

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
All-In Pricing for Cable and Satellite) MB Docket No. 23-203
Television Service)
)

**COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS**

I. INTRODUCTION

In its Notice of Proposed Rulemaking in the above-captioned proceeding, the Commission proposes to enhance pricing transparency by requiring cable operators and direct broadcast satellite (DBS) providers to specify the “all-in” price for service in their promotional materials and on subscribers’ bills.¹ The proposal would require cable operators and DBS providers to clearly and prominently display the total cost of video programming service to give customers a transparent and accurate reflection of their subscription payment obligations, eliminate unexpected fees, and facilitate consumers’ comparison shopping. As discussed below, NAB agrees with the FCC’s proposal and urges the Commission to require cable and DBS providers to provide an “all-in” price on promotional materials and bills. Given the public interest benefits of price transparency regardless of platform, NAB also urges the Commission to consider expanding the requirements proposed in the Notice to telecommunications carriers that offer multichannel video programming distribution (MVPD) service.²

¹ *All-In Pricing for Cable and Satellite Television Service*, Notice of Proposed Rulemaking, MB Docket No. 23-203, FCC No. 23-52 (rel. June 20, 2023) (Notice).

² Notice at ¶¶ 3, 15.

II. THE COMMISSION'S PROPOSAL WILL IMPROVE THE TRANSPARENCY AND ACCURACY OF MVPD BILLING, ADVERTISING AND OTHER PROMOTIONS

As Congress, the Commission and consumer advocates have correctly observed, prospective and existing MVPD consumers face confusing fees on promotional materials and bills, including what may be labeled a “broadcast TV fee” or “broadcast TV surcharge.”³ Congress’s concerns about the fees led it to adopt certain consumer protections and transparency requirements for MVPDs as part of the TVPA.⁴ The MVPD-imposed fees raise multiple accuracy and transparency concerns. First, they are itemized and identified in a manner that, whether done intentionally or not, may make them appear incorrectly to be regulatory fees or taxes. As the Notice observes, the categorization of these fees “can be potentially misleading and interpreted as a government-imposed tax or fee, instead of a company-imposed service fee increase.”⁵ Second, they single out certain programming,

³ Notice at ¶ 4, *citing* H.R. Rep 116–329, at 6 (2019) (in adopting the Television Viewer Protection Act of 2019 (TVPA), Congress expressed concern that consumers encounter “unexpected and confusing fees when purchasing video programming,” including “fees for broadcast TV,” and noted that the practice of charging these fees began in the late 2000s).

⁴ 47 U.S.C. § 562. Section 642 provides the following consumer protections: (1) before entering into a contract with a consumer, an MVPD must provide the consumer the total monthly charge for MVPD service, including any related fees; (2) not later than 24 hours after contracting with a consumer, an MVPD must provide the total monthly charge that a consumer can expect to pay and permit the consumer to cancel without fee or penalty for 24 hours; (3) MVPDs’ electronic bills must include an itemized statement that breaks down the total amount charged for MVPD service and the amount of all related taxes, administrative fees, equipment fees or other charges, the termination date of the contract for service between the consumer and the provider, and the termination date of any applicable promotional discount; and (4) MVPDs and fixed broadband Internet service providers must not charge a consumer for using their own equipment and also must not charge lease or rental fees to subscribers to whom they do not provide equipment. *Id.*

⁵ Notice at ¶ 2. In addition to the manner in which the fees are presented on bills and in promotional materials, some MVPDs have explicitly described their broadcast TV fees as fees “to recover costs of complying with its governmental obligations.” See, e.g., Opposition to Petitions for Declaratory Ruling, Enforcement Order and Further Relief of Charter Communications, Inc. (Charter), MB Docket No. 18-91 and 18-101 (Apr. 26, 2018) at 19 (Charter Opposition).

including broadcast programming, but fail to itemize or identify the costs of all other video programming.⁶ NAB can identify no consumer-focused rationale for distinguishing retransmission consent payments from all other inputs into the programming packages MVPDs sell to the public, and the practice can lead the public erroneously to believe that broadcasters are somehow uniquely responsible for MVPD bills. Third, there is no way for anyone to know whether the itemized “fees” appearing in advertisements and on consumer bills correlate to any actual retransmission consent payments. It is unclear what the fees cover or how they are established, and the methods of calculating and publishing the fees likely varies significantly among MVPDs.⁷

