defend and hold harmless Comcast and its affiliates, suppliers, and agents against all claims and expenses (including reasonable attorney fees) arising out of any breach of this Section including, but not limited to, any claims based on or arising out of any material violation of any applicable law.

**Purpose. If you have a Dispute (as defined below) with Comcast that cannot be resolved through the informal dispute resolution process described in**

**this Agreement, you or Comcast may elect to arbitrate that Dispute in accordance with the terms of this Arbitration Provision rather than litigate the Dispute in court. Arbitration means you will have a fair hearing before a neutral arbitrator instead of in a court by a judge or jury.**

Right to Opt Out. **IF YOU DO NOT WISH TO BE BOUND BY THIS ARBITRATION PROVISION, YOU MUST NOTIFY COMCAST IN WRITING WITHIN 30 DAYS FROM THE DATE THAT YOU FIRST RECEIVE THIS AGREEMENT BY VISITING [WWW.COMCAST.COM/ARBITRATIONOPTOUT](http://WWW.COMCAST.COM/ARBITRATIONOPTOUT), OR BY MAIL TO COMCAST 1500 MARKET ST., PHILADELPHIA, PA 19102 ATTN: LEGAL DEPARTMENT/ ARBITRATION.** YOUR WRITTEN NOTIFICATION TO COMCAST MUST INCLUDE YOUR NAME, ADDRESS AND COMCAST ACCOUNT NUMBER AS WELL AS A CLEAR STATEMENT THAT YOU DO NOT WISH TO RESOLVE DISPUTES WITH COMCAST THROUGH ARBITRATION. YOUR DECISION TO OPT OUT OF THIS ARBITRATION PROVISION WILL HAVE NO ADVERSE EFFECT ON YOUR RELATIONSHIP WITH COMCAST OR THE DELIVERY OF SERVICES TO YOU BY COMCAST. IF YOU HAVE PREVIOUSLY NOTIFIED COMCAST OF YOUR DECISION TO OPT OUT OF ARBITRATION, YOU DO NOT NEED TO DO SO AGAIN.

Comcast will provide you with dynamic Internet protocol ("IP") address(es) as a component of HSI, and these IP address(es) can and do change over time. You will not alter, modify, or tamper with dynamic IP address(es) assigned to you or any other customer. You agree not to use a dynamic domain name server or DNS to associate a host name with the dynamic IP address(es) for any commercial purpose. **You also agree not to use any software that provides for static IP address(es) on or in conjunction with any computer(s) or network device connected to HSI.** If applicable, Comcast will release and/or recover the dynamic IP address(es) when the Service or this Agreement is disconnected, discontinued, or terminated.

Monitoring of Postings and Transmissions. Comcast shall have no obligation to monitor postings or transmissions made in connection with HSI. However, **you acknowledge and agree that Comcast and its agents have the right to monitor, from time to time, any such postings and transmissions, including without limitation e-mail, newsgroups, chat, IP audio and video, and Web space content.** Comcast may also use and disclose them in accordance with the Comcast High-Speed Internet Acceptable Use Policy and other applicable policies, and as otherwise required by law or government request. **We reserve the right to refuse to upload, post, publish, transmit or store any information or materials, in whole or in part, that, in our sole discretion, is unacceptable, undesirable or in violation of this Agreement.**

The following are excerpts from Comcast's Acceptable Use Policy [*emphasis added and removed*], available at: <http://www.comcast.net/terms/use/>

**Comcast may revise this Policy from time to time by posting a new version on the Web site at <http://www.comcast.net> or any successor URL(s) (the "Comcast.net Web site"). Comcast will use reasonable efforts to make customers aware of any changes to this Policy, which may include sending e-mail announcements or posting information on the Comcast.net Web site. Revised versions of this Policy are effective immediately upon posting. Accordingly, customers of the Comcast High-Speed Internet Service should read any Comcast announcements they receive and regularly visit the Comcast.net Web site and review this Policy to ensure that their activities conform to the most recent version.** You can send questions regarding this Policy to, and report violations of it at, <http://www.comcast.net/help/contact/>. To report a child exploitation incident involving the Internet, go to <http://security.comcast.net/get-help/report-a-security-threat-or-scam.aspx#childPornography>.

#### Network and usage restrictions

restrict, inhibit, or otherwise interfere with the ability of any other person, regardless of intent, purpose or knowledge, to use or enjoy the Service (except for tools for safety and security functions such as parental controls, for example), including, without limitation, posting or transmitting any information or software which contains a worm, virus, or other harmful feature, or generating levels of traffic sufficient to impede others' ability to use, send, or retrieve information;

**restrict, inhibit, interfere with, or otherwise disrupt or cause a performance degradation, regardless of intent, purpose or knowledge, to the Service or any Comcast (or Comcast supplier) host, server, backbone network, node or service, or otherwise cause a performance degradation to any Comcast (or Comcast supplier) facilities used to deliver the Service;**

**resell the Service or otherwise make available to anyone outside the Premises the ability to use the Service (for example, through wi-fi or other methods of networking), in whole or in part, directly or indirectly.** The Service is for personal and non-commercial residential use only and you agree not to use the Service for operation as an Internet service provider or for any business enterprise or purpose (whether or not for profit);

**connect the Comcast Equipment to any computer outside of your Premises;**

interfere with computer networking or telecommunications service to any user, host or network, including, without limitation, denial of service attacks, flooding of a network, overloading a service, improper seizing and abusing operator privileges, and attempts to "crash" a host; and

**accessing and using the Service with anything other than a dynamic Internet Protocol (“IP”) address that adheres to the dynamic host configuration protocol (“DHCP”).** You may not configure the Service or any related equipment to access or use a static IP address or use any protocol other than DHCP unless you are subject to a Service plan that expressly permits you to do so.

**Comcast reserves the right to refuse to transmit or post, and to remove or block, any information or materials, in whole or in part, that it, in its sole discretion, deems to be in violation of Sections I or II of this Policy, or otherwise harmful to Comcast's network or customers using the Service, regardless of whether this material or its dissemination is unlawful so long as it violates this Policy.** Neither Comcast nor any of its affiliates, suppliers, or agents have any obligation to monitor transmissions or postings (including, but not limited to, e-mail, file transfer, blog, newsgroup, and instant message transmissions as well as materials available on the Personal Web Pages and Online Storage features) made on the Service. However, **Comcast and its affiliates, suppliers, and agents have the right to monitor these transmissions and postings from time to time for violations of this Policy and to disclose, block, or remove them in accordance with this Policy, the Subscriber Agreement, and applicable law.**

Comcast is not responsible for deleting or forwarding any e-mail sent to the wrong e-mail address by you or by someone else trying to send e-mail to you. Comcast is also not responsible for forwarding e-mail sent to any account that has been suspended or terminated. This e-mail will be returned to the sender, ignored, deleted, or stored temporarily at Comcast's sole discretion. **In the event that Comcast believes in its sole discretion that any subscriber name, account name, or e-mail address (collectively, an “identifier”) on the Service may be used for, or is being used for, any misleading, fraudulent, or other improper or illegal purpose, Comcast (i) reserves the right to block access to and prevent the use of any of these identifiers and (ii) may at any time require any customer to change his or her identifier.** In addition, Comcast may at any time reserve any identifiers on the Service for Comcast's own purposes. In the event that a Service account is terminated for any reason, all e-mail associated with that account (and any secondary accounts) will be permanently deleted as well.

Comcast uses various tools and techniques to manage its network, deliver the Service, and ensure compliance with this Policy and the Subscriber Agreement. These tools and techniques are dynamic, like the network and its usage, and can and do change frequently. **For example, these network management activities** may include (i) identifying spam and preventing its delivery to customer e-mail accounts, (ii) detecting malicious Internet traffic and preventing the distribution of viruses or other harmful code or content, **(iii) temporarily lowering the priority of traffic for users who are the top contributors to current network**

**congestion, and (iv) using other tools and techniques that Comcast may be required to implement in order to meet its goal of delivering the best possible broadband Internet experience to all of its customers.**

The Service is for personal and non-commercial residential use only. Therefore, **Comcast reserves the right to suspend or terminate Service accounts where data consumption is not characteristic of a typical residential user of the Service as determined by the company in its sole discretion.** Comcast has established a monthly data consumption threshold per Comcast High-Speed Internet account of 250 Gigabytes (“GB”). Use of the Service in excess of 250GB per month is excessive use and is a violation of the Policy. See the Network Management page at <http://www.comcast.net/terms/network/> for more information and to learn how Comcast applies this Policy to excessive use. **Common activities that may cause excessive data consumption in violation of this Policy include, but are not limited to, numerous or continuous bulk transfers of files and other high capacity traffic using (i) file transfer protocol (“FTP”), (ii) peer-to-peer applications, and (iii) newsgroups. You must also ensure that your use of the Service does not restrict, inhibit, interfere with, or degrade any other person's use of the Service, nor represent (as determined by Comcast in its sole discretion) an overly large burden on the network. In addition, you must ensure that your use of the Service does not limit or interfere with Comcast's ability to deliver and monitor the Service or any part of its network.**

