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
	)	
	)	

REPORT AND ORDER

Adopted: March 14, 2024 **Released: March 19, 2024**

By the Commission: Chairwoman Rosenworcel and Commissioner Starks issuing separate statements; Commissioners Carr and Simington dissenting and issuing separate statements.

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I. INTRODUCTION

1. In this Report and Order (*Order*), we take action to benefit video consumers by requiring cable operators and direct broadcast satellite (DBS) providers to specify the "all-in" price for video programming in their promotional materials that include pricing information and on subscribers' bills. Our action today enables consumers to make purchasing decisions with access to clear, easy-to-understand, and accurate information disclosing the price of video programming. We believe that an "all-in" price for video service also will increase transparency and have a positive effect on competition in the video programming marketplace by allowing consumers to make better informed choices among the ranges of video programming service options available to them.

II. BACKGROUND

2. Sections 335 and 632 of the Communications Act of 1934, as amended (the Act), authorize the Commission to adopt public interest regulations for DBS providers and direct the Commission to adopt cable operator customer service requirements, respectively.[1] 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.[2] The TVPA revised the Act to add section 642, which, among other things, requires greater transparency in subscribers' bills.[3] As Congress explained then, and we observe today, consumers face "unexpected and confusing fees when purchasing video programming," including "fees for broadcast TV [and] regional sports."[4]

3. On June 20, 2023, the Commission released a Notice of Proposed Rulemaking (*NPRM*), observing that consumers who choose a video service based on an advertised monthly price may be surprised by unexpected fees that cable operators and DBS providers charge and list in the fine print separately from the top-line listed service price. The Commission found that such fees can be potentially misleading and make it difficult for consumers to compare the prices of competing video service providers.[5] In the *NPRM*, the Commission proposed to enhance pricing transparency by requiring cable operators and DBS providers to provide the "all-in" price for video programming in their promotional materials and on subscribers' bills.[6] The Commission sought comment on whether the proposal is

[1] 47 U.S.C. §§ 335, 552.

[2] 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.) (2019-20).

[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, a multichannel video programming distributor (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* Jonathan Schwantes, Consumer Reports, How Cable Companies Use Hidden Fees to Raise Prices and Disguise the True Cost of Service, CR CABLE BILL REPORT 2019 (Oct. 2019), https://advocacy.consumerreports.org/wp-content/uploads/2019/10/CR-Cable-Bill-Report-2019.pdf (reporting on the cable industry's practice of charging "hidden fees" beyond the rates that they promote) (CR Cable Bill Report 2019).

[5] *All-In Pricing for Cable and Satellite Television Service*, MB Docket No. 23-203, FCC 23-52, Notice of Proposed Rulemaking, 2023 WL 4105426 at *1, para. 2 (rel. June 20, 2023) (*NPRM*).

[6] *Id.* at *2, para. 5.

sufficient to ensure that subscribers and potential subscribers have accurate information about the cost for video service for which they will be billed. Specifically, the Commission sought comment on (i) the specifics of the proposed requirement for increased marketing and billing transparency, (ii) existing federal, state, and local requirements related to truth-in-billing, (iii) the marketplace practices regarding advertising and billing, and (iv) the Commission's legal authority to adopt this proposal.[7] The Commission also included a request for comment on the costs and benefits of the proposal, as well as the effects that the proposal could have on equity and inclusion.[8] The Commission received comments and *ex parte* filings from individuals, consumer advocates, cable, DBS, broadcast industry members, trade associations, state and local governments, and franchising authorities.[9] A number of comments describe general consumer frustration with unexpected "fees" (for example, for broadcast television programming and regional sports programming[10] charges listed separately from the monthly subscription rate for video programming) that are actually charges for the video programming for which the subscriber pays.[11]

III. DISCUSSION

4. In this *Order*, we adopt the proposal in the *NPRM* to require that cable operators and DBS providers provide the "all-in" price of video programming as a prominent single line item on subscribers' bills and in promotional materials that state a price.[12] We find that the record demonstrates that charges and fees for video programming provided by cable and DBS providers are often obscured in misleading promotional materials and bills, which causes significant and costly confusion for consumers.

[7] *Id*.

[8] *Id*.

[9] *See* Appendix A (List of Commenters). *See also* Letter from Mary Beth Murphy, Vice President/Deputy General Counsel, NCTA– The Internet & Television Ass'n, to Marlene H. Dortch, Esq., Secretary, FCC (filed Oct. 2, 2023) (NCTA Oct. 2 *Ex Parte*); Letter from Leora Hochstein, Vice President, Government Public Policy and Government Affairs, Verizon, to Marlene H. Dortch, Esq., Secretary, FCC (filed Nov. 13, 2023) (Verizon Nov. 13 *Ex Parte*); Letter from Michael Nilsson Counsel to DIRECTV, to Marlene H. Dortch, Esq., Secretary, FCC (filed Jan. 31, 2024) (DIRECTV *Ex Parte*); Letter from Mary Beth Murphy, Vice President and Deputy General Counsel, NCTA – The Internet & Television Ass'n, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 23-203 (filed Feb. 14, 2023) (NCTA Feb. 14 *Ex Parte*); Letter from Charles Dudley, Florida Internet & Television Ass'n; Andy Blunt, MCTA – The Missouri Internet & Television Ass'n; David Koren, Ohio Cable Telecommunications Ass'n; and Walt Baum, Texas Cable Ass'n, to Marlene H. Dortch, Esq., Secretary, FCC (filed Mar. 5, 2024) (State Cable Ass'ns Mar. 5 *Ex Parte*); Letter from Leora Hochstein, Vice President, Government Public Policy and Government Affairs, Verizon, to Marlene H. Dortch, Esq., Secretary, FCC (filed Mar. 6, 2024) (Verizon Mar. 6 *Ex Parte*); Letter from Mary Beth Murphy, Vice President/Deputy General Counsel, NCTA– The Internet & Television Ass'n, to Marlene H. Dortch, Esq., Secretary, FCC (filed Mar. 6, 2023) (NCTA Mar. 6 *Ex Parte*); Letter from Stacy Fuller, SVP, External Affairs, DIRECTV, to Marlene H. Dortch, Esq., Secretary, FCC (filed Mar. 7, 2024) (DIRECTV Mar. 7 *Ex Parte*); Letter from Brian Hurley, ACA Connects, to Marlene H. Dortch, Esq., Secretary, FCC (filed Mar. 7, 2024) (ACA Connects Mar. 7 *Ex Parte*); Letter from Keith J. Leitch, President, One Ministries, Inc. (KQSL), to Marlene H. Dortch, Esq., Secretary, FCC (filed Mar. 7, 2024); Letter from Leora Hochstein, Vice President, Government Public Policy and Government Affairs, Verizon, to Marlene H. Dortch, Esq., Secretary, FCC (filed Mar. 8, 2024) (Verizon Mar. 8 *Ex Parte*); Letter from Michael Nilsson, Counsel to ACA Connects, to Marlene H. Dortch, Secretary, FCC (filed Mar. 8, 2024) (ACA Connects Mar. 8 *Ex Parte*).

[10] *See generally Review of the Commission's Program Access Rules and Examination of Programming Tying Arrangements*, First Report and Order, 25 FCC Rcd 746, Appx. A at 121 (2010) (defining "Regional Sports Network"); *Altitude Sports & Entm't, LLC v. Comcast Corp*., No. 19-cv-3253-WJM-MEH, 2020 WL 8255520 at *1 (D. Colo. Nov. 25, 2020) (defining the "relevant product market" for regional sports programming).

[11] *See, e.g.*, Comments of Truth in Advertising, Inc. (Truth in Advertising Comments); Daniel Drake Comments at 1; Jonathan Bates Comments at 1; Maureen Comments at 1; M Mondesir Comments at 1; Kenneth Lubar Comments at 1; Mitchel Bakke Comments at 1; Matt Mann Comments at 1.

[12] *NPRM*, 2023 WL 4105426 at *2, para. 6.

We, therefore, adopt the "all-in" rule to promote pricing transparency and to complement existing consumer protections and practices of cable operators and DBS providers.

5. First, we describe current marketplace practices and conclude that the "all-in" rule is well-tailored to address the need for consumers to have accurate information about the cost of video service. Next, we consider issues related to implementation of the "all-in" rule, including how the rule applies to bundled services and billing material (including for currently-offered and grandfathered or legacy plans) and promotional material (including national and regional marketing where charges to consumers vary by geography and promotional discounts). We discuss the legal authority we rely upon to implement the "all-in" rule. We conclude that section 642 of the Act (the TVPA), section 632 of the Act (covering cable operators), section 335 of the Act (covering DBS providers), as well as ancillary authority, provide ample authority for the "all-in" rule. We also conclude that the "all-in" rule is consistent with the First Amendment. We consider existing local, state, and voluntary consumer protections adopted and implemented by cable operators and DBS providers, as well as existing federal requirements stemming from the TVPA applicable to multichannel video programming distributors (MVPDs), that relate to transparency and disclosure of pricing information. We conclude that the "all-in" rule will complement existing protections by further mitigating consumer confusion about the aggregate cost of video programming. Finally, we consider the potential competitive effects of the "all-in" rule and conclude that increased consumer access to clear, easy-to-understand, and accurate information likely encourages price competition, innovation, and the provision of high-quality services.

A. Need for the "All-In" Rule

6. Based on the record, we find that there is a need for the "all-in" rule so that consumers can make better informed decisions about their service and can comparison shop among video programming providers without having to "read fine print or try to determine which 'fees' or 'surcharges' are really charges related to video programming services that might raise the monthly cost compared to other offers they are considering."[13] In the *NPRM*, the Commission sought comment on whether consumers encounter misleading promotions or receive misleading bills, and on current industry practices regarding pricing categorization.[14] As described below, individuals, consumer protection organizations, state and local governments, and franchise authorities report that consumers experience "considerable" confusion and surprise when unanticipated charges and fees for cable and satellite video programming are not included in the advertised price in promotional materials and are separately listed on bills.[15]

[13] Comments of the City of Oklahoma City, Oklahoma; City of Minneapolis, Minnesota; Metropolitan Area Communications Commission; Northwest Suburbs Cable Communications Commission; North Metro Telecommunications Commission; South Washington County Telecommunications Commission; North Suburban Communications Commission; City of Edmond, Oklahoma; City of Coon Rapids, Minnesota; and City of Aumsville, Oregon, at 6 (Local Franchise Authorities Comments). *See also* Comments of the Texas Coalition of Cities For Utility Issues, City of Boston, Massachusetts, the Mt. Hood Cable Regulatory Commission, Fairfax County, Virginia and National Association of Telecommunications Officers and Advisors (NATOA), at 10 (Local Government Comments) (stating their belief "that a robust disclosure requirement that works alongside local consumer protection regulation will be a welcome addition to the cable sector and improve prices and competition for consumers").

[14] *NPRM*, 2023 WL 4105426 at *2-4, paras. 7-10.

[15] *See, e.g.*, Reply Comments of the City of Oklahoma City, Oklahoma; City of Minneapolis, Minnesota; Metropolitan Area Communications Commission; Northwest Suburbs Cable Communications Commission; North Metro Telecommunications Commission; South Washington County Telecommunications Commission; North Suburban Communications Commission; City of Edmond, Oklahoma; City of Coon Rapids, Minnesota; City of Aumsville, Oregon; and City of Mustang, Oklahoma (the Local Franchise Authorities), at 3 (Local Franchise Authorities Reply Comments) (concluding the all-in rule is needed to resolve the "[c]onsiderable confusion among consumers regarding 'junk fees'" on subscribers' bills); Reply Comments of the Colorado Communications and Utility Alliance at 2 (asserting that "cable operators and DBS television providers have been using fees associated

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7. Consumer protection groups describe significant, recurring issues with consumer access to clear, easy-to-understand, and accurate information about the price of cable operator and DBS provider video programming. Truth in Advertising, for example, contends that "several cable and satellite service companies [are] engaged in deceptive pricing practices, including the use of unexpected fees."[16] Truth in Advertising discusses a 2019 analysis by Consumer Reports of 800 cable bills, revealing the cable industry generates $450 per customer, per year, from company-imposed fees, and that nearly 60% of Americans who encounter these unexpected or hidden fees report the fees caused them to exceed their budget.[17] Consumer Reports examined hundreds of cable and satellite television bills collected in 2018 and made several findings in the 2019 report, "including that consumers pay significantly more than the advertised price for video programming ... because of the addition of various fees, surcharges, and taxes."[18] According to Consumer Reports, fees are "often imposed or increased with little notice, and are often listed among a dizzying array of other charges, including government-imposed fees and taxes" while cable companies "continue advertising relatively low base rates."[19] Further, a 2018 "Secret Shopper Investigation" conducted by Consumer Reports found that consumers were provided with inaccurate or confusing fee-related information by customer service representatives of cable and DBS providers on a number of occasions.[20] This included customer service representatives portraying certain

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with 'broadcast television' and 'regional sports' to obfuscate the true price of cable television service"); Comments of Kenneth Lubar (stating that "[t]he advertised fees [of cable companies] are misleading and hinder effective comparison of true costs"); Consumer Reports (with Public Knowledge) Comments at 5 (Consumer Reports and Public Knowledge Comments) (observing that hidden fees "enable cable companies to camouflage price increases, confounding consumer efforts to comparison shop and to maintain household budgets"); Comments of the National Association of Broadcasters at 5 (NAB Comments) ("Current advertising and billing methods used by MVPDs can lead consumers to believe that retransmission consent fee payments are somehow different from all the other inputs into MVPDs' programming packages or that retransmission consent payments to broadcasters constitute a tax or governmental regulatory fee.").

