Before the Federal Trade Commission Washington, D.C. 20580

)	
Trade Regulation Rule on Unfair)	
or Deceptive Fees)	No. R207011
)	
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COMMENTS OF THE NATIONAL ASSOCIATION OF BROADCASTERS

I. INTRODUCTION

The National Association of Broadcasters (NAB)¹ hereby submits brief comments in response to the Federal Trade Commission's rulemaking notice proposing rules that would prohibit companies from omitting mandatory fees from advertised prices and misrepresenting the nature and purpose of fees.² The NPRM discusses and solicits comment on consumer fee practices affecting multiple industries, including "telecommunications" (defined to include internet, television, and telephone services).³ Below, NAB discusses certain fees imposed by multichannel video program distributors (MVPDs) which mislead and confuse consumers.

¹ NAB is the nonprofit trade association that advocates on behalf of free local radio and television stations and broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the courts.

² Trade Regulation Rule on Unfair or Deceptive Fees, Notice of Proposed Rulemaking, No. R207011, 88 Fed. Reg. 77420 (2023) (NPRM).

³ NPRM at 77427.

II. MVPDS ENGAGE IN ADVERTISING AND BILLING PRACTICES THAT HARM CONSUMERS AND IMPEDE COMPETITION

As the NPRM and commenters have highlighted, prospective MVPD consumers routinely "are confronted with advertised rates that do not include mandatory fees," including broadcast programming fees, that are not disclosed until well into the consumer's buying process and are described "in ways that consumers find difficult to understand."

MVPDs pay for a variety of inputs into their video programming packages that they resell to consumers, including fees for carriage of non-broadcast programming networks and "retransmission consent" payments for carriage of local television broadcast stations.⁵

Despite selling video programming packages that are advertised as including local broadcast stations, MVPDs often advertise one price for those packages and then tack on a large, separate "broadcast TV fee," "broadcast TV surcharge," or "retransmission fee" which purportedly reflects their retransmission consent payments made to local broadcasters.

According to Consumer Reports, cable company-imposed fees add what amounts to an average 24 percent surcharge on top of the advertised price.⁶ This practice is extremely common and used by large and small MVPDs alike. For example:

⁴ NPRM at 77427; see *also* Comments of Consumer Reports, FTC-2022-0069-6099, at 2, 5-7 (Feb. 8, 2023) (Consumer Reports Comments) (describing the cable television industry as "the worst offender for charging hidden junk fees" and stating that cable television consumers "are facing a rise and proliferation of company-imposed fees that are buried in the fine print and aren't clearly disclosed.").

⁵ Just as pay TV providers pay fees for the rights to carry non-broadcast programming (e.g., the programming of cable networks like TBS, TNT and FX), they pay fees for the rights to retransmit the signals of local broadcast TV stations, which include both national broadcast network programming (e.g., ABC, CBS, FOX, NBC, Telemundo, Univision, etc.) and the programming created by local stations (e.g., local newscasts).

⁶ Consumer Reports Comments at 2.

- Charter Communications (Charter) advertises a Spanish and English language programming package containing 140+ channels for \$39.99/month. The channel lineup includes local broadcast channels. However, once the consumer selects the package, a \$25.75 broadcast surcharge appears, upping the total to \$65.74.7
- HBC, a smaller operator serving consumers in Minnesota and Wisconsin, advertises a "Basic TV" subscription package for a price of only \$29.99/month. In three different places on its website, HBC makes clear that this package includes local stations, specifically mentioning that the subscriber will receive: "ABC, CBS, C-SPAN, CW+, FOX, PBS, NBC and more." Once a prospective subscriber puts that package in their cart, however, additional fees including a \$29.80 "retransmission fee" appear, more than doubling the price of that package to \$62.86.8
- Similarly, Franklin Plant Board (FPB), a smaller operator serving consumers in Kentucky, advertises on its website prices as low as \$12.79/month for a package that includes local broadcast channels, but fine print at the bottom of the page states that "An additional \$27.25 monthly retrans surcharge will be added to your monthly FPB Cable bill."9

No consumer would expect MVPD packages claiming to include local broadcast channels to cost *more than double* the advertised price due to large fees added for those very same stations. The lack of forthright pricing information makes it more difficult for consumers to compare MVPD packages in potential detriment to competition in the pay TV industry, and may well lead consumers to significantly underestimate the total cost of an MVPD service.

