



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

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MEDIA BUREAU ACTION

COMMENT DATES ESTABLISHED FOR TIME WARNER CABLE INC. PETITION FOR A DECLARATORY RULING REGARDING NEGATIVE OPTION BILLING RESTRICTIONS OF SECTION 623(F) OF THE COMMUNICATIONS ACT AND THE FCC'S RULES AND POLICIES

MB Docket No. 10-215

Comment Date: November 9, 2010

Reply Comment Date: November 19, 2010

Time Warner Cable Inc. ("TWC") has filed a petition requesting that the Commission issue a declaratory ruling providing guidance on the obligations of cable operators and the proper interpretation of the prohibition on negative option billing contained in Section 623(f) of the Communications Act, and implemented in Section 76.981 of the Commission's Rules.¹ Section 623(f) states that "a cable operator shall not charge a subscriber for any service or equipment that the subscriber has not affirmatively requested by name"² and is designed to prevent consumers from being billed for cable services or equipment they never ordered. TWC is the defendant in a putative class action lawsuit pending in state court in California in which the plaintiffs contend that TWC's California cable systems have violated the prohibition on negative option billing.³ At issue is whether Section 623(f) is satisfied by a subscriber's "affirmative assent" and whether TWC's ordering process complies with the negative option billing restriction of Section 623(f).

This proceeding will be treated as "permit but disclose" for purposes of the Commission's *ex parte* rules. See 47 C.F.R. §§ 1.1200, 1.1206. As a result of the permit-but-disclose status of this proceeding, *ex parte* presentations will be governed by the procedures set forth in Section 1.1206 of the Commission's rules applicable to non-restricted proceedings.⁴

¹ 47 U.S.C. § 543(f); 47 C.F.R. §76.981.

² 47 U.S.C. § 543(f).

³ *Swinegar et al. v. Time Warner Cable Inc.*, filed April 28, 2008 in the Superior Court of the State of California, County of Los Angeles, Central Civil West, Case No. BC 389755.

⁴ 47 C.F.R. § 1.1206.

Interested parties may file comments on or before **November 9, 2010** and reply comments on or before **November 19, 2010**. All filings must reference **MB Docket No. 10-215**. Comments sent via e-mail to the Commission will be considered informal and will not be part of the official record. Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies.⁵

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.
 - For ECFS filers, in completing the transmittal screen, filers should include their full name, U.S. Postal service mailing address, and the applicable docket number: **MB Docket No. 10-215**. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message: "get form". A sample form and instructions will be sent in response.
- **Paper Filers:** Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail.
 - All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
 - U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, S.W., Washington, D.C. 20554.

All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. Parties should also send a copy of their filing to Sonia Greenaway-Mickle, Media Bureau, Room 4-A813, 445 12th Street, S.W., Washington, D.C. 20554 or sgreenaw@fcc.gov. Parties must also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, (202) 488-5300, or via e-mail to fcc@bcpiweb.com.

Documents in **MB Docket No. 10-215** are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th St., S.W., Room CY-A257, Washington, DC 20554, telephone (202) 418-0270. They may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., telephone (202) 488-5300, facsimile (202) 488-5563, or via email at fcc@bcpiweb.com.

People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

⁵ See *Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-113, *Report and Order*, 13 FCC Rcd 11322, 11326, ¶ 8 (1998).

For further information, contact Sonia Greenaway-Mickle, (202) 418-1419. Press inquiries should be directed to Janice Wise, (202) 418-8165.

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