⁶ Notice at ¶ 6. See also, Verified Answer and Counterclaim of CMG Media Corporation, MB Docket No. 22-148 (Apr. 21, 2022) at 24-25 (“As a consumer protection matter, ‘broadcast surcharge’ line items are fundamentally dishonest as they are typically used. It is common knowledge that programming acquisition costs are a huge part of the cost of operating an MVPD system. As a cost to MVPDs, acquisition of broadcast programming is no different than acquisition of any other programming, and historically cable operators have paid far more for many thinly-viewed non-broadcast programming networks than it paid for highly-viewed broadcast stations.”).

⁷ For example, on its consumer-facing website, Charter currently states that its broadcast TV fee is “a pass-through fee reflecting charges from local broadcast or affiliate TV stations.” See Spectrum Support, Broadcast TV Surcharge, available at: <https://www.spectrum.net/support/account-and-billing/broadcast-tv-surcharge> (viewed Jul. 24, 2023). A consumer reading that might believe that the fee reflects exactly what Charter is paying for carriage of the consumer’s specific local stations. But in filings with the Commission, Charter has explained that “the Broadcast TV Surcharge is imposed on a national, per subscriber basis.” See Charter Opposition at 17. Another potentially confusing issue for consumers is that MVPDs do not discount or refund broadcast TV fees if they do not successfully reach retransmission consent agreements with broadcasters and are not carrying all of the local stations that normally appear in a viewer’s channel line-up. See, e.g, Petition for Declaratory Ruling, Enforcement Order, and Further Relief of Crescent City, MB Docket No. 18-101 (April 4, 2018) (urging the Commission to enforce sections 76.1603 and 76.1619 of its rules because of Charter’s failure to notify consumers and municipalities of service changes and continued billing of a monthly broadcast TV fee even while certain broadcast programming was not available to Charter subscribers). It is also unclear whether, at the inception of this practice, MVPDs truly itemized broadcast fees already being paid by consumers or simply tacked on new charges. For example, if a broadcast TV fee of \$5.99 is

Fourth, and most importantly, these fees can significantly increase the advertised and billed price of MVPD service. One Consumer Reports study determined that MVPD-imposed fees added an average of \$37 to a consumer's monthly pay TV bill, which is the equivalent of 24 percent of the base bill amount.⁸ The Notice observes that MVPD websites, advertisements, and other promotional materials may advertise a top-line price that does not prominently identify the mandatory programming costs that make up the service until the customer signs up for service. For example, promotional materials may use a different font size (often in fine print) and separate from the proclaimed monthly subscription fee amount the extra "fees" designated by the provider that consumers also will need to pay to receive video programming.⁹ Comments in the record identifying actual MVPD advertisements document the challenges faced by consumers trying to navigate these ads.¹⁰

While the TVPA was intended to improve MVPD billing and advertising practices, Consumer Reports concluded in its comments on the status of MVPD consumer practices several months after TVPA implementation that "the MVPD practice of separating out

an *itemization* and not an addition, a consumer's total bill would not increase by \$5.99, but would either stay the same (or increase by some lesser amount).

⁸ Consumer Reports Reply Comments, MB Docket No. 21-501 (Mar. 7, 2022) (CR Reply) at 2.

⁹ Notice at ¶ 4. See also CR Reply at 2 (Many fees and surcharges "are not included in the advertised price, and are instead buried in the fine print of the service plan. As part of our work, CR examined hundreds of MVPD bills and determined that additional charges of all types amount to an additional 33 percent mark-up over the base price of service.").

¹⁰ See e.g., Comments of Truth in Advertising, Inc., MB Docket No. 23-303 (Jul. 24, 2023) at 5 (describing a Charter advertisement for an MVPD package prominently featuring an advertised price of \$29.99 and stating that "your local broadcast channels are *included*," despite consumers later learning they still had to pay a separate \$22.20 "broadcast surcharge").

operating costs as cleverly-named fees remains firmly in place, and company-imposed fees continue to rise in price.”¹¹ It is past time for the Commission to address this long-standing concern.¹²

For these reasons, NAB supports the Notice’s proposal that cable operators and DBS providers aggregate the cost of the video programming service (that is, any and all amounts that the cable operator or DBS provider charges the consumer for video programming, including for broadcast retransmission consent, regional sports programming, and other programming-related fees) as a prominent single line item on subscribers’ bills and in promotional materials, if they choose to advertise a price in those promotional materials. Approval of this proposal should improve consumer access to accurate information about the true costs of cable and DBS services. Current advertising and billing methods used by MVPDs can lead consumers to believe that retransmission consent fee payments are somehow different from all the other inputs into MVPDs’ programming packages or that retransmission consent payments to broadcasters constitute a tax or governmental regulatory fee. MVPDs pay for a variety of programming, and there is no reason payments to broadcasters should be singled out in consumer advertising or billing as a special “fee” or “surcharge.” NAB also believes the proposed rule would facilitate consumers’ ability to

¹¹ CR Reply at 2.

¹² See, e.g., *Inside the Box: Customer Service and Billing Practices in the Cable and Satellite Industry*, U.S. Senate Permanent Subcommittee on Investigations, Minority Staff Report (June 23, 2016), at 1, 22, 24 (noting that creating new line items on their bills for broadcast and sports programming allowed cable/satellite providers to charge customers for it in a way that did not affect the base price of their programming packages, and citing the concerns of multiple consumer advocacy groups and local regulators about these providers’ “practice of adding fees for programming already included in the package”).

comparison shop across pay TV services. NAB has long supported increasing consumer choice in the MVPD marketplace¹³ and supports the adoption of the rule to further that goal.

The Commission also seeks comment on whether it should consider applying the same requirements to MVPDs other than cable and DBS.¹⁴ NAB understands that telecommunications carriers have, at times, also separately listed “fees” that actually constitute part of the programming packages consumers must pay for MVPD service.¹⁵ To the extent that the practice is or can be used by such MVPDs, the consumer harms arising from confusing and potentially misleading advertising and billing still need to be addressed. To avoid such consumer harms, NAB urges the Commission to consider applying the same requirements to these MVPDs.

III. CONCLUSION

For the foregoing reasons, the Commission should adopt its proposed all-in pricing rule. The proposed rule will improve consumers’ access to accurate, transparent information about the costs of potential or existing MVPD service and facilitate comparison shopping.

¹³ See, e.g., NAB Comments, MB Docket No. 16-42 (Apr. 22, 2016) at 1, 21 (expressing support for FCC efforts to increase consumer choice and spur development of a competitive market for consumer navigation devices); NAB Comments MB Docket No. 14-261 (Mar. 3, 2015) at 2 (discussing the value of fostering competitive alternatives to traditional MVPDs); NAB Comments, MB Docket No. 10-71 (May 27, 2011) at 13-15 (urging the Commission to ensure that early termination fees do not undermine consumer choice in the MVPD marketplace).

¹⁴ Notice at ¶¶ 3, 15.

¹⁵ See, e.g., AT&T, *Learn about the Broadcast TV Fee*, available at: [https://tdstelecom.com/tvrates.html](https://www.att.com/support/article/my-account/KM1373896/(viewed Jul. 27, 2023)(AT&T U-Verse, which continues to provide service to legacy customers, appears to charge a broadcast TV fee); TDS Telecom, <i>Information for TV Customers</i>, available at: <a href=) (viewed Jul. 31, 2023)(listing a \$19.04 “broadcast retransmission fee”); altafiber, *What are the additional charges and fees on my bill?*, available at: <https://www.altafiber.com/help-center/account-billing/understanding-managing-my-bill/what-are-the-additional-charges-and-fees-on-my-bil> (viewed Jul. 31, 2023)(describing a “TV Broadcast Fee”).

The proposed rule also will reduce the chance that consumers are misled into believing that particular inputs into MVPD packages, such as broadcast signals, are government required or represent the bulk of MVPDs' programming costs. And given the consumer benefits, the Commission should further consider adopting the same requirement for other MVPDs.

Respectfully submitted,

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