

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

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

NOTICE OF PROPOSED RULEMAKING

Adopted: June 14, 2023

Released: June 20, 2023

Comment Date: 30 days after date of publication in the Federal Register
Reply Comment Date: 60 days after date of publication in the Federal Register

By the Commission: Chairwoman Rosenworcel issuing a separate statement.

I. INTRODUCTION

1. Access to clear, easy-to-understand, and accurate information about the pricing of video services helps consumers make informed choices and encourages competition in the market. It does so by empowering consumers with information to comparison shop and to find the video programming services that best meets their needs and matches their budget.

2. Consumers who choose a video service based on an advertised monthly price may be surprised by unexpected fees related to the cost of video programming that raise the amount of the bill significantly. These fees, with names like broadcast TV fee, or regional sports programming surcharge, are listed in the fine print as "fees" or "taxes and surcharges," separate from the top-line listed service price and can result in a bill that is substantially more than the advertised price. This categorization can be potentially misleading and interpreted as a government-imposed tax or fee, instead of a company-imposed service fee increase. This practice can also make it difficult for consumers to compare the service prices of competing video service providers.

3. In this Notice of Proposed Rulemaking (NPRM), we propose 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. This proposal would require cable operators and DBS providers to clearly and prominently display the total cost of video programming service. This all-in pricing proposal is intended to give consumers a transparent and accurate reflection of their subscription payment obligations and eliminate unexpected fees. It also seeks to provide consumers with the ability to comparison shop among competing cable operators and DBS providers, and to compare programming costs against alternative programming providers, including streaming services. We also seek comment on whether we should consider expanding the requirements of this proceeding to other types of multichannel video programming providers (MVPDs) and on our authority to do so.

II. BACKGROUND

4. Sections 335 and 632 of the Communications Act of 1934, as amended (the Act), authorize the Commission to adopt public interest regulations for DBS and direct the Commission to adopt cable customer service requirements, respectively.¹ In 2019, Congress adopted the Television

¹ 47 U.S.C. §§ 335, 552.

Viewer Protection Act of 2019 (TVPA), which bolstered the consumer protection provisions of the Act by adding specific consumer protections.² The TVPA revised the Act to add section 642, which, among other things, requires greater transparency in subscribers' bills.³ As it considered this legislation, Congress expressed specific concern that consumers face "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 In 2021, the Media Bureau sought comment on the steps MVPDs have taken to implement the TVPA requirements and on whether consumers found those steps effective in furthering Congress's goal of protecting consumers when purchasing MVPD or broadband service.⁵ In response to that PN, Consumer Reports commented that below-the-line fees, "which are solely the creation of the provider (versus regulatory fees that are passed on to the consumer)[,] made up the bulk" of costs that are added to advertised rates and MVPD subscribers' bills.⁶ It appears that since adoption of the TVPA, the practice of charging subscribers unexpected "fees" (for example, for broadcast television programming and regional sports programming listed separately from the monthly subscription rate for video programming service) that are actually charges for the video programming service for which the subscriber pays, has continued.⁷ Moreover, websites, advertisements, and other promotional materials may advertise a top-line price that does not note prominently the mandatory programming costs that make up the service until the customer signs up for service. For example, those materials use a different font size (often in fine print) and separate from the proclaimed monthly subscription fee amounts extra "fees" designated by the provider that consumers will also need to pay for video programming that they will receive.⁸

² The Television Viewer Protection Act of 2019, Pub. L. No. 116-94, 133 Stat. 2534 (2019). The TVPA was enacted as Title X of the "Further Consolidated Appropriations Act, 2020" (H.R. 1865, 116th Cong.).

³ 47 U.S.C. § 562. Section 642 provides four main areas of consumer protection related to billing: (1) before entering into a contract with a consumer, an MVPD must provide the consumer the total monthly charge for MVPD service, whether offered individually or as part of a bundled service, including any related administrative fees, equipment fees, or other charges, (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) with respect to electronic bills, MVPDs 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.*

⁴ H.R. Rep 116–329, at 6 (2019). *See also* Consumer Reports, *How Cable Companies Use Hidden Fees to Raise Prices and Disguise the True Cost of Service*, <https://advocacy.consumerreports.org/wp-content/uploads/2019/10/CR-Cable-Bill-Report-2019.pdf> (2019) (detailing the cable industry's practice of charging "hidden fees" beyond the rates that they advertise and promote).

⁵ *Media Bureau Seeks Comment on Implementation of the Television Viewer Protection Act of 2019*, Public Notice, DA 21-1610, 2021 WL 6063052 (MB Dec. 20, 2021). Commenters in the public notice docket should update and refile their comments from the public notice docket into the docket for this proceeding (MB Docket No. 23-203), to the extent they are relevant.

⁶ *See* Consumer Reports Reply Comments, MB Docket No. 21-501, at 2 (filed Mar. 7, 2022) (CR Reply).

⁷ *Compare, e.g.,* Sharon Lurye, *Comcast releases rate changes for 2016*, Philly Voice, Nov. 24, 2015, <https://www.phillyvoice.com/comcast-releases-rate-changes-2016/> with Erin McCarthy, *Comcast's rates are increasing again. Here's what to expect*, The Philadelphia Inquirer, Dec. 5, 2022, <https://www.inquirer.com/business/comcast/comcast-rate-increase-internet-broadcast-sports-fees-20221205.html> (indicating that in Philadelphia, "broadcast TV" and "regional sports" fees increased from \$48 per year in 2014 to over \$415 per year in 2023).

⁸ *See, e.g.,* Build Your Plan with Xfinity for Internet, TV, Mobile and Security, <https://www.xfinity.com/digital/offers/plan-builder>; Spectrum Packages – Best Bundles for Cable TV, Internet &

(continued....)

III. DISCUSSION

5. We believe that the public interest requires that cable operators and DBS providers represent their subscription charges transparently, accurately, and clearly. Accordingly, we propose to require cable operators and DBS providers to provide the “all-in” price for video programming service in their promotional materials and on subscribers’ bills. Below, we seek comment on (i) the specifics of this proposal, (ii) existing federal, state, and local requirements related to truth-in-billing, (iii) the marketplace practices regarding advertising and billing, and (iv) our legal authority to adopt this proposal. We also seek comment on the costs and benefits of our proposal and the effects that our proposal could have on equity and inclusion.