[16] Truth in Advertising Comments at 2.

[17] *Id.* at 4-5 (citing CR Cable Bill Report 2019). Truth in Advertising lists examples of issues with the disclosure of pricing for video programming, including: a Comcast advertisement for free installation that becomes a hidden fee; lack of disclosure of a price increase for the second year of a two-year service agreements with AT&T, CenturyLink, and DIRECTV; and Frontier "failing to honor its advertised prices for its TV and internet bundle." *Id*. at 2. Truth in Advertising asserts that "[b]ecause the harm imposed by such fees is so widespread and injurious, numerous consumers have complained ... about losing significant money to cable companies that employ these tactics." *Id*. at 4-5.

[18] Consumer Reports and Public Knowledge Comments at 2-3 (citing CR Cable Bill Report 2019) ("Specifically, CR determined that for cable bills, additional charges of all types amount to an additional 33 percent mark-up over the base price of service. Many of these additional charges are not included in the advertised price, and are instead buried in the fine print of the service plan."). *See also NPRM*, 2023 WL 4105426 at *1, para. 4 (citing Consumer Reports and Public Knowledge Reply Comments, MB Docket No. 21-501, at 2 (filed Mar. 7, 2022)).

[19] Consumer Reports and Public Knowledge Comments at 5. *See also, e.g.*, Local Government Comments at 5 (highlighting TechHive's documentation of the practices of Comcast, Charter and Cox in 2021 (citing Jared Newman, Cable-bill Transparency Laws Haven't Killed Sneaky Fees, TechHive (Jan. 28, 2021), https://www.techhive.com/article/579177/cable-bill-transparency-laws-havent-killed-sneaky-fees.html (describing instances in which many charges and fees would not be known to the consumer "without clicking on the fine print" and service providers withholding information about "broadcast and regional fees," for example, "from [a] bill summary until the final stage of the checkout process, after you've provided a social security number and agreed to a credit check")). *But see* Reply Comments of NCTA – The Internet & Television Association at 3 (NCTA Reply Comments) (arguing the TechHive "article is clear that fees are being disclosed to consumers prior to purchase" and that, since the publication of the article, "methods of disclosing pricing information have continued to evolve to better meet the needs of our members' existing and potential customers").

company-imposed fees as government-imposed taxes and fees; failing to mention fees; or offering incomplete fee information.[21]

8. Comments filed by individual consumers as well as state and local governments and franchise authorities likewise detail concerns about misleading promotional materials and bills for cable and DBS service and urge the Commission to adopt an "all-in" rule to protect consumers. The record indicates that approximately 24 to 33 percent of a consumer's bill is attributable to company-imposed fees such as "Broadcast TV Fees," "Regional Sports Surcharges," "HD Technology Fees," and others,[22] and that the "dollar amount of company-imposed fees has skyrocketed."[23] However, consumers too often lack transparent information about fees that significantly increase the cost of advertised and billed video services and how they will affect their total cost and bottom-line budget.[24] Increases in fees relating to video programming during the term of the service agreement are sources of consumer surprise and confusion, and it is "especially notable … that these fees are being raised by cable companies even while many consumers are locked into supposed 'fixed-rate' contracts."[25] As the Local Government Commenters emphasize, these fees disproportionately impact lower-income households.[26]

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[20] Consumer Reports and Public Knowledge Comments at 14-15 (describing how in "late 2018, seven [Consumer Reports] secret shoppers made a total of 74 calls to customer service representatives (CSRs) of Charter, Comcast, DIRECTV, Frontier, and Verizon … [and] pos[ed] as potential new customers interested in obtaining TV and internet service"). *But see* NCTA Reply Comments at 3 (noting that the secret shopper survey occurred before the TVPA was adopted in 2019). Although this survey took place before the passage of the TVPA, the record indicates that cable operators and satellite providers continue to charge the very same "add-on" fees at issue in the Consumer Reports survey. *Compare* Consumer Reports and Public Knowledge Comments at 4-8 *with* NCTA Reply Comments at 8-12 (criticizing and justifying the use of add-on fees, respectively).

[21] Consumer Reports and Public Knowledge Comments at 15, 19 (concluding "that providers seldom acknowledge that company-imposed fees are in fact imposed at the discretion of the cable companies, and, further, that they frequently state or suggest the exact opposite: that the company has no choice but to charge these fees").

[22] *See id.* at 3-4, 10.

[23] *Id.* at 6. Data from the Local Government Commenters reveals cumulative increases in sports broadcasting and regional sports network programming charges; an increase in broadcast fees as much as five- to seven-fold since 2016, while cable prices have increased 25 to 50 percent; an increase in equipment fees in the last two to three years; and that regional sports fees have tripled, quadrupled, or quintupled in the last six years. *See* Local Government Comments at 6-7 and Appendix A (describing and attaching "fee data over time in four major metropolitan areas … demonstrat[ing] the increased consumer costs over time and the increasing contribution of cable operator-created fees toward a consumer's final bill"). *See also* City of Seattle Comments at 6 (discussing how fees are growing cost components across Seattle's two franchised service areas).

[24] *See* Consumer Reports and Public Knowledge Comments at 6. *See also* Comments of Jonathan Bates ("It's misleading and false advertisement ... to promote any pricing that doesn't include mandatory fees."); Comments of Maureen (describing a consumer's experience of confusion after telling a customer service agent that she was on a fixed income, and later discovering a $20 fee for "local channels" being charged separately when her understanding was that such channels are "included with the cable package"); Comments of M. Mondesir (observing that "my cable bill with Spectrum included 'TV Select $49.99' – that was the actual name of the plan – and it added $28.19 in hidden 'Other Charges,'" which was a 56 percent increase from the advertised price and included a $21 "Broadcast TV Surcharge"); Local Franchise Authorities Comments at 5 (noting 83 reports from cable subscribers in the City of Minneapolis asking about broadcast fees, regional sports fees, or otherwise not understanding their monthly bill).

[25] Consumer Reports and Public Knowledge Comments at 5. Companies have been accused of increasing hidden fees after customers have agreed to a fixed-fee fixed-term contract. Local Government Comments at 5 (citing Harold Feld, *Junk Fees and Cable TV: Lessons from the Television Viewer Protection Act*, CPI Anti-Trust Chronicle at 5 (April 2023)). The Northwest Suburbs Cable Commission, for example, received a complaint that a consumer's "broadcast fee went up when it stated on their bill that the fee was going down [and] Comcast could not explain the reason for the increase and what the broadcast fee was for." Local Franchise Authorities Comments at 5.

[26] Local Government Comments at 6. *See also infra* Section III.G (Digital Equity and Inclusion).

9. Misinformation and misunderstandings about how much subscribing to video programming service costs lead to subscriber complaints, disputed bills, and litigation. Consumer Reports observed that since 2016, state attorneys general in Massachusetts,[27] Minnesota,[28] and Washington[29] have "launched investigations and/or filed lawsuits accusing Comcast, one of the nation's largest cable operators, of fee-related fraud."[30] Truth in Advertising describes eight class-action lawsuits initiated by consumers challenging unexpected charges and fees.[31] The Local Government Commenters report that "[c]lass action lawsuits or suits brought by state Attorneys General have resulted in settlements when companies impose fees that exceed its promise of a fixed price."[32] Local franchising authorities from several states also report a variety of complaints they are receiving, and the types of questions they respond to, in support of "subscribers who are confused" about the charges on bills from cable operators and DBS providers.[33]

10. On the other hand, cable and DBS commenters dispute the characterization of their advertising and billing practices as misleading to consumers and argue that there is no need for the Commission to adopt an "all-in" rule. NCTA contends that "[p]roviding accurate and transparent pricing information to consumers is a marketplace necessity" given fierce competition for consumers in the video programming market.[34] According to NCTA, "[i]n the course of a prospective customer's consideration

[27] Massachusetts reached a settlement with Comcast over alleged violations of the Massachusetts Consumer Protection Act, wherein Comcast was accused of failing to disclose fees that increased bills by up to forty percent and deceptive advertising practices. Consumer Reports and Public Knowledge Comments at 16 (citing Assurance of Discontinuance, *In the Matter of Comcast Cable Comm'ns LLC*, No. 18-3514 (Mass. Super. Ct. Nov. 9, 2018)); 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) (announcing "Comcast will pay refunds and cancel debts for more than 20,000 Massachusetts customers as part of a settlement resolving allegations that the company violated state consumer protection laws by using deceptive advertisements to promote its long-term cable contracts"), 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.

[28] The attorney general of Minnesota filed an "enforcement action in December 2018, accusing Comcast of misrepresenting company-imposed fees and the price of cable television packages, charging consumers for products they did not order, and failing to send the prepaid Visa cards that customers had been promised as a sign-up bonus." Consumer Reports and Public Knowledge Comments at 16 (citing *State of Minnesota v. Comcast Cable Commc'ns*, LLC, No. 27-CV-18-20552 (Hennepin Cty. D. Ct. Dec. 21, 2018)). "On June 6, 2019, a state judge ruled against Comcast, finding that the cable company had violated the Washington State law almost half a million times by signing consumers up for the $6 per month protection plan without their consent." *Id.* at 17. Comcast was assessed a $9.1 million penalty and ordered to pay back affected consumers with interest. *Id.*

[29] In Washington State, the attorney general "sued Comcast in 2016 for allegedly violating the state's Consumer Protection Act." *Id.* at 17 (citing *State of Washington v. Comcast Commc'ns Mgmt.*, Superior Court of Washington (June 6, 2019)).

[30] *Id.* at 15-17 (citing Assurance of Discontinuance, *In the Matter of Comcast Cable Commc'ns LLC*, No. 18-3514 (Mass. Super. Ct. Nov. 9, 2018)).

[31] These include class action lawsuits against Cox, Frontier, AT&T, DIRECTV, CenturyLink, Comcast, DISH Network, and Charter Communications. Truth in Advertising Comments at 2-3.

[32] Local Government Comments at 5.

[33] *See* Local Franchise Authorities Comments at 1-7 (describing how "the [Local Franchise Authorities] receive questions and complaints from subscribers who are confused about the nature of these fees"); Local Government Comments at 7; Connecticut Office of State Broadband (CT OSB) within the Connecticut Office of Consumer Counsel Comments at 6 (emphasizing consumer issues, in its experience) (Connecticut Office of State Broadband Comments).