If you use the Service in violation of the restrictions referenced above, that is a violation of this Policy. In these cases, **Comcast may, in its sole discretion, suspend or terminate your Service account or request that you subscribe to a version of the Service (such as a commercial grade Internet service, if appropriate) if you wish to continue to use the Service at higher data consumption levels. Comcast may also provide versions of the Service with different speed and data consumption limitations, among other characteristics, subject to applicable Service plans. Comcast's determination of the data consumption for Service accounts is final.**

**Comcast reserves the right immediately to suspend or terminate your Service account and terminate the Subscriber Agreement if you violate the terms of this Policy or the Subscriber Agreement.**

Comcast does not routinely monitor the activity of individual Service accounts for violations of this Policy, except for determining aggregate data consumption in connection with the data consumption provisions of this Policy. However, in the company's efforts to promote good citizenship within the Internet community, it will respond appropriately if it becomes aware of inappropriate use of the Service. **Comcast has no obligation to monitor the Service and/or the network. However, Comcast and its suppliers reserve the right at any time to monitor bandwidth, usage, transmissions, and content in order to,**

**among other things, operate the Service; identify violations of this Policy; and/or protect the network, the Service and Comcast users.**

Comcast prefers to inform customers of inappropriate activities and give them a reasonable period of time in which to take corrective action. Comcast also prefers to have customers directly resolve any disputes or disagreements they may have with others, whether customers or not, without Comcast's intervention. **However, if the Service is used in a way that Comcast or its suppliers, in their sole discretion, believe violates this Policy, Comcast or its suppliers may take any responsive actions they deem appropriate under the circumstances with or without notice. These actions include, but are not limited to, temporary or permanent removal of content, cancellation of newsgroup posts, filtering of Internet transmissions, and the immediate suspension or termination of all or any portion of the Service (including but not limited to newsgroups).** Neither Comcast nor its affiliates, suppliers, or agents will have any liability for any of these responsive actions. **These actions are not Comcast's exclusive remedies and Comcast may take any other legal or technical actions it deems appropriate with or without notice.**

## **Time Warner Cable:**

The following are excerpts of Time Warner Cable's Subscriber Agreement [*emphasis added and removed*], available at:  
[http://help.twcable.com/html/twc\\_sub\\_agreement2.html](http://help.twcable.com/html/twc_sub_agreement2.html)

**TWC has the right to add to, modify, or delete any term of this Agreement, the Terms of Use, the Subscriber Privacy Notice or any applicable Tariff(s) at any time.** An online version of this Agreement, the Terms of Use, the Subscriber Privacy Notice and any applicable Tariff(s), as so changed from time to time, will be accessible at <http://help.twcable.com/html/policies.html> or another online location designated by TWC, or can be obtained by calling my local TWC office.

TWC will notify me of any significant change(s) in this Agreement, the Terms of Use, the Subscriber Privacy Notice or any applicable Tariff(s). Any such changes shall become effective immediately except where applicable law requires a notice period, in which case the change will become effective at the end of the requisite notice period. **Upon effectiveness of any change to any of these documents, my continued use of the Services will constitute my consent to such change and my agreement to be bound by the terms of the document as so changed.** If I do not agree to any such change, I will immediately stop using the Services and notify TWC that I am terminating my Services account.

**I agree that TWC has the right to add to, modify, or delete any aspect, feature or requirement of the Services (including content, price, equipment and system requirements). I further agree that my ISP (and, if applicable, OLP) has the right to add to, modify, or delete any aspect, feature or requirement of the HSD Service (including content, price and system requirements).** If TWC changes its equipment requirements with respect to any Services, I acknowledge that I may not be able to receive such Services utilizing my then-current equipment. **Upon any such change, my continued use of Services will constitute my consent to such change and my agreement to continue to receive the relevant Services, as so changed, pursuant to this Agreement, the Terms of Use and the Tariff(s).** If I participate in a promotional offer for any Service(s) that covers a specified period of time, I agree that I am assured only that I will be charged the promotional price for such Service(s) during the time specified. **I agree that TWC shall have the right to add to, modify, or delete any aspect, feature or requirement of the relevant Service(s), other than the price I am charged, during such promotional period.**

If I receive HSD Service, I agree not to use the HSD Service for operation as an Internet service provider, for the hosting of websites (other than as expressly permitted as part of the HSD Service) or for any enterprise purpose whether or not the enterprise is directed toward making a profit. I agree that, among other things, my use of any form of transmitter or wide area network that enables

persons or entities outside the location identified in the Work Order to use my Services, whether or not a fee is sought, will constitute an enterprise purpose. Furthermore, **if I use a wireless network within my residence, I will limit wireless access to the HSD Service (by establishing and using a secure password or similar means) to the members of my household.**

Speeds and Network Management. I acknowledge that each tier or level of the HSD Service has limits on the maximum speed at which I may send and receive data at any time, as set forth in the price list or Terms of Use. **I understand that the actual speeds I may experience at any time will vary based on a number of factors, including the capabilities of my equipment, Internet congestion, the technical properties of the websites, content and applications that I access, and network management tools and techniques employed by TWC. I agree that TWC or ISP may change the speed of any tier by amending the price list or Terms of Use. My continued use of the HSD Service following such a change will constitute my acceptance of any new speed. I also agree that TWC may use technical means, including but not limited to suspending or reducing the speed of my HSD Service, to ensure compliance with its Terms of Use and to ensure that its service operates efficiently. I further agree that TWC and ISP have the right to monitor my usage patterns to facilitate the provision of the HSD Service and to ensure my compliance with the Terms of Use and to efficiently manage its network and the provision of services. TWC or ISP may take such steps as it determines appropriate in the event my usage of the HSD Service does not comply with the Terms of Use. Additionally, TWC may use such tools and techniques as it determines appropriate in order to efficiently manage its network and to ensure a quality user experience for its subscribers ("Network Management Tools").** These Network Management Tools are described in the Terms of Use, which include the Acceptable Use Policy, [http://help.twcable.com/html/twc\\_misp\\_aup.html](http://help.twcable.com/html/twc_misp_aup.html).

I agree that unsolicited email, or "spam," is a nuisance and that TWC and my ISP (and, if applicable, my OLP) are entitled to establish limits on the volume of email that I send. **Such volume limits may be set by reference to a number of emails per day, week, month or year.**

Use of ISP and OLP Service. **I agree that TWC and/or my ISP and/or OLP has the right, but not the obligation, to edit, refuse to post or transmit, request removal of, or remove or block any material transmitted through, submitted to or posted on the HSD Service, if it determines in its discretion that the material is unacceptable or violates the terms of this Agreement, any TWC consumption limits or any other Terms of Use. Such material might include personal home pages and links to other sites. In addition, I agree that, under such circumstances, TWC may suspend my account, take other action to prevent me from utilizing certain account privileges (e.g., home pages) or cancel my account without prior notification. I also agree that TWC and/or ISP and/or OLP may suspend or cancel my account for using all or part of the HSD Service to post content to the Internet or to**

**engage in "peer to peer" file exchanges or other forms of file exchanges that violate this Agreement or the Terms of Use.**

**I agree that TWC has no liability for delays in or interruption to my Services, except that if for reasons within TWC's reasonable control, for more than twenty-four (24) consecutive hours, (i) service on all cable channels is interrupted, (ii) there is a complete failure of the HSD Service or (iii) there is a complete failure of the Digital Phone Service, TWC will give me a prorated credit for the period of such interruption or failure if I request one within 30 days of the interruption or failure. Notwithstanding the above, TWC will issue credits for VOD, pay-per-view and pay-per-play events for service problems where a credit request is made within 30 days of the interruption or failure. In no event shall TWC be required to credit me an amount in excess of applicable service fees. TWC will make any such credit on the next practicable bill for my Services. State and local law or regulation may impose other outage credit requirements with respect to some or all of my Services. In such event, the relevant law or regulation will control.**

**TWC may suspend or terminate all or a portion of my Services without prior notification if TWC determines in its discretion that I have violated this Agreement, any of the Terms of Use or any Tariff(s), even if the violation was a one-time event. If all or a portion of my Services are suspended, I will not be charged for the relevant Services during the suspension. If my account is terminated, I will be refunded any pre-paid fees minus any amounts due TWC.**

**If I receive HSD Service, I acknowledge that TWC has the right, but not the obligation, to review content on public areas of the HSD Service, including chat rooms, bulletin boards and forums, in order to determine compliance with this Agreement and the Terms of Use.**

**I agree that TWC shall have the right to take any action that TWC deems appropriate to protect the Services, TWC's facilities or TWC Equipment.**

**Either TWC or I may terminate all or any portion of my Services at any time for any or no reason, in its sole discretion, in accordance with applicable law.**

**I consent to TWC calling the phone numbers I supply to it for any purpose, including the marketing of its current and future Services. I agree that these phone calls may be made using any method, including an automatic dialing system or an artificial or recorded voice. Upon my request, the phone numbers I have previously provided will be removed from TWC's phone marketing list. I can make this request by calling or writing my local TWC office and asking to be placed on TWC's Do Not Call List.**

**I acknowledge that being included in any state or federal "do not call" registry will not be sufficient to remove me from TWC's phone marketing list.**

**I consent to TWC emailing me, at any email address, including that of a wireless or mobile device, that I provide to TWC (or that TWC issues to me in connection with the HSD Service), for any purpose, including the marketing of TWC's current and future Services. If my wireless or mobile provider charges me for receipt of such messages, I acknowledge and agree that I am responsible for paying such charges.** I may revoke this authorization insofar as it relates to marketing messages at any time by calling or writing my local TWC office.

