



OFFICE OF  
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

January 19, 2009

The Honorable Jay Rockefeller  
Chairman  
Senate Committee on Commerce, Science and Transportation  
531 Hart Senate Office Building  
Washington, DC 20510

The Honorable Kay Bailey Hutchison  
Ranking Member  
Senate Committee on Commerce, Science and Transportation  
284 Russell Senate Office Building  
Washington, DC 20510

Dear Chairman Rockefeller and Ranking Member Hutchison,

As you may know, on October 29, 2008, Consumers Union sent a letter to the Senate Commerce Committee expressing concern about the fact that many cable operators were moving cable programming to a digital-only tier and charging consumers more money for digital cable boxes in order to continue receiving this programming. See Consumers Union Letter dated October 29, 2008. Last fall, the Commission's Enforcement Bureau initiated an investigation into these channel migration practices. The Commission has received nearly 600 complaints from cable subscribers around the country who one day were watching their favorite channel and then the next day were unable to access it.

In short, cable customers have been receiving less from the cable companies but paying the same price or, in some cases, more. Consumers who wish to continue viewing the analog channels that they once received as part of their cable package are told that they must rent a digital set-top box in order to do so. As several consumer advocacy groups, Consumers Union, Consumer Federal of America, Media Access Project and Free Press, put it, "[cable] consumers are given the false choice of paying the same amount for less service or paying substantially more for the same service." See Consumers Union et al. Letter dated November 13, 2008.

For consumers, this situation is unacceptable. As Chairman of an agency that is dedicated to protecting the public interest, I have been using our resources to find out whether these channel migrations were done in compliance with relevant laws. Unfortunately, in some instances, we have been thwarted in our efforts to make this determination as 9 of the 13 cable companies we have been investigating did not provide the Commission with all of the information we requested. Specifically, in a letter of

inquiry (LOI) we asked for information concerning instances in which the cable company had migrated analog channels to a digital tier, including the channels affected, whether and how the company notified customers of the change, whether, in light of the change in service, the company permitted customers to change their service tier without charge, and the rates charged customers before and after the channel migration. We also asked about the cable company's charges for digital set-top boxes as well as information regarding its subscriber rates and the rates it pays to video programmers.

Because the vast majority of cable operators did not fully respond to our LOI, we recently issued Notices of Apparent Liability against these operators for failing to respond to a Commission investigation. Misconduct of this type exhibits contempt for the Commission's authority and threatens to compromise the Commission's ability to adequately investigate violations of its rules. Prompt and full responses to LOIs are essential to the Commission's enforcement function. The cable operators' refusal to provide the Commission full information has delayed our investigation and inhibited our ability to examine allegations raised in the nearly 600 consumer complaints.

Consumers have seen their cable bills double over the last decade at the same time the costs for all other communications services have declined. Specifically, since Congress enacted the 1996 Act, cable rates have risen every year – significantly higher than the rate of inflation. In 1995, cable rates were \$22.35 and in 2008 (using prices as of January 1, 2008) cable rates more than doubled to \$49.65.

To provide another comparison, before they were reregulated in 1993, average cable prices were \$22.23. When adjusted for inflation, that average cable price would be \$33.88. Compared against 2008 cable prices of \$49.65, we see an increase of nearly 53%. That is, cable rates are now 50% higher, even when adjusted for inflation, than when Congress stepped in to reregulate them with the passage of 1992 Cable Act. Moreover, prices for cable packages that include the digital tiers that consumers are forced to purchase in order to continue watching the same channels they were before have skyrocketed. Specifically, weighted average cable prices (including digital tiers) have grown from \$22.35 to \$58.80 between 1995 and 2008, an increase of over 163 percent.

In contrast, the price for every service that the Commission regulates has decreased. For example, the average rate for wireless service has plummeted more than 85% (\$ 0.43 per minute in 1995, compared with \$0.07 per minute in 2007), average long distance rates has declined more than half (\$0.12 a minute to \$0.06 a minute), and international calls declined more than 89% (\$0.91 a minute in 1995 to \$0.10 in 2007).