[34] Comments of NCTA – The Internet & Television Association at 3 (NCTA Comments). *See also* Comments of Verizon at 1 (Verizon Comments) (asserting that in light of competition from streaming services in the video

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of which service package to buy (the 'buy-flow') and on customers' bills, our members clearly disclose the specific amounts of the fees that will apply and the total amount customers will pay for service, thereby ensuring that customers are not 'surprised by unexpected fees."[35] In addition, NCTA argues that there is no need for the Commission to adopt an "all-in" requirement because the existing transparency in billing requirements of the TVPA sufficiently address this issue.[36] DIRECTV submits that an "all-in" rule could complicate "apples-to-apples" comparison shopping because it (i) would require the disclosure of only one variable in a service offering–price–rather than specific channels or other aspects of the video programming service that the provider offers, thus "creat[ing] confusion in a world where the content and other terms of the service offering differ dramatically among providers"; (ii) would apply only to cable and DBS and not other providers of video programming, including online video distributors; and (iii) would require a single price in national advertising even though actual prices differ depending on where a customer lives.[37]

11. Although industry commenters assert that the practice of separating certain elements of the price for video programming and listing them as "fees" does not deceive consumers,[38] we believe that the weight of evidence in the record as detailed above suggests otherwise and that efforts to address these issues will benefit from a robust "all-in" rule. As Local Government Commenters contend, "[m]ore clarity and transparency are needed to help consumers understand their cable bills and make informed decisions about their services," and "consumers should know what their video programming services will cost, including all charges cable operators add to those services."[39] We agree that an "all-in" rule serves the dual purposes of helping consumers comparison shop among video programming providers when looking at promotional materials and helping subscribers recognize when the price for video service has changed when looking at their bills.[40] As we found in the *NPRM*, unexpected fees related to the cost of

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market, "there is no basis or need for the Commission to adopt far-reaching regulations regarding cable and satellite TV billing practices, particularly for competitive entrants like Verizon"); Comments of ACA Connects – America's Communications Association at 2 (ACA Connects Comments) ("Consumers may be troubled by the high rates they are charged for video service but not because prices are hidden or not sufficiently disclosed."); Reply Comments of Charter Communications, Inc., Comcast Corporation, Cox Communications, Inc., Mediacom Communications Corporation, Midcontinent Communications, and TDS Telecommunications Corporation (Cable Company Reply Comments) (asserting that "rules are unnecessary in the current, highly competitive video marketplace," and "[t]he Cable Company Commenters already clearly inform consumers of the costs of their services, in response to marketplace forces and consistent with existing law").

[35] NCTA Comments at 2-3.

[36] *Id*. at 4-7. *See infra* Section III.D.2 (discussing the TVPA).

[37] Comments of DIRECTV at ii, 9-12 (DIRECTV Comments). *See also* Comments of USTelecom – The Broadband Association at 2 (USTelecom Comments) (citing DIRECTV's argument); NCTA Comments at 7 ("[U]niquely regulating cable and DBS advertising and pricing disclosures as proposed in the Notice would undercut this goal, making it harder for consumers to accurately compare video services, especially as others in the marketplace would have greater flexibility in how they present pricing information"). *But see infra* para. 31 (explaining that we do not require a single price in national or regional advertising, but instead will allow cable operators and DBS providers to advertise a range of "all-in" prices that will apply within the area covered by the promotion).

[38] *See, e.g.*, NCTA Reply Comments at 2-3; NCTA Oct. 2 *Ex Parte* at 1-2.

[39] Local Franchise Authorities Comments at 5. NAB explains that, in its experience, MVPD-imposed fees, including those labeled "broadcast TV fee" or "broadcast TV surcharge" raise accuracy and transparency concerns, because they make the fees appear to be regulatory fees or taxes and because they single out certain programming without identifying the costs of all other video programming. NAB Comments at 2-3.

[40] *Id*. *See also* Local Government Comments at 3 ("agree[ing] that the proposal will serve consumers and promote competition, by enabling consumers to know what they will pay when they subscribe to cable television services," and "will enable them to shop among various services more effectively, enabling competition"); Local Franchise Authorities Comments at 4 (contending that the "all-in" rule will lead to a reduction of "complaints received by
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video programming, and how those fees are disclosed, can "make it difficult for consumers to compare the prices of video programming providers."[41] An "all-in" price that lets consumers know the exact amount that they pay for video programming will give consumers a clear, easy-to-understand, and accurate price-point to consider.[42] We disagree that requiring cable operators and DBS providers to present consumers with honest pricing information without addressing other variables of video programming service will complicate comparison shopping. The "all-in" rule does not prohibit additional information that may highlight or compare a service feature (for example, the number, quality, or types of video programming channels available).[43] Instead, it simply prohibits deceptive pricing practices. We also find, based on the record, that the "all-in" rule will benefit consumers, notwithstanding its application only to cable and DBS providers, considering the specific issues raised in the record with respect to these services.[44]

B. The "All-In" Rule

12. We adopt the proposal in the *NPRM* to require cable operators and DBS providers to provide the "all-in" price for video programming service in both their promotional materials and on subscribers' bills.[45] As noted in the *NPRM* and confirmed by the record in this proceeding, the public interest requires that cable operators and DBS providers represent their subscription charges transparently, accurately, and clearly.[46] While commenters representing the cable and DBS industry

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cable operators and [Local Franchise Authorities (LFAs)] regarding misleading or confusing advertisements and unexpectedly higher cable service bills for new subscribers"), 6 ("The all-in price will also help consumers comparison shop among video programming providers, including streaming services. Because cable operators have varying billing practices and different line items, consumers may have difficulty comparing the actual price of video programming services among various providers…."); City of Seattle Comments at 5, 7 ("strongly" supporting the Commission's "all-in" proposal as "an effective and meaningful way to ensure that subscribers and potential subscribers have accurate information about the full cost of video services").

[41] *NPRM*, 2023 WL 4105426 at *1, para. 2. *See* Comments of Kenneth Lubar (discussing how "[t]he advertised fees [of cable companies] are misleading and hinder effective comparison of true costs"); Consumer Reports and Public Knowledge Comments at 5 (commenting that current disclosures are "confounding consumer efforts to comparison shop"); Local Government Comments at 3 (predicting the "all-in" rule "will enable [consumers] to shop among various services more effectively, enabling competition"); Local Franchise Authorities Comments at 6 (predicting the "all-in" rule will benefit comparison shop among video programming providers by requiring "the actual price of video programming"). *But see* NCTA Comments at 7 (discussing that the "all-in" rule would make it more difficult for consumers to accurately compare video services if competitors "have greater flexibility in how they present pricing information"); NCTA Reply Comments at 4 (describing the difficulty of applying the "all-in" rule to bundled services, such as broadband and voice, making "all-in" price comparisons "more complex and … misleading").

[42] Thus, we disagree with industry commenters that suggest that an "all-in" rule will lead to less transparency because it addresses only one variable in a video service offering–price. *See, e.g.*, DIRECTV Comments at 9-12. Commenters point to the success of the recently adopted broadband consumer label that also "offers helpful guidance for the Commission in adopting a consistent and clear obligation for cable services and DBS" and suggest the all-in rule should include factors similar to those required in a broadband consumer label. Local Government Comments at 10-11.

[43] *See infra* para. 15.

[44] *See infra* para. 30. Despite mentioning numerous streaming services, DIRECTV provides just one example of a non-cable, non-DBS provider that charges a "regional sports" junk fee. DIRECTV Comments at 10.

[45] *NPRM*, 2023 WL 4105426 at *2, para. 5.

[46] *Id*. ("We believe that the public interest requires that cable operators and DBS providers represent their subscription charges transparently, accurately, and clearly."); *supra* Section III.A (Need for the "All-In" Rule).

object to the proposal, the record otherwise reflects a broad swath of support for adoption of an "all-in" price rule.[47]

1. General Implementation

13. In accordance with this requirement, cable operators and DBS providers must aggregate the cost of video programming (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 in promotional materials (if a price is included in those promotional materials) and on subscribers' bills.[48] We do not require every cable or DBS advertisement to provide an "all-in" price where pricing is not otherwise included in the ad; but when a price is included in promotional materials, the "all-in" rule applies.[49] This aggregate price must include the full amount of the charge the cable operator or DBS provider charges (or intends to charge) the customer in exchange for video programming, including costs relating to broadcast television retransmission, and sports and entertainment programming. We agree with commenters that requiring cable and DBS providers to include these video programming charges in the "all-in" price will help consumers "better distinguish between operator-imposed charges and government-imposed taxes or fees"; as the record indicates, by separating out these charges, cable operators and DBS providers mislead consumers into believing such charges are government-imposed fees when they are nothing of the sort. Instead, such video programming charges are part of the aggregate cost for video programming in their promotional and billing material.[50]

14. Consistent with the Commission's proposal in the *NPRM*,[51] amounts beyond those charged to the consumer for the video programming itself, such as taxes, administrative fees, equipment fees,[52] and franchise fees,[53] or other such charges, are excluded from the "all-in" rule.[54] Commenters

[47] *See generally* Local Government Comments and Reply Comments; Local Franchising Authorities Comments and Reply Comments; Colorado Communications and Utility Alliance Reply Comments; Connecticut Office of State Broadband Comments; City of Seattle Comments; Consumer Reports and Public Knowledge Comments and Reply Comments; Truth in Advertising Comments; NAB Comments; ABC Television Affiliates Association Reply Comments; One Ministries, Inc. Comments; Daniel Drake Comments; Jonathan Bates Comments; Maureen Comments; M Mondesir Comments; Kenneth Lubar Comments; Mitchel Bakke Comments; Matt Mann Comments. *But see* NCTA Comments and Reply Comments; DIRECTV Comments; Verizon Comments and Reply Comments; Cable Company Reply Comments; USTelecom Comments.

[48] *NPRM*, 2023 WL 4105426 at *2, para. 6. *See also* Consumer Reports and Public Knowledge Comments at 8 ("If this rulemaking accomplishes nothing more, at least the aggravating practice of separating out retransmission consent costs in the form of a mandatory 'Broadcast TV Fee' or 'Regional Sports Fee' will be stymied if the advertised price accounts for these fees that consumers cannot opt out of and whose cost are not insignificant …."). As discussed among commenters, "promotional material" generally includes online promotions. *See* ACA Connects Comments at 14-15 (explaining that video programming service providers rely on websites "not only to advertise and promote their services but also as a point of sale").

[49] For purposes of the "all-in" rule, promotional material includes communications to consumers such as advertising and marketing.

[50] Local Franchise Authorities Comments at 7-8; Consumer Reports and Public Knowledge Comments at 5, 15, 19; Local Government Comments at 5; NCTA Reply Comments at 3.

[51] *NPRM*, 2023 WL 4105426 at *2, para. 6 (stating that the Commission "intend[s] 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)."

[52] *See id.* at *2, para. 6 n.10 (declining to 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").

discussed the potential benefits and downsides of extending the "all-in" rule to cover charges and fees not directly related to the provisioning of video programing. Consumer Reports and Public Knowledge, for example, support a broad application of the "all-in" rule, including where "fees might be variable," such as equipment costs, because, if not, the advertised price "is not the real price a consumer will eventually pay."[55] The Local Franchise Authorities, on the other hand, suggest "the Commission should be clear that an all-in price that includes government-imposed taxes or fees does not satisfy the rule."[56] We are convinced, at this time, to focus the "all-in" rule on the issues identified in the record regarding the disclosure of charges associated with the video programming itself. We also are mindful of pragmatic difficulties of complying with the "all-in" rule when certain costs for *each consumer* (not for *each market*) vary more than others.[57] Compliance with the "all-in" rule could be complicated, for example, by taxes that may vary by location; and decisions on whether there is a need to purchase equipment and on the number and type of devices, which vary for each household.

15. As proposed in the *NPRM*, we are persuaded that service providers subject to the "all-in" requirement may provide their subscribers and potential subscribers with itemized information about how much of their subscription payments are attributable to specific costs relating to providing video

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[53] For purposes of this proceeding, we will consider Public, Educational, and Governmental Access Support Fees (PEG Fees) as part of franchise fees, consistent with prior Commission findings. *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, 34 FCC Rcd 6844, 6860-62, paras. 28-30 (2019) (finding that the definition of franchise fee in section 622(g)(1) encompasses PEG-related contributions).

[54] *Id*. at *7, para. 16 (concluding, tentatively, that "the terms 'taxes,' '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)" (citing 47 U.S.C. § 542(c)). *See, e.g.*, NTCA – The Rural Broadband Association Comments at 6 ("NTCA agrees with the Commission's proposal not to require taxes to be included in the all-in price or for taxes to be listed separately in promotional materials due to the challenges and possible confusion this would create with taxes varying according to a consumer's location."); NCTA Mar. 6 *Ex Parte* at 3 (contending that "[f]ranchise fees and PEG fees should be explicitly excluded from the all-in price" because "[l]ike taxes, the fees would be impractical to include in an all-in price").