Current MVPD practices make it difficult for consumers to accurately assess the value delivered by an MVPD. In addition to omitting fees from advertised prices, MVPDs' descriptions of broadcast programming fees tend to mislead consumers in several ways. First, the practice of singling out certain programming, including broadcast programming,

⁷ See Attachment A.

⁸ See Attachment B.

⁹ See Attachment C.

while failing to itemize or identify the costs of all other video programming is misleading. Consumers rightly expect pay TV packages that advertise local channels to have the cost of such channels reflected in the base package price. There simply is 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 consumers erroneously to believe that broadcasters are somehow uniquely responsible for the cost of their pay TV service.

Additionally, broadcast programming fees often appear incorrectly to be regulatory fees or taxes rather than a company-imposed fee. Some MVPDs even offer explanations of the fees that reinforce the suggestion that they are required by the government. For example, Charter references the "government" and/or "federal law" nine times in its broadcast programming fee FAQs, claims that it treats broadcast programming differently than cable networks because "[f]ederal law treats them differently," and states that changes to current law would result in Charter removing the additional broadcast charges. ¹⁰ It would be entirely reasonable for a consumer reading such (mis)information to believe mistakenly that the broadcast programming fee is mandated by the government. These confusing and misleading references to government requirements in connection with broadcast fees disserve both consumers and broadcasters. ¹¹

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¹⁰ See Charter d/b/a Spectrum, *Broadcast TV Surcharge: Frequently Asked Questions*, available at: https://www.spectrum.net/support/account-and-billing/broadcast-tv-surcharge (last visited Jan. 24, 2024).

¹¹ NTCA has claimed that broadcasters' confidentiality terms preclude transparent explanation of retransmission fees. See NPRM at 77427 (summarizing NTCA's comments). However, such terms do not require MVPDs to use unfair and deceptive drip pricing tactics to attract subscribers or to single out costs for the broadcast programming they resell in ways

III. CONCLUSION

MVPD advertising and billing practices that identify "broadcast TV" fees mislead and confuse consumers, baselessly single out broadcast programming, and make it difficult for consumers to comparison shop among MVPD services. The pay TV industry should cease engaging in these practices.

Respectfully submitted,

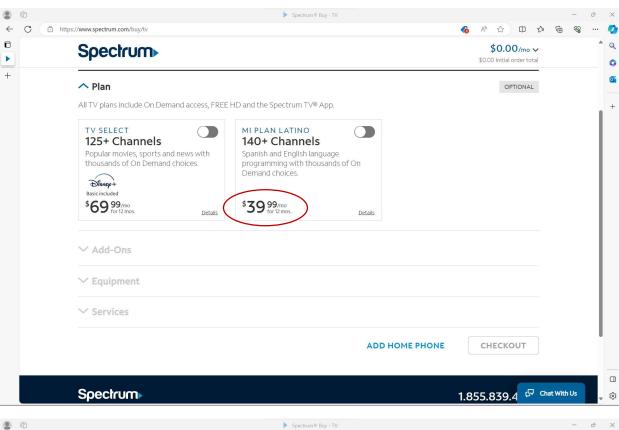
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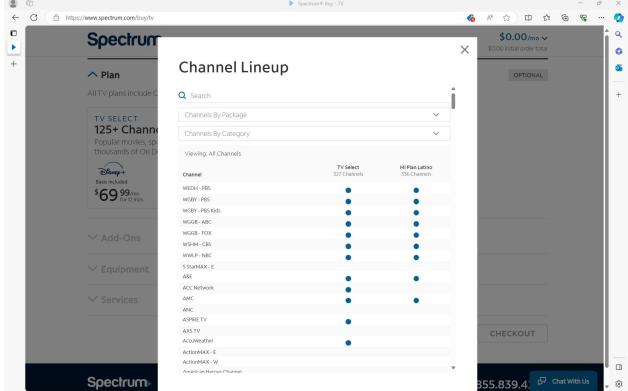
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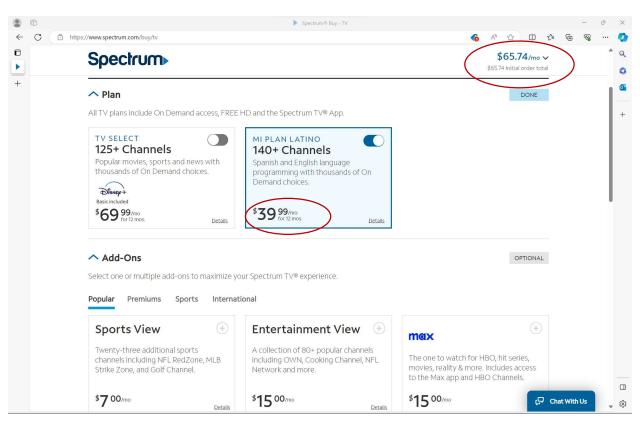
February 7, 2024