6. *Proposal details.* We propose to require 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.⁹ We intend for this aggregate amount to include the full amount the cable operator or satellite provider charges (or intends to charge) the customer in exchange for video programming service (such as broadcast television, sports programming, and entertainment programming), but nothing more (that is, no taxes or charges unrelated to video programming).¹⁰ The goal of this proposal is to provide consumers with the video programming service portion of their subscription payment for which they are or will be responsible in clear terms. This will allow consumers to make informed choices, including the ability to comparison shop among competing cable operators and DBS providers; compare programming costs against alternative programming providers, including streaming services; and budget for the actual amount that they will need to pay for cable or DBS video service every month, similar to the truth-in-billing rules that the Commission has in place to aid common carrier customers in understanding their bills and making informed choices in the market.¹¹

7. We seek comment on our proposal. Is this proposal sufficient to ensure that subscribers and potential subscribers have accurate information about the cost for video service? To what extent are providers already advertising an “all-in” price that is inclusive of all video programming-related costs, government-imposed taxes, and any other fees? Would such materials satisfy our proposal, given that it relates only to charges for video programming? If a provider attempts to attract new subscribers with a total price (which would necessarily be higher than just the price for video programming), does that benefit outweigh the benefits of requiring uniformity for comparison shopping purposes? Are there more consumer-friendly ways that cable operators and DBS providers should be required to provide this information? Is the term “prominent” specific enough to ensure that cable operators and DBS providers present consumers with an easy-to-understand “all-in” subscription price, or do we need to provide more detail about how cable operators and DBS providers must communicate the price for service?¹² In cases

(Continued from previous page)

Phone, <https://www.spectrum.com/packages>; Fios TV Rate Card, <https://www.verizon.com/about/sites/default/files/2022-01/December-2021-Rate-Card-WCAG-2-1.pdf>.

⁹ Section 602 of the Act defines video programming as “programming provided by, or generally considered comparable to programming provided by, a television broadcast station.” 47 U.S.C. § 522(20).

¹⁰ We do not propose to require that cable operators and DBS providers include equipment costs in the “all-in” price listed on promotional materials and bills, as these costs are variable for each subscriber, and some subscribers use their own equipment and therefore do not incur such charges from the provider. We seek comment on this analysis.

¹¹ See 47 CFR § 64.2400(a) (explaining that common carrier truth-in-billing rules are “intended to aid customers in understanding their telecommunications bills, and to provide them with the tools they need to make informed choices in the market for telecommunications service”).

¹² For example, should we require cable operators and DBS providers to convey the information in a consistent font size or via some other measurable metric?

where the cable operator or DBS provider bundles video programming with other services like broadband Internet service, can the cable operator or DBS provider readily identify the amount of the bill that is attributable to video programming, and if not, how should our rule account for those situations? We invite comment, particularly from consumers and local franchising authorities (LFAs), about whether consumers encounter misleading promotions or receive misleading bills, and request that commenters include documents (such as advertisements and bills with redacted personal information) to support their claims.

8. Subscribers are entitled to clear, concise, and understandable information about the elements that comprise their subscription fees.¹³ We also understand that cable operators and DBS providers may wish to (or in some cases are required to under 47 U.S.C. § 562) provide their subscribers and potential subscribers with information about how much of their subscription payments are attributable to specific costs of the video programming service, equipment rental, or other items that contribute to the bill. Therefore, consistent with sections 622(c) and 642 of the Act,¹⁴ we propose to explicitly state in our rule that cable operators and DBS providers may complement the prominent aggregate cost line item with an itemized explanation of the elements that compose that aggregate cost, so long as the cable operator or DBS provider portrays the video programming-related costs as part of the all-in price for service. We seek comment on this proposal. Are there consumer benefits to receiving the cost line-item information, which would justify their inclusion on consumer bills? Would a prohibition on separate line items, other than those mandated by section 642 of the Act or permitted under 622(c) of the Act,¹⁵ better serve the public interest,¹⁶ and if so, could the Commission adopt such a prohibition consistent with the Act and the First Amendment?¹⁷ Should we require cable operators and DBS providers that choose to itemize portions of their bills to provide a full accounting of how a subscriber's bill is apportioned?¹⁸ We invite comment about rules we should consider in order to promote billing and marketing transparency.

¹³ See 47 CFR § 76.1619 (“[B]ills must be clear, concise and understandable.”).

¹⁴ Section 622(c) permits cable operators to identify franchisee fees, public, educational, and governmental access (PEG) fees, and other fees, taxes, assessments, or other charges imposed by the government “as a separate line item on each regular bill of each subscriber.” 47 U.S.C. § 542©. Section 642(b) states that when an MVPD provides a consumer a bill in an electronic format, that bill shall include an “itemized statement that breaks down the total amount charged for or relating to the provision of the covered service by the amount charged for the provision of the service itself and the amount of all related taxes, administrative fees, equipment fees, or other charges.” 47 U.S.C. § 562(b)(1). The language in our rule is intended to make clear that MVPDs may itemize their bills with even more granularity than the statute requires. We are concerned, however, that some cable operators and DBS providers may currently portray retransmission consent and sports programming costs as separate lines on “the bill in such a way as to lead a reasonable consumer to believe that the charge has been mandated by the government,” which is a concern that is similar to the concerns that the Commission had with regard to common carriers when it adopted truth-in-billing rules that apply to them. See *Truth-in-Billing and Billing Format*, CG Docket Nos. 98-170; 04-208, Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking, 20 FCC Rcd 6448 at 6461, para. 27 (2005).

¹⁵ 47 U.S.C. §§ 562(a)(1) & (b)(1) (requiring MVPDs to itemize the total amount charged for or relating to the provision of MVPD service, broken down by the amount charged for the provision of the service itself and the amount of all related taxes, administrative fees, equipment fees, or other charges), 542(c) (permitting cable operators to identify franchisee fees, public, educational, and governmental access (PEG) fees, and other fees, taxes, assessments, or other charges imposed by the government separately on consumer bills).

¹⁶ See CR Reply at 2 (“Ultimately, the only way to rid the marketplace of these growing and increasingly expensive fees would be to prohibit MVPDs from charging them as additional line items in the first place.”).

¹⁷ See *infra* paras. 16-18.

¹⁸ For example, should we require cable operators and DBS providers to explain what portion of a bill is attributable to programming costs, or other relevant costs? If so, we seek comment on which categories would best inform consumers about how their payments are apportioned.

9. We also seek comment on how to apply our proposal to different types of promotional materials. For example, should we consider adopting different requirements or exempting certain materials based on the size of the advertisement (e.g., a website or direct mail solicitation, as opposed to a pop-up ad that may be character limited)? Should we account for national, regional, or local advertisements where the actual price may not be the same for all consumers receiving the promotional materials due to market-specific price variations? Should the proposal differentiate between residential, small business, and enterprise subscribers? Additionally, should our proposal apply to existing customers with legacy plans that are no longer available? For example, in the broadband nutrition labels context, providers were not required to produce labels for plans that are no longer available for new customers. Should we consider a similar approach here? Why or why not? What is a reasonable implementation period for providers to update their systems to reflect any changes we may adopt in this proceeding? Are there any issues faced by smaller providers that would warrant additional time or a different approach? Finally, are there any other practical/implementation issues we should consider related to our proposal?

