



MT. HOOD CABLE REGULATORY COMMISSION

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June 25, 2003

Deborah M. Luppold, Vice President
Comcast Cable Communications, Inc.
Franchising and Government Affairs
9605 SW Nimbus Avenue
Beaverton, OR 97008-7198

Re: *Comcast revised subscriber privacy notice*

Dear Debbie:

We have a number of concerns about the changes made in Comcast's revised subscriber privacy notice, which we understand Comcast began mailing to subscribers in Mt. Hood Cable Regulatory Commission ("MHCRC") franchise areas beginning late last month. The purpose of this letter is to set forth our concerns and request a detailed response from the company.

We appreciate the initial discussion you arranged for us with yourself and Gerard Lewis, Comcast's privacy officer, on May 30, 2003. This letter is intended to follow up that discussion and focus on the particular concerns we continue to have with Comcast's privacy policy both with respect to the applicable federal statute (47 U.S.C. 551 *et seq.*) and applicable MHCRC franchise requirements. This letter is also intended to include reference to the issues and concerns expressed by MHCRC members at the MHCRC meeting of June 16, 2003.

First we would note, in general, that the policy as revised (from the prior AT&T Broadband policy) appears to enlarge, rather than limit, the ability of the company to share personally identifiable information ("PII") with third parties outside the company. Secondly, the use of vague language such "as otherwise necessary" and the enlargement of the list of potential third parties appears to expand the intended scope of Comcast's use of PII outside the company beyond anything stated or understood in the prior policy. Third, the "opt-out" provision, which is limited only to release of a subscriber's name and address to third parties, and does not limit Comcast's release to third parties of other highly sensitive PII (such as email address, telephone number, social security number, bank account and credit card information, etc.) is set forth in the revised privacy policy in a confusing and internally contradictory manner. As such, it is not likely, in our opinion, to be understood by the average subscriber. Fourth, we remain concerned that the policy may not be consistent with applicable MHCRC franchise privacy requirements (we provided these requirements to you prior to our May 30 call). Indeed, the revised policy is replete with so many exceptions, caveats and qualifications that a reasonably educated subscriber would, in our opinion, be warranted in entertaining a high degree of uncertainty as to whether the company has any genuine intention of protecting any of the subscriber's sensitive PII as a matter of overall policy. Fifth and last, on an operational level, we have received and continue to receive numerous complaints and concerns about the policy from alarmed subscribers, many of whom report an inability on the part of

Comcast to adequately respond to their concerns when the subscriber has contacted the 1-800-COMCAST telephone number listed in the revised notice.

Although we have not yet arrived at conclusions that might necessitate triggering applicable notice requirements of MHCRC franchise agreements in connection with possible franchise violations, there are some specific questions we need to ask at this time in order to determine whether such conclusions could be fairly drawn. The questions we are asking in this letter are not intended to be exhaustive, but are only an initial set of questions. Comcast's response and our own further analysis may lead to further questions and/or a need for additional discussion.

With this in mind, our initial questions are as follows:

1. Applicable MHCRC franchise requirements oblige Comcast to *"maintain constant vigilance with regard to possible abuses of the right of privacy or other human rights of any Subscriber, Programmer or any other Person resulting from any device or Signal associated with the Cable System."* Comcast's previous privacy policy recited that *"Comcast considers the information contained in the business records we keep to be confidential. Unless prior written or electronic consent is obtained, personal information which we maintain related to our subscribers may be disclosed to a third party only if (1) it is necessary to render or conduct a legitimate business activity related to the cable and other services we provide; (2) such disclosure is required by court order and you are notified of such order; or (3) to a government entity as described below."* Comcast's revised policy has eliminated the latter language, and now only refers to a "reasonable effort" to "preserve" subscriber privacy.
 - a. Why was the original, more general statement regarding confidentiality deleted?
 - b. In light of this change, in what manner is Comcast maintaining the "constant vigilance" required by its MHCRC franchises?
 - c. What is the effective date of the revised privacy policy?
 - d. When was the policy last revised?
 - e. Are there any Comcast franchise areas where the policy is not being distributed and/or is deemed by Comcast to not apply?
 - f. Are there any variants (i.e. alternative versions) of the policy prepared or in use in any Comcast franchise areas?
 - g. What type of security procedures and systems are utilized by Comcast in keeping subscriber PII and related data confidential within the company?
 - h. How is PII data stored and backed up?
 - i. Where is PII subscriber data from MHCRC franchise areas physically stored?
 - j. Is there a single or multiple locations where such data is stored?
 - k. Who is authorized to access MHCRC franchise area subscriber PII, and under what procedures?
2. Applicable MHCRC franchise requirements provide that Comcast shall not *"sell, or otherwise make available, lists of the names and addresses of its Subscribers, or any list which identifies the viewing habits by the name of any Subscriber, or any Personalized Data pertaining to a Subscriber's use of any of Grantee's Cable Services by the name of any Subscriber, without the written, expressed consent of the Subscriber to which the Personalized Data pertains, except as otherwise expressly authorized by federal law."* Comcast's revised privacy policy provides that Comcast may *"disclose personally identifiable information"* to Comcast's *"affiliates or to others (such as our employees, contractors and agents for our internal business purposes) as well as outside auditors, professional advisors, service providers, potential*

business transition partners, regulators and franchise authorities with or without your written consent if necessary to render the service or to conduct a legitimate business activity related to the service.” (emphasis supplied) How does Comcast reconcile the statements in its revised privacy policy with the requirements of the MHCRC franchises?