[55] Consumer Reports and Public Knowledge Comments at 10-11 (arguing "the fact that [equipment] fees might be variable is not a reason to exclude them in the aggregate price"). *See also* Local Government Comments at 10 ("Local Government Commenters believe … that taxes could be included in the cable operator disclosures; but even if the Commission does not require the inclusion of taxes, franchise fees are not taxes."); Reply Comments of the Texas Coalition of Cities For Utility Issues, City of Boston, Massachusetts, the Mt. Hood Cable Regulatory Commission, Fairfax County, Virginia and National Association of Telecommunications Officers and Advisors (NATOA) at 6 (Local Government Reply Comments) (suggesting that the "all-in" price should include the total amount consumers will pay, including taxes, with the exception of local sales taxes); ACA Connects Comments at 15 (explaining that an "all-in" price that does not include all taxes and fees may lead consumers to experience "sticker shock" when they receive a bill).

[56] Local Franchise Authorities Comments at 8 ("[T]o ensure full transparency, the Commission should be clear that an all-in price that includes government-imposed taxes or fees does not satisfy the rule. Including government-imposed taxes and fees in the all-in price will continue to obscure cable operators' decisions regarding pricing and additional charges." (citing *NPRM*, 2023 WL 4105426 at *2, para. 7)).

[57] Consumer Reports and Public Knowledge Comments at 11 (arguing that "even if minor variations were present, tailoring an advertised price to reflect different prices does not strike us as overly burdensome"). *See also* NCTA Comments at 2-3 (discussing efforts made to disclose fees that are "typically dependent on what customers purchase and where they live"); Cable Company Reply Comments at 3 ("Cable operators also remain subject to applicable laws governing the full and accurate disclosure of the nature and amount of [taxes, administrative fees, equipment fees, or other charges and] fees.").

programming or other items that contribute to the bill.[58] Thus, consistent with sections 622(c) and 642 of the Act,[59] 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.[60] Information in addition to the "all-in" price may be included, so long as the cable operator or DBS provider portrays the video programming-related costs as part of the "all-in" price for service.[61] Additional communications (the customer subscription and billing processes, for example) may also include information about other attributable costs with even more granularity, but may not be a substitute for, or obscure, compliance with the "all-in" price. The "all-in" rule, for example, does not prevent the additional disclosure of costs relating to retransmission consent fees incurred by cable operators and DBS providers. The record describes issues cable operators and DBS providers incur by recouping retransmission costs, which some providers would like to avoid entirely or inform their customers of, and there is a lack of evidence indicating that additional disclosures that the industry supports causes consumer confusion.[62] Our decision does not prohibit additional disclosures or separate line items, including those required by section 642 of the Act or permitted under 622(c) of the Act.[63] We also decline at this time to "reform the retransmission consent marketplace," as some commenters have requested, as it is beyond the scope of this proceeding and the focus of the Commission in other dockets.[64]

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[58] *See NPRM*, 2023 WL 4105426 at *3, para. 8; 47 U.S.C. § 562; NTCA – The Rural Broadband Association Comments at 5 ("NTCA notes that the Commission already permits cable operators to list franchise fees, public, educational, and government access fees, among others, as a separate line item on customers' bills."); Verizon Comments at 10 ("It likewise may enhance transparency to show consumers the various mandatory fees and taxes imposed by local governments."); ACA Connects Comments at 17 (explaining that restricting the ability to break out fees would lead to "reduced transparency for consumers, who may be led to assume … that the high and rising prices they are charged for cable service are merely an effort by the operator to generate unreasonable profits"). We note that in some instances this itemization may be required, as well as compliance with the "all-in" rule. *See* 47 U.S.C. § 562(b)(1) (requiring bill in electronic formats to include "an itemized statement that breaks down the total amount charged for or relating to the provision of the [MVPD] 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").

[59] 47 U.S.C. § 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 "as a separate line item on each regular bill of each subscriber"); 47 U.S.C. § 562(b)(1) (requiring MVPD consumer bills to 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").

[60] ACA Connects Comments at 9, 15.

[61] *See id.* at 6-7 (describing how some ACA Connects members "explicitly pass through retransmission consent fees and [regional sports] fees as line items on subscriber bills" to promote transparency and "help customers understand the source of … increases").

[62] *See, e.g.*, *id.* at 6-7 ("To be clear, our Members would prefer to help their video customers by reducing prices or at least curbing price increases, but the dictates of the retransmission consent regime make this impossible. The best they can do is transparency: by explicitly identifying the programming fees that are driving up cable bills, they can at least help customers understand the source of these increases.").

[63] *See NPRM*, 2023 WL 4105426 at *3, para. 8 (discussing that cable operators may identify certain charges imposed by the government "as a separate line item on each regular bill of each subscriber," 47 U.S.C. § 542(c), and the MVPD electronic format billing requirement to include an itemized statement that breaks down the total amount charged, 47 U.S.C. § 562(b)(1)).

[64] *See* ACA Connects Comments at 9, 15 (urging the Commission to "to refocus its efforts on finding ways to reform the retransmission consent marketplace for the benefit of consumers"); NTCA – The Rural Broadband Association Reply Comments at 4 (arguing "the Commission can use this opportunity to address some of the practices that have resulted in these concerns – namely, costly and non-negotiable retransmission consent fees – and allow video service providers to provide consumers with transparent information about these fees."). The

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16. In the *NPRM*, the Commission sought comment on whether the "all-in" proposal should differentiate between residential, small business, and enterprise subscribers.[65] We agree with commenters asserting that the "all-in" rule should apply to all residential customer services provided by cable and DBS operators, including residents in multiple tenant or dwelling unit environments served by such operators.[66] However, we are also persuaded that services provided and marketed to enterprise customers and bulk purchasers of non-residential video programming service should be exempt from the rule because, as NCTA explains, "[s]uch customers subscribe to video services under customized or individually negotiated plans and thus receive all of the relevant information during the customization or negotiation process."[67]

17. We decline to impose more specific requirements for how to present an "all-in" price to consumers beyond our finding that it must be a prominent single line item in promotional materials and on subscribers' bills. In the *NPRM*, the Commission sought comment on whether the term "prominent" is specific enough to ensure that cable operators and DBS providers present consumers with easy-to-understand "all-in" subscription price, or whether we need to provide more detail about how the price for service must be communicated.[68] We do not at this time impose a "service nutrition-style label," specific font size, or disclosure proximity requirement to comply with the "all-in" rule. Comments submitted on this point support a clear, easy-to-understand, and accurate statement of the total cost of video programming, while service providers suggest flexibility.[69] We find that the clear, easy-to-understand,

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Commission has and is addressing issues regarding retransmission consent in other dockets, and we continue to believe those issues should be addressed separate from the "all-in" rule. *See, e.g.*, *Amendment of the Commission's Rules Related to Retransmission Consent*, MB Docket No. 10-71, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 3351 (2014) (seeking comment on the Commission's retransmission consent rules); *Reporting Requirements for Commercial Television Broadcast Station Blackouts*, Notice of Proposed Rulemaking, MB Docket No. 23-437, FCC 23-115, 2023 WL 8889607 (Dec. 21, 2023) (proposing a reporting framework that "would require public notice to the Commission of the beginning and resolution of any blackout and submission of information about the number of subscribers affected"); *Customer Rebates for Undelivered Video Programming During Blackouts*, Notice of Proposed Rulemaking, MB Docket No. 24-20, FCC 24-2, 2024 WL 212126 (Jan. 17, 2024) (seeking comment on whether to require cable operators and DBS providers to rebate subscribers for programming blackouts that result from failed retransmission consent negotiations or failed non-broadcast carriage negotiations); Federal Communications Commission, Retransmission Consent, https://www.fcc.gov/media/policy/retransmission-consent (last updated Sept. 27, 2021).

[65] *See NPRM*, 2023 WL 4105426 at *3, para. 9. Enterprise customers include bulk purchasers (such as multiple dwelling unit (MDU) or multiple tenant environment (MTE) owners) and typically do not include small business or residential customers. *See* NCTA Comments at 8.

[66] *See* Local Government Reply Comments at 9 ("[R]esidents of multi-dwelling units (MDUs) can often be the most vulnerable consumers and should not be excluded from the proposed rule's protections.").

[67] *See* NCTA Comments at 8 ("[E]nterprise customers and bulk purchasers (such as multiple dwelling unit (MDU) or multiple tenant environment (MTE) owners) should not be covered by the proposed rule."); DIRECTV Comments at 16-17 (suggesting the Commission not regulate business services, as enterprise customers are sophisticated entities that do not need the Commission's protection). *See also Safeguarding and Securing the Open Internet*, WC Docket No. 23-320, FCC 23-83, Notice of Proposed Rulemaking, 2023 WL 8543459 at *25, para. 60 (rel. Oct. 19, 2023) (explaining that the definition of "mass-market retail services" "excludes enterprise service offerings, which are typically offered to larger organizations through customized or individually negotiated arrangements, and special access services").

[68] *See NPRM*, 2023 WL 4105426 at *2, para. 7.

[69] *See* Local Government Comments at ii ("urg[ing] the Commission to require cable operators and DBS providers to clearly and prominently display the total cost of video programming service and separately itemize the elements that compose that aggregate cost"); NCTA Reply Comments at 14-16; Cable Company Reply Comments at 5, 7; DIRECTV Comments at 13-14; NCTA Reply Comments at 15 (citing *Nat'l Inst. of Family and Life Advocates v. Becerra*, 138 S. Ct. 2361, 2372, 2377 (2018) (rejecting a compelled disclosure where the record showed that a
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and accurate communication of the aggregate price of video service that the cable operator or DBS provider charges best achieves our goal of promoting transparency in promotional and billing material.[70]

a. Compliance Date

18. The "all-in" rule must be fully implemented within nine months of release of this *Report and Order* or after the Office of Management and Budget completes review of any information collection requirements that may be required under the Paperwork Reduction Act of 1995 (PRA),[71] whichever is later, with the exception of small cable operators which will have 12 months to come into compliance. In the *NPRM*, we sought comment on what would be a reasonable implementation period for providers to update their systems to reflect any changes if we were to adopt the "all-in" price.[72] Verizon has suggested the Commission "allow at least six months for providers to comply and ensure 'a reasonable implementation period for providers to update their system,' [and] an additional six months for parties to comply with any rules that affect legacy plans.[73] NCTA contends that "given the scope of changes that could be necessary to implement an all-in pricing rule, the Commission should grant at least 12 months for operators to come into compliance."[74] ACA Connects likewise argues that the Commission should provide at least twelve months for providers to implement any requirements, particularly for smaller cable operators that use software platforms from third-party vendors.[75] We conclude that a nine-month implementation period will be sufficient to fully implement the "all-in" rule, which will afford time to affect operating systems and address legacy plan billing. We note that Congress afforded MVPDs six months to implement the billing requirements of the TVPA and conclude that nine months for most providers is a time period that will similarly benefit consumers when implementing the "all-in" rule.[76]

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smaller warning – half the size – would accomplish the government's stated goals)); Verizon Comments at 9 n.21 ("The Commission should not regulate the even finer details of how such itemized or bundled charges are displayed on the bill by defining the term 'prominent.'").

[70] *See* Consumer Reports and Public Knowledge Comments at 4 (supporting "a strong requirement to display a prominent line item of the all-in price for video service as suggested by the Commission in the [*NPRM*]").

[71] Pub. L. No. 104-13, 109 Stat. 163 (1995) (codified in Chapter 35 of title 44 U.S.C.).

[72] *NPRM*, 2023 WL 4105426 at *3, para. 9.

[73] Verizon Nov. 13 *Ex Parte* at 2 (quoting *NPRM*, 2023 WL 4105426 at *3, para. 9).

[74] NCTA Feb. 14 *Ex Parte* at 3. *See also* DIRECTV Mar. 7 *Ex Parte* at 2 (suggesting that the Commission "either extend[] the overall deadline to twelve months or maintain[] the current nine-month deadline for advertisements but allow[] an additional six months for billing").

[75] As ACA explains, "smaller operators are dependent on third-party vendors that serve many customers, and smaller systems often have to 'wait in line' behind larger ones when implementing any changes to their billing systems." ACA Connects Mar. 8 *Ex Parte* at 2. This is similar to the delays that small operators face in obtaining equipment that complies with our rules. *See TiVo Inc.'s Request for Clarification and Waiver of the Audiovisual Output Requirement of Section 76.640(b)(4)(iii), etc.*, MB Docket No. 12-230, etc., Memorandum Opinion and Order, 27 FCC Rcd 14875, 14884, para. 17 (observing that "small cable operators have, in the past, experienced difficulty obtaining compliant devices in the same time frame as larger operators") (2012).