10. *Marketplace practices.* We seek comment on industry practices regarding service pricing categorization. Is there a business purpose for characterizing these service rate increases as taxes, fees, or surcharges, and if so, what is this purpose? Are certain sectors in the MVPD marketplace more prone to charging such fees? Aside from line-item fees for broadcast television, sports programming (including regional sports programming), and entertainment programming, are there other video programming-related fees that are being categorized as taxes, fees, and surcharges, instead of included in the price for video service? Have any MVPDs changed the way they bill or promote such fees since the TVPA took effect, and if so, how? Aside from the examples discussed above, are there any other industry practices that are relevant to the analysis of our proposal?

11. *Existing consumer protections.* We seek comment on whether any existing laws and protections prevent these advertising and billing practices related to charges for video programming that are listed separately on bills as taxes, fees, or surcharges. The Act provides shared authority over cable customer service issues: the Commission sets baseline customer service requirements at the federal level, and state and local governments tailor more specific customer service regulations based on their communities' needs.¹⁹ Given the bifurcated authority we share with state and local governments, we seek comment on whether any franchising authorities have regulations or franchise agreement terms about these types of billing and advertising practices, and if so, whether they would conflict with our proposal. We seek specific input from franchising authorities about whether any regulations or franchise agreement terms have succeeded in eliminating surprise, below-the-line fees and potentially deceptive advertising, and whether those regulations or terms would make for appropriate federal standards for purposes of the practices we are considering here. What other insights can franchising authorities share regarding their experiences in assisting constituents with understanding these billing and/or advertising practices? And have other regulatory bodies addressed this practice? For example, has the Federal Trade Commission investigated any of these advertising and billing practices, and if so, what was the result of that investigation? Have any state attorneys general investigated these practices and found them to violate any state laws?²⁰ If so, how do such efforts contribute to our efforts in this proceeding?

¹⁹ 47 U.S.C. § 542; *see also Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, MB Docket No. 05-311, Second Report and Order, 22 FCC Rcd 19633, 19646, para. 27 (2007) (“The statute’s explicit language [in section 632] makes clear that Commission standards are a floor for customer service requirements, rather than a ceiling, and thus do not preclude LFAs from adopting stricter customer service requirements.”).

²⁰ *See, e.g.*, Press Release, Office of Attorney General Maura Healey, Comcast to Pay \$700,000 in Refunds and Cancel Debts for More Than 20,000 Massachusetts Customers to Resolve Allegations of Deceptive Advertising (Nov. 13, 2018), <https://www.mass.gov/news/comcast-to-pay-700000-in-refunds-and-cancel-debts-for-more-than-20000-massachusetts-customers-to-resolve-allegations-of-deceptive-advertising>.

12. *Legal authority.* We tentatively conclude that sections 335, 632, and 642 of the Act provide ample authority for this proposal.²¹ We also tentatively conclude that our proposed rule is consistent with the First Amendment. We seek comment on our analysis below and invite comment on other sources of authority upon which we may rely to support our proposed rule.

13. We tentatively conclude that section 335 of the Act provides us with authority to adopt our proposed rule as it will apply to direct broadcast satellite (DBS) providers.²² Section 335(a) provides us with authority to impose on DBS providers “public interest or other requirements for providing video programming.”²³ The Commission has not relied on this authority to impose customer service obligations on DBS before, but has recognized that section 335(a) authorizes the adoption of public interest regulations.²⁴ We tentatively find that the rules we propose here are public interest requirements that fall squarely within our authority under section 335(a). As the Commission recently explained, “Consumer access to clear, easy-to-understand, and accurate information is central to a well-functioning marketplace that encourages competition, innovation, low prices, and high-quality services. The same information empowers consumers to choose services that best meet their needs and match their budgets and ensure that they are not surprised by unexpected charges or service quality that falls short of their expectations.”²⁵ These are some of the same goals that our proposed rule here is intended to accomplish. Although section 335(a) covers requirements for “*providing* video programming,” we do not read that phrase to limit our authority to cover only communications that take place after a DBS provider and consumer enter into a contract. Advertising and promotional materials are often the catalyst for locking consumers into long-term contracts for the provision of video service. Our proposed rule, as it applies to advertising and other promotional materials, will ensure consumers have accurate and understandable information from the start of their subscriber relationship with the DBS provider, prevent consumer surprise down the road from unexpected charges assessed for “providing video programming,” and allow each consumer to have accurate information about the monthly cost in order to choose an MVPD service that best suits his or her needs.²⁶ Accordingly, we tentatively conclude that we have authority under section 335(a) to apply our proposed rule to DBS providers. We seek comment on this tentative conclusion.

14. In addition, we seek comment on whether we have authority under section 4(i) of the Act to extend our proposed rule to DBS providers.²⁷ By doing so, we will ensure uniformity of regulation between and among cable operators (regulated under Title VI and by various state consumer protection laws and local franchising provisions) and DBS providers (under Title III), thereby preventing DBS

²¹ 47 U.S.C. §§ 335, 552, 562.

²² 47 U.S.C. § 335.

²³ 47 U.S.C. § 335(a). *See also* 47 U.S.C. § 303(v) (granting the Commission “exclusive jurisdiction to regulate the provision of direct-to-home satellite services”).

²⁴ *Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act Of 1992*, MM Docket No. 93-25, Report and Order, 13 FCC Rcd 23254, 23276-23279, paras. 55-61 (1998); *Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act Of 1992, Direct Broadcast Satellite Public Interest Obligations Sua Sponte Reconsideration*, MM Docket No. 93-25, Second Order on Reconsideration of First Report and Order, 19 FCC Rcd 5647, 5666-68, 5670-73 (2004) (exercising authority under section 335(a) to apply to DBS providers the commercial limits on children’s programming and the one-channel-per-programmer limitation).

²⁵ *See Empowering Broadband Consumers Through Transparency*, CG Docket No. 22-2, FCC 22-86, Report and Order and Further Notice of Proposed Rulemaking, 2022 WL 17100958, at *1, para. 1 (rel. Nov. 17, 2022).

²⁶ *See FCC v. WNCN Listeners Guild*, 450 U.S. 582, 596 (1981) (“[T]he Commission’s judgment regarding how the public interest is best served is entitled to substantial judicial deference.”).

²⁷ 47 U.S.C. § 154(i).

providers from gaining a competitive advantage over their competitors with potentially misleading marketing materials.²⁸ We seek comment on this analysis.