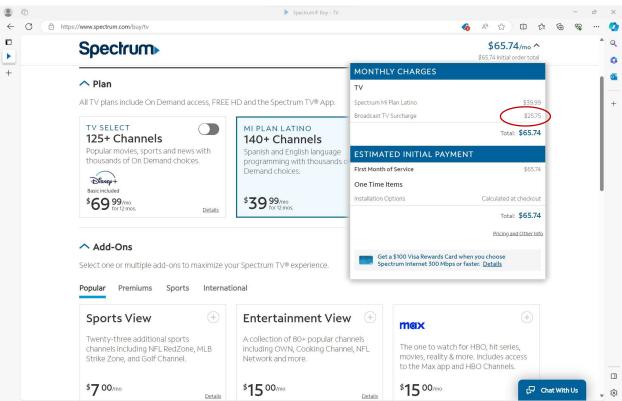
that confuse and mislead subscribers. Notwithstanding the FTC's lack of authority to require the disclosure of confidential pricing terms, such disclosure would do nothing to remedy the consumer harm caused by MVPDs' failure to disclose the true costs of their services in their advertised prices or by practices that mislead subscribers as to the nature and purpose of the fees that they are charged.

Attachment A

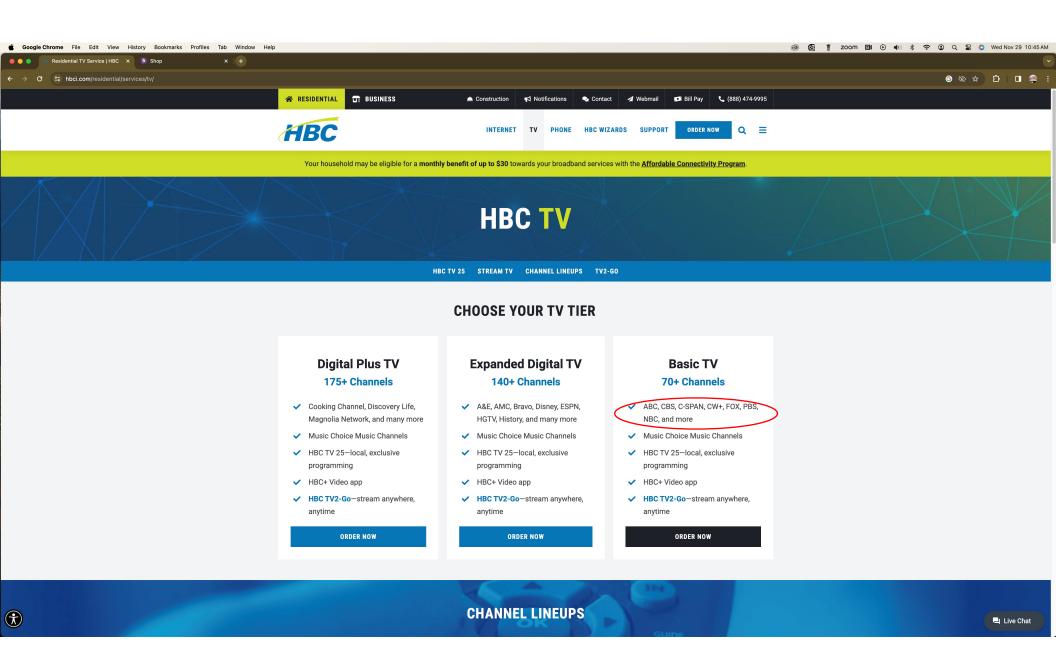


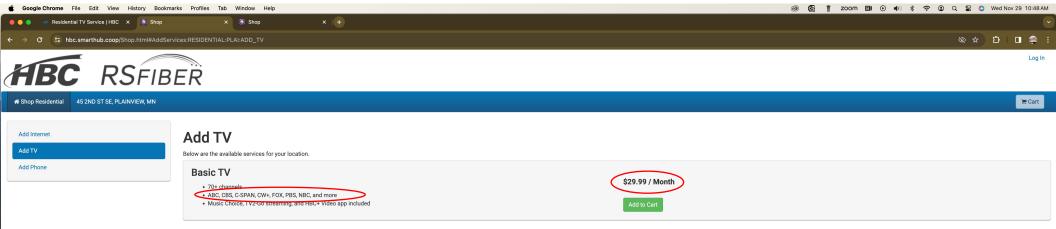






Attachment B

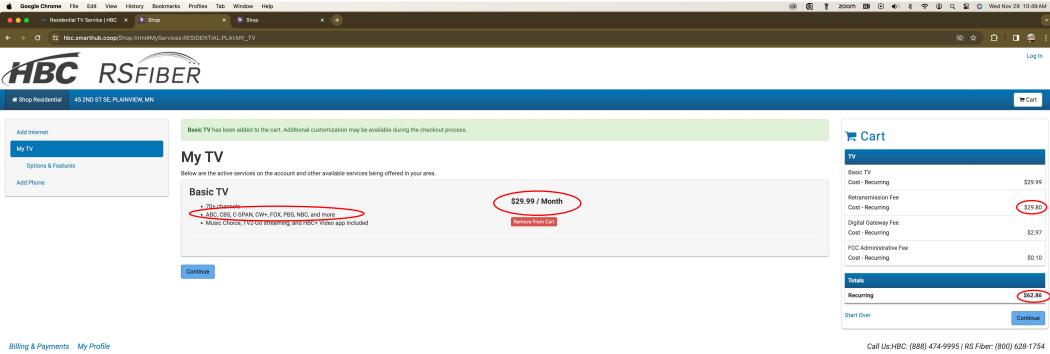




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Attachment C

Cable TV — Frankfort Plant Board



Limited Cable | \$12.79

FPB's Limited Cable offer local broadcast networks such as FOX, CBS, NBC, and ABC. Watch local Frankfort programming and events brought to you by FPB's Cable 10 including Game of the Week, Around 10, government meetings, and more. You'll also have access to educational programming from KET, KET2, KETKY, CSPAN1, CSPAN2, CSPAN3, and NASA. Whether you want to shop with QVC, be aware of the weather with Weatherscan, or provide family entertainment with MeTV, FPB Limited Cable has plenty of channels to choose from.

QAM LINEUP CHANNEL LINEUP

Standard def. requires DTA, QAM tuner, FPB advanced set top or cable card. HD requires FPB HD advanced set top or cable card. VOD requires FPB advanced set top. See options below.

An additional \$27.25 monthly retrans surcharge will be added to your monthly FPB Cable bill.

FPB SPORTS PLUS

FPB Sports Plus offers subscribers nine new programming networks covering a wide range of sports. This exciting offering is only \$7/mo.

ORDER SPORTS PLUS



https://fpb.cc/cable-tv 3/13

CABLE CHANNEL LINEUP

LIMITED \$12.79* channels 2-30 **PROGRAM GUIDE** 03 503 NBC (WAVE 3) 10 mm **FPB MARKETPLACE** 05 505 FOX (WDKY 56) 6 @ 06 506 CBS (WKYT 27) > 07 507 NBC (WLEX 18) 6 @ 08 508 ABC (WTVQ 36) • 09 509 QVC 10 **510** CABLE 10 **9** 11 **511** ABC (WHAS 11) • 12 **512** CBS (WLKY 32) (P) 13 513 CW (CWKYT) 14 514 CSPAN 1@ 15 **515** CSPAN 2 @ 16 516 CSPAN 3/GA @ 17 NASA/GA 18 518 MYNETWORK (MyKY) 19 WEATHERSCAN 20 LEASED ACCESS 21 521 COZITV (WLJC 65) 22 **522** ION (WUPX 67) 23 **KET KY** 24 **524** KET 25 KET2 26 **CHARGETV** 27 MeTV 28 ANTENNA TV 29 GritTV