[76] Television Viewer Protection Act of 2019, Pub. L. No. 116-94, 133 Stat. 2534 (2019) § 1004(b) ("Section 642 of the [Act] ... shall apply beginning on the date that is 6 months after the date of the enactment of this Act. The [Commission] may grant an additional 6-month extension if [it] finds that good cause exists for such ... extension."). The Commission granted a six-month extension due to "the national emergency concerning the COVID-19 pandemic." *Implementation of Section 1004 of the Television Viewer Protection Act of 2019*, Order, 35 FCC Rcd 3008, 3009, para. 3 (MB 2020).

However, given the concerns raised by ACA Connects, we give small cable operators, i.e., those with annual receipts of $47 million or less, an additional three months to come into compliance.[77]

b. Bundled Services

19. The "all-in" rule requires clear, easy-to-understand, and accurate disclosure of the aggregate cost of video programming when a cable operator or DBS provider promotes or bills for video programming that is part of a bundle. Bundled services are increasingly popular among consumers. We agree with Verizon that bundles can be economically efficient and benefit consumers, and allow video programming service providers to distinguish themselves.[78] As part of the *NPRM*, the Commission asked for comment on whether to apply the "all-in" rule in circumstances where the cable operator or DBS provider bundles video programming with other services like broadband Internet service.[79] The Commission also inquired as to whether it was possible to provide an "all-in" price, as Verizon explains, "where the video component has not been priced or itemized separately from the bundle as a whole."[80]

20. The record raises issues with how bundled service offerings disclose and bill for the costs of video programming, particularly when charges and fees for the video programming element of the bundle increase due to a promotion schedule or otherwise. Consumer Reports argues "the video portion of a bundled offering should reflect the required prominent all-in price of the equivalent stand-alone video offering."[81] Truth in Advertising notes "deceptive pricing tactics" and comments that the rule should specifically address bundled and related services.[82] The Connecticut Office of State Broadband submits that consumers would benefit from application of the "all-in" rule to the marketing and billing of oftentimes complicated bundles that include video programing service with other services, like phone and internet.[83] They discuss consumer reports of deceptive pricing specifically related to bundled services and are in favor of applying the "all-in" rule for the video programming portion of a bundled offering, "because many bundles are discounted"[84] and "the advertised prices for such bundles often omit fees that consumers are ultimately charged," including video programming charges that unexpectedly increase the bottom-line monthly price of the bundled service.[85]

21. Verizon and NCTA argue that applying the "all-in" rule to bundled packages that include video programming removes flexibility necessary to offer competitive packages, while potentially adding

[77] *See* 13 CFR § 121.201, NAICS Code 516210 (classifying "Media Streaming Distribution Services, Social Networks, and Other Media Networks and Content Providers" with annual receipts of $47 million or less as small). *See also NPRM*, 2023 WL 4105426 at para. 20 (seeking comment on whether there are ways to limit any potential compliance burdens on providers, including "on small cable operators, as that term is defined by the Small Business Administration" and citing 13 CFR § 121.201, NAICS Code 516210).

[78] Verizon Comments at 11-12; Local Government Reply Comments at 11 (describing how "most streaming services offer very different products from cable and DBS providers").

[79] *NPRM*, 2023 WL 4105426 at *2, para. 7.

[80] *Id.*; Verizon Comments at 11.

[81] Consumer Reports and Public Knowledge Comments at 12.

[82] Truth in Advertising Comments at 6, 8 ("TINA.org supports the Commission's commencement of a rulemaking proceeding to address … deceptive pricing tactics, and also urges the FCC to explicitly address bundled – and related – services in the text of the proposed rule.").

[83] Connecticut Office of State Broadband Comments at 5 (explaining that "because so many of the cable subscribers bundle their video service with other services like phone and internet, the All- In rules need to be tailored to ensure that bundled services are not exempted").

[84] Consumer Reports and Public Knowledge Comments at 12.

[85] Truth in Advertising Comments at 6, 7-8; Connecticut Office of State Broadband Comments at 5-6.

to consumer confusion.[86] Verizon contends that the "all-in" rule "threaten[s] to undermine this flexibility, by potentially requiring carriers to advertise and bill for a stand-alone price where none exists – that is, where the video component has not been priced or itemized separately from the bundle as a whole."[87] As NCTA explains, video programming is "frequently bundled with other services, such as broadband … and voice services, resulting in service packages that offer consumers a wide range of choices but do not easily lend themselves to apples-to-apples comparisons between providers."[88] "[R]equiring an all-in price for video for bundled customers is also likely to increase customer confusion, not reduce it," especially where the "consumers have been purchasing the plans for many years,"[89] Verizon asserts.

22. We find that application of the "all-in" rule is warranted when video programing service is offered and billed as part of a bundle of services. Our driving intent is to inform and enable consumers with information regardless of the type of service agreement they have with a provider, including agreements for bundles of services.[90] Thus, in circumstances in which a cable operator or DBS provider promotes or bills for a bundled service that includes video programming as part of a bundle that will result in a charge to a consumer, compliance with the "all-in" rule requires clear, easy-to-understand, and accurate disclosure of the aggregate customer fees and charges specific to video programming,[91] and, if applicable, either the length of time that a promotional discount will be charged or the date on which a time period will end that will result in a price change for video programming. If a cable operator or DBS provider charges (or will charge) for a cost related to video programming in whole or in part (for example, charge for costs related to local broadcast programming), then disclosure of those costs must comply with the "all-in" rule. And if a discount is applied, it also must be presented in clear, easy-to-understand, and accurate terms, which includes any expiration date, if applicable, for example.[92] In that manner, consumers will be better informed about an element of the service bundle that may lead to an unexpected charge or fee. Providers are free to describe in their promotional materials the value of bundling, including the discounts associated with bundling various services.

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[86] Verizon Comments at 11; NCTA Reply Comments at 4 (describing the difficulty of applying the "all-in" rule to bundled services, such as broadband and voice, making "all-in" price comparisons "more complex and … misleading"), 13-14 (describing how application of the "all-in" rule to service bundles "would not give an accurate picture to the consumer of the price they are paying, and would therefore be misleading").

[87] *Id.* at 11-12 (explaining that some bundled offerings "contain no standalone price of video service or any separate video-specific discount, so providers would be forced into an arbitrary allocation of the discount among the bundled services " and how Verizon has provided a breakdown of separate prices and discounts for each service so customers can readily identify the portion of the bill attributable to video service); USTelecom Reply Comments at 3 (discussing the challenges with applying the "all-in" rule to bundles considering the difficulty of accurately pricing each element of the bundle (quoting Verizon Comments at 12)).

[88] NCTA Comments at 7.

[89] Verizon Comments at 12.

[90] *See* NAB Comments at 4 ("[T]hese fees can significantly increase the advertised and billed price of MVPD service.").

[91] Because our intent is to inform consumers about the price they are paying specifically for video programming and enable them to comparison shop, we disagree with NCTA's contention that a provider should have the option of complying with the "all-in" rule by stating the full price of the bundle, inclusive of all video programming related fees. *See* NCTA Mar. 6 *Ex Parte* at 3.

[92] Consumer Reports and Public Knowledge Comments at 12 (supporting disclosure of "clear and concise terms, including any expiration date"); *see generally Empowering Broadband Consumers Through Transparency*, CG Docket No. 22-2, Report and Order and Further Notice of Proposed Rulemaking, FCC 22-86, 37 FCC Rcd 13686, 13695, para. 25 (rel. Nov. 17, 2022) (*Broadband Transparency Order*) (discussing benefits of requiring the broadband label to "clearly disclose either the length of the introductory period or the date on which the introductory period will end")).

2. Specific Implementation Issues Raised in the Record

a. Billing Materials

23. *Pricing Disclosures And Billing Material*. The "all-in" rule requires providers to state the aggregate monthly (or regularly occurring) price for video programming on billing material so that consumers know the charges they will incur during the term of service and when.[93] We find requiring an "all-in" price on billing material further enables consumers access to important information about the cost of video programming, including increases in prices during the term of service.[94] DIRECTV contends that, as an alternative to the "all-in" rule, the Commission could require that bills be "accurate" and "disclose key information regarding programming-related fees clearly and conspicuously and in close proximity to pricing."[95] We do not, however, accept that as an alternative to the "all-in" rule, as this proposal is a more subjective alternative that would be difficult to enforce and does not address issues identified in the record specific to charges related to video programming. Thus, subscriber billing material for video programming, standalone or otherwise, requires inclusion of the aggregate monthly amount the subscriber's video programming will ultimately cost including all video programming related fees.[96] If a price is introductory or limited in time, for example, then the "all-in" rule requires customer billing to include clear, easy-to-understand, and accurate disclosure of the date the promotional rate ends (by stating either the length of a promotional period or the date on which it will end), and the post-promotion "all-in" rate (i.e., the roll-off rate) 60 and 30 days before the end of any promotional period[97] (as is necessary when offering a varying rate in promotional material, discussed below).[98]

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[93] *See generally id.* at 13695, para. 27 ("In the interest of simplicity and based on the record, at this time we require providers to display only the 'retail' monthly broadband price, by which we mean the price a provider offers broadband to consumers before applying any discounts such as those for paperless billing, automatic payment (autopay), or any other discounts.").

[94] *See* Local Government Comments at 11 (suggesting the "all-in" rule for existing subscribers). *See also* ABC Television Affiliates Association Reply Comments at 6 (arguing that cable operators and DBS providers "should not be allowed to ... bill their subscribers in a manner that obfuscates the true cost of their services"). We note that section of 76.1603 of our rules requires cable operators to provide written notice to subscribers of any changes in rates or services at least 30 days in advance of the change, unless the change results from circumstances outside of the cable operator's control in which case notice should be provided as soon as possible. *See* 47 CFR § 76.1603(b) (also requiring that notice of rate changes include the precise amount of the rate change and explain the reason for the change in readily understandable terms). *See also* Local Government Comments at 11 (suggesting "a notice should be given at least 30 days in advance of any price change to give consumers the opportunity to cancel their service and avoid the price increase"); Local Government Reply Comments at 9 (arguing that "the all in contract price must be the price for the entire term of the contract" and, "[i]f companies want the flexibility to change that subscriber's price at any time, they can simply not offer the price guarantee").

[95] DIRECTV Comments at 2 ("The Commission could permit an alternative to all-in pricing under which bills must (1) be accurate and (2) disclose key information regarding programming-related fees clearly and conspicuously and in close proximity to pricing.").

[96] *See* 47 U.S.C. § 562(a)(1)-(3) ("Consumer Rights in Sales").

[97] The "roll-off rate" is the rate as calculated at the time it is provided and does not require projections or estimates of what the rate will be at the time the promotional rate expires. *See* NCTA Mar. 6 *Ex Parte* at 2 (discussing how "cable operators do not know what their post-promotional rate will be, as rates are impacted by a variety of factors not under their exclusive control"). We recognize that rates may fluctuate during the term of the promotional period, and as such, disclosure of the post-promotional rate does not "effectively freeze the rates that an operator can charge during the promotional period," as NCTA posits. *Id*. To the extent that a provider subject to this requirement has multiple or graduated roll-off periods, the operator will need to provide the roll-off rate 60 and 30 days before the end of each promotional period. *See* NCTA Mar. 6 *Ex Parte* at 2 n.7 (discussing disclosure of promotions that "include graduated roll-off prices").

24. *Grandfathered Service Plans*. We are persuaded that the "all-in" rule should apply to billing materials for legacy or grandfathered service plans that cable operators and DBS providers no longer offer to subscribers and when promotional material is used to market legacy plans that are being renewed by customers. In the *NPRM*, the Commission sought comment on whether the proposal should apply to existing customers with legacy plans that are no longer available,[99] and industry commenters raise concern with how the "all-in" rule would apply to existing subscribers with legacy or grandfathered plans.[100] Verizon suggests we exempt legacy or grandfathered plans that are no longer available to new customers as the Commission did with the Broadband Nutrition Labels required of broadband Internet service providers.[101] According to DIRECTV, "[a]t a minimum, the Commission should not seek to regulate bills for legacy offers not available to new subscribers," which would have a "substantially diminished benefit for purposes of comparison shopping."[102] Consumer Reports disagrees, citing consumer benefits of pricing disclosures and suggests the "task need not be more complicated than a simple case of addition" of the "all-in" price.[103]

25. We are persuaded that consumers of legacy plans benefit as much as consumers of available plans and that the benefits of providing an "all-in" price outweigh burdens described by industry.[104] It is a complicated process, according to Verizon, for it to apply an "all-in" rule across a wide variety of pricing plans and content packages that have changed over time to adapt to market forces,[105] and we appreciate the difficulties involved with changing various billing formats all at once.[106] We disagree, however, that inclusion of the "all-in" price on billing material for legacy plans will "cause unnecessary confusion."[107] To the contrary, application of the "all-in" rule to the billing of legacy service plans, including potentially long-term or renewable agreements, will benefit consumers' knowledge of how much their video programming service costs. As for promotional materials, grandfathered plans are not available to new consumers by definition, and therefore we expect that cable operators and DBS providers will not be marketing the services in a way that would trigger the "all-in" rule. But if the operator or provider issues promotional material used to inform or market a legacy plan to existing

[99] *See NPRM*, 2023 WL 4105426 at *3, para. 9.

