

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3
4 UNITED STATES OF AMERICA,
Plaintiff,

5 -against-

6 TIME WARNER CABLE INC.,
7 Defendant.

Case No. 13 Civ. 8998 (AJN)

8
9 **STIPULATED ORDER FOR PERMANENT INJUNCTION AND**
10 **CIVIL PENALTY JUDGMENT**

11 Plaintiff, the United States of America, acting upon notification and
12 authorization to the Attorney General by the Federal Trade Commission
13 (“Commission”) filed its Complaint for permanent injunction, civil penalties, and
14 other equitable relief in this matter, pursuant to Sections 13(b) and 16(a)(1) of the
15 Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 56(a)(1).
16 Defendant has waived service of the summons and the Complaint. Plaintiff and
17 Defendant stipulate to the entry of this Order for Permanent Injunction and Civil
18 Penalties to resolve all matters in dispute in this action between them.

19 THEREFORE, IT IS ORDERED as follows:

20 **FINDINGS**

- 21 1. This Court has jurisdiction over this matter.
- 22 2. The Complaint charges that Defendant participated in acts or practices
23 in violation of Sections 5(a)(1), of the Federal Trade Commission Act (“FTC
24 Act”), 15 U.S.C. § 45(a)(1) and Section 621(a) of the Fair Credit Reporting Act

1 (“FCRA”), 15 U.S.C. § 1681s(a), in connection with the provision of cable
2 television, internet, and other services.

3 3. Defendant neither admits nor denies any of the allegations in the
4 Complaint, except as specifically stated in this Order. Only for purposes of this
5 action, Defendant admits the facts necessary to establish jurisdiction.

6 4. Defendant waives any claim that it may have under the Equal Access
7 to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through
8 the date of this Order, and agree to bear their own costs and attorney fees.

9 5. Defendant and Plaintiff waive all rights to appeal or otherwise
10 challenge or contest the validity of this Order.

11 DEFINITIONS

12 For purposes of the Order, the following definitions shall apply:

13 1. “Defendant” shall mean Time Warner Cable Inc. and its successors
14 and assigns.

15 2. “FCRA” shall mean the Fair Credit Reporting Act, 15 U.S.C. § 1681
16 *et. seq.*

17 3. “Risk-Based Pricing Notice” shall mean a notice provided to
18 Consumers as set forth in and required by the Risk-Based Pricing Rule.

19 4. “Risk-Based Pricing Rule” shall mean the rule regarding Duties of
20 Users Regarding Risk-Based Pricing, 16 C.F.R. § 640.1 *et seq.*, issued pursuant to
21 Section 615(h) of the FCRA, 15 U.S.C. § 1681m(h), and republished at 12 C.F.R.
22 § 1022.70 *et seq.*

23 5. The definitions set forth in the FCRA, 15 U.S.C. §§ 1681a, *et seq.*,
24 shall apply.

25

1 **ORDER**

2 **I. MONETARY JUDGMENT FOR CIVIL PENALTY**

3 IT IS ORDERED that:

4 A. Judgment in the amount of one million nine hundred thousand dollars
5 (\$1,900,000) is entered in favor of Plaintiff against Defendant as a civil penalty,
6 pursuant to Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A).

7 B. Defendant is ordered to pay Plaintiff, by making payment to the
8 Treasurer of the United Stations, one million nine hundred thousand dollars
9 (\$1,900,000), which, as Defendant stipulates, its undersigned counsel holds in
10 escrow for no purpose other than payment to Plaintiff. Such payment must be
11 made within 7 days of entry of this order by electronic fund transfer in accordance
12 with instructions previously provided by a representative of Plaintiff.

13 C. Defendant relinquishes dominion and all legal and equitable right,
14 title, and interest in all assets transferred pursuant to this Order and may not seek
15 the return of any assets.

16 **II. INJUNCTION AGAINST RISK-BASED PRICING RULE**
17 **VIOLATIONS**

18 IT IS FURTHER ORDERED that Defendant, and its officers, agents,
19 servants, employees, and attorneys, and all other persons or entities in active
20 concert or participation with any of them, who receive actual notice of this Order,
21 whether acting directly or indirectly, are hereby permanently restrained and
22 enjoined from:

23 A. Failing to comply with Section 615(h) of the FCRA, 15 U.S.C.
24 § 1681m(h), and the Risk-Based Pricing Rule by failing to:
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1. Provide to a consumer a Risk-Based Pricing Notice where Defendant:
 - a) Uses a consumer report in connection with an application for, or a grant, extension, or other provision of, credit to that consumer that is primarily for personal, family, or household purposes, and
 - b) Based in whole or in part on the consumer report, grants, extends, or otherwise provides credit to that consumer on material terms that are materially less favorable than the most favorable material terms available to a substantial proportion of consumers from or through Defendant.
2. Include in a Risk-Based Pricing Notice:
 - a) A statement that a consumer report (or credit report) includes information about the consumer's credit history and the type of information included in that history;
 - b) A statement that the terms offered, such as the annual percentage rate, deposit, or pre-payment requirements, have been set based on information from a consumer report;
 - c) A statement that the terms offered may be less favorable than the terms offered to consumers with better credit histories;
 - d) A statement that the consumer is encouraged to verify the accuracy of the information contained in the consumer report and has the right to dispute any inaccurate information in the report;

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- e) The identity of each consumer reporting agency that furnished a consumer report used in the credit decision;
- f) A statement that Federal law gives the consumer the right to obtain a copy of a consumer report from the consumer reporting agency or agencies identified in the notice without charge for 60 days after receipt of the notice;
- g) A statement informing the consumer how to obtain a consumer report from the consumer reporting agency or agencies identified in the notice and providing contact information (including a toll-free telephone number, where applicable) specified by the consumer reporting agency or agencies;
- h) A statement directing consumers to the Web site of the Consumer Financial Protection Bureau to obtain more information about consumer reports; and
- i) If a credit score of the consumer to whom a person grants, extends, or otherwise provides credit is used in setting the material terms of credit:
 - (1) A statement that a credit score is a number that takes into account information in a consumer report, that the consumer's credit score was used to set the terms of credit offered, and that a credit score can change over time to reflect changes in the consumer's credit history;
 - (2) The credit score used by the person in making the credit decision;

- 1 (3) The range of possible credit scores under the
2 model used to generate the credit score;
- 3 (4) All of the key factors that adversely affected the
4 credit score, which shall not exceed four key factors,
5 except that if one of the key factors is the number of
6 enquiries made with respect to the consumer report, the
7 number of key factors shall not exceed five;
- 8 (5) The date on which the credit score was created;
9 and
- 10 (6) The name of the consumer reporting agency or
11 other person that provided the credit score.

12 **III. ORDER ACKNOWLEDGMENTS**

13 IT IS FURTHER ORDERED that Defendant obtain acknowledgments of
14 receipt of this Order:

15 A. Defendant, within 7 days of entry of this Order, must submit to the
16 Commission an acknowledgment of receipt of this Order sworn under penalty of
17 perjury.

18 B. For 3 years after entry of this Order, Defendant must deliver a copy of
19 this Order to: (1) all principals, officers, directors, LLC managers and members,
20 and other management-level personnel who have decision-making authority with
21 respect to the subject matter of this order or with respect to consumer credit
22 evaluation or granting; and (2) any business entity resulting from any change in
23 structure as set forth in the Section titled Compliance Reporting. Delivery must
24 occur within 7 days of entry of this Order for current personnel. To all others,
25 delivery must occur before they assume their responsibilities.

1 C. From each individual or entity to which Defendant delivered a copy of
2 this Order, Defendant must obtain, within 30 days, a signed and dated
3 acknowledgment of receipt of this Order.

4 **IV. COMPLIANCE REPORTING**

5 IT IS FURTHER ORDERED that Defendant shall make timely submissions
6 to the Commission:

7 A. One year after entry of this Order, Defendant must submit a
8 compliance report, sworn under penalty of perjury.

9 1. Defendant must: (a) identify the primary physical, postal, and
10 email address and telephone number, as designated points of contact,
11 which representatives of the Commission and Plaintiff may use to
12 communicate with Defendant; (b) identify all of Defendant's
13 businesses that use consumer reports in providing products or services
14 primarily for personal, family, or household purposes by all of their
15 names, telephone numbers, and physical, postal, email, and Internet
16 addresses; (c) describe the activities of each such business, including
17 the goods and services offered, and the means of advertising,
18 marketing, and sales; (d) describe in detail whether and how
19 Defendant is in compliance with each Section of this Order; and (e)
20 provide a copy of each Order Acknowledgment obtained pursuant to
21 this Order, unless previously submitted to the Commission;

22 B. For 10 years after entry of this Order, Defendant must submit a
23 compliance notice, sworn under penalty of perjury, within 14 days of any change
24 in the following: 1) any designated point of contact; or 2) the structure of
25 Defendant or any entity that Defendant has any ownership interest in or controls

1 directly or indirectly that may affect compliance obligations arising under this
2 Order, including: creation, merger, sale, or dissolution of the entity or any
3 subsidiary, parent, or affiliate that engages in any acts or practices subject to this
4 Order.

5 C. Defendant must submit to the Commission notice of the filing of any
6 bankruptcy petition, insolvency proceeding, or any similar proceeding by or
7 against Defendant within 14 days of its filing.

8 D. Any submission to the Commission required by this Order to be
9 sworn under penalty of perjury must be true and accurate and comply with 28
10 U.S.C. § 1746, such as by concluding: "I declare under penalty of perjury under
11 the laws of the United States of America that the foregoing is true and correct.
12 Executed on: _____" and supplying the date, signatory's full name, title, and
13 signature; and

14 E. Unless otherwise directed by a Commission representative in writing,
15 all submissions to the Commission pursuant to this Order must be emailed to
16 DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to:
17 Associate Director for Enforcement, Bureau of Consumer Protection, Federal
18 Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The
19 subject line must begin: U.S. v. Time Warner Cable Inc. and, if available, the X
20 number.

21 **V. RECORDKEEPING**

22 IT IS FURTHER ORDERED that Defendant must create certain records for
23 10 years after entry of the Order, and retain each such record for 5 years.
24 Specifically, Defendant must create and retain the following records:

1 A. Accounting records showing the revenues from all goods and services
2 sold to consumers in transactions in which a consumer's consumer report or credit
3 score was considered.

4 B. For those transactions in which a consumer's consumer report or
5 credit score resulted in any increase in cost to the consumer, such as a deposit, pre-
6 payment, additional charge or higher price or other source of revenue to
7 Defendant, records showing: the total dollar value of the increased costs; an
8 exemplar of any Risk Based Pricing Notice sent to those consumers; and the
9 number of times each such Risk Based Pricing Notice was sent to consumers, if
10 any. Defendant need not maintain records identifying the consumers to whom
11 particular notices were sent.

12 C. Personnel records showing, for each person involved in Risk-Based
13 Pricing Notices, that person's name, address, and telephone numbers; job title or
14 position; dates of service; and, if applicable, the reason for termination;

15 D. Records of consumer complaints related to Defendant's use of
16 consumer reports or credit scores, whether received directly or indirectly, such as
17 through a third party, and any response; and

18 E. All records necessary to demonstrate full compliance with each
19 provision of this Order, including all submissions to the Commission.

20 **VI. COMPLIANCE MONITORING**

21 IT IS FURTHER ORDERED that, for the purpose of monitoring
22 Defendant's compliance with this Order:

23 A. Within 14 days of receipt of a written request from a representative of
24 the Commission or Plaintiff, Defendant must: submit additional compliance reports
25 or other requested information, which must be sworn under penalty of perjury;

1 appear for depositions; and produce documents for inspection and copying. The
2 Commission and Plaintiff are also authorized to obtain discovery, without further
3 leave of court, using any of the procedures prescribed by Federal Rules of Civil
4 Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.

5 B. For matters concerning this Order, the Commission and Plaintiff are
6 authorized to communicate directly with Defendant. Defendant must permit
7 representatives of the Commission and Plaintiff to interview any employee or other
8 person affiliated with Defendant who has agreed to such an interview. The person
9 interviewed may have counsel present.

10 C. The Commission and Plaintiff may use all other lawful means,
11 including posing, through its representatives, as consumers, suppliers, or other
12 individuals or entities, to Defendant or any individual or entity affiliated with
13 Defendant, without the necessity of identification or prior notice. Nothing in this
14 Order limits the Commission's lawful use of compulsory process, pursuant to
15 Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

16 **VII. RETENTION OF JURISDICTION**

17 IT IS FURTHER ORDERED that this Court retains jurisdiction of this
18 matter for purposes of construction, modification, and enforcement of this Order.

19
20 **SO ORDERED this _____ day of _____, 2013:**

21
22 _____
23 [name]
24 UNITED STATES DISTRICT JUDGE

1 SO STIPULATED AND AGREED:

2 FOR THE PLAINTIFF:
3 THE UNITED STATES OF AMERICA

4 PREET BHARARA
5 U.S. Attorney
6 Southern District of New York

7 
8 Assistant U.S. Attorney
9 Southern District of New York

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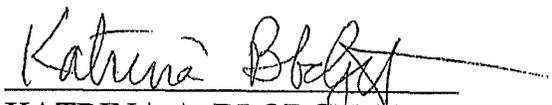
FOR THE FEDERAL TRADE COMMISSION



MANEESHA MITHAL
Associate Director, Division of Privacy and Identity Protection

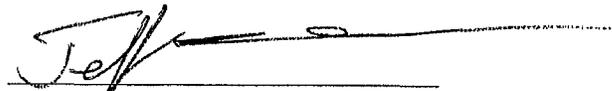


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