15. Further, we tentatively conclude that section 632 of the Act provides us with authority to adopt our proposed rule as it will apply to cable operators.²⁹ Section 632(b) provides us authority to establish customer service standards regarding billing practices and other communications with consumers, and we have relied on that authority for decades to regulate in this area.³⁰ Our mandate under section 632(b) is to adopt customer service requirements regarding, among other enumerated topics, “communications between the cable operator and the subscriber (including standards governing bills and refunds).”³¹ Although the statute identifies specific areas that the Commission’s customer service standards must cover, section 632 describes these only as the “minimum” standards.³² Thus, by its terms, section 632(b) gives us broad authority to adopt customer service standards that go beyond those enumerated, including outside the billing context.³³ The legislative history of section 632 provides that “[p]roblems with customer service have been at the heart of complaints about cable television,” and Congress believed that “strong mandatory requirements are necessary.”³⁴ Congress expected “the FCC, in establishing customer service standards to provide standards addressing . . . billing and collection practices; disclosure of all available service tiers, [and] prices (for those tiers and changes in service) . . .”³⁵ This language from the legislative history—particularly the expectation that the Commission would adopt standards regarding “disclosure of all available service tiers, [and] prices”—suggests that Congress granted the Commission authority over how cable operators disclose their prices to consumers, including prices for services to which consumers may have not yet subscribed. We do not read the reference to “customer service” requirements in section 632(b) to limit the Commission to regulate only post-contract communications; rather, we tentatively find that price information in advertising and other promotional materials is a natural extension of the power Congress expressly delegated to the Commission concerning billing communications between cable operators and subscribers. That is, our proposal seeks to prohibit a cable operator from promoting a potentially misleading price to entice customers to sign up for service. Thus, we tentatively conclude that requiring an “all-in” price for service is the type of “strong mandatory requirement” that Congress contemplated in section 632 and

²⁸ See, e.g., *Mobile Communications Corp. v. FCC*, 77 F.3d 1399, 1405-06 (D.C. Cir. 1996) (upholding reliance on 4(i) for the Commission to adjust the terms of preferences to reduce the gulf between recipients of preferences (who would otherwise receive a free license) and other license aspirants (who, under the new auction regime, would have to pay for a license)).

²⁹ 47 U.S.C. § 552.

³⁰ See, e.g., *Cable Service Change Notifications; Modernization of Media Regulation Initiative; Amendment of the Commission's Rules Related to Retransmission Consent*, MB Docket Nos. 19-347, 17-105, 10-71, Report and Order, 35 FCC Rcd 11052, 11057, para. 8 (2020); *Implementation of Section 8 of the Cable Television Consumer Protection and Competition Act of 1992; Consumer Protection and Customer Service*, MB Docket Nos. 92-263, Report and Order, 8 FCC Rcd 2892, 2906-7, paras 65-66 (1993) (*1993 Report and Order*).

³¹ 47 U.S.C. § 552(b).

³² *Id.*

³³ 47 U.S.C. § 552(b) (“The Commission shall . . . establish standards by which cable operators may fulfill their customer service requirements”); see, e.g., *Cablevision v. FCC*, 649 F.3d 695, 705-706 (D.C. Cir. 2011) (by requiring mandatory “minimum” regulations, Congress established “a floor rather than a ceiling,” leaving the Commission with authority to issue rules that go beyond those specified in the statute); *NCTA v. FCC*, 567 F.3d 659, 664-65 (D.C. Cir. 2009) (by describing the “minimum contents of regulation” the statutory structure indicates that “Congress had a particular manifestation of a problem in mind, but in no way expressed an unambiguous intent to limit the Commission’s power solely to that version of the problem”).

³⁴ See S.Rep. No. 92, 102nd Cong. 1st Sess. 1991 at 21-22, *reprinted in* 1992 U.S.C.C.A.N. 1133, 1153.

³⁵ *Id.*

accordingly we have authority under section 632(b) to adopt our proposed rule as applied to cable operators. We seek comment on these tentative conclusions, and whether we should consider expanding the requirements of this proceeding to other types of MVPDs, and on what statutory basis. We also seek comment on the potential competitive effects of applying these requirements to only a subset of video programming providers.

16. As discussed above, section 642, as added by the TVPA, requires MVPDs to bill subscribers transparently when the MVPD sends an electronic bill, and specifically requires MVPDs to include in their bills “an itemized statement that breaks down the total amount charged for or relating to the provision of the covered service by the amount charged for the provision of the service itself and the amount of all related taxes, administrative fees, equipment fees, or other charges.”³⁶ We tentatively conclude that our proposal requiring cable operators and DBS providers to provide consumers with the “all-in” price for video programming service meets this statutory directive, at least as it applies to any electronic bill the MVPD sends.³⁷ Specifically, our proposal to require cable operators and DBS providers to provide consumers with the total charge for all video programming would ensure that consumers are provided complete and accurate information about the “amount charged for the provision of the *service itself*,” as Congress intended.³⁸ We tentatively find that such costs make up the charges for the “provision of the service itself” because broadcast channels, regional sports programming, and other programming track the statutory definition of “video programming” (that is, all are programming provided by, or generally considered comparable to programming provided by, a television broadcast station),³⁹ and video programming is, by definition, the service that an MVPD makes available for purchase.⁴⁰ We tentatively conclude that listing such costs as below-the-line fees potentially results in confusion for consumers about the “amount charged for the provision of the service itself,” because the word “itself” suggests a single charge for the total service rather than one charge for one portion of the service and then a separate charge for other programming provided. This contravenes Congress’s core purpose for enacting the legislation: as noted above, the legislative history of this section indicates that Congress intended to curb MVPDs’ practice of charging “unexpected and confusing fees,” but recent press reports suggest that this practice continues.⁴¹ We observe that the statute further provides for the disclosure of a second group of costs on electronic bills –*i.e.*, “the amount of all related taxes, administrative fees, equipment fees, or other charges.”⁴² However, we do not believe that costs related to video programming fall within this category. Such costs are not “taxes,” “administrative fees,” “equipment fees,” or “other charges” because the Act defines video programming as the specific service that customers buy from MVPDs—in other words, the “service itself.”⁴³ Thus, the terms “taxes,”

³⁶ 47 U.S.C. § 562(b)(1) (emphasis added). The statute defines “covered service” as “service provided by a multichannel video programming distributor [sic], to the extent such distributor is acting as a multichannel video programming distributor.” 47 U.S.C. § 562(d)(3).

³⁷ As we explain in paragraphs 12 and 14 above, we believe that sections 335 and 632 alone provide authority for our proposed rule. As we explain in this paragraph, section 642 provides additional and independent authority over electronic bills.

³⁸ 47 U.S.C. § 562(b)(1) (emphasis added).

³⁹ 47 U.S.C. § 522(20) (“the term ‘video programming’ means programming provided by, or generally considered comparable to programming provided by, a television broadcast station”).

⁴⁰ 47 U.S.C. § 522(13) (“the term ‘multichannel video programming distributor’ means a person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, or a television receive-only satellite program distributor, who makes available for purchase, by sub scribers or customers, multiple channels of video programming”).

⁴¹ See *supra* paras. 2 and 4.

⁴² 47 U.S.C. § 562(b)(1).

⁴³ 47 U.S.C. § 522(13).