[100] We refer to the terms "legacy" and "grandfathered" plans interchangeably; Verizon, for example, refers to legacy plans, while the Commission considered similar issues in the *Broadband Transparency Order* when discussing grandfathered plans. *See Broadband Transparency Order*, 37 FCC Rcd at 13718-19, paras. 100-04.

[101] Verizon Comments at 8 (citing *Broadband Transparency Order*, 37 FCC Rcd at 13718, para. 100). *See also* ACA Connects Mar. 7 *Ex Parte* at 2, n.4 (arguing that the Commission "should decline to apply any requirements to legacy plans"); ACA Connects Mar. 8 *Ex Parte* at 2 (further contending that "cable operators often have dozens of such [legacy] plans, which can be artifacts of acquisitions," and "[r]equiring changes to legacy-plan bills thus would greatly increase the compliance burden but would not make most legacy-plan subscribers any better off").

[102] DIRECTV Comments at 17 (citing *Broadband Transparency Order*, 37 FCC Rcd at 13718, para. 100). *See also* DIRECTV Mar. 7 *Ex Parte* at 2.

[103] Consumer Reports and Public Knowledge Comments at 12.

[104] *See* DIRECTV Comments at 17; Verizon Comments at 4; USTelecom Comments at 2-3 (citing DIRECTV Comments at 17; Verizon Comments at 7).

[105] Verizon Comments at 4. *See also* Verizon Mar. 6 *Ex Parte* at 1-2. In 2020, for example, Verizon transitioned from a Fios TV standalone product and Fios TV as a bundle with other services to a "Mix & Match" model enabling consumers to purchase TV, internet, and phone service in any combination. *Id.*; Verizon Reply Comments at 5-7.

[106] Verizon Comments at 8 ("In addition, regulation of legacy plans could provide an incentive for providers to eliminate them, which would lead to further consumer disruption.").

[107] Verizon Reply Comments at 6 ("Requiring changes to these customers' legacy bills would cause unnecessary confusion, especially when they have been purchasing the same plans for many years and are therefore fully aware of the total costs of the services to which they subscribed.").

customers that are subscribed to such plans, then that material must include the "all-in" price.[108] By applying the "all-in" rule in this manner, we avoid unnecessary confusion to customers, while enabling subscriber access to information that is key to their understanding of the services they are purchasing under the grandfathered plans and ability to comparison shop.[109]

b. Promotional Materials

26. *Time-Limited Promotional Discounts*. The "all-in" rule applies to promotional materials that state a price, including in circumstances involving a promotional discount when the amount billed to the customer by the cable operator or DBS provider may change (for example, at the end of a promotional period).[110] And if a discount is applied, it also must be presented in clear, easy-to-understand, and accurate terms, which includes any expiration date, if applicable, for example. According to NCTA, consumers "do not jump immediately from advertising to bills," rather they typically go through the "sales process during which providers disclose the total price that the consumer would pay, inclusive of the relevant fees."[111] The record, however, indicates that the onboarding sales process has not proven to be entirely effective.[112] The record includes evidence indicating persistent confusion over the price for video programming, particularly with how the price for video programming is described in promotional material and when the price may vary over the term of the service agreement.[113]

[108] As we discuss below, we apply the "all-in" rule to promotional material to further our principal goal of allowing consumers to comparison shop among services, but new customers comparison shopping do not benefit from an "all-in" rule price for service that is not available to them. *See generally Broadband Transparency Order*, 37 FCC Rcd at 13718, para. 101 ("And such labels may even confuse consumers if those plans are not actually available to them.").

[109] Consumer Reports and Public Knowledge Comments at 7-8.

[110] NCTA argues "that the Commission did not provide notice that it was considering rules relating to promotional discounts in its Notice of Proposed Rulemaking" and thus a rule would violate the Administrative Procedure Act. NCTA March 6 *Ex Parte* at 2. *See also* State Cable Ass'ns Mar. 5 *Ex Parte* at 4-5. This argument is without merit. As an initial matter, the Commission in the *NPRM* notes that the TVPA provides that electronic bills must list, among other things, "the termination date of any applicable promotional discount." *NPRM*, 2023 WL 4105426 at *2, para. 4 n.3, *7, para. 16. The *NPRM* also noted that the goal of the proposals in the *NPRM* was to provide consumers with the price of video programming service for which they are "or will be responsible" in clear terms, in order to allow consumers to make informed choices. *Id.* at *2, para. 6. In addition, the Commission specifically sought "comment on how to apply our [all-in] proposal to different types of promotional materials." *Id.* at *3, para. 9. Several commenters filed comments suggesting various ways to craft the rule to handle promotional rates and discounts, and NCTA responded to some of those arguments in its reply comments. *See, e.g.*, Consumer Reports and Public Knowledge Comments at 12; Local Government Comments at 3 ("Providers should be subject to a requirement similar to the TVPA's terms with respect to the disclosure of the length of a promotional rate or discount."); NCTA Reply at 8-10. Therefore, we reject the argument that the *NPRM* did not provide notice that our final rule would address promotional discounts.

[111] NCTA Comments at 4-6.

[112] *See* Local Governments Reply Comments at 1-2 (discussing how "the TVPA requires providers to disclose the total monthly charge for services provided by MVPDs, including the dates discounts will expire and a good faith estimate of any government-imposed tax or fee," and that "[w]ithin 24 hours of signing up, a provider must send a written disclosure of that information, and" provide ability to cancel without a penalty, "[b]ut the TVPA will not work well if consumers are already confused by marketing and advertising by the time they reach the 48-hour disclosure and cancellation period provided by the TVPA").

[113] *See supra* Section III.A. *See also* Local Government Comments at 7 (describing '"teaser' rates" and how "Fairfax County has received complaints from consumers confused by teaser rates and from cable operator policies that resulted in inconsistent implementation of promotional rates by a cable operator in northern Virginia").

27. We disagree that applying the "all-in" rule to promotional rates will undermine transparency and potentially discourage the use of promotions altogether.[114] We find that knowledge of how a time-limited discounted price will increase to the ultimate price the consumer will be charged for video programming service gives consumers a reliable idea of what they will pay each month that incorporates pricing variables, and does so in a way that is uniform among providers and enables comparison shopping. Compliance with the "all-in" rule therefore includes disclosing the base (or standalone) rate with a subtracted amount (the amount after application of any promotional discount) in a way that enables consumers to know the amount they will be required to pay each month (each billing cycle) during the term of the service agreement.[115] If, for example, a promotion or other circumstance includes an introductory offer of free or discounted channels and the "all-in" price will change at the conclusion of the promotional period, then the cable operator or DBS provider must state in promotional materials the current cost of video programming service that the consumer will pay initially and state the "all-in" price that applies following the introductory period or promotion.[116] To the extent that a provider subject to this requirement has multiple or graduated roll-off periods, the operator must, at a minimum, provide the initial promotional rate and the final rate after all promotional discounts have expired. Consumers must simply be enabled to know what amount they can expect to find as a charge on their bill, particularly when the amount is scheduled to change due to promotions or other circumstances.

28. *Regional And National Promotional Material.* We conclude that the "all-in" rule applies to regional and national promotions of cable operators and DBS providers. Service providers raise concerns with how an "all-in" pricing requirement would affect regional and national promotional efforts.[117] In the *NPRM*, the Commission asked how it should 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 variation.[118] DIRECTV argues that the "all-in price proposal *cannot* account for national advertising."[119] DIRECTV predominantly advertises nationally, but "charges different [regional sports] fees in different markets based on the differing fees it pays for access to those [regional sports networks]."[120] According to DIRECTV, a single, "all-in" price afforded to everybody could "provide inaccurate information for most subscribers and potential subscribers no matter what price

[114] DIRECTV Comments at 12 (noting that if the "ultimate cost of promotions must be included in an 'all-in' price," the pricing would be inaccurate for customers who cancel before the end of the promotional period when channels are offered for free or at a reduced cost); ACA Connects Comments at 8 (The "proposed rule is more likely to have the counterproductive effect of making the costs of cable service less transparent, and making bills and promotions more confusing for consumers.").

[115] As discussed above, this is the rate as calculated at the time it is provided and does not require projections or estimates of what the rate will be at the time the promotional rate expires. *See supra* note 97.

[116] *See generally Broadband Transparency Order*, 37 FCC Rcd at 13695, para. 25 ("We agree with those commenters that argue that the label should also clearly disclose either the length of the introductory period or the date on which the introductory period will end."). We decline to act on other issues, such as the City of Seattle's contention that cable operators should not be able to increase broadcast TV and regional sports fees during the promotional period, considering our focus on the core issues identified in the record relating to the disclosure of fees. City of Seattle Comments at 6. We find this proposal goes beyond the scope of this proceeding.

[117] NCTA Reply Comments at 4 (describing the "all-in" rule as difficult to implement because it "does not account for how any rule would apply to national advertising when fees vary from market to market—as they frequently do"); NCTA Comments at 5 (reporting that an "all-in" rule could "create substantial burdens for companies that offer services across multiple franchise areas but which advertise nationally or regionally"); Cable Company Reply Comments at 6 (arguing that the "all-in" rule will create "substantial burdens for companies that offer services across multiple franchise areas and advertise those services nationally or regionally").

[118] *See NPRM*, 2023 WL 4105426 at *3, para. 9.

[119] DIRECTV Comments at 11.

[120] *Id*.

DIRECTV may choose to provide."[121] Likewise, NCTA states that there is a potential that the "all-in" requirement "would not give consumers an accurate estimate of the all-in price for video programming services available in their areas given the variation in these fees."[122] DIRECTV reports it may have to calculate a price using the most expensive regional sports programming fees, which "could artificially encourage customers and potential customers in markets without [regional sports networks] or with lower-priced [regional sports networks] to take service from one of DIRECTV's competitors, particularly its unregulated online competitors."[123]

29. We find these arguments merely support the need for Commission action. A number of services and commodities are promoted and sold at nationwide or regional prices that include varying local costs, including services of cable operators and DBS providers.[124] These arguments support our conclusion that the manner in which promotional and billing information is being communicated with consumers currently is susceptible to costly misunderstandings. The separation of programming fees (such as the cost of regional sports programming fees) from the bottom-line, "all-in" price has been described as a leading contributor to customer confusion we seek to address. Costs may vary depending upon franchise area, as the NCTA, DIRECTV, and ACA explain,[125] but the exclusion of any and all amounts charged to the consumer for video programming leads to significant issues, as described in the record by individuals, organizations, and state and local governments. We disagree, therefore, that programming fees should be excluded from the "all-in" rule for regional or national promotions.[126]

30. To address the fact that certain costs vary by region, our rule requires any advertised price to include all video programming fees that apply to all consumers in the market that the advertisement is targeted to reach. Providers may opt to provide a "starting at" price, or a range of prices that account for the fluctuation in video programming fees in the locations that the advertisement is intended to reach.[127] In this case, when an aggregate "all-in" price is not stated due to pricing fluctuation that depends on service location, the provider must state where and how consumers may obtain their subscriber-specific "all-in" price (for example, online at the provider's website or by contacting a customer service or sales representative). At the time the potential consumer provides location information, online or otherwise, then the provider must state the "all-in" price. Providers also may state time-limited introductory prices that are available to all potential customers the advertisement is targeted

[121] *Id*. *See also* NCTA Reply Comments at 4 (explaining that it would be difficult "[t]o avoid being misleading" when tailoring advertisements to reflect local variations in price because "advertised prices would either have to be geo-targeted to each media market – which is highly impractical … or reflect a wide range of fees that would be of little use to customers").

