

Comcast Reaches Record \$2.3 Million Settlement with FCC Over “Negative Option Billing”

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Yesterday, the FCC’s Enforcement Bureau reached a \$2.3 million [settlement](#) with Comcast Corporation (Comcast) to resolve an investigation into whether Comcast wrongfully charged cable TV customers for services and equipment that those customers never authorized. This prohibited practice, which the Commission refers to as “negative option billing”, is cable’s functional equivalent to the telco practice commonly referred to as “cramming.”

Notably, according to the FCC’s Office of Media Relations, the Comcast Consent Decree contains “the largest civil penalty assessed from a cable operator by the FCC.”

Background

At least as early as June 11, 2014, the FCC received complaints from numerous Comcast customers alleging that the company imposed charges for equipment and services they never ordered, often without their knowledge or consent. The improperly charged entities included premium channels, additional cable boxes, DVRs, and cable modems. In response to these complaints, the FCC undertook an investigation of the company.

Alleged Violations

Specifically, in the consent decree, the Enforcement Bureau cited Comcast for violations of Section 623(f) of the Act and Section 76.981 of the Commission’s Rules.

Section 623(f) of the Act prohibits negative option billing, stating:

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

Section 76.981 of the FCC’s Rules effectively mirrors the language of Section 623(f).

According to the Enforcement Bureau, Comcast violated Section 623(f) of the Act and Section 76.981 of the Commission’s Rules by charging its Customers for new products they had not affirmatively

requested.

Terms of the Consent Decree

Under the terms of the consent decree, Comcast has agreed to pay a \$2.3 million fine, and to implement a wide-ranging compliance plan, which includes the following key elements:

- **Affirmative Consent:** Adopt processes and procedures designed to obtain affirmative informed consent from customers prior to charging them for new services or equipment.
- **Order Confirmation Processing:** Send customers an order confirmation separate from any other bill, clearly and conspicuously describing newly added products and their associated charges.
- **Upgrade Blocking:** Offer to customers the ability to block the addition of new services or equipment to their accounts free of charge.
- **Unauthorized Charges Dispute Redress Program:** Implement a detailed program for redressing disputed charges in a standardized and expedient fashion, and limit adverse action while a disputed charge is under investigation.

Comcast also must appoint a compliance officer and submit periodic compliance reports to the Commission for the next five years.

Lessons Learned:

In recent years, the Enforcement Bureau has been aggressive in its efforts to enforce the FCC's rules, particularly with respect to "[slamming and cramming](#)" and related consumer protection priorities. We expect this trend to continue for the foreseeable future. This record fine for "negative option billing" might be the largest fine levied on a cable operator to date, but it is unlikely to be the last. Hence, all cable, telecommunications, and other similarly situated providers should take affirmative steps to reexamine their billing policies, procedures, and practices to ensure compliance with FCC rules and guidance.