“administrative fees,” “equipment fees,” or “other charges” cannot reasonably include separate charges for various types of video programming (e.g., amounts paid for retransmission consent rights or rights to transmit regional sports programming or any other programming).⁴⁴ Based on this analysis, we tentatively conclude that our proposed rule regarding pricing disclosures is a reasonable construction of these statutory directives and is authorized under the TVPA.⁴⁵ We seek comment on these tentative conclusions.

17. We also tentatively conclude that our proposed rule is consistent with the First Amendment. As the Commission has explained in other contexts where it adopted truth-in-billing, advertising, and labeling rules, “[c]ommercial speech that is misleading is not protected speech and may be prohibited,” and “commercial speech that is only potentially misleading may be restricted if the restrictions directly advance a substantial governmental interest and are no more extensive than necessary to serve that interest.”⁴⁶ To what extent is the speech at issue here—portrayal that the cost of video service is a certain amount when the actual amount for the video service is potentially much higher—misleading? Is it categorically misleading, such that is not considered protected speech? Or is it only potentially misleading? Is there a credible argument that this practice is not misleading at all?

18. If a reviewing court were to find that the speech is misleading, the constitutional analysis would end there because the proposed rule simply prevents misleading commercial speech, which is afforded no protection under the First Amendment.⁴⁷ However, even if our proposed rule seeks to regulate only potentially misleading speech, regulations involving commercial speech⁴⁸ that require a disclosure of factual information (such as the disclosure of the total cost for video programming service that our proposed rule would require) are entitled to more lenient review from courts than regulations that limit speech.⁴⁹ That is, under Supreme Court precedent, a speaker’s commercial speech rights are adequately protected as long as disclosure requirements are reasonably related to the government’s

⁴⁴ We note that section 622(c) permits cable operators to identify, “as a separate line item on each regular bill of each subscriber, . . . [t]he amount of the total bill assessed to satisfy any requirements imposed on the cable operator by the franchise agreement to support public, educational, or governmental channels or the use of such channels.” 47 U.S.C. § 542(c). As noted in paragraph 5 above, we drafted our proposed rule to be consistent with this rule section by making explicit that cable operators and DBS providers may list discrete costs that make up the “all-in” cost for video programming.

⁴⁵ Section 642’s silence with respect to the Commission’s rulemaking role does not remove such authority. The courts have previously affirmed the Commission’s authority to promulgate rules implementing a section of the Communications Act even where Congress never explicitly or implicitly delegated power to the Commission to interpret that particular statutory section. See *Alliance for Community Media v. FCC*, 529 F.3d 763, 773 (6th Cir. 2008) (affirming the Commission’s jurisdiction to promulgate rules implementing section 621(a)(1) of the Communications Act even in the absence of an explicit delegation of rulemaking power to the Commission in that statutory section).

⁴⁶ *Truth-in-Billing and Billing Format*, CC Docket No. 98-170, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 7492, 7530-31, para. 60 (1999) (citing *Central Hudson Gas & Electric Corp. v. Public Service Commission*, 447 U.S. 557, 563-564, 566 (1980) (*Central Hudson*) (“The government may ban forms of communication more likely to deceive the public than to inform it.”)). See also *Empowering Broadband Consumers Through Transparency*, CG Docket No. 22-2, Report and Order and Further Notice of Proposed Rulemaking, FCC 22-86, 2022 WL 17100958, para. 123 (2022).

⁴⁷ *Central Hudson*, 447 U.S. at 563 (“there can be no constitutional objection to the suppression of commercial messages that do not accurately inform the public about lawful activity” and “[t]he government may ban forms of communication more likely to deceive the public than to inform it”) (citations omitted).

⁴⁸ *Id.* at 561 (explaining “commercial speech” as “expression related solely to the economic interests of the speaker and its audience”). Information about the price of service in bills and promotional materials clearly constitutes “commercial speech.” We seek comment on this tentative conclusion.

⁴⁹ See *Zauderer v. Office of Disciplinary Counsel of the Supreme Court of Ohio*, 471 U.S. 626, 651-52 (1985) (*Zauderer*); see also *Milavetz, Gallop, & Milavetz v. U.S.*, 559 U.S. 229, 249-50 (2010).

interest in preventing deception of consumers.⁵⁰ That standard is met here as our proposed rule would simply require cable operators and DBS providers to disclose to consumers in bills and promotional materials an accurate statement of the total cost for video programming service, and the disclosure requirement is reasonably related to the government's interest in preventing deception of consumers. As was the case in *Zauderer*, here, a cable operator's or DBS provider's constitutionally protected interest in *not* providing the required information is "minimal."⁵¹ In addition, the rule does not prevent cable operators and DBS providers from conveying any additional information. We seek comment on this analysis.

19. Assuming, for the sake of argument, that our proposed rule would be subject to the more stringent test of commercial speech regulation (i.e., intermediate scrutiny), we still believe that the rule passes that three-prong test that the Supreme Court established in *Central Hudson*: first, the government must assert a substantial interest in support of its regulation; second, the government must demonstrate that the restriction on commercial speech directly and materially advances that interest; and third, the regulation must be "narrowly drawn."⁵² Our proposed rule passes this test. First, we have a substantial interest in making sure that consumers can identify the full cost of video programming to which they subscribe so that they can understand the price they are being charged for the service as well as make informed purchasing decisions as they consider competing cable and DBS service options. Second, our proposed rule would advance that interest by requiring cable operators and DBS providers to identify the cost for video programming as a single, prominent line-item on consumer bills and promotional materials, which would allow consumers to identify the full cost of video programming. Finally, our proposal is narrowly drawn and proportionate to the substantial interest we aim to promote: the proposed rule would permit cable operators and DBS providers to identify elements that comprise the total charge for video programming and require only that they present information about the total cost for video programming uniformly. We seek comment on this analysis.

20. *Cost/Benefit Analysis.* We seek comment on the benefits and costs associated with adopting the proposed rules. In addition to the consumer benefits discussed above, including promotion of competition, are there also benefits to industry, such as leveling the playing field for cable operators and DBS providers that do offer transparent pricing? We also seek comment on any potential costs that would be imposed on consumers or cable operators and DBS providers if we adopt the proposals contained in this NPRM. Would a truth-in-billing requirement impose undue burdens on small cable operators, as that term is defined by the Small Business Administration?⁵³ Are there ways to limit any potential compliance burdens on providers, including small cable operators, while still achieving the benefits to consumers discussed above? Comments should be accompanied by specific data and analysis supporting claimed costs and benefits. We seek comment on these issues and any other issues related to the regulation of below-the-line fees and truth-in-billing requirements.

21. *Digital Equity and Inclusion.* Finally, the Commission, as part of its continuing effort to advance digital equity for all,⁵⁴ including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely

⁵⁰ *Zauderer*, 471 U.S. at 651.

⁵¹ *Id.*

⁵² *Central Hudson*, 447 U.S. at 566.

⁵³ See 13 CFR § 121.201, NAICS Code 516210 (classifying firms with annual receipts of \$47 million or less as small).

⁵⁴ Section 1 of the Communications Act of 1934 as amended provides that the FCC "regulat[es] interstate and foreign commerce in communication by wire and radio so as to make [such service] available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex." 47 U.S.C. § 151.

affected by persistent poverty or inequality, invites comment on any equity-related considerations⁵⁵ and benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, we seek comment on how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission's relevant legal authority.

IV. PROCEDURAL MATTERS

22. *Ex Parte Rules - Permit-But-Disclose.* The proceeding this Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.⁵⁶ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

23. *Filing Requirements—Comments and Replies.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

⁵⁵ The term "equity" is used here consistent with Executive Order 13985 as the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. See Exec. Order No. 13985, 86 Fed. Reg. 7009, Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (January 20, 2021).

⁵⁶ 47 CFR §§ 1.1200 *et seq.*

- Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.⁵⁷
- During the time the Commission’s building is closed to the general public and until further notice, if more than one docket or rulemaking number appears in the caption of a proceeding, paper filers need not submit two additional copies for each additional docket or rulemaking number; an original and one copy are sufficient.

24. *Initial Regulatory Flexibility Act Analysis.* The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for notice and comment rulemaking proceedings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.”⁵⁸ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁵⁹ A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).⁶⁰

25. With respect to this Notice of Proposed Rulemaking, an Initial Regulatory Flexibility Analysis (IRFA) under the RFA is contained in Appendix B. Written public comments are requested on the IFRA and must be filed in accordance with the same filing deadlines as comments on this Notice of Proposed Rulemaking, with a distinct heading designating them as responses to the IRFA. In addition, a copy of this Notice of Proposed Rulemaking and the IRFA will be sent to the Chief Counsel for Advocacy of the SBA and will be published in the Federal Register.

26. *Paperwork Reduction Act.* This document proposes new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens and pursuant to the Paperwork Reduction Act of 1995, Public Law 104-13, invites the general public and the Office of Management and Budget (OMB) to comment on these information collection requirements. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

27. *People with Disabilities.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice).

28. *Additional Information.* For additional information on this proceeding, please contact Brendan Murray, Media Bureau, Policy Division at Brendan.Murray@fcc.gov or (202) 418-1573.

⁵⁷ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (2020).

⁵⁸ 5 U.S.C. § 603.

⁵⁹ *Id.* § 601(3) (incorporating by reference the definition of “small business concern” in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.” 5 U.S.C. § 601(3).

⁶⁰ 15 U.S.C. § 632.

V. ORDERING CLAUSES

29. Accordingly, **IT IS ORDERED** that, pursuant to the authority found in sections 1, 4(i), 303(v), 335(a), 632(b), and 642 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 303(v), 335(a), 552(b), and 562, this Notice of Proposed Rulemaking **IS ADOPTED**.

30. **IT IS FURTHER ORDERED** that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A
Proposed Rules

Part 76 of Title 47 of the U.S. Code of Federal Regulations is amended to read as follows:

PART 76 – MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

1. The authority citation for Part 76 is amended to read as follows:

AUTHORITY: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 335, 338, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 562, 571, 572, 573.

2. Add § 76.310 to read as follows:

47 CFR § 76.310. Truth in billing and advertising.

Cable operators and DBS providers shall aggregate the cost of video programming that they provide as a prominent single line item on subscribers' bills and in any promotional materials. Cable operators and DBS providers may complement the aggregate line item with an itemized explanation of the elements that compose that single line item.

APPENDIX B

Initial Regulatory Flexibility Act Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in this *Notice of Proposed Rulemaking (NPRM)*. The Commission requests written public comments on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments specified in the *NPRM*. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the Federal Register.³

A. Need for, and Objectives of, the Proposed Rules

2. Sections 335 and 632 of the Communications Act of 1934, as amended (the Act), authorize the Commission to adopt public interest regulations for direct broadcast satellite (DBS) and direct the Commission to adopt cable customer service requirements, respectively.⁴ In 2019, Congress adopted the Television Viewer Protection Act of 2019 (TVPA), which bolstered the consumer protection provisions of the Act by adding specific consumer protections.⁵ The TVPA revised the Act to add section 642, which, among other things, requires greater transparency in subscribers' bills.⁶ As it considered this legislation, Congress expressed specific concern that consumers face "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.⁷ In 2021, the Media Bureau sought comment on the steps multichannel video programming distributors (MVPDs) have taken to implement the TVPA requirements and on whether consumers found those steps effective in furthering Congress's goal of protecting consumers when purchasing MVPD or broadband service.⁸ In response to that PN, Consumer Reports

¹ 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² 5 U.S.C. § 603(a).

³ *Id.*

⁴ 47 U.S.C. §§ 335, 552.

⁵ The Television Viewer Protection Act of 2019, Pub. L. No. 116-94, 133 Stat. 2534 (2019). The TVPA was enacted as Title X of the "Further Consolidated Appropriations Act, 2020" (H.R. 1865, 116th Cong.).

⁶ 47 U.S.C. § 562. Section 642 provides four main areas of consumer protection related to billing: (1) before entering into a contract with a consumer, an MVPD must provide the consumer the total monthly charge for MVPD service, whether offered individually or as part of a bundled service, including any related administrative fees, equipment fees, or other charges, (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) with respect to electronic bills, MVPDs 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.*

⁷ H.R. Rep 116-329, at 6 (2019). *See also* Consumer Reports, How Cable Companies Use Hidden Fees to Raise Prices and Disguise the True Cost of Service, <https://advocacy.consumerreports.org/wp-content/uploads/2019/10/CR-Cable-Bill-Report-2019.pdf> (2019) (detailing the cable industry's practice of charging "hidden fees" beyond the rates that they advertise and promote).

⁸ *Media Bureau Seeks Comment on Implementation of the Television Viewer Protection Act of 2019*, Public Notice, DA 21-1610, 2021 WL 6063052 (MB Dec. 20, 2021). Commenters in the public notice docket should update and

(continued...)

commented that below-the-line fees, “which are solely the creation of the provider (versus regulatory fees that are passed on to the consumer)[,] made up the bulk” of costs that are added to advertised rates and MVPD subscribers’ bills.⁹ It appears that since adoption of the TVPA, the practice of charging subscribers unexpected “fees” (for example, for broadcast television programming and regional sports programming listed separately from the monthly subscription rate for video programming service) that are actually charges for the video programming service for which the subscriber pays, has continued.¹⁰ Moreover, websites, advertisements, and other promotional materials may advertise a top-line price that does not note prominently the mandatory programming costs that make up the service until the customer signs up for service. For example, those materials use a different font size (often in fine print) and separate from the proclaimed monthly subscription fee amounts extra “fees” designated by the provider that consumers will also need to pay for video programming that they will receive.¹¹

3. Some MVPDs charge subscribers an assortment of unexpected fees that are not identified as a cost attributable to the video programming service that they sell, even though those fees are for parts of that video programming service.¹² This categorization can potentially be misleading and interpreted as a government-imposed tax or fee, instead of a company-imposed service fee increase. This practice can also make it difficult for consumers to compare the service prices of competing video service providers. To make sure that consumers have the information they need to budget for video programming service and compare competitive services, we propose to require cable operators and DBS providers to identify all costs attributable to video programming service as a single line item on subscribers’ bills and in promotional materials.