EXCEPT FOR CLAIMS FOR INJUNCTIVE RELIEF, AS DESCRIBED BELOW, **ANY PAST, PRESENT, OR FUTURE CONTROVERSY OR CLAIM ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL BE RESOLVED BY BINDING ARBITRATION** ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION UNDER ITS COMMERCIAL ARBITRATION RULES, INCLUDING, IF APPLICABLE, THE SUPPLEMENTARY PROCEDURES FOR THE RESOLUTION OF CONSUMER RELATED DISPUTES.

**I understand that my Services are being provided only to the location identified on my Work Order and that I am not allowed to transfer all or any portion of the Services, or TWC's Equipment, to any other person, entity or location, including a new residence. I agree that I may not assign or transfer this Agreement. TWC may transfer or assign any portion or all of this Agreement at any time without notice to me, and I waive any such notice which may be required.**

The following are excerpts of Time Warner Cable's Acceptable Use Policy [*emphasis added and removed*], available at: [http://help.twcable.com/html/twc\\_misp\\_aup.html](http://help.twcable.com/html/twc_misp_aup.html)

Your local Time Warner Cable affiliated cable operator ("Operator") seeks to create and foster an on-line community that can be used and enjoyed by all its cable modem customers across all ISPs offered by Operator. To further that goal, Operator has developed an Acceptable Use Policy. Although much of what is included here is common sense, Operator takes these issues very seriously and will enforce its rules to ensure enjoyment by all of its members. **Operator reserves the right to suspend or cancel a subscriber's account for engaging in inappropriate conduct.** (Subscribers, of course, also remain legally responsible for any such acts.) In using the services of any ISP as provided over Operator's cable network (the "ISP Service"), subscribers accept this non-exhaustive list of restrictions as well as those set forth in Operator's Cable Modem Subscription Agreement and agree to use the ISP Service only for lawful

purposes and not to use or allow others to use the ISP Service in violation of the following guidelines:

**The ISP Service may not be used to engage in any conduct that interferes with Operator's ability to provide service to others, including the use of excessive bandwidth.**

The ISP Service may not be used in a manner that interferes with Operator's efficient operation of its facilities, the provision of services or the ability of others to utilize the ISP Service in a reasonable manner. **Operator may use various tools and techniques in order to efficiently manage its networks and to ensure compliance with this Acceptable Use Policy** (“Network Management Tools”). **These may include** detecting malicious traffic patterns and preventing the distribution of viruses or other malicious code, **limiting the number of peer-to-peer sessions a user can conduct at the same time, limiting the aggregate bandwidth available for certain usage protocols such as peer-to-peer and newsgroups and such other Network Management Tools as Operator may from time to time determine appropriate.**

## AT&T Wireless:

The following is an excerpt from AT&T's Wireless Data Service Terms and Conditions [*emphasis added and removed*], available at:

<http://www.wireless.att.com/cell-phone-service/legal/plan-terms.jsp>

AT&T provides wireless data services, including but not limited to, features that may be used with wireless data services and wireless content and applications ("Services"). The absolute capacity of the wireless data network is limited. Accordingly, service is only provided for prescribed purposes and pricing for Data Services is device dependent and based on the transmit and receive capacity of each device. A pricing plan designated for one type of device may not be used with another device. Some devices or plans may require you to subscribe to both a voice and a data plan. **If AT&T determines that you are not subscribed to the required plan(s), AT&T reserves the right to switch you to the required plan or plans and bill you the appropriate monthly fee.** The Services may be subject to credit approval. **An activation fee of up to \$36 may apply to each new data line.** Compatible data-enabled wireless device required.

Usage and monthly fees will be billed as specified in your rate plan brochure, customer service summary, or rate plan information online. **DATA TRANSPORT IS CALCULATED IN FULL-KILOBYTE ("KB") INCREMENTS, AND ACTUAL TRANSPORT IS ROUNDED UP TO THE NEXT FULL KB INCREMENT AT THE END OF EACH DATA SESSION FOR BILLING PURPOSES. TRANSPORT IS BILLED EITHER BY THE KB OR MEGABYTE ("MB"). IF BILLED BY MB, THE FULL KBs CALCULATED FOR EACH DATA SESSION DURING THE BILLING PERIOD ARE TOTALED AND ROUNDED UP TO NEXT FULL MB INCREMENT TO DETERMINE BILLING. IF BILLED BY KB, THE FULL KBs CALCULATED FOR EACH DATA SESSION DURING THE BILLING PERIOD ARE TOTALED TO DETERMINE BILLING. NETWORK OVERHEAD, SOFTWARE UPDATE REQUESTS, AND RESEND REQUESTS CAUSED BY NETWORK ERRORS CAN INCREASE MEASURED KILOBYTES. AIRTIME AND OTHER MEASURED USAGE ARE BILLED IN FULL-MINUTE INCREMENTS AND ROUNDED UP TO THE NEXT FULL-MINUTE INCREMENT AT THE END OF EACH CALL FOR BILLING PURPOSES.**

Roaming charges for wireless data or voice service may be charged with some plans when outside AT&T's wireless network. **Display on your device will not indicate whether you will incur roaming charges.** Services originated or received while outside your plan's included coverage area are subject to roaming charges. Use of Services when roaming is dependent upon roaming carrier's support of applicable network technology and functionality. Check with roaming carriers individually for support and coverage details. Billing for domestic and international roaming usage may be delayed up to three billing cycles due to reporting between carriers. **If your usage of the Services on other carriers'**

wireless networks ("offnet usage") during any month exceeds your offnet usage allowance, AT&T may at its option terminate your wireless service or access to data Services, deny your continued use of other carriers' coverage, or change your plan to one imposing usage charges for offnet usage. Your offnet usage allowance is equal to the lesser of 24 megabytes or 20% of the kilobytes included with your plan and for messaging plans the lesser of 3000 messages or 50% of the messages included with your plan. AT&T will provide notice that it intends to take any of the above actions and you may terminate your agreement. You may be required to (1) use a device programmed with AT&T's preferred roaming database; and (2) have a mailing address and live in the United States, Puerto Rico or the U.S. Virgin Islands.

Prohibited and Permissible Uses: Except as may otherwise be specifically permitted or prohibited for select data plans, **data sessions may be conducted only for the following purposes: (i) Internet browsing; (ii) email; and (iii) intranet access (including access to corporate intranets, email, and individual productivity applications like customer relationship management, sales force, and field service automation).** While most common uses for Intranet browsing, email and intranet access are permitted by your data plan, there are certain uses that cause extreme network capacity issues and interference with the network and are therefore prohibited. Examples of prohibited uses include, without limitation, the following: (i) server devices or host computer applications, including, but not limited to, Web camera posts or broadcasts, automatic data feeds, automated machine-to-machine connections or peer-to-peer (P2P) file sharing; (ii) as a substitute or backup for private lines, landlines or full-time or dedicated data connections; (iii) "auto-responders," "cancel-bots," or similar automated or manual routines which generate excessive amounts of net traffic, or which disrupt net user groups or email use by others; (iv) "spam" or unsolicited commercial or bulk email (or activities that have the effect of facilitating unsolicited commercial email or unsolicited bulk email); (v) **any activity that adversely affects the ability of other people or systems to use either AT&T's wireless services or other parties' Internet-based resources**, including "denial of service" (DoS) attacks against another network host or individual user; (vi) accessing, or attempting to access without authority, the accounts of others, or to penetrate, or attempt to penetrate, security measures of AT&T's wireless network or another entity's network or systems; (vii) **software or other devices that maintain continuous active Internet connections when a computer's connection would otherwise be idle or any "keep alive" functions, unless they adhere to AT&T's data retry requirements, which may be changed from time to time. This means, by way of example only, that checking email, surfing the Internet, downloading legally acquired songs, and/or visiting corporate intranets is permitted, but downloading movies using P2P file sharing services, redirecting television signals for viewing on Personal Computers, web broadcasting, and/or for the operation of servers, telemetry devices and/or Supervisory Control and Data Acquisition devices is prohibited. Furthermore, plans (unless specifically designated for tethering**

usage) cannot be used for any applications that tether the device (through use of, including without limitation, connection kits, other phone/PDA-to computer accessories, BLUETOOTH® or any other wireless technology) to Personal Computers (including without limitation, laptops), or other equipment for any purpose. Accordingly, AT&T reserves the right to (i) deny, disconnect, modify and/or terminate Service, without notice, to anyone it believes is using the Service in any manner prohibited or whose usage adversely impacts its wireless network or service levels or hinders access to its wireless network, including without limitation, after a significant period of inactivity or after sessions of excessive usage and (ii) otherwise protect its wireless network from harm, compromised capacity or degradation in performance, which may impact legitimate data flows. You may not send solicitations to AT&T's wireless subscribers without their consent. You may not use the Services other than as intended by AT&T and applicable law. Plans are for individual, non-commercial use only and are not for resale. **AT&T may, but is not required to, monitor your compliance, or the compliance of other subscribers, with AT&T's terms, conditions, or policies.**