30 **REWIND TV** CLASSIC \$76.60* channels 2-98 31 **531** ESPN **● ●** 32 532 ESPN2 @ 33 533 ACC NETWORK 34 534 SEC NETWORK ® 35 535 FOX SPORTS 1 @ 36 536 BALLY SPORTS OHIO 37 537 MLB NETWORK () 39 539 GOLF CHANNEL D 40 **540** OUTDOOR ▶ ● **FANDUELTV** 43 543 FOX BUSINESS @ 44 544 FOX NEWS @ 45 **545** CNN ▶ ⊕ 46 546 HLN @ 47 **547** CNBC ▶ ● 48 **548** MSNBC ▶ ● 49 **549** WEATHER ▶ ● 50 550 NEWSNATION 51 **551** TBS ▶ ● 52 **552** TNT ▶ ●

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104 604	DESTINATION AMERICA®
105 605	SCIENCE
106	AMERICAN HEROES CH.
107 607	FYI ▶ ⊕

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П	134	NICKTOONS
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П	137	DISNEY JUNIOR ®
П		I1 ESPNU ● ●
П	142 6 4	12 ESPNEWS
П	143 6 4	13 CBS SPORTS
П	144	OLYMPIC CHANNEL®
П	145	FANDUEL RACING
П		7 FOX SPORTS 2 ®
П		18 BIG TEN NETWORK⊕
П		19 NFL NETWORK ▶ ⊕
П		0 NBATV
П		51 TENNIS
П	160	WETV⊛
П	162	FX MOVIE
П	163	LIFETIME REAL WOMEN
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	173	MTV CLASSIC ()
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	175	CMT MUSIC
П	176	GAC FAMILY

STINGRAY 200 HIT LIST 201 POP ADULT

202 SWINGING STANDARDS 203 JUKEBOX OLDIES

204 FLASHBACK 70'S

205 EVERYTHING 80'S An additional \$27.25 monthly retransmission surcharge will be added to your monthly FPB Cable bill. Deposits may be required. Limited service area. Taxes and fees may apply

(Stingray Music Cont'd) 206 NOTHIN' BUT 90'S 207 MAXIMUM PARTY 208 GROOVE DISCO & FUNK 209 DANCE CLUBBIN' 210 HOLIDAY HITS 211 CLASSIC ROCK 212 ALTERNATIVE 213 ROCK 214 HEAVY METAL 215 ALT ROCK CLASSICS 216 THE BLUES 217 ADULT ALTERNATIVE 218 FOLK ROOTS 219 ALT COUNTRY/AMERICANA 220 HOT COUNTRY 221 NO FENCES 222 COUNTRY CLASSICS 223 BLUEGRASS 224 CHRISTIAN POP & ROCK 225 GOSPEL 226 SOUL STORM 227 HIP-HOP/R&B 228 CLASSIC RnB & SOUL 229 HIP HOP 230 JAZZ MASTERS 231 JAZZ NOW 232 SMOOTH JAZZ UNGE **TENING** SSICS

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234	THE SPA
235	EASY LISTENING
236	POP CLASSICS
237	CLASSIC MASTERS
238	CHAMBER MUSIC

239 BROADWAY 240 ECLECTIC ELECTRONIC

241 Y2K 242 JAMMIN'

243 ÉXITOS TROPICALES 244 ÉXITOS DEL MOMENTO

245 RETRO LATINO 246 RITMOS LATINOS

247 ROCK EN ESPANOL 248 ROMANCE LATINO

249 KID'S STUFF

PAY PER VIEW LIVE EVENT PPV

HD PLUS 57 *

770 MOTOR TREND @ **771** MGM HD 774 MTV LIVE 775 NFL RED ZONE @

776 SONY MOVIE CH. 777 HDNET MOVIES

787 MAVTV **788** WORLD FISHING NETWORK 789 NEXT LEVEL SPORTS @ YES

791 STADIUM COLLEGE SPORTS - ATLANTIC STADIUM COLLEGE SPORTS - CENTRAL @ STADIUM COLLEGE SPORTS-PACIFIC

794 PAC 12 @ **796** MLB STRIKE ZONE

PREMIUM*

300 **700** HBO E ▶ ● 301 **HBOW** 302 HBO2 E 303 HBO2W 304 **HBO SIG E** 305 HBO SIG W 306 **HBO FAMILY E**

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310 **710** CINEMAX E • 311 **CINEMAX W**

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312 MORE MAX E 313 MORE MAX W

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352 STARZ ENCORE ACTION W 360 **760** STARZ E •

STARZ W 361 STAR7 FDGF F 362 STARZ EDGE W STARZ IN BLACK 364

E - East W - West

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\$15.00 Starz

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requires FPB advanced set top.

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