B. Legal Basis

4. The proposed action is authorized under Sections §§ 1, 4(i), 303(v), 335(a) and 632(b), 642 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 303(v), 335(a) and 552(b), and 562.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

5. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rule revisions, if adopted.¹³ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,”

(Continued from previous page) _____

refile their comments from the public notice docket into the docket for this proceeding (MB Docket No. 23-203), to the extent they are relevant.

⁹ See Consumer Reports Reply Comments, MB Docket No. 21-501, at 2 (filed Mar. 7, 2022) (CR Reply).

¹⁰ Compare, e.g., Sharon Lurye, *Comcast releases rate changes for 2016*, Philly Voice, Nov. 24, 2015, <https://www.phillyvoice.com/comcast-releases-rate-changes-2016/> with Erin McCarthy, *Comcast’s rates are increasing again. Here’s what to expect*, The Philadelphia Inquirer, Dec. 5, 2022, <https://www.inquirer.com/business/comcast/comcast-rate-increase-internet-broadcast-sports-fees-20221205.html> (indicating that in Philadelphia, “broadcast TV” and “regional sports” fees increased from \$48 per year in in 2014 to over \$415 per year in 2023).

¹¹ See, e.g., Build Your Plan with Xfinity for Internet, TV, Mobile and Security, <https://www.xfinity.com/digital/offers/plan-builder>; Spectrum Packages – Best Bundles for Cable TV, Internet & Phone, <https://www.spectrum.com/packages>; Fios TV Rate Card, <https://www.verizon.com/about/sites/default/files/2022-01/December-2021-Rate-Card-WCAG-2-1.pdf>.

¹² H.R. Rep 116–329, at 6 (2019).

¹³ 5 U.S.C. § 603(b)(3).

“small organization,” and “small governmental jurisdiction.”¹⁴ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act (SBA).¹⁵ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.¹⁶ Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

6. *Cable and Other Subscription Programming.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis.¹⁷ The broadcast programming is typically narrowcast in nature (e.g., limited format, such as news, sports, education, or youth-oriented). These establishments produce programming in their own facilities or acquire programming from external sources.¹⁸ The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers.¹⁹ The SBA small business size standard for this industry classifies firms with annual receipts less than \$41.5 million as small.²⁰ Based on U.S. Census Bureau data for 2017, 378 firms operated in this industry during that year.²¹ Of that number, 149 firms operated with revenue of less than \$25 million a year and 44 firms operated with revenue of \$25 million or more.²² Based on this data, the Commission estimates that a majority of firms in this industry are small.

¹⁴ 5 U.S.C. § 601(6); *see infra* note 15 (explaining the definition of “small business” under 5 U.S.C. § 601(3)); *see* 5 U.S.C. § 601(4) (defining “small organization” as “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field, unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register”); 5 U.S.C. § 601(5) (defining “small governmental jurisdiction” as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand, unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and which are based on such factors as location in rural or sparsely populated areas or limited revenues due to the population of such jurisdiction, and publishes such definition(s) in the Federal Register”).

¹⁵ 5 U.S.C. § 601(3) (incorporating by reference the definition of “small business concern” in 15 U.S.C. § 632(a)(1)). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.” *Id.*

¹⁶ 15 U.S.C. § 632(a)(1)-(2)(A).

¹⁷ *See* U.S. Census Bureau, *2017 NAICS Definition, “515210 Cable and Other Subscription Programming,”* <https://www.census.gov/naics/?input=515210&year=2017&details=515210>.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *See* 13 CFR § 121.201, NAICS Code 515210.

²¹ *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 515210, <https://data.census.gov/cedsci/table?y=2017&n=515210&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>. The US Census Bureau withheld publication of the number of firms that operated for the entire year to avoid disclosing data for individual companies (see Cell Notes for this category).

²² *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue in all categories of revenue less than \$500,000 to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue in these categories). Therefore, the number of firms with revenue that meet the SBA size standard would be higher than noted herein.

(continued....)

7. *Cable Companies and Systems (Rate Regulation)*. The Commission has developed its own small business size standard for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide.²³ Based on industry data, there are about 420 cable companies in the U.S.²⁴ Of these, only seven have more than 400,000 subscribers.²⁵ In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.²⁶ Based on industry data, there are about 4,139 cable systems (headends) in the U.S.²⁷ Of these, about 639 have more than 15,000 subscribers.²⁸ Accordingly, the Commission estimates that the majority of cable companies and cable systems are small.

8. *Cable System Operators (Telecom Act Standard)*. The Communications Act of 1934, as amended, contains a size standard for a "small cable operator," which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."²⁹ For purposes of the Telecom Act Standard, the Commission determined that a cable system operator that serves fewer than 677,000 subscribers, either directly or through affiliates, will meet the definition of a small cable operator based on the cable subscriber count established in a 2001 Public Notice.³⁰ Based on industry data, only six cable system operators have more than 677,000 subscribers.³¹ Accordingly, the Commission estimates that the majority of cable system operators are small under this size standard. We note however, that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million.³² Therefore, we are unable at this time to estimate with greater precision the number of cable

(Continued from previous page)

We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

²³ 47 CFR § 76.901(d).

²⁴ S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

²⁵ S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q* (last visited May 26, 2022); S&P Global Market Intelligence, *Multichannel Video Subscriptions, Top 10* (April 2022).

²⁶ 47 CFR § 76.901(c).

²⁷ S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

²⁸ S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q* (last visited May 26, 2022).

²⁹ 47 U.S.C. § 543(m)(2).

³⁰ *FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, Public Notice, 16 FCC Rcd 2225 (CSB 2001) (*2001 Subscriber Count PN*). In this Public Notice, the Commission determined that there were approximately 67.7 million cable subscribers in the United States at that time using the most reliable source publicly available. *Id.* We recognize that the number of cable subscribers changed since then and that the Commission has recently estimated the number of cable subscribers to be approximately 58.1 million. *See Communications Marketplace Report*, GN Docket No. 20-60, 2020 Communications Marketplace Report, 36 FCC Rcd 2945, 3049, para. 156 (2020) (*2020 Communications Marketplace Report*). However, because the Commission has not issued a public notice subsequent to the *2001 Subscriber Count PN*, the Commission still relies on the subscriber count threshold established by the *2001 Subscriber Count PN* for purposes of this rule. *See* 47 CFR § 76.901(e)(1).