It is universally accepted that cable rates have risen dramatically over the past decade and that consumers' bills for video services are too high. And now, when cable operators migrate analog channels to a digital tier, consumers are forced to pay more if they wish to continue watching the same channels. Or, consumers may continue to pay the same amount to watch fewer channels. This is not the type of consumer choice that the Communications Act envisions. The Commission has taken this issue seriously and I hope that Congress will as well.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kevin J. Martin", with a long horizontal flourish extending to the right.

Kevin J. Martin



Nonprofit Publisher  
of Consumer Reports

October 29, 2008

The Honorable Daniel K. Inouye  
Chairman  
Senate Committee on Commerce, Science and Transportation  
722 Hart Senate Office Building  
Washington, D.C. 20510

The Honorable Kay Bailey Hutchison  
Ranking Member  
Senate Committee on Commerce, Science and Transportation  
284 Russell Senate Office Building  
Washington, D.C. 20510

Dear Chairman Inouye and Ranking Member Hutchison:

On behalf of Consumers Union, we write to you today to express our concern over a troubling trend developing within the cable industry.

Today, despite our nation's economic crisis, Comcast Corporation reported a 38 percent growth in its third quarter earnings. The cable company saw a 10% increase in revenue to \$8.5 billion. This growth is attributed in the report to, "solid operating results at Comcast Cable." Indeed, they report that revenue from their cable segment increased 7% to \$8.1 billion, due to a growth in digital customers.<sup>1</sup>

We fear large cable companies, like Comcast, have been adding to their bottom-line by inappropriately reaching into the pockets of their subscribers.

Consumers Union has fielded a number of complaints from subscribers of Comcast and other large cable networks across America who have been subjected to increased monthly costs for cable television service. Many cable operators have begun moving cable programming to a digital-only tier and charging consumers an extra fee each month for additional digital cable boxes in order to receive this programming. Consumers are left paying the same monthly rate for significantly less service, or must rent more expensive set-top boxes for each television set they own.

With the DTV transition quickly approaching, consumer confusion in the television programming marketplace is at its peak. Cable operators appear to be leveraging content to strong-arm confused consumers into paying much more every month for cable programming they have previously received at no extra fee. We believe the timing of this rate hike is deceptive.

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<sup>1</sup> Comcast Corporation Press Release. *Comcast Reports Third Quarter 2008 Results*.  
<http://www.cmcsk.com/phoenix.zhtml?c=118591&p=irol-newsArticle&ID=1218842&highlight=>

On October 15, the Enforcement Bureau at FCC fined Time Warner Cable in Hawaii and Cox Communications in Virginia for moving certain channels to an all digital tier and preventing consumers with unidirectional digital cable products (UDCPs), like CableCARDS, from accessing those channels. By blocking consumers' freedom to choose their own navigational devices, the Bureau found that both Time Warner and Cox violated § 629 of the Communications Act.

We believe the FCC appropriately interpreted the Act, however the scope of this order fails to address many consumers' issues. It does not help subscribers losing channels who have no navigational devices at all. This order is a small step in the right direction, but it only addresses the tip of the ice-berg of these unfair consumer practices.

In fact, in an October 2008 *Consumer Reports* Survey, we found that over two-thirds (68%) of cable only consumers have televisions in their home without set-top boxes. Nearly one-fifth (19%) of these consumers have noticed a reduction in the number of channels they are able to receive. The majority (60%) have taken no action and are paying the same monthly bill for less service; 28 percent have called their cable company to complain, and 21 percent have swallowed the extra equipment charge. This represents a significant number of cable customers who are either paying for less service, or being forced to pay more for the same service.

With so much at stake in the upcoming DTV transition, it is imperative that television viewers not be misled. Consumers Union is doing our part, and in the November 2008 issue of *Consumer Reports* magazine, we alerted cable subscribers to the cable industry's deceptive practice. We are hopeful that Congress and the Commission will take the appropriate action and investigate these complaints further. Cable companies that have misled customers should be held accountable for their inappropriate business practices.

Regards,



Joel Kelsey  
Policy Analyst



Christopher Murray  
Senior Counsel

Enclosed: Article, "Confused About Cable?" *Consumer Reports* magazine, November 2008.



Consumer Federation of America

November 13, 2008

Chairman Kevin Martin  
Commissioner Michael Copps  
Commissioner Robert McDowell  
Commissioner Jonathan Adelstein  
Commissioner Deborah Taylor Tate

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

**Re: File Nos. EB-08-SE-1067-1075, 1077-1078**

Dear Chairman Martin and Commissioners:

We write in response to National Cable and Telecommunications Association's (NCTA) request that the Enforcement Bureau rescind their October 30<sup>th</sup> Letters of Inquiry (LOIs) to 13 cable companies across the country.

As you know, the national transition to digital television broadcasts (DTV transition) is upon us. For over a year, cable customers have been seeing commercials about the DTV transition and told to do nothing; that nothing will change. However, recently more and more consumers are noticing a reduction in the number of expanded basic channels that they receive through their cable subscription. These consumers do not receive a reduced bill for receiving reduced service. Rather, they are told they need to rent a more expensive digital set-top box to get these channels back.

It is important to note this forced cable digital migration is wholly separate from the national broadcast DTV transition. However, the FCC, the National Telecommunications and Information Administration, the National Association of Broadcasters and the National Cable and Telecommunications Association have spent millions of dollars advertising and communicating to consumers about the DTV transition, and millions of television viewers are struggling to cut through the noise and understand how the transition affects their television. We believe they are rightly confused and we believe the timing of cable operators' forced digital migration is deceptive.

When consumers are given the false choice of paying the same amount for less service or paying substantially more for the same service, we believe they have a right to be upset. Moreover, we are pleased to see a federal entity take consumer complaints seriously and seek more information from the cable companies that are treating them unfairly.

Based on the lack of information about cable operators actions, the Commission can not assess what, if any, provisions of the Act have been violated. For example, it is possible that some operators are thwarting the diversity of available programming by moving only independent or unaffiliated channels to the digital-only tier, and keeping the channels they own on the more easily accessible (and cheaper) tier. Additionally, cable operators may be requiring consumers to rent the own boxes to access cable programming, which would significantly hinder the widespread availability of navigational devices.

Since 1996, when deregulation of the cable industry began, prices have increased by approximately double the rate of inflation (86.5%, source: Bureau of Labor Statistics, Consumer Price Index). Contrast this with the price of a long distance phone call, which has fallen by nearly half in that same period, and the price of a television set is less than 15% what it cost in 1996. On top of these disproportionate annual price increases, the additional increases triggered by the digital channel migration impose an ever greater financial burden on consumers already worn down by a struggling economy. Consumers naturally complain under such circumstances.

A consumer complaint need not prove to the agency that a law has been broken. Legal determinations are the job of the agency and ultimately the courts. The agency should act on a complaint. When the complaint is from a consumer with no lawyer, writing to the agency charged with protecting consumers from abuse, then one should expect the complaint to be general in nature. Consumers should not need to hire lawyers to justify complaints to an agency required by law to investigate whether a violation has taken place. Moreover, when the possible violation of law has widespread and immediate impact, the Commission is to be commended for acting swiftly.

We believe that the Enforcement Bureau at the FCC has the authority to inquire about the circumstances surrounding cable's forced migration and protect consumers from unfair treatment. The FCC has the right to inquire in response to consumer complaints whether the cable operators have handled the digital migration process appropriately. Inquiry does not mean that the complaint will be adjudicated in favor of the consumer. It simply means the FCC has taken the issue seriously and sought to find the facts, and through them, the correct means of resolution. We applaud the FCC for taking consumer complaints seriously.

Sincerely,



Joel Kelsey  
Consumers Union



Ben Scott  
Free Press



Mark Cooper  
Consumer Federation of America

/ S/

Andrew Jay Schwartzman  
Media Access Project