[122] NCTA Comments at 5.

[123] DIRECTV Comments at 11-12.

[124] *See, e.g.*, Thomas T. Nagle, John E. Hogan, Joseph Zale, The Strategy and Tactics of Pricing (5th ed. 2011).

[125] DIRECTV Comments at 11 (describing issues with advertising nationally while video programming fees it pays to provide service vary by location); NCTA Comments at 5 (discussing issues with "giv[ing] consumers an accurate estimate of the all-in price for video programming services available in their areas given the variation in these fees"); ACA Connects Comments at 14 (discussing how an "all-in" price might vary among the consumers that receive, or are targeted by, the advertisement). *See also* Consumer Reports and Public Knowledge Comments at 11; NTCA – The Rural Broadband Association Comments at 6.

[126] NCTA Comments at 5-6 (citing H.R. Rep. No 116-329, at 6).

[127] *See* NCTA Comments at 5-6 (explaining that "fees can vary from community to community or from state to state" and that currently "companies calculate and display all-in prices only when a consumer is actively considering purchasing service"); NCTA Reply Comments at 15 (discussing how "fees and charges can vary widely by geographic location"); ACA Comments at 15 (discussing how "there may be earlier stages in the process when the 'all-in' price may not be calculable because the consumer has not yet provided sufficient information about their location").

to reach,[128] if the advertised price includes the video programming fees that apply to all consumers in the targeted market and the consumer has the ability to obtain an "all-in" price before ordering video programming, as discussed above.[129] This allows flexibility for service providers to highlight information in promotional and billing material while providing transparency to promotional material that reduces consumer confusion and enables comparison shopping with a budgets in mind. Our goal is to enable consumers to know the amount they will be billed for the service offered.

C. Legal Authority

31. We conclude that the TVPA, section 632 of the Act (covering cable operators), and section 335 of the Act (covering DBS providers), in addition to ancillary authority, provide ample authority for the "all-in" rule.[130] We also conclude that the "all-in" rule is consistent with the First Amendment. In the *NPRM*, the Commission asked "whether we should consider expanding the requirements of this proceeding to other types of [MVPDs] and on our authority to do so."[131] We decline to extend the "all-in" rule to other entities at this time given the lack of record evidence concerning the billing and advertising practices of non-cable and non-DBS video services.[132]

1. Section 642 of the Act, 47 U.S.C. § 562 (Television Viewer Protection Act of 2019 (TVPA))

32. The Commission derives authority for the "all-in" rule from the TVPA requirements as it applies to electronic billing. Section 642 of the Act, 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."[133] As mandated by this statutory directive, the "all-in" rule requires cable operators and DBS providers to provide consumers with the total charge for all video programming and will ensure that consumers are provided complete and accurate information about the "amount charged for the provision of the service itself," as Congress intended.[134] 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),[135] and video programming is, by definition, the

[128] NCTA Mar. 6 *Ex Parte* at 2.

[129] *See* Consumer Reports and Public Knowledge Comments at 2 (discussing issues with prices increased outside of a '"locked-in' promotional rate"). *See generally Broadband Transparency Order*, 37 FCC Rcd at 13695, para. 25 ("conclud[ing] that if a provider displays an introductory rate in the label, it must also display the rate that applies following the introductory period").

[130] 47 U.S.C. §§ 335, 552.

[131] *NPRM*, 2023 WL 4105426 at *1, para. 3.

[132] *See* NCTA Comments at 12; NCTA Reply Comments at 7; ACA Connects Comments at 16; DIRECTV Comments at 10-11.

[133] *NPRM*, 2023 WL 4105426 at *7, para. 16; 47 U.S.C. § 562(b)(1), (d)(3) (defining "covered service" as "service provided by a multichannel video programming distributer [sic], to the extent such distributor is acting as a multichannel video programming distributor"); NCTA Reply Comments at 3 (noting that the TVPA addresses transparency of payment by "requiring electronic bills to include an itemized statement that breaks down the total amount charged for or relating to the provision of [video] service").

[134] 47 U.S.C. § 562(b)(1).

[135] *Id*. § 522(20) ("the term 'video programming' means programming provided by, or generally considered comparable to programming provided by, a television broadcast station").

service that an MVPD makes available for purchase.[136] 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: to curb MVPDs' practice of charging "unexpected and confusing fees," but the record, including recent press reports, suggest that this practice continues.[137]

33. We observe that the TVPA 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."[138] Charges and fees relating to video programming (including broadcast channels, regional sports programming, and other programming) do not fall within this category because video programming, by definition, is the service that an MVPD makes available for purchase—in other words, the "service itself."[139] Thus, the most reasonable reading of the statute is that the terms "taxes," "administrative fees," "equipment fees," or "other charges" do not 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).[140] We accordingly reject NCTA's argument that programming fees (such as retransmission consent fees) fall within this "second group" of costs on electronic bills.[141]

2. Section 632 of the Act, 47 U.S.C. § 552 (Cable Operators)

34. We conclude that section 632 of the Act provides us with authority to adopt the "all-in" rule as it will apply to cable operators.[142] Section 632(b) of the Act provides the Commission authority to establish customer service standards regarding billing practices and other communications with subscribers, and the Commission has relied on that authority for decades to regulate in this area.[143]

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[136] *Id*. § 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 subscribers or customers, multiple channels of video programming").

[137] 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. H.R. Rep 116–329, at 6 (2019). We reject the claim that the "only authority that the TVPA gave the Commission" was to grant MVPDs an additional six months to comply with the statute. State Cable Ass'ns Mar. 5 *Ex Parte* at 4 n.19. The courts have affirmed the Commission's authority to promulgate rules implementing a section of the Communications Act without an explicit delegation 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).

[138] 47 U.S.C. § 562(b)(1).

[139] *Id*. § 522(13).

[140] The "all-in" rule is explicit that cable operators and DBS providers may list certain discrete costs. 47 U.S.C. § 542(c) (Cable operators may 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.").

[141] NCTA Comments at 6-7.

[142] 47 U.S.C. § 552.

[143] *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, 2906-07, paras. 65-66 (1993).

Section 632(b)(3) also supports the Commission adopting customer service requirements regarding, among other enumerated topics, "communications between the cable operator and the subscriber (including standards governing bills and refunds)."[144] The legislative history of section 632 provides that "[p]roblems with customer service have been at the heart of complaints about cable television," and indicates Congress' belief that "strong mandatory requirements are necessary."[145] 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) …."[146] Our "all-in" rule addresses cable operators' billing practices, i.e., requiring clear, easy-to-understand, and accurate price information in customer bills for video programming service, and, therefore, is a customer service matter within the meaning of section 632(b)(3). In addition, the statute identifies the specific areas for the Commission to act as the "minimum" standards.[147] Thus, by its terms, section 632(b) gives the Commissions broad authority to adopt customer service standards that go beyond those enumerated in the statute.[148] We find that the "all-in" rule is also authorized under our general authority in section 632(b) to establish "customer service" standards. The term "customer service" is not defined in the statute. In 1984, when Congress first enacted section 632 authorizing franchising authorities to establish customer service requirements, the legislative history defined the term "customer service" to mean "in general" "the direct business relation between a cable operator and a subscriber," and goes on to explain that "customer service requirements include … the provision to customers (*or potential customers*) of information on billing or services."[149] In 1992, Congress retained this term when amending section 632 to require the FCC to adopt "customer service" standards.[150] The "all-in" rule imposes requirements on billing information provided to potential customers in promotional materials, which, as reflected in the legislative history, is a customer service matter.[151] Accordingly, billing communications in customer bills as well as promotional materials and advertising aimed at potential customers are precisely the type of customer service concerns that Congress meant to address when it enacted section 632.[152] Thus, the "all-in" rule covering bills, advertisements and promotional materials is within the statute's grant of authority.

[144] 47 U.S.C. § 552(b).

[145] *See* S.Rep. No. 92, 102nd Cong. 1st Sess. 1991 at 21-22, *reprinted in* 1992 U.S.C.C.A.N. 1133, 1153; City of Local Franchise Authorities Reply Comments at 6 (noting that Congress found that "customer service requirements include requirements related to … 'provision[s] to customers (or potential customers) of information on billing services'" (quoting H.R. Rep. No. 98-934, at 79 (1984)).

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

[147] *Id*.

[148] *Id*. ("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, 705-06 (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").

[149] H.R. Rep. 98-934, at 79 (1984), *reprinted in* 1984 U.S.C.C.A.N. 4655, 4716 (emphasis added).

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

[151] H.R. Rep. 98-934, at 79 (1984), *reprinted in* 1984 U.S.C.C.A.N. 4655, 4716 (emphasis added).

[152] Local Franchise Authorities Comments at 3-4 ("The Commission has statutory authority to establish additional customer service standards for cable operators, including standards for prospective subscribers" under section 632 of the Act, as "[t]he proposed rule fits squarely in this provision with respect to cable operators' billing standards for current subscribers.").

35. We thus reject commenters' argument that covering "non-subscribers" or "potential subscribers" under the "all-in" rule renders it a "consumer protection" law under section 632(d) and thus falls "outside" the Commission's authority, as evidenced by section 632's title, which distinguishes between customer service and consumer protection.[153] As mentioned above, the "all-in" rule, which covers both current and potential subscribers, is a customer service requirement that is authorized under section 632(b). Moreover, section 632(d) does not place any limitation on the Commission's authority; rather it preserves States' and local governments' ability to enact and enforce consumer protection laws and customer service requirements that are not specifically preempted by the Cable Act.[154] We likewise reject commenters' argument that the text of the statute—which "uses the terms 'customer' and 'subscriber', and refers to 'installations, outages, and service calls', and discusses 'bills and refunds'"—indicates that section 632 only addresses "interactions between the cable operators and current and former subscribers" but "not potential subscribers."[155] Those statutory terms are found in subsection (b)'s list of specific areas for the Commission to address—areas the statute makes clear are "minimum" requirements.[156] Commenters' statutory-narrowing argument essentially reads out of the provision the Commission's general grant of authority in subsection (b) to "establish standards by which cable operators may fulfill their customer service requirements."[157] Moreover, we are not persuaded by commenters' argument that the use of the generic term "subscriber" means "actual cable subscribers" and excludes "potential subscribers" from the authority granted under subsection (b).[158] We find that the better reading of the statute is that the term "subscriber" is not limited to current subscribers because "the term [subscriber] is sufficiently ambiguous to include those considering a subscription," as well as current subscribers considering renewal and reviewing promotional material.[159] Indeed, those commenters arguing for a narrow construction concede that the term "subscriber" used in subsection (b) can be read to cover both "current and *former* subscribers."[160] And their argument ignores the legislative history, which, as discussed above, indicates Congressional intent to cover under subsection (b) billing information provided to both current and *potential* customers.[161] This language from the legislative history—including 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

[153] NCTA Reply Comments at 6.

[154] 47 U.S.C. § 552(d).

[155] NCTA Reply Comments at 6; *see also* NCTA Comments at 8-9 (arguing that section 632(b) "gives the Commission ***no authority*** to adopt rules for advertisements and promotional materials addressed to *prospective subscribers* among the general population, who are plainly not 'subscribers,' have no direct business relationship with the cable operator, and do not receive the 'bills and refunds' mentioned in the text of the statute") (emphasis in original); Cable Company Reply Comments at 4-6 (arguing that section 632(b) does not give the Commission authority to "regulate communications with the general public or 'potential subscribers'"; rather, section 632(b) uses the terms 'customer' and 'subscriber'… all of which only address interactions between cable operators and current and former subscribers").

[156] 47 U.S.C. § 552(b)(1)-(3).

[157] *Id*. § 552(b).

[158] NCTA Comments at 8; NCTA Reply Comments at 6.

[159] Consumer Reports and Public Knowledge Reply Comments at 7-8 (discussing how "the term 'subscriber' need not be limited to current subscribers [and] is sufficiently ambiguous to include those considering a subscription (as well as those who have terminated their subscription").

[160] NCTA Comments at 8 (emphasis added).