3. In what manner might disclosure without a subscriber’s consent of highly sensitive PII (such as a subscriber’s email address, telephone number, social security number, driver’s license number, bank account number, credit card numbers, credit history and other similar information) be “necessary to render the service” or to “conduct a legitimate business activity related to the service” in connection with:
 - a. “others” (apparently unspecified, non-affiliated third parties);
 - b. outside auditors;
 - c. professional advisors;
 - d. service providers;
 - e. potential business transition partners; and
 - f. regulators and franchise authorities

Please provide specific examples of the entities which Comcast views as occupying the categories listed in a-f, above. Also, in each instance please be specific about why each entity listed above would require, or what specific use each entity would make of a subscriber’s:

- (1) email address;
- (2) telephone number;
- (3) social security number;
- (4) driver’s license number;
- (5) bank account numbers;
- (6) credit card numbers; and
- (7) credit history.

4. The Gramm-Leach-Bliley Act (“GLBA”), Pub. L. No. 106-102, 113 Stat. 1338, governs when and how financial institutions may share personally identifiable financial information with nonaffiliated third parties. Among other things, GLBA directed financial institutions to provide a reasonable means for a customer or consumer to opt out prior to disclosing nonpublic personal information to nonaffiliated third parties.
 - a. Since Comcast’s privacy notice reserves to Comcast the unrestricted ability to disclose a subscriber’s personal bank account numbers, credit card numbers, credit history, social security number, etc. to unaffiliated third parties without subscriber consent, in what manner would Comcast’s policy protect a subscriber who has acted to restrict a financial institution’s disclosure of the same information to nonaffiliated third parties and similarly wishes to restrict Comcast’s disclosure of the same information?
 - b. Please explain Comcast’s views as to the business reasons and rationale for Comcast reserving the right to disclose to outsiders personally identifiable information that a subscriber may strongly object to Comcast disclosing, particularly in a situation where the subscriber’s own financial institution may be prohibited from disclosing the same information.
5. Applicable federal privacy provisions, 47 U.S.C. 551(e), require Comcast to destroy all subscriber PII if the information is no longer necessary for the purpose for which it was collected and there are no pending requests from the subscriber or orders (e.g. a court order) in place. Comcast’s policy provides that Comcast will maintain “*most, if not all*” PII during a subscriber’s tenure, and “*generally will destroy the information*

after a reasonable period of time has elapsed following the termination” of the subscriber account. Our questions are as follows:

- a. What is Comcast’s practice in MHCRC franchise areas regarding the chronological length of the “reasonable period of time” referred to in the statute?
 - b. What limitation on the destruction of such information is intended by Comcast’s use of the term “generally”?
 - c. What specific PII falls outside the scope of Comcast’s destruction of PII following account termination?
 - d. What about PII Comcast may already have disclosed to third parties, i.e. does Comcast have arrangements with its affiliates, or unaffiliated third parties, to destroy the information in turn?
6. As mentioned, we continue to receive complaints from subscribers who have contacted Comcast’s 1-800-COMCAST number to ‘opt out’ of Comcast sharing their name and address with third parties and have received contradictory or inconsistent information about Comcast’s implementation of this procedure. We have also received questions about whether the revised Comcast subscriber privacy notice has been prepared in appropriate translation for distribution to non-English speaking subscriber households.
- a. What specific information is Comcast providing to subscribers in MHCRC franchise areas who contact Comcast via the 1-800-COMCAST number to ‘opt out’?
 - b. Is there a procedure in place to ensure Comcast customer service representatives (CSRs) provide uniform and consistent information to such subscribers?
 - c. Are calls to the 1-800-COMCAST number for ‘opt out’ purposes handled by locally-based Comcast CSRs or by CSRs elsewhere?
 - d. If CSRs outside the Oregon/Washington system respond to such calls, what access do they have to subscriber PII in MHCRC franchise areas, and what specific technical steps are taken to ensure that the subscriber name and address is removed from all data provided by Comcast to third parties? Also, assuming that CSRs outside the system handle such calls, what steps are taken to ensure that subscriber data maintained at the local system level reflects the ‘opt out’ for purposes of any subscriber PII otherwise shared or sold locally (i.e. within the Oregon/Washington system)?
 - e. Will Comcast allow, or consider allowing its subscribers in MHCRC franchise areas to ‘opt out’ of any Comcast disclosure to third parties of other highly sensitive PII (such as a subscriber’s email address, telephone number, social security number, driver’s license number, bank account number, credit card numbers, credit history and other similar information)?
 - f. Under Comcast procedures, can a subscriber’s name and address, or other subscriber PII that has been released by Comcast, be retrieved and deleted on behalf of a subscriber who has opted out after Comcast has released the information to an unaffiliated third party? To a Comcast affiliate or subsidiary?
 - g. What non-English language versions of Comcast’s revised subscriber privacy policy are available, and what steps has Comcast taken to ensure distribution of the correct version to non-English-speaking households in MHCRC areas concurrent with English-speaking households?

These are the initial questions we have at present. We will forward any additional questions as our analysis continues, and we may have followup questions once we hear from you.

We would appreciate your response to this letter by July 25, 2003. This should allow sufficient time for additional analysis and followup in advance of any actions by the MHCRC at the scheduled MHCRC meeting in September.

Sincerely,

David C. Olson

cc: MHCRC, Ben Walters, Kevin Bell