³¹ S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q* (last visited May 26, 2022); S&P Global Market Intelligence, *Multichannel Video Subscriptions, Top 10* (April 2022).

³² The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.901(e) of the Commission's rules. *See* 47 CFR § 76.910(b).

system operators that would qualify as small cable operators under the definition in the Communications Act.

9. *Direct Broadcast Satellite (DBS) Service.* DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic “dish” antenna at the subscriber’s location. DBS is included in the Wired Telecommunications Carriers industry which comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks.³³ Transmission facilities may be based on a single technology or combination of technologies.³⁴ Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution; and wired broadband internet services.³⁵ By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.³⁶ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.³⁷ U.S. Census Bureau data for 2017 show that 3,054 firms operated in this industry for the entire year.³⁸ Of this number, 2,964 firms operated with fewer than 250 employees.³⁹ Based on this data, the majority of firms in this industry can be considered small under the SBA small business size standard. According to Commission data however, only two entities provide DBS service - DIRECTV (owned by AT&T) and DISH Network, which require a great deal of capital for operation.⁴⁰ DIRECTV and DISH Network both exceed the SBA size standard for classification as a small business. Therefore, we must conclude based on internally developed Commission data, in general DBS service is provided only by large firms.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

10. *Reporting Requirements.* The *NPRM* proposes to require cable operators and DBS providers to state the makeup of consumers’ bills transparently, accurately, and clearly. The *NPRM* does not propose any new or modified recordkeeping or other compliance requirements.

³³ See U.S. Census Bureau, *2017 NAICS Definition, “517311 Wired Telecommunications Carriers,”* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

³⁴ *Id.*

³⁵ See *id.* Included in this industry are: broadband Internet service providers (e.g., cable, DSL); local telephone carriers (wired); cable television distribution services; long-distance telephone carriers (wired); closed-circuit television (CCTV) services; VoIP service providers, using own operated wired telecommunications infrastructure; direct-to-home satellite system (DTH) services; telecommunications carriers (wired); satellite television distribution systems; and multichannel multipoint distribution services (MMDS).

³⁶ *Id.*

³⁷ See 13 CFR § 121.201, NAICS Code 517311.

³⁸ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPfirm, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPfirm&hidePreview=false>.

³⁹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁴⁰ See *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Eighteenth Report*, Table III.A.5, 32 FCC Rcd 568, 595 (Jan. 17, 2017).

11. In assessing the cost of compliance for small entities, at this time the Commission is not in a position to determine whether, if adopted, amending the cable operator customer service obligations will require small entities to hire professionals to comply, and cannot quantify the cost of compliance with any of the potential rule changes that may be adopted. To help the Commission more fully evaluate the cost of compliance, in the *NPRM* we seek comment on whether a truth-in-billing requirement would impose undue burdens on small entities. We also seek comment on ways to limit any potential compliance burdens on small entities, while still achieving the benefits to consumers of clearer, non-misleading bills and advertisements. Comments should be accompanied by specific data and analysis supporting claimed costs and benefits. In addition, we seek comment on these issues and any other issues related to the regulation of below-the-line fees and truth-in-billing requirements. We expect the comments that we receive from the parties in the proceeding, including cost and benefit analyses, to help the Commission identify and evaluate compliance costs and burdens for small entities that may result from the matters discussed in the *NPRM*.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

12. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for such small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”⁴¹

13. The *NPRM* seeks comment on whether cable operators and DBS providers have changed the way they bill or promote such fees since the TVPA took effect, and if so, how. We ask whether there is a business purpose for characterizing these service rate increases as taxes, fees, or surcharges, and whether certain sectors in the MVPD marketplace more prone to charging such fees. We also ask whether any franchising authorities have regulations or franchise agreement terms about these types of billing and advertising practices, and if so, whether they would conflict with our proposal. Consistent with section 642 of the Act, the *NPRM* proposes to explicitly state in our rule that cable operators and DBS providers may complement the prominent aggregate cost line item with an itemized explanation of the elements that compose that aggregate cost, so long as the cable operator or DBS provider portrays the video programming-related costs as part of the all-in price for service. There may be consumer benefits to allowing cable operators and DBS providers to provide their subscribers and potential subscribers with information about how much of their subscription payments are attributable to specific elements of the video programming service, equipment rental, or other elements that contribute to the bill.

14. We considered alternatives to whether our proposal to provide the “all-in” price for service in their promotional materials and on subscribers’ bills is sufficient to ensure that subscribers and potential subscribers have accurate information about the cost for video service. We considered whether there are more consumer-friendly ways that cable operators and DBS providers should be required to provide this information and whether the term “prominent” is specific enough to ensure that cable operators and DBS providers present consumers with an easy-to-understand “all-in” subscription price, or whether we need to provide more detail about how cable operators and DBS providers must communicate the price for service and seek comment on these matters. We also considered whether, aside from line-item fees for broadcast television, sports programming (including regional sports programming), and entertainment programming, there are other video programming-related fees that are being categorized as taxes, fees, and surcharges, instead of included in the price for video service. We also considered whether

⁴¹ See 5 U.S.C. § 603(c)(1)-(4).

are there also benefits to industry, such as leveling the playing field for MVPDs that do offer transparent pricing.

15. We expect to more fully consider the economic impact and alternatives for small entities following the review of comments and costs and benefits analyses filed in response to the *NPRM*. Our evaluation of this information will shape the final alternatives we consider, the final conclusion we reach, and any final actions we ultimately take in this proceeding to minimize any significant economic impact that may occur on small entities.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rule

16. None.

**STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL**

Re: *All-In Pricing for Cable and Satellite Television Service*, MB Docket No. 23-203, Notice of Proposed Rulemaking.

Consumers deserve to know exactly what they are paying for when they sign up for a cable or direct broadcast satellite subscription. No one likes surprises on their bill. The advertised price for a service should be the price you pay when your bill arrives, rather than hide a bunch of junk fees that are separate from the top-line service price.

Increases in programming costs shouldn't be described as a tax, fee, or surcharge. The "all-in" pricing format we propose today would allow consumers to make informed choices by letting them more easily comparison shop among competing providers and evaluate programming costs against alternative programming providers, including streaming services.

Not only would this proposal reduce cost confusion and make it easier for consumers to compare services, but it would also increase competition among cable and broadcast satellite providers through improved price transparency.

Like our prior work to adopt a new Broadband Nutrition Label, which requires broadband providers to display easy-to-understand labels to allow consumers to comparison shop for broadband services, this is another step in our initiative to improve price transparency and competition. I look forward to the record that develops and then moving ahead with policies to protect and inform consumers by ensuring up-front and all-in pricing on their cable and satellite services.