[161] H.R. Rep. 98-934, at 79 (1984), *reprinted in* 1984 U.S.C.C.A.N. 4655, 4716.

cable operators disclose their prices to consumers, including prices for services to which consumers may have not yet subscribed.[162]

36. *Section 4(i) of the Act,* 47 U.S.C. § 154(i). Applying the "all-in" rule's to the promotional materials of cable operators for video programming is also a proper exercise of our authority under section 4(i) of the Act.[163] The Commission is specifically delegated authority under the Communications Act to adopt standards governing communications between the cable operator and subscriber regarding bills.[164] Extending the "all-in" requirement to promotional material when a price for video programming is offered is necessary to achieve customer service standards in light of issues raised in the record. Otherwise, consumers might be misled by confusing or misleading pricing information from promotional material and enter into long-term contracts with higher charges than understood would be due. This would undermine the very purpose of the "all-in" rule as applied to bills, which aims to ensure consumers receive clear, easy-to-understand, and accurate pricing information.

3. Section 335 of the Act, 47 U.S.C. § 335 (Direct Broadcast Service Providers)

37. Section 335 of the Act provides the Commission with authority to adopt the "all-in" rule as it will apply to direct broadcast satellite (DBS) providers.[165] Our action is supported, specifically, by section 335(a), which provides the Commission with authority to impose "public interest or other requirements for providing video programming" on DBS providers.[166] We conclude that the "all-in" rule is a public interest requirement that falls squarely within our authority under section 335(a).[167]

38. The Commission has previously confirmed, and we agree, that the public interest includes consumer access to clear, easy-to-understand, and accurate information about charges for service, which benefits a well-functioning marketplace.[168] The record reveals how promotional and billing materials are critical to a consumer's understanding of fees and charges relating to video programming, and that misunderstandings from promotional material lead to subscribers going over budget and billing disputes, often while locked into long-term agreements.[169] In addition to billing, we focus on the demonstrated start of the customer's understanding of the pricing of video services, and adopt the "all-in" rule to ensure consumers have accurate and understandable information about the monthly cost in order to choose an MVPD service that best suits his or her needs.[170]

39. DIRECTV's description of the limits of the Commission's jurisdiction is inconsistent with the broad authority granted by Congress in section 335(a), which grants authority to impose on DBS providers "public interest or other requirements for providing video programming."[171] We do not read the reference in section 335(a) to adopt requirements for "providing video programming" as limiting our authority to cover only public service carriage or programming requirements on DBS providers, as

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

[163] *See* 47 U.S.C. § 154(i).

[164] *See* 47 U.S.C. § 552(b)(3).

[165] 47 U.S.C. § 335.

[166] *Id*. § 335(a). *See also id*. § 303(v) (granting the Commission "exclusive jurisdiction to regulate the provision of direct-to-home satellite services").

[167] *See* 47 U.S.C. § 335.

[168] *See Broadband Transparency Order*, 37 FCC Rcd at 13687, para. 1.

[169] *NPRM*, 2023 WL 4105426 at *5, para. 13.

[170] *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.").

[171] 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").

DIRECTV contends,[172] and we disagree with DIRECTV that our interpretation "is inconsistent with the text, structure and legislative history of the provision."[173] Section 335(a) directs the Commission to impose on providers of DBS service "public interest or other requirements for providing video programming." On its face, this language is broad in scope. And the regulation we are adopting here is precisely the type of regulation covered under the statute, i.e., our rule serves the public interest by requiring DBS operators in "providing video programming" to ensure consumers have clear, easy-to-understand, and accurate information about the charges for service. DIRECTV, on the other hand, argues that what Congress really intended was to grant the Commission limited authority over public interest *carriage* requirements, such as carriage of political advertising, educational programming, and other public service uses.[174] However, there is no "carriage" limitation in the statutory text. Although section 335(a) specifies certain topics that must be addressed by the Commission (including political advertising requirements in sections 312(a)(7) and 315 of the Act), the list is not exhaustive. Because section 335(a) states that the regulations must address these topics "at a minimum,"[175] the Commission has authority to adopt public interest requirements beyond those enumerated in the statute. DIRECTV also argues that reading section 335(a) to authorize the "all-in" rule would render "redundant" the "prices, terms and conditions" provision in section 335(b)(3) covering carriage obligations for noncommercial, educational programming.[176] We reject this argument. Our rule does not impose requirements on "reasonable prices, terms, and conditions," as directed under section 335(b)(3). Rather our rule is a public interest requirement directed at ensuring DBS providers are *transparent* about the price *they* have chosen to charge for their service. Thus, there is no redundancy.

40. To be sure, the legislative history suggests that when enacting section 335(a), Congress was focused on potential requirements to be placed on DBS providers with respect to public service programming.[177] However, "rarely have [courts] relied on legislative history to constrict the otherwise broad application of a statute indicated by its text."[178] Contrary to DIRECTV's assertion,[179] the legislative history cannot overcome the clearest and most common sense reading of the language of the

[172] *See* 47 U.S.C. § 335.

[173] DIRECTV Comments at 2. *See also* DIRECTV Mar. 7 *Ex Parte* at 1-2.

[174] *See id*. at 4.

[175] 47 U.S.C. § 335(a).

[176] DIRECTV Comments at 4-5.

[177] *See id*. at 5 (citing H.R. Rep. No. 102-862, 100 (1992) (Conf. Rep.), *reprinted in* 1992 U.S.C.C.A.N. 1231, 1282).

[178] *Consumer Electronics Ass'n v. FCC*, 347 F.3d 291, 298 (D.C. Cir. 2003) (citations omitted). The court further noted that "the Supreme Court has consistently instructed that statutes written in broad, sweeping language should be given broad, sweeping application." *Id.* (citing *New York v. FERC*, 1225 S. Ct. 1012, 1025 (2002) ("where Congress uses broad language, evidence of a specific 'catalyz[ing] force for the enactment 'does not define the outer limits of the statute's coverage'"); *PGA Tour, Inc. v. Martin*, 532 U.S. 661, 689 (2001) ("[T]he fact that a statute can be applied in situations not expressly anticipated by Congress does not demonstrate ambiguity. It demonstrates breadth.")).

[179] *See* DIRECTV Comments at 4-5 (arguing that the legislative history of section 335 is specific to educational programming, and not broader authority and discussing the "Conference Report explain[ing] that the purpose … was to 'define the obligation of direct broadcast satellite service providers to provide a minimum level of educational programming,' as well as the 'capacity to be allotted' to 'noncommercial public service uses'" (citing H.R. Rep. No 102-10-862, 100 (1992) (Conf. Rep.), *reprinted in* 1992 U.S.C.C.A.N. 1231, 1282)), 5-6 (arguing that necessary ancillary jurisdiction for the Commission to regulate DBS bills and advertising, such jurisdiction would require: (1) the Commission's general jurisdictional grant under Title I covering the regulated subject; and (2) that the regulations are reasonably ancillary to the Commission's effective performance of its statutorily mandated responsibilities (citing *American Library Ass'n v. FCC*, 406 F.3d 689, 691-92 (D.C. Cir. 2005)).

statute, which does not limit our authority only to national educational programming.[180] The "all-in" rule is a "public interest or other requirement[]" for providing video programming that we find falls within our jurisdiction under section 335(a).[181] The "all-in" rule is not an imposition of "sweeping new authority over DBS,"[182] nor is the Commission "assert[ing] that [section 335(a) of the Act] confers power to regulate virtually all other terms and conditions of service as well," including general regulation of terms, conditions, and pricing for DBS service.[183] Our prior invocation of section 335(b) to reserve channel capacity for noncommercial programming of an educational or informational nature does not preclude targeting non-carriage related problems when they arise under section 335(a), as the "all-in" rule does with a specific public interest problem raised in the record.[184] Moreover, the requirement we adopt for DBS providers here as necessary to protect consumers from misleading pricing information, is a proper exercise of the Commission's other authority in Title III, which courts have found endow the Commission with "expansive powers" and a "comprehensive mandate to 'encourage the larger and more effective use of radio in the public interest.'"[185]

41. DIRECTV analogizes the authority granted to the Commission in section 335 with statutes conferring administration authority to the Department of Health and Human Services (Department) that the D.C. Circuit found did not support its regulation of advertisements of certain pharmaceuticals.[186] The circumstances of that decision are distinguishable. In *Merck & Co.*, the Department argued that its regulation was '"necessary' to [a pharmaceutical] programs' 'administration,'" and the court found that "the Secretary must demonstrate an actual and discernible nexus between the rule

[180] Consumer Reports and Public Knowledge Reply Comments at 6 (noting legislative history does not accurately reflect Congress's intent "especially where such an interpretation would mark a radical departure from the general structure of the Act") (citing *National Petroleum Refiners Ass'n v. FTC*, 482, F.2d 672, 693 (D.C. Cir. 1973); *American Hosp. Ass'n v. NLRB*, 499 U.S. 606, 613-14 (1991)).

[181] DIRECTV Comments at 3 (citing the Television Viewer Protection Act of 2019, Pub L. No. 116-94, 133 Stat. 2534 (2019)).

[182] *Id*. at 3-7 (acknowledging that section 335 of the Act confers authority to the Commission to impose public interest or other requirements for providing video programming, while arguing that "[p]roperly understood, the statute confers authority to impose public service *carriage* or *programming* requirements on DBS providers but provides no authority to mandate specific terms or conditions of service"); Consumer Reports and Public Knowledge Reply Comments at 8 (arguing that section 335(a) did not create new authority, but obligated the Commission to "use existing authority – with a deadline of 180 days to complete an initial rulemaking").

[183] *Id.* at 7.

[184] *See* 47 U.S.C. § 335. *See also* DIRECTV Comments at 4 (arguing that section 335 limits the Commission's authority to "specific public interest *carriage* requirements (that is, carriage of political advertising, educational programming, and other public service uses), not general regulation of terms and conditions of DBS service"), 7 ("The Commission cannot rely on a single clause in a decades-old provision about carriage requirements to assert sweeping new authority over DBS.").

[185] *Cellco Partnership v. FCC*, 700 F.3d 534, 542 (D.C. Cir. 2012). Thus, we rely on other delegations of authority in Title III for adoption of the "all-in" rule, including sections 303(b) (which directs the Commission, consistent with the public interest, to "[p]rescribe the nature of the service to be rendered by each class of licensed stations and each station within any class), 303(r) (which supplements the Commission's ability to carry out its mandates via rulemaking), and 316 (which enables the Commission to alter the term of existing licenses by rulemaking). 47 U.S.C. §§ 303(b), (r), 316. *See also* Consumer Reports and Public Knowledge Reply, at 5 ("Even if DIRECTV were correct with regard to the limitation of Section 335, the Commission has ample authority to impose the proposed rule under its general authority to set service rules for wireless licensees under Sections 303(b) and 303(r)").

[186] DIRECTV Comments at 8-9 (citing *Merck & Co., Inc. v. U.S. Dep't of Health & Human Svcs.*, 962 F.3d 531 (D.C. Cir. 2020)).

and the conduct or management of Medicare and Medicaid programs."[187] The nexus was too attenuated, the court concluded, "stray[ing] far off the path of administration for four reasons."[188] The authority granted under section 335, on the other hand, does not provide "general administrative authority" to the Commission.[189] Under section 335, a rule must further a "public interest or other requirement[] for providing video programming," which the "all-in" rule does: it protects the public interest by requiring truth in billing and advertisements for video programming.[190]

42. *Section 4(i) of the Act,* 47 U.S.C. § 154(i). In addition, we find authority to extend the "all-in" rule to DBS providers under section 4(i) of the Act.[191] The Commission is specifically delegated authority under the Communications Act to adopt standards governing communications between the cable operator and subscriber.[192] Extending the "all-in" requirement imposed on cable operators to DBS is necessary for our exercise of this specifically delegated power. Otherwise, consumers might opt for DBS service based on confusing or misleading pricing information over service offered by cable operators that are required to be transparent about the price they are charging. This would undermine the very purpose of the "all-in" rule that we are imposing on cable operators. Thus, by extending our rule to DBS providers, 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).[193]

4. Other Federal Statutes

43. Contrary to arguments raised by industry commenters, the TVPA does not preclude the "all-in" rule.[194] We recognize that Congress did not include "language in the original version of the TVPA that would have required all-in pricing in advertisements and other marketing."[195] The lack of such a requirement in the TVPA, however, does not preclude the Commission from exercising its powers outside the TVPA (i.e., under Titles III, VI and section 4(i)) over promotional materials including

[187] *Merck & Co.*, 962 F.3d at 539.

[188] *Id.* at 539, 541 ("hold[ing] only that no reasonable reading of the Department's general administrative authority allows the Secