

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

In re Complaint Against)	
)	
Comcast Corporation)	
)	EB-02-MD-033
)	
For Systemic Abuse of Customer Service)	
Standards Established by the Federal)	
Communications Commission Pursuant to)	
Section 632(b) of the Communications Act of)	
1934, as Amended.)	

MEMORANDUM OPINION AND ORDER

Adopted: December 22, 2003

Released: January 8, 2004

By the Commission:

I. INTRODUCTION

1. In this Memorandum Opinion and Order, we dismiss a complaint filed by WideOpen West Holdings, LLC (“WOW”) against Comcast Corporation (“Comcast”) alleging that Comcast is violating the Commission’s cable customer service rules¹ in the Detroit, Michigan metropolitan area by failing to provide proper written notice of certain promotional discounts.² We do so because WOW has not demonstrated that Comcast’s actions constitute “systemic abuses that undermine the statutory objectives,” a threshold established by the Commission for invocation of the Commission’s enforcement authority regarding the cable customer service rules.³

¹ 47 C.F.R. §§ 76.1602–1603. The Commission promulgated these rules pursuant to section 632 of the Communications Act of 1934, 47 U.S.C. § 552, as amended by section 8 of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 02-385 § 8, 106 Stat. 1490 (1992) (“1992 Cable Act” or “1992 Act”).

² *In Re Complaint Against Comcast Corporation*, File No. EB-02-MD-033 (filed May 23, 2002) (“Complaint”).

³ *Implementation of Section 8 of the Cable Television Consumer Protection and Competition Act of 1992*, Report and Order, 8 FCC Rcd 2892, 2897 at ¶ 19 (1993) (“*Consumer Protection Order*”), *pets. for recon. dismissed*, Order of Dismissal, 17 FCC Rcd 11916 (Med. Bur. June 24, 2002) (“*CPO Dismissal Order*”).

II. BACKGROUND

A. Statutory and Regulatory Background

2. Section 8 of the 1992 Cable Act (“Section 8”) provides that “a franchise authority may establish and enforce” cable operator “customer service requirements.”⁴ It then requires the Commission to “establish standards by which cable operators may fulfill their customer service requirements.”⁵ It further states that “[s]uch standards shall include, at a minimum, requirements governing – (1) cable system office hours and telephone availability; (2) installations, outages, and service calls; and (3) communications between the cable operator and the subscriber (including standards governing bills and refunds).”⁶

3. With regard to “communications between the cable operator and the subscriber,” the standards adopted by the Commission pursuant to this congressional mandate provide, in pertinent part:

[T]he cable operator shall provide written information on each of the following areas at the time of installation of service, at least annually to all subscribers, and at any time upon request:

- (1) Products and services offered;
- (2) Prices and options for programming services and conditions of subscription to programming and other services.⁷

The standards also provide:

Customers will be notified of any changes in rates . . . as soon as possible in writing. Notice must be given to subscribers in a minimum of thirty (30) days in advance of such changes if the change is within the control of the cable operator.⁸

4. Although the 1992 Cable Act directed the Commission to promulgate customer service standards, it referred only to local franchising authorities as enforcers of the Commission’s customer service standards.⁹ The Commission, based on its view of legislative intent,¹⁰ concluded in the *Consumer Protection Order* that local franchise authorities, rather than

⁴ 47 U.S.C. § 552(a).

⁵ 47 U.S.C. § 552(b).

⁶ *Id.*

⁷ 47 C.F.R. § 76.1602(b). See *Consumer Protection Order*, 8 FCC Rcd at 2906-07, ¶¶ 64-68. Rule 76.1602(b) also requires the provision of written information regarding “(3) Installation and service maintenance policies; (4) Instructions on how to use the cable service; (5) Channel positions . . . ; and (6) Billing and complaint procedures. . . .” 47 C.F.R. § 76.1602(b).

⁸ 47 C.F.R. § 76.1603(b). As directed by Congress, the Commission also adopted customer service rules regarding billing, see 47 C.F.R. § 76.1619; *Consumer Protection Order*, 8 FCC Rcd at 29, ¶¶ 65-68; office hours and telephone availability, see 47 C.F.R. § 76.309; *Consumer Protection Order*, 8 FCC Rcd at 2903-2904, ¶¶ 45-56; and installations, outages, and service calls, see 47 C.F.R. § 76.309; *Consumer Protection Order*, 8 FCC Rcd at 2905-2906, ¶¶ 56-64.