**These terms and conditions may be changed from time-to-time. AT&T will post the most current version of these terms and conditions at [att.com/MediaTerms](http://att.com/MediaTerms) or other appropriate location. Please check these regularly to inform yourself about changes to the terms and conditions.**

Not all plans or Services are available for purchase or use in all sales channels, in all areas or with all devices. AT&T is not responsible for loss or disclosure of any sensitive information you transmit. **AT&T's wireless services are not equivalent to landline Internet.** AT&T is not responsible for nonproprietary services or their effects on devices. If applicable, use of Desktop Toolbar requires compatible home computer products. **AT&T RESERVES THE RIGHT TO TERMINATE YOUR SERVICES WITH OR WITHOUT CAUSE, INCLUDING WITHOUT LIMITATION, UPON EXPIRATION OR TERMINATION OF YOUR WIRELESS SERVICE AGREEMENT.** Caller ID blocking is not available when using the Services, and your wireless number is transmitted to Internet sites you visit. You may receive unsolicited messages from third parties as a result of visiting Internet sites, and a per-message charge may apply whether the message is read or unread, solicited or unsolicited.

See below for additional terms relating to specific Services and rate plans. In addition, all use of AT&T's wireless network and the Services is governed by AT&T's Acceptable Use Policy, which can be found at [att.com/AcceptableUsePolicy](http://att.com/AcceptableUsePolicy), as determined solely by AT&T. **AT&T can revise its Acceptable Use Policy at any time without notice by updating this posting.** Use of the Services is subject to Terms and Conditions of your Wireless Service Agreement. See Wireless Service Agreement, [att.com/wireless](http://att.com/wireless) or AT&T Customer Service for additional conditions, restrictions, privacy policy and information.

The following are excerpts from AT&T's Acceptable Use Policy [*emphasis added and removed*], available at: <http://www.corp.att.com/aup/>

**General Prohibitions:** AT&T prohibits use of the IP Services in any way that is unlawful, harmful to or interferes with use of AT&T's network or systems, or the network of any other provider, interferes with the use or enjoyment of services received by others, infringes intellectual property rights, results in the publication of threatening or offensive material, or constitutes Spam/E-mail/Usenet abuse, a security risk or a violation of privacy.

Threatening Material or Content: IP Services shall not be used to host, post, transmit, or re-transmit any content or material (or to create a domain name or operate from a domain name), that harasses, or threatens the health or safety of others. In addition, for those IP Services that utilize AT&T provided web hosting, AT&T reserves the right to decline to provide such services if the content is determined by AT&T to be obscene, indecent, hateful, malicious, racist, defamatory, fraudulent, libelous, treasonous, excessively violent or promoting the use of violence or otherwise harmful to others.

#### **AUP Enforcement and Notice**

**Customer's failure to observe the guidelines set forth in this AUP may result in AT&T taking actions anywhere from a warning to a suspension or termination of Customer's IP Services.** When feasible, AT&T may provide Customer with a notice of an AUP violation via e-mail or otherwise allowing the Customer to promptly correct such violation.

**AT&T reserves the right, however, to act immediately and without notice to suspend or terminate affected IP Services in response to a court order or government notice that certain conduct must be stopped or when AT&T reasonably determines, that the conduct may:** (1) expose AT&T to sanctions, prosecution, civil action or any other liability, (2) cause harm to or interfere with the integrity or normal operations of AT&T's network or networks with which AT&T is interconnected, (3) interfere with another AT&T Customer's use of IP Services or the Internet (4) violate any applicable law, rule or regulation, or (5) otherwise present an imminent risk of harm to AT&T or AT&T Customers.

AT&T has no obligation to monitor content of any materials distributed or accessed using the IP Services. However, **AT&T may monitor content of any such materials as necessary** to comply with applicable laws, regulations or other governmental or judicial requests; or **to protect the AT&T network and its customers.**

The following are excerpts from AT&T Wi-Fi Terms of Service and Acceptable Use Policy [*emphasis added and removed*], available at: <https://secure.sbc.com/tosaup.adp>

AT&T respects freedom of expression and believes it is a foundation of our free society to express differing points of view. AT&T will not terminate, disconnect or suspend service because of the views you or we express on public policy matters, political issues or political campaigns. However, **AT&T may immediately terminate or suspend all or a portion of your Service, without notice, for conduct that AT&T believes (a) violates the Acceptable Use Policy, set forth below; or (b) constitutes a violation of any law, regulation or tariff (including, without limitation, copyright and intellectual property laws) or a violation of these Terms, or any applicable policies or guidelines.** Your Service may be suspended or terminated if your payment is past due and such condition continues un-remedied for thirty (30) days. Termination or suspension by AT&T of Service also constitutes termination or suspension (as applicable) of your license to use any Software. AT&T may also terminate or suspend your Service if you provide false or inaccurate information that is required for the provision of Service or is necessary to allow AT&T to bill you for Service. Membership customers: customer cancellation of Services is governed by the terms and conditions of your Membership Agreement. Subscription customers: you may cancel your subscription to the Service at any time by contacting AT&T. If canceled after the first month, subscription charges will be prorated to the date the Service is cancelled. If you disconnect your DSL or Dial Internet access services, your subscription to the Service will also automatically cancel.

**AT&T reserves the right to modify or discontinue, temporarily or permanently, at any time and from time to time, the Service (or any function or feature of the Service or any part thereof, including but not limited to rates and charges) with or without notice.** You agree that AT&T will not be liable to you or to any third party for any such modification, suspension or discontinuance of the Service. **Without limiting the foregoing, AT&T may post, or email, notices of changes in the Service. It is your responsibility to check our website and your AT&T email address for any such notices.** You agree that AT&T will not be liable to you or to any third party for any such modification, suspension or discontinuance of the Service.

**These Terms may be updated or changed from time to time. The current Terms shall be posted at: ("Website"). If AT&T makes a change to these Terms and that change has a material impact on the Service, you will be provided electronic notice of that change via e-mail or other written notice. Your continued use of the Service following such notice constitutes your acceptance of those changes.** If you do not agree to the revisions, you must terminate your Service immediately.

#### ACCEPTABLE USE POLICY

**Customer's failure to observe the guidelines set forth in this AUP may result in AT&T taking actions anywhere from a warning to a suspension of privileges or termination of your Service(s). AT&T reserves the right, but does not assume the obligation, to strictly enforce the AUP.** When feasible, AT&T may provide Customer with notice of an AUP violation via e-mail or otherwise and demand that such violation is immediately corrected.

**However, AT&T reserves the right to act immediately and without notice to suspend or terminate IP Service(s) in response to a court order or other legal requirement that certain conduct should be stopped or when AT&T determines, in its sole discretion, that the conduct may: (1) expose AT&T to sanctions, prosecution, civil action or any other liability, (2) cause harm to or interfere with the integrity or normal operations of AT&T's network(s) or facilities, (3) interfere with another person's use of AT&T's IP Service(s) or the Internet, or (4) otherwise present a risk of harm to AT&T or AT&T Customers or other parties AT&T interconnects with.**

**AT&T's decisions with respect to interpretation of the AUP and appropriate remedial actions are final and determined by AT&T in its sole discretion.** AT&T may refer potential violations of law(s) to the proper authorities, may cooperate in the investigation of any suspected criminal or civil wrongdoing, and will cooperate with authorities when required to do so by law, subpoena, or when the public safety is at stake. AT&T assumes no obligation to inform you that your information has been disclosed, and, in some cases, may be prohibited by law from providing such notice.

**AT&T does not, as an ordinary practice, proactively monitor the activities of those who use its IP Service(s) or exercise any editorial control over any material transmitted, hosted or posted using IP Services to ensure that its Customers comply with the AUP and/or the law, although it reserves the right to do so.** If AT&T is alerted to violations or potential violations of this AUP, AT&T will take whatever measures it deems necessary and appropriate to stop or prevent such violations including the actions described in this AUP. For example, **AT&T may in its sole discretion refuse to transmit, screen, or editing content prior to delivery of the IP Service(s), block access to certain categories of numbers or certain sites as AT&T determines needed to enforce these policies.**

AT&T respects freedom of expression and believes it is a foundation of our free society to express differing points of view. AT&T will not terminate, disconnect or suspend service because of the views you or we express on public policy matters, political issues or political campaigns. AT&T is committed at all times, however, to complying with the laws and regulations governing use of the Internet and e-mail transmissions and to preserving for all of its Customers the ability to use AT&T's network and the Internet without interference or harassment from other users. **AT&T prohibits use of its IP Services in any way that is unlawful, interferes with use of AT&T's network or the Internet,**

**interferes in any way with the usage or enjoyment of services received by others, infringes intellectual property rights, results in the publication of threatening or offensive material, constitutes Spam/E-mail/Usenet abuse, or presents security or privacy risks.** Customer will not resell or provide Service(s) to unauthorized third parties, whether as part of a commercial enterprise or otherwise.

**AT&T IP Services shall not be used to host, post, transmit, or re-transmit any content or material that is threatening, harassing, obscene, indecent, hateful, malicious, racist, fraudulent, deceptive, invasive of privacy or publicity rights, abusive, inflammatory, or otherwise harmful or offensive to third parties, treasonous, excessively violent or promotes the use of violence, or provides instruction, information or assistance in causing or carrying out violence against any government, organization, group or individual, or provides guidance, information or assistance with respect to causing damage or security breaches to AT&T's network or to the network of any other IP Service provider. Customer shall not create or attempt to utilize a domain name that is fraudulent, indecent, offensive, deceptive, threatening, abusive or harassing.**

Customer remains solely and fully responsible for the content of any material posted, hosted, downloaded/uploaded, created, accessed or transmitted using the IP Services. AT&T takes no responsibility and assumes no liability for any material created or accessible on or through the AT&T network(s) using IP Service(s), or for any mistakes, defamation, slander, libel, omissions, falsehoods, obscenity, pornography, or profanity Customer (or its Users) may encounter. As the provider of IP Service(s), AT&T is only a forum and is not liable for any statements, representations, or content provided by the users of IP Services in any public forum. **AT&T shall not be obligated to monitor or exercise any editorial control over such material, but reserves the right to do so.** In the event that AT&T becomes aware that any such material may violate this AUP, other applicable terms of use or contract provisions, and/or expose AT&T to civil or criminal liability, **AT&T reserves the right to block access to such material and suspend or terminate the Service of any user creating, storing or disseminating such material.** AT&T further reserves the right to conduct investigations into fraud, violations of the Terms of Service, this AUP or other laws or regulations, and to cooperate with legal authorities and third parties in the investigation of alleged wrongdoing, including disclosing the identity of the user that AT&T deems responsible for the wrongdoing.

**AT&T reserves the right to modify its Acceptable Use Policy at any time, and effective when posted to AT&T's web site (<http://www.corp.att.com/aup>).** Notice of any change to this AUP may also be provided to a Customer via electronic mail, if Customer subscribes to AT&T's automated notification system regarding any AUP changes.

## **Verizon Wireless:**

The following are excerpts from Verizon Wireless's Terms & Conditions [*emphasis added and removed*], available at: [http://b2b.vzw.com/broadband/bba\\_terms.html](http://b2b.vzw.com/broadband/bba_terms.html)

**You can use our Data Plans and Features for accessing the Internet and for such uses as: (i) Internet browsing; (ii) e-mail; (iii) intranet access (including accessing corporate intranets, e-mail and individual productivity applications made available by your company); (iv) uploading, downloading and streaming of audio, video and games; and (v) Voice over Internet Protocol (VoIP).**

**You may not use our Data Plans and Features for illegal purposes or purposes that infringe upon others' intellectual property rights, or in a manner that interferes with other users' service, interferes with the network's ability to fairly allocate capacity among users, or that otherwise degrades service quality for other users. Examples of prohibited usage include: (i) server devices or host computer applications, including continuous Web camera posts or broadcasts, automatic data feeds, automated machine-to-machine connections, or peer-to-peer (P2P) file-sharing applications that are broadcast to multiple servers or recipients such that they could enable "bots" or similar routines (as set forth in more detail in (iii) below) or otherwise denigrate network capacity or functionality; (ii) as a substitute or backup for private lines or dedicated data connections; (iii) "auto-responders," "cancel-bots," or similar automated or manual routines that generate amounts of net traffic that could disrupt net user groups or e-mail use by others; (iv) generating "spam" or unsolicited commercial or bulk e-mail (or activities that facilitate the dissemination of such e-mail); (v) any activity that adversely affects the ability of other users or systems to use either Verizon Wireless' services or the Internet-based resources of others, including the generation or dissemination of viruses, malware, or "denial of service" attacks; (vi) accessing, or attempting to access without authority, the information, accounts or devices of others, or to penetrate, or attempt to penetrate, Verizon Wireless' or another entity's network or systems; or (vii) running software or other devices that maintain continuous active Internet connections when a computer's connection would otherwise be idle, or "keep alive" functions, unless they adhere to Verizon Wireless' requirements for such usage, which may be changed from time to time. By way of example only, you may not use a Data Plan or Feature for web broadcasting, or for the operation of servers, telemetry devices and/or Supervisory Control and Data Acquisition devices.**

**We further reserve the right to take measures to protect our network and other users from harm, compromised capacity or degradation in performance. These measures may impact your service, and we reserve the right to deny, modify or terminate service, with or without notice, to anyone**

**we believe is using Data Plans or Features in a manner that adversely impacts our network.**

**We may monitor your compliance, or the compliance of other subscribers, with these terms and conditions,** but we will not monitor the content of your communications except as otherwise expressly permitted or required by law. See [www.verizonwireless.com/privacy](http://www.verizonwireless.com/privacy).

**The following are excerpts from Verizon Wireless's Acceptable Use Policy [*emphasis added and removed*], available at:**

<http://www.verizonwireless.com/b2c/footer/acceptableuse.jsp>

**All subscribers or customers who use the Services must agree to and must comply with this AUP. Verizon Wireless may remove, block, filter, or restrict by any other means the transmission of any material or use of the Services if Verizon Wireless determines, in its sole discretion, that such transmission or use may be unlawful.** Verizon Wireless will cooperate with legal authorities and/or third parties in the investigation of any suspected or alleged crime or civil wrong. In addition, **violation of this AUP may result in the suspension or termination of the Services.** The following constitute violations of this AUP:

Network disruptions and unfriendly activity: **Using the Services for any activity that adversely affects the ability of other people or systems to use either Verizon Wireless Services or other parties' Internet-based resources. This specifically but without limitation includes excessive consumption of network or system resources whether intentional or unintentional.** This also includes "denial of service" (DoS) attacks against another network host or individual user. **Interference with or disruption of other network users, network services or network equipment is prohibited.**

**Verizon Wireless is under no obligation to monitor your usage, bandwidth, transmissions and content of this Service. However, anyone using this Service agrees that Verizon Wireless may monitor the usage, bandwidth, transmissions and content of the Service periodically to (1) comply with any necessary laws, regulations or other governmental requests; (2) to operate the Service properly or to protect itself, its network and its users. Verizon Wireless reserves the right to modify, reject or eliminate any information residing on or transmitted to its server that it, in its sole discretion, believes is unacceptable or in violation of these terms and conditions.**

## **Appendix B – Misleading Marketing and Point-of-Sale Disclosures**

In this appendix we offer several examples of misleading advertisements for wireline and wireless Internet access services and service bundles. Although these advertisements typically contain multiple examples of misleading information, we will focus on misleading statements regarding service performance and price. As we show, deceptive advertised speeds and service prices are present at all stages of service ordering – from marketing materials mailed to consumers’ homes, to print and television advertisements, and even during service ordering. In each of these stages, service providers do not offer true information about actual speeds or costs of service.

Internet access providers employ numerous tactics to hide hidden fees, actual service capacity, and usage restrictions. The examples of such tactics presented here are broken into two sections – first, marketing and advertising materials from print and television that sell the consumer on the service (Exhibits 1-5); and second, the online ordering process faced by consumers who decide to sign up (Exhibits 6 and 7). We offer screenshots of the key pages in the ordering process, analyzing the information presented and the information omitted.

As these examples demonstrate, at each stage of the customer acquisition process, the necessary information to enable meaningful consumer choice is misleading, confusing, or entirely absent. Consumers therefore may make incorrect choices, skewing the functionality of the market and trapping customers into lengthy service agreements with insufficient service and unexpectedly high bills. We urge the Commission to consider the real world examples below as evidence that meaningful disclosure rules are desperately needed.

## Exhibit 1



The fastest fast is here.

 Comcast High-Speed Internet now has the fastest speeds out there. Sign up — and hold on.

Dear friend,

Here's good news for speed lovers: You're cleared for takeoff.

Comcast High-Speed Internet with PowerBoost® now offers speeds of 15, 20 and 30 Mbps. And now you can even get 50 Mbps with Extreme 50 from Comcast High-Speed Internet, so you can download HD movies, music, games, photos and more — even faster!

And when it comes to the Internet, who wants to wait? No matter whether you're into intense online gaming or just sharing photos with the grandkids, you can do it faster with Comcast.

Plus, Comcast High-Speed Internet comes with lots of valuable extras, including:

- McAfee® Security Suite — with parental controls, pop-up blocker, virus protection, personal firewall and spam filtering. A \$120 value, included.\*
- 1 GB of online storage.
- 7 e-mail accounts.
- Share, store and transfer photos in a flash with the Comcast Photo Center powered by Snapfish. Order prints, too.

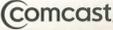
Sign up for Comcast High-Speed Internet now, with packages starting at

**\$29.99**  
a month  
for 12 months.\*

**Blast!® from Comcast High-Speed Internet.**  
Download at up to 20 Mbps — way, way faster than DSL. Plus, get all the valuable extra features.

Call now. (And hurry — this offer will be gone fast.)  
1-800-COMCAST

Sincerely,  
Comcast



Comcast sent out the above solicitation stating they now offer “speeds of 15, 20 and 30 Mbps” through “PowerBoost.” This assertion not only fails to explain PowerBoost — even though it does not even confer the stated theoretical speeds at all times — but also fails to include the “up to” qualifier, the minimal disclosure commonly present to indicate that real speeds may be substantially less. As this mailing is targeted to “speed lovers” — presumably people who make service judgments on the basis of actual speeds — such omission seems particularly troubling. The mailing also omits any mention of upstream speeds. Even those recipients alert enough to read find the fine print on the back are only offered the vague statement that “actual speeds vary and are not guaranteed.” Furthermore, the flyer plasters the promotional monthly base price in huge print, but fails to mention installation, activation or cable modem costs, nor what the price will go to following the first 12 months.

## Exhibit 2

**You won't believe your eyes – or your ears**  
**GET READY!**

 **Comcast Digital Starter** delivers programming and features that will change the way you watch TV.

- Up to 100 of your favorite cable channels, including 45 Digital Music Channels.
- On Demand offers over 10,000 movies and programs, all ready to watch when you are.
- An INTERACTIVE PROGRAM GUIDE with parental controls.

 **Blast!® from Comcast High-Speed Internet** offers speeds up to **20 Mbps** with PowerBoost!™

**Comcast now delivers the fastest fast with speeds of 12, 16, 22 Mbps and up to 50 Mbps with Extreme 50!**

Plus lots of valuable extras including:

- McAfee® Security Suite – including parental controls and virus protection. A \$120 value, included.\*
- 7 e-mail accounts and 1 GB of online storage.
- Share and store photos with the Comcast Photo Center powered by Snapfish.

 **Comcast Digital Voice® Unlimited** combines features, benefits and value that the phone company doesn't match. Compare what you're currently getting – and paying – and you'll see what we mean.

- Save over 25% over Verizon.
- Unlimited nationwide calling to the US, Puerto Rico and Canada – all for one low price.
- 12 Popular Calling Features like Caller ID, plus Voice Mail at no additional cost.
- Rated #1 in Call Clarity. So no word goes unheard!†

 Six Flags is heart-pounding, high-flying speed.

**Six Flags America features our triple threat: Mind Eraser, Batwing and Superman: Ride of Steel plus other fast and furious coasters.** Use the lift ones ride and play all day long in Looney Tunes Movie Town with 10 rides just for them. Splishin' good times in **Hurricane Harbor with Tornado, Hurricane Bay wave pool and Buccaneer Beach**, a dual pool just for the little 'Ees. Have more fun close to home at Six Flags America. More Flags. More Fun. Six Flags! Check out our complete line up of exciting acts coming to Six Flags America this summer as part of the **STARBURST® Summer Concert Series**. Go to [sixflags.com](http://sixflags.com) for more information.

**Choose the offer that's right for you!**

<b>Comcast Digital Starter and Blast® from Comcast High-Speed Internet</b> <b>\$69<sup>99</sup></b> for only <b>per month for 12 months!</b>	<b>Comcast Digital Starter and Comcast Digital Voice® Unlimited</b> <b>\$69<sup>99</sup></b> for only <b>per month for 12 months!</b>	<b>Digital Starter, Blast® from Comcast High-Speed Internet and Digital Voice® Unlimited</b> <b>\$99<sup>99</sup></b> for only <b>per month for 12 months!</b>
--	---	--

Plus sign up today and get 2 FREE tickets to Six Flags America†  
Courtesy of Comcast

**1-888-COMCAST**

Similar to Exhibit 1, Comcast fails to offer an up to qualifier when stating “Comcast now delivers the fastest fast with speeds of 12, 16, 22 Mbps and up to 50 Mbps with Extreme 50!” The advertisement similarly fails to offer a visible explanation of PowerBoost, and places the numerical speed in bold while “up to” and “with PowerBoost” receive no such treatment. The lack of emphasis on even the vague and inadequate “up to” qualifier extends to television advertisements as well.<sup>1</sup>

<sup>1</sup> One Comcast commercial (at 22 seconds) displays “> Twice as fast as DSL” while saying “with speeds up to twice as fast as DSL”. [emphasis added]  
<http://www.youtube.com/watch?v=cOGv9SozBK8> (accessed Oct. 12, 2009).

Exhibit 3

# POWER IS BLAZING-FAST ACCESS



We depend on the Internet more and more every day as our to-do lists continue to grow longer and our lives become more demanding. So we need speeds that allow us to fulfill all of our online needs in seconds, not minutes or hours. That's why **Road Runner High Speed Online™** delivers incredibly fast speeds that blow away standard DSL and sluggish dial-up. Banking transactions can be completed in seconds. Music, photos and videos can be downloaded faster than ever before. Thousands of online stores are at your fingertips, allowing you to browse, compare and purchase in no time. When you need unmatched speeds and a reliable connection from a service provider you can trust, Road Runner High Speed Online™ from Time Warner Cable is there.

- Download songs, photos and video clips in seconds with **speeds up to 5Mbps—that's 3x faster than DSL and 100x faster than dial-up**—and unlike DSL, your speed stays the same, no matter where you live!
- Road Runner's free security package is the ultimate in protection—say goodbye to viruses and pop-ups, control what your kids do online and stay up-to-date with the latest software upgrades.
- Enjoy an always-on, reliable connection that will never tie up your phone.
- Free 24/7 customer service is available anytime you need it.
- Each member of your family enjoys access to exclusive content including:
  - Road Runner Radio – Enjoy your favorite music anytime with 52 channels of CD-quality music—it's only a click away!
  - PhotoShow...Deluxe – Manage, edit, store and share your digital pictures.
  - Make rr.com your homepage and enjoy access to its various features, content sites and personalization tools at the click of your mouse—customize your homepage according to what matters most to you!

[www.timewarnercable.com](http://www.timewarnercable.com)

DSL speed comparison is based on Road Runner's standard maximum download speed versus DSL's 1.5Mbps standard package maximum download speed. Actual speeds may vary. Dial-up speed comparisons are based on average download speeds of 20k and 50k modems • PhotoShow...Deluxe © 2000 Sonic Solutions. All Rights Reserved. Route the leader in Digital Media Software.

**DID YOU KNOW?**  
Road Runner was introduced at 2Mbps. Since then, we've increased the speed **TWICE!** Road Runner keeps getting faster and faster—to meet the needs of your daily demands.

- ▶ **SPEED 2Mbps**
- ▶ **SPEED 3Mbps**
- ▶ **SPEED 5Mbps TODAY!**

### Turbocharge your speed with Road Runner Turbo

If your online time is spent gaming or downloading pictures and videos, or you just want the fastest speed available, **Road Runner Turbo** is for you. With speeds up to **10Mbps**, it's twice as fast as our already blazing-fast standard Road Runner! Road Runner Turbo gives you the speed you need when downloading large files, so you can do everything faster. It's time to kick it into high gear. With Road Runner Turbo, time is yours. Reclaim it!

#### **PowerBoost® has been added for Road Runner Turbo customers!**

Now Road Runner Turbo customers can enjoy an instant burst of speed with new **PowerBoost®** technology. PowerBoost® is a network technology that provides a temporary burst of speed that is significantly faster than our standard Road Runner Turbo speeds—up to 16Mbps!

Upgrade to **Road Runner Turbo** and rev up to 10Mbps for only \$9.95 more!  
**For more information, call 1-866-625-5018.**

### **NEW AND IMPROVED!**

#### **Try out these hot new enhancements to Road Runner High Speed Online™:**

- Enjoy easier interaction on r.com with the reinvented portal. With new page layouts, easy navigation, faster load times and new elements, surfing has never been easier or more enjoyable. Get enhanced webmail when you check your e-mail away from home. Also check out the new content r.com has to offer, including local news, sports, radio, weather, maps, horoscopes and stocks!
- More e-mail accounts and storage space for the ultimate experience:

**Road Runner Standard** = 10 Mailboxes (50% more) and 2 GB total storage space

**Road Runner Turbo** = 25 Mailboxes (40% more) and 5 GB total storage space



Not all services available in all areas.

This solicitation from Time Warner Cable heavily emphasizes advertised maximum speeds. The advertisement fails to include the “up to” qualifier, much less any realistic statement of service speeds. The flier also states “unlike DSL, your speed stays the same, no matter where you live.” This is extremely misleading, as the (very) fine print on the lower left states “actual speeds may vary.” Separately, the fine print in Time Warner Cable’s Subscriber Agreement includes the provision: “I understand that the actual speeds I may experience at any time will vary based on a number of factors, including... network management tools and techniques employed by TWC.” This mailing portrays a grossly inaccurate picture of the limitations and restrictions on Time Warner Cable’s Internet access services.

## Exhibit 4



# A HIGH SPEED OFFER THAT'S MOVING FAST.

**SPECIAL INTRODUCTORY OFFER**

# \$19<sup>99</sup>

a month for the first 6 months, up to 3 Mbps

**OFFER EXPIRES  
12/31/08**

**Last chance to go faster.**  
This holiday season get faster Internet for only **\$19.99** a month for the first six months. Verizon High Speed Internet gives you speeds up to 3 Mbps at an amazing value. And when you're moving up to 55 times faster than 56 Kbps dial-up, you'll do it all quicker — from downloading purchased music and videos, to holiday shopping and exchanging the season's favorite photos.

**Get more than just speed.**  
According to PC Magazine's 2008 Readers' survey, Verizon High Speed Internet beats the average cable provider in reliability. That's because this isn't just about speed, it's about a better online experience — from setup to surfing:

- **Easy 3-step installation — so you're up and running in no time**
- **A dedicated line from our central office to your home — so even if your neighbors are online, it won't slow you down**
- **All the reliability of the Network**
- **24/7 technical support that's just a phone call away**
- **It's the best value in broadband**

**To go fast you need to move fast — offer ends 12/31/08.**  
December 31, 2008 is your last opportunity to get Verizon High Speed Internet at 3 Mbps for only **\$19.99** a month (plus taxes and fees) for the first six months; \$31.99 a month for months 7–12, with a one-year agreement (plus taxes and fees). Verizon High Speed Internet is provided over the Network that gives you more.

**Offer ends soon so don't wait.**  
**CALL 1.866.905.6296** (Mon.–Sun., 7am–12am ET)



[verizon.com/hotoffer19](http://verizon.com/hotoffer19) **It's the Network**

SUC5M8  
Offer valid through 12/31/08. For new service. Not for Verizon High Speed Internet customers or U.S. Verizon mobile service. Rates may change after first year. \$79 early termination fee. One-time charges of up to \$55. Other charges and terms apply. Service availability and speeds may vary. ©2008 Verizon.

In this mailing, Verizon trumpets a price of \$19.99 for DSL Internet access service. Only the fine print in the last section reveals that a one-year agreement is required, and that the price increases substantially following the first six months of service. Fine print is also used to disclose while effectively hiding a one time charge of “up to \$55,” and mandatory subscription to Verizon telephone service, in order to receive the service at the advertised base price.

## Exhibit 5

# Fast. Small.

The nation's fastest 3G network now powers the smallest netbooks.



NEW! ACER  
ASPIRE ONE NETBOOK

\$199.99

#### AFTER MAIL-IN REBATE

Pay \$299.99 for device, and after mail-in rebate receive \$100 AT&T Promotion Card.  
2-year service agreement on qualifying DataConnect Plan required.

\*AT&T Promotion Card valid for 120 days wherever major credit cards accepted. May be used to pay wireless bill. Not redeemable for cash and cannot be used at ATMs or gas pumps.



at&t

Your world. Delivered.

FREE SHIPPING | 1.866.MOBILITY | ATT.COM/NETBOOKS | VISIT A STORE

**\*AT&T imposes a Regulatory Cost Recovery Charge of up to \$1.25 to help defray costs incurred in complying with obligations and charges imposed by State and Federal telecom regulations; State and Federal Universal Service charges; and surcharges for government assessments on AT&T. These fees are not taxes or government-required charges.**

3G not available in all areas. Coverage is not available in all areas. See coverage map at stores for details. **Limited-time offer.** Other conditions & restrictions apply. See contract, rate plan brochure, and rebate form at store for details. Subscriber must live & have a mailing addr. within AT&T's owned wireless network coverage area. Up to \$35 activ. fee applies. Equipment price & avail may vary by mkt & may not be available from independent retailers. **Early Termination Fee:** None if cancelled in the first 30 days, but a restocking fee up to \$35 may apply, thereafter up to \$175. Some agents impose add'l fees. **Offnet Usage:** If your mins of use (including unlt'd svcs) on other carriers' networks ("offnet usage") during any two consecutive months exceed your offnet usage allowance, AT&T may at its option terminate your svcs, deny your cont'd use of other carriers' coverage, or change your plan to one imposing usage charges for offnet usage. Your offnet usage allowance is equal to the lesser of 750 mins or 40% of the Anytime mins incl'd with your plan (data offnet usage allowance is the lesser of 6 MB or 20% of the KB incl'd with your plan). **AT&T Promotion Card:** Allow 60 days for fulfillment. You must be a customer for 30 consecutive days to receive Promotion Card. Offer expires 11/30/09. **Sales Tax** calculated based on price of unactivated equipment. DataConnect Plan is not unlimited & substantial charges may be incurred if included allowance is exceeded. ©2009 AT&T Intellectual Property. Service provided by AT&T Mobility. All rights reserved. AT&T, the AT&T logo, and all other marks contained herein are trademarks of AT&T Intellectual Property and/or AT&T affiliated companies. All other marks contained herein are the property of their respective owners.

This print advertisement from AT&T suffers from numerous problems. First, the advertisement buries a wide variety of additional fees in the fine print, including an activation fee. The heavily displayed \$199.99 price tag requires a mail-in rebate for \$100 and a two-year data plan service agreement. Perhaps worst of all, the fine print reveals a “data allowance” or usage limit, a still-foreign concept for consumers using a personal computer online and one that should not be hidden. These limitations are also not mentioned during AT&T’s television advertisements.<sup>2</sup>

<sup>2</sup> See e.g. [http://www.youtube.com/watch?v=xsifyM\\_72NI](http://www.youtube.com/watch?v=xsifyM_72NI) or [http://www.youtube.com/watch?v=iv3AbLU\\_o6U](http://www.youtube.com/watch?v=iv3AbLU_o6U) (accessed Oct. 12, 2009).

# Exhibit 6

The screenshot shows the Comcast website's ordering process. At the top, there is a navigation bar with five steps: 1. Products, 2. Customize, 3. Customer Info, 4. Installation, and 5. Review & Submit. Below this, there are four categories: Faster Internet, Better TV, Smarter Phone, and Bundles. The 'Faster Internet' category is selected, showing three options: Performance, Economy Internet Service, and Blast!®. Each option includes a description of features and a price. The Performance option is priced at \$19.99 for the first 6 months and \$42.95 thereafter. The Economy Internet Service is priced at \$24.95 per month. The Blast!® option is priced at \$52.95 per month. To the right, there is a 'Shopping Cart' section with a table showing the 'Performance Promo' for \$19.99 and a 'Total Monthly Fees' of \$19.99. There are also buttons for 'Remove from cart', 'Add to my cart', and 'Next'.

Comcast

English Your location: 20001 | Reset  
Search Comcast.com

1 Products 2. Customize 3. Customer Info 4. Installation 5. Review & Submit

Faster Internet Better TV Smarter Phone Bundles

Questions? Call 1-877-870-4310.

### Performance

Downloads up to 12Mbps, uploads up to 2Mbps with PowerBoost®  
The perfect upgrade from DSL.  
Surf the net, download music, upload photos and chat with friends faster than ever before.  
Comprehensive security tools.  
SmartZone® Communications Center.  
Access to Comcast.net  
7 e-mail accounts, each with 10GB of storage  
Offer limited to residential customers satisfying applicable eligibility criteria.

Minimum System Requirements  
Terms and Conditions  
Learn More

**Special Comcast.com Price!**  
**\$19.99**  
for the first 6 months  
\$42.95 per month thereafter

Remove from cart

### Economy Internet Service

Way faster than dial-up with downloads up to 1 Mbps and uploads up to 384 Kbps.  
No dialing in required and no tying up the phone line.  
Download speeds that are way faster than dial-up.  
The highly-acclaimed, McAfee Security Suite—a \$120 value!  
The SmartZone® Communications Center, which combines e-mail, Comcast voice mail and contacts into one convenient place online.  
Seven e-mail accounts, each with 10GB of storage.  
Access to Comcast.net to share photos, check e-mail and more.  
This starting price is for customers who currently subscribe to Comcast Cable and/or Comcast Digital Voice service.

Minimum System Requirements  
Terms and Conditions  
Learn More

**\$24.95** per month

Add to my cart

### Performance

Downloads up to 12Mbps, uploads up to 2Mbps with PowerBoost®  
The perfect upgrade from DSL.  
Surf the net, download music, upload photos and chat with friends faster than ever before.  
Comprehensive security tools.  
SmartZone® Communications Center.  
Access to Comcast.net  
7 e-mail accounts, each with 10GB of storage.  
This starting price is for customers that currently subscribe to Comcast Cable or Comcast Digital Voice service.

Minimum System Requirements  
Terms and Conditions  
Learn More

**\$42.95** per month

Add to my cart

### Blast!®

Downloads up to 16Mbps, uploads up to 2Mbps with PowerBoost®.  
All the speed you need for downloading music and movies, and uploading photos and streaming video.  
Comprehensive security tools.  
SmartZone® Communications Center.  
Access to Comcast.net  
7 e-mail accounts, each with 10GB of storage.  
This starting price is for customers that currently subscribe to Comcast Cable or Comcast Digital Voice service.

Minimum System Requirements  
Terms and Conditions  
Learn More

**\$52.95** per month

Add to my cart

### Shopping Cart

	Monthly Fees
HIGH-SPEED INTERNET	
Performance Promo [Remove]	\$19.99
<b>Total Monthly Fees</b>	<b>\$19.99</b>

Prices do not include applicable taxes and fees.

Next

Current Comcast Customers  
Add new products or upgrade existing products. It's easy and convenient.

LEARN MORE

### More About High-Speed Internet

Protection with McAfee Security Suite  
Easy self-installation

During the online ordering process, Comcast offers “up to” speeds for both download and upload. At no point in the ordering process are consumers told (or even, can they actively find) the actual speeds they might expect to receive. Furthermore, the “terms and conditions” pertains only to the promotion. Thus, consumers are not afforded an opportunity to learn of the vague and overbroad rights to monitor and interfere with Internet use and communications reserved by Comcast.

## Exhibit 7

The screenshot displays the Time Warner Cable website's online ordering interface. At the top, the Time Warner Cable logo is visible with the tagline "THE POWER OF YOU™". The main heading reads "Order All Your Time Warner Cable Services Online". A progress bar shows three steps: "Configure Services" (active), "Schedule Installation", and "Set Up Account".

The "Configure Services" section is titled "High Speed Online" and includes a sub-heading "Set Up Your Internet Service" with the instruction "Configure your High Speed Online service." Under "Speed and Options", users are prompted to "Choose Your Speed" and are informed to "View our [comparison chart](#) to help you decide." Two service options are listed:

- Road Runner Turbo (up to 22 Mbps) with PowerBoost™ \$44.90 monthly
- Road Runner Standard (up to 10 Mbps) Subtract \$9.95

The "Connections and Outlets" section asks, "Is your computer within 6 feet of a [cable outlet](#)?" with radio buttons for "Yes" and "No".

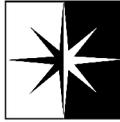
On the right side, there are three utility boxes: "Chat Online" (Get help with your order right away), "Have Us Call You" (Please provide your phone number, and a representative will get right back to you.), and "Helpful Hints" (What is Turbo with Powerboost™?, How do I decide what speed I want or need?, How do I change the speed in my cart?, How do I get wireless internet?).

At the bottom right, a "Your Order" summary table shows:

Monthly Charges	
- High Speed Online	\$44.90
• Road Runner Turbo (up to 22 Mbps) with PowerBoost™	\$44.90

Navigation buttons for "Back" and "Continue" are located at the bottom of the main configuration area.

As with other service providers, during the online ordering process Time Warner Cable fails to disclose any information on realistic speed expectations for its services. But Time Warner Cable goes even further, disclosing only the maximum PowerBoost speed for some of its services. Prospective customers are therefore left in the dark as to even the theoretical capacity of sustained use of the Internet access service, in a hypothetical environment without any congestion – much less what service speeds they should expect. And as with Comcast, Time Warner Cable hides their terms of service (note, the screenshot above does not contain any link that appears to indicate any terms of use), and certainly makes no effort to help consumers understand any restrictions or limitations to the Internet access service.



NEW AMERICA  
FOUNDATION



OPEN TECHNOLOGY INITIATIVE

## **Broadband Truth-in-Labeling**

The Open Technology Initiative of the New America Foundation is calling for Truth-in-Labeling by our nation's broadband operators. Drawn from similar useful disclosure requirements by lenders, these Broadband Truth-in-Labeling disclosure standards will give the marketplace a much-needed tool that clarifies and adds meaning to the terms and conditions of the service being offered.

Broadband subscribers are often frustrated that the actual performance of their internet access service regularly falls far below the advertised speeds. Consumers set their expectations based on phrases like "up to 16 Mbps," and are disappointed to learn that these quotes are worthless as assurances. Currently, there is no lawful requirement for ISPs to reveal the contents of the broadband services they are providing; customers might be harmed by the invalid or ambiguous languages.

Internet Access Providers should disclose the important facts and details of the broadband offering before subscribers sign up. The disclosure should be meaningful, and failing to meet minimum standards should be treated as an important service outage (resulting in a refund or service credit to the consumer). Where there are choices between different products or providers, the disclosure should be made in a way that allows consumers to compare them. Providing clear, meaningful, comparable disclosures ultimately spurs competition between ISPs which encourages the future development of broadband technology.

Open Technology Initiative has created a sample Broadband Truth-in-Labeling disclosure below. ISPs use a standardized label to notice their customers what broadband services they are subscribing, including Internet speed, service guarantee, prices, service limits, and other related elements. The label aims at educating customers the contents of broadband services and making the broadband services more transparent to spur broadband competition, innovation and consumer welfare.

To make sure the broadband service is clearly expressed, the Broadband Truth-in-Labeling disclosure should be standardized to comprise several typical elements as indicators of broadband service quality, such as minimum expected speed and latency to the ISP's border router (where the ISP connects to the rest of the Internet) and service uptime. These minimum assurances will be supported by the ISP as guarantees in the delivery of broadband services, backed by technical support and service charge refunds or credits. In addition to the description of minimums being guaranteed of the service, the disclosure should include all applicable fees, a common description of the technology used to provide the services, any service limits such as a bandwidth cap or the application of any traffic management techniques, the length of the contract terms, and a link to all additional terms and conditions. Requirements should be established for disclosing any highly objectionable or surprising terms such as arbitration restrictions or information or data selling.

This Broadband Truth-in-Labeling disclosure must be shown to the consumer as part of the sign-up process and must be assertively presented again any time the ISP decide to alter the terms in such a way that alters the facts on the original Broadband Truth-in-Labeling disclosure.

<b>ExampleCom Ultra 15 Mbps Broadband Truth-in-Labeling</b>	
<b>Advertised Speed</b>	15 Mbps downstream/2 Mbps upstream
<b>Service Guarantees</b> <b>Services are measured from and to the border router.</b>	
<b>Minimum Speed at Border Router</b>	8Mbps downstream /384Kbps upstream
<b>Minimum Reliability/Uptime</b>	96%
<b>Maximum Round-trip Latency (Delay) to Border Router</b>	50ms
<b>Service Guarantee Terms</b>	Daily service credit upon request for any outages or extended periods of under-delivery of service
<b>Prices</b>	\$44.99 monthly service \$19.99 monthly for the first six months on promotion
<b>Service Limits (List all traffic management techniques)</b>	<ul style="list-style-type: none"> <li>● Exceeding 100GB calendar week considered excessive use, subject to disconnect penalties, see <a href="http://www.examplecom.invalid/excessive">http://www.examplecom.invalid/excessive</a></li> <li>● Traffic by heavy users in congested areas is artificially slowed, see <a href="http://www.examplecom.invalid/shaping">http://www.examplecom.invalid/shaping</a></li> </ul>
<b>Other Fees (ISPs cannot charge if not listed)</b>	\$3 monthly modem rental fee \$59.99 installation fee \$19 outlet installation \$150 early termination during promotion period \$2 account change fee \$35 service call fee unless \$3 monthly inside wiring maintenance plan is in force Sales taxes and franchise fees, vary by location
<b>Contract Term</b>	At will, customer may cancel at anytime after first six months. During the first six months, a cancellation results in a \$150 fee.
<b>Service Technology</b>	DOCSIS 1.1 / 2.0 HFC
<b>Legal and Privacy Policies</b>	<a href="http://www.examplecom.invalid/legal">http://www.examplecom.invalid/legal</a>

## **Consumer Reports 2008 Telecom Survey Highlights: Cable TV and Bundles**

- Respondents in the survey had cable, fiber, or satellite TV service. The median monthly cost for cable TV service (including taxes and fees) was \$73. This was comparable with the overall median cost among all respondents (also \$73).
- Only 35% of cable subscribers were highly satisfied with their service, significantly less than those of fiber (70%) and satellite (54%).
- Forty-three percent of cable subscribers said they had wanted to switch providers. This includes 28% of cable subscribers who said they could not switch for some reason. The top reasons preventing them from switching were a lack of other providers in their area (50%) and that the cost of other services bundled with their TV would increase if they switched (29%).
- Respondents reporting on their bundling experiences had “triple-play” telecom bundles from cable or phone companies (using fiber technology) or “hybrid” bundles combining landline phone and DSL Internet service from a phone company and TV service from a satellite provider. The median cost for all bundles (including taxes and fees) was \$144 and did not vary appreciably by type of bundle.
- Just above a quarter of bundle customers complained that additional taxes and fees made their bills much higher than expected.

### **Sample characteristics**

Consumer Reports subscribers who completed the Consumer Reports National Research Center Annual Questionnaire in Spring 2008 told us about their experiences with their telecommunications services. The survey was designed to provide satisfaction ratings for different service providers and only data from customer of providers with sufficient numbers to provide reliable ratings were included in the sample. Separate samples were drawn for different services: 42,494 reported on digital TV service from 12 cable companies, 2 phone companies offering fiber service, and 2 satellite companies; 9,701 told us about their experiences with their “triple-play” bundles of Internet, TV, and phone services from 6 cable companies, 1 phone company offering fiber service, and 2 phone and satellite company partnerships. These findings report the experiences of Consumer Reports subscribers, who may not be representative of the general US population.