



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

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October 23, 2015

SENT VIA OVERNIGHT MAIL AND FAX TO 212 384 8700

Marc Lawrence-Apfelbaum, Esq.
Executive Vice President, General Counsel and Secretary
Time Warner Cable Inc.
60 Columbus Circle
New York, NY 10023

Re: New York Office of Attorney General Inquiry Concerning Broadband Internet Speeds

Dear Mr. Lawrence-Apfelbaum:

Time Warner Cable Inc. (“TWC”) advertises Internet plans to New York customers at upload and download speeds of up to a specified rate (e.g., “10/1 Mbps”). It also advertises various premium options, such as its “Extreme” and “Ultimate” offerings, whereby for a higher monthly fee, the consumer is promised even higher speeds and better performance. For example, TWC’s higher priced “Ultimate 100” broadband service promises customers “ultra-fast speeds” that they may use to “[u]pload large files, enjoy power gaming and streaming multiple videos simultaneously.”¹

This Office is concerned that, for reasons substantially within TWC’s control, consumers may not be experiencing the speeds advertised. We are also concerned that those paying for premium options (“Ultimate 300” and “Extreme”) may not experience proportional increases in experienced speeds.

¹ Time Warner Cable, *High-Speed Internet Speeds and Prices*, <http://www.timewarnercable.com/content/twc/en/plans-packages/internet/internet-service-plans.html/> (last visited Oct. 23, 2015) (mouse over “100/10 Mbps” to see the quoted text).

Our concerns can be placed in two groups. First, that the speeds made available over the last-mile (between the home and cable headend) may deviate far enough from the speeds advertised to render the advertising deceptive. Second, that the impact of technical and business decisions made at the point of interconnection between TWC and other networks may so affect end-to-end throughput that the speeds are not what was promised. In this respect, we are specifically concerned about disruptions to the consumer experience caused by interconnection disputes, and also the possibility that interconnection arrangements may in some instances render irrelevant any benefit of paying for a “premium” option.

Pursuant to New York Executive Law § 63(12) and General Business Law Article 22-A, the Attorney General has the authority to commence legal action to enjoin deceptive, fraudulent or illegal business practices, and to obtain restitution, penalties and costs whenever a business is engaged in deception, fraud or illegality. The Attorney General is also authorized to issue subpoenas to assist him in investigating any activity that may be deceptive, fraudulent or illegal. Consequently, we are gathering information to enable us to make a determination of what action, if any, is warranted.

In connection with our inquiry into this matter, we request your cooperation in providing written responses to the requests below, as well as any supporting or specifically requested documents, by November 8, 2015. Following review of your responses and documents, we will invite you to our offices for a meeting to discuss TWC’s marketing practices and services in connection with broadband speed.

Unless otherwise stated, the relevant time period for the requests listed below is from January 1, 2011 to the present.

Requests

A. General

1. On a month-by-month basis, how many New York TWC broadband customers has TWC had from January 1, 2011 to the present, broken down by levels of service (Extreme, Ultimate, etc.)?
2. Provide representative copies of all disclosures made to actual or potential TWC broadband customers concerning actual or expected Internet speeds since January 1, 2013.
3. For every broadband Internet plan offered by TWC, provide all substantiation for your claims that customers who purchase any broadband Internet plan will, in practice, experience the advertised download/upload Internet speeds. For example, for customers who purchase TWC’s “Ultimate 300” plan, provide all substantiation for your claim that such customers will experience download/upload speeds of “up to 300/20 Mbps.” Include a discussion of the effect of interconnection arrangements on these claims.

4. Provide copies of all documents related to TWC broadband customer complaints related to discrepancies or perceived discrepancies between expected and actual Internet speeds, including but not limited to TWC's responses to the complaints.
5. Provide all documents related to any analysis, study, survey, testing, or review of quality of experience, quality of service, or Internet speeds experienced by TWC broadband customers.
6. Provide all documents related to any training of TWC's employees, customer service representatives, spokespersons, or other agents with respect to representations and/or advertising regarding TWC's Internet speeds.

B. Last Mile

1. Provide documents sufficient to show last-mile broadband speeds experienced by TWC's New York State broadband customers, including but not limited to documents sufficient to show the speeds experienced by different classes of broadband customers during various times of the day, and documents sufficient to show last-mile broadband speeds experienced by TWC's New York State broadband customers expressed as a percentage of the maximum advertised speeds for the rate plan subscribed to by such customers.
2. Explain how TWC provisions or manages differently the last-mile service made available to differing levels of customers (such as an "Ultimate" versus an "Extreme" customer) with respect to bandwidth, latency, or packet loss, or other performance characteristics. Provide any documents related to internal technical or business policies related to the last-mile difference between classes of customers.

C. Interconnection

1. Provide a list and produce a copy of all Internet interconnection agreements (and amendments), formal or informal, that TWC has entered into with any person (including content delivery networks, application providers, broadband Internet access service providers and Internet backbone service providers) that are currently in effect or were implemented at any time. Indicate which arrangements are settlement-free, and which are paid.
2. Identify each instance, since January 1, 2013, when an interconnection partner requested augmentation of interconnection capacity that you did not implement within ninety days; and describe why you did not augment capacity.
3. For each week since January 1, 2013, for your twenty largest interconnection partners, provide total throughput capacity, utilization metrics, packet loss records, and total traffic volume. Provide any measures of actual throughput speeds experienced by users through these partners.

4. Explain whether TWC's interconnection policies or agreements might differentially affect the experienced performance of different types of customers (for example, an "Ultimate" as opposed to an "Extreme" consumer).
5. Describe and provide all documents sufficient to show the company's policies with respect to upgrading, declining to upgrade, or downgrading interconnections between the company and any other network or person.

Please contact me at (212) 416-8262 if you have any questions. We look forward to hearing from you.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim Wu". The signature is stylized and cursive.

Tim Wu
Senior Enforcement Counsel