⁹ 47 U.S.C. § 552(a).

¹⁰ See *Consumer Protection Order*, 8 FCC Rcd at 2895, ¶ 10, n.15, in which the Commission discusses the following portions of the legislative history: House Comm. on Energy and Commerce, H.R. Rep. No. 102-628, 102d (continued....)

the Commission, would enforce the customer service rules.¹¹ Consistent with that conclusion, the Commission's rules provide that "[a] cable franchise authority may enforce the customer service standards" established in the rules.¹² The *Consumer Protection Order*, however, articulated a narrow circumstance where the Commission would retain enforcement authority: "to address, as necessary, systemic abuses that undermine the statutory objectives" of Section 8.¹³

B. Factual Background and Pleadings

5. Comcast is an incumbent cable services provider in many regions of the United States, including metropolitan Detroit, Michigan.¹⁴ WOW is a competitive cable and broadband services provider, known as an "overbuilder," serving the metropolitan Detroit area, among other locations.¹⁵ According to WOW, it competes with Comcast in 42 communities in the Detroit area,¹⁶ and WOW's share of the cable services market in the state of Michigan is approximately 24%.¹⁷

(...continued from previous page)

Cong., 2d Sess. at 37 (1992) ("House Report"); Statement of Chairman John Dingell, 138 Cong. Rec. H6500 (daily ed. July 23, 1992); Statement of Chairman Edward Markey, 138 Cong. Rec. E1034 (daily ed. Apr. 10, 1992). See also House Report at 78 (Section 8 requires the "FCC to establish federal customer service standards which may be required in local cable franchises and enforced by local franchising authorities"); Senate Comm. on Commerce, Science and Transportation, S. Rep. No. 102-92, 102d Cong., 2d Sess. at 21 (1992), *reprinted in* 1992 U.S.C.C.A.N. 1133 ("Senate Report") (local franchising authorities, "who are closest to the consumer, would be in the best position to effectively address [customer service issues]"); House Report at 105 (Congress intended that the Commission would develop standards that are sufficiently flexible in nature to allow local authorities to tailor the rules to meet the needs of the local community and to adopt more stringent standards in accordance with local needs). Although the Senate version of Section 8 did not differ substantially from the House version, the Conference Committee adopted the latter. See H.R. Conf. Rep. No. 102-862, 102d Cong., 2d Sess. at 79 (1992), *reprinted in* 1992 U.S.C.C.A.N. 1231 ("Conference Report").

¹¹ See *Consumer Protection Order*, 8 FCC Rcd at 2897, ¶ 19 ("it does not appear that Congress intended for the Commission to bear the responsibility of enforcing the new FCC standards"); *id.* at 2893, ¶ 3 (the customer service rules "will then be enforced by local franchising authorities"); *id.* at 2895, ¶ 10 ("the Commission is required to establish baseline customer service standards on which local governments may rely to ensure that the cable systems they regulate provide an adequate level of customer service"); *id.* at 2899, ¶ 26 ("Local franchise authorities will enforce the self-executing Federal standards we adopt today"); *CPO Dismissal Order*, 17 FCC Rcd at 11916 ("the Commission established customer service standards which are subject to enforcement by local franchising authorities.") Because the Commission found that the 1992 Act delegated enforcement of customer service rules to the local franchising authorities, the Commission determined that "it is unnecessary for this Commission to establish specific customer service reporting requirements or refund or penalty guidelines applicable to all cable operators nationwide. . . . Local governments should be free to avail themselves of reasonable remedies to assure compliance and fairness to all parties." *Consumer Protection Order*, 8 FCC Rcd at 2898, ¶ 21.

¹² 47 C.F.R. §§ 76.1602(a), 76.1603(a).

¹³ *Consumer Protection Order*, 8 FCC Rcd at 2897, ¶ 19.

¹⁴ Complaint at 1; Response of Comcast Corporation to Questions Posed By the Enforcement Bureau, File No. EB-01-MD-033 (filed Sept. 20, 2002) ("Comcast Response to Commission Questions") at 2-4.

¹⁵ Complaint at 2. See Comcast Response to Commission Questions at 2-3.

¹⁶ Complaint at 2.

¹⁷ Reply to Comcast's Response to Commission's Questions of September 20, 2002, File No. EB-02-MD-033 (filed Oct. 4, 2002) ("WOW Reply to Commission Questions") at 10.

6. WOW alleges – and Comcast concedes – that Comcast offers limited-term discounts in an effort (1) to retain customers who would otherwise switch to another provider, and (2) to persuade former customers to return to Comcast.¹⁸ WOW further alleges – and Comcast also concedes – that Comcast does not publish or publicize all of these retention or win-back discounts in writing, such as in filings with local franchising authorities or notices to subscribers.¹⁹ According to WOW, these oral, unpublished “secret, targeted rates” may vary “from day to day, call to call.”²⁰

7. WOW contends that, by not disclosing in writing to *all* its customers *every* limited-term retention and win-back discount offer, Comcast is violating the Commission’s customer service rules requiring cable operators (1) to provide written information to subscribers regarding “prices and options for programming services,” and (2) to notify customers in writing of “any changes in rates.”²¹ According to WOW, these oral discount offers constitute an anticompetitive practice that treats some Comcast customers unequally and may drive WOW out of the market.²² WOW requests that the Commission order Comcast to publish in writing all of its rates and charges, including any limited-term win-back or retention offers made only to a limited number of customers, and to pay a forfeiture in the amount of \$27,000.00 for each day that Comcast has failed to comply with the Commission’s regulations.²³

III. DISCUSSION

8. Comcast argues that the Commission lacks authority to adjudicate WOW’s complaint because the challenged actions do not constitute “systemic abuses that undermine the statutory objectives,”²⁴ which is the standard the Commission established for the limited scope of its jurisdiction to enforce the cable customer service rules. Acknowledging this threshold hurdle previously established by the Commission in this area, WOW claims that Comcast’s practice of failing to disclose in writing to all subscribers each and every retention or win-back offer meets the test.²⁵

¹⁸ Complaint at 1-2; Comcast Response to Commission Questions at 1-6.

¹⁹ Complaint at 1-2; Comcast Response to Commission Questions at 5-6, 8-10.

²⁰ Complaint at 3.

²¹ 47 C.F.R. §§ 76.1602(b), 1603(b). *See* Complaint at 1, 5-6; Reply at 1-3, 7-10; WOW Response to Commission Questions at 1-2, 4-6, 8-10; WOW Reply to Commission Questions at 7-9, 11-27. WOW asserts that any price reduction must be disclosed to all customers and the franchising authority within 30 days of making the offer. *See WOW Response to Commission Questions at 4*. WOW does not seek to enforce 47 C.F.R. § 76.1602(b), however, which requires cable operators to notify customers 30 days in advance of any rate changes. *See Id.* at 4-5.

²² Complaint at 6 (Comcast’s conduct has “one purpose alone – to preclude other Comcast customers from receiving the same rates and charges, thus diminishing the cost of eliminating competition in the greater metropolitan Detroit market”); Comcast Response to Commission Questions at 1-3, 6 (same); Reply to Opposition to Complaint of WideOpen West Holdings, LLC, File No. EB-02-MD-033 (filed June 28, 2002) (“Reply”) at 1-2, 7 (same).

²³ Complaint at 6.

²⁴ Answer of Comcast Corporation and Request for Dismissal, File No. EB-02-MD-033, (filed June 11, 2002) (“Answer”) at 3-6. Comcast seeks dismissal of the complaint on several other grounds, as well: as a competitor, WOW lacks standing to challenge Comcast’s compliance with the customer service rules; the disclosure requirements do not encompass promotional or win-back offers; and the challenged actions exemplify vigorous competition, which is the broader legislative purpose of the 1992 Cable Act. *Id.* at 6-12.

²⁵ *See* Complaint at 1, 4-6; Reply at 1, 3-4, 6-10; WOW Response to Commission Questions at 1-2, 6-10; WOW Reply to Commission Questions at 2, 17-18.

9. WOW's position is that Comcast's failure to disclose in writing to all of its customers each and every offer made to any customer for any reason for any period of time undermines the objectives of Section 8.²⁶ While WOW's complaint implicates the statutory objectives insofar as it concerns communications between cable operators and subscribers, based on the broad scope of the complaint, we are unable to conclude that such a sweeping proposition in all cases undermines these objectives. By alleging that Comcast should disclose in writing to *all* its customers *every* limited-term retention and win-back discount offer made to any subscriber, WOW essentially seeks to preclude all win-backs and other promotional activities. We are unable to determine that allegations premised on such a sweeping proposition conclusively undermine the statutory objectives concerning communications with subscribers.²⁷ We therefore conclude that WOW has not demonstrated that Comcast's actions constitute "systemic abuses that undermine the statutory objectives" in order to invoke our direct enforcement authority.²⁸

10. WOW's support for its sweeping proposition relies on a single, isolated statement in the Senate Report indicating that the Commission's customer service standards should address, among other things, "disclosure of all available service tiers" and prices for those tiers.²⁹ WOW's complaint, however, does not concern written disclosures regarding the kinds of service tiers offered, but more generally seeks disclosure of all promotional activity. We find this support a far cry from a mandate that any limited-term win-back or retention offers ever made be disclosed or extended uniformly to all subscribers. The pertinent language of the statute, moreover, does not support this broad proposition. The relevant statutory language states that the Commission should establish standards relating to "communications between the cable operator and the subscriber (including standards governing bills and refunds)."³⁰ Further, the relevant legislative history says nothing about requiring cable operators to communicate in writing to all subscribers every limited-term retention or win-back offer made to any subscriber.³¹ In sum, there is simply no indication in either the language or legislative history of Section 8 that Congress meant for the Commission to exercise jurisdiction to enforce quasi-tariffing regime precluding cable operators from engaging in the kind of win-back and retention efforts shown by Comcast here. We do not address here whether some other promotional or win-back practices could raise systemic issues that undermine Section 8's statutory objectives.

²⁶ See Complaint at 1, 4-6; Reply at 1, 6-10; WOW Reply to Commission Questions at 17-18.

²⁷ Our review of the legislative history does not demonstrate that the statutory objectives are definitively undermined without the type of sweeping relief that WOW seeks. See *generally* H.R. Rep. 104-204(I), 104th Cong., 1st Sess. at 112 (1995). Granted, it is not surprising that Congress did not focus Section 8 on win-back or retention offers because, at the time it enacted Section 8, cable operators in virtually every region of the country were monopoly providers.

²⁸ We take no position on whether discrete types of win-back behavior would run afoul of customer service standards for communicating with subscribers or other provisions of the Act. See 47 U.S.C. § 543(d); 47 C.F.R. §§ 76.901-990 (requiring *inter alia* cable operators to have geographically uniform rates under certain circumstances, with a stated objective "to prevent cable operators from dropping the rates in one portion of a franchise area to undercut a competitor temporarily.").

²⁹ WOW Reply to Commission Questions at 16-17, citing Senate Report at 27.

³⁰ 47 U.S.C. § 552(b).

³¹ See *generally* H.R. Rep. 104-204(I), 104th Cong., 1st Sess. at 112 (1995), *reprinted in* 1996 U.S.C.A.N. 10; House Report at 34-35; Senate Report at 20.

Rather, we conclude only that Comcast's alleged action in this case is not a systemic abuse that undermines the statutory objective.

11. Our conclusion that WOW has not alleged a systemic abuse that undermines Section 8's customer service objectives does not preclude WOW from seeking relief from other appropriate sources. For example, WOW still has at least three avenues of potential recourse that it could pursue. First, WOW could file complaints with local franchise authorities under any applicable rules or ordinances. Second, WOW could file a lawsuit in court alleging unfair competition/antitrust type claims, which appear to be the real concern of its complaint here.³⁹ Third, WOW could file a claim at the Commission under the uniform price provisions of the Communications Act and the Commission's rules.⁴⁰

IV. ORDERING CLAUSE

12. ACCORDINGLY, IT IS ORDERED, pursuant to sections 1, 4(i), 4(j), 601, and 632 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 521, and 552, and sections 76.6, 76.7, 76.1602, and 76.1603 of the Commission's rules, 47 C.F.R. §§ 76.6-76.7, and 76.1602-1603, that the Complaint filed by WideOpen West Holdings, LLC against Comcast Corporation for systemic abuse of customer service standards established by the Federal Communications Commission pursuant to Section 632(b) of the Communications Act of 1934, as amended, IS DISMISSED in its entirety with prejudice.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

³⁹ See, e.g., Complaint at 1 (the "sole purpose" of Comcast's conduct is "an effort to drive WideOpen West from those markets in which it competes directly with Comcast."); *id.* at 2, 6; Reply at 2, 7.

⁴⁰ 47 U.S.C. § 543(d); 47 C.F.R. § 76.984. We note that, by describing potential avenues for WOW to seek relief, we express no view on the ultimate validity of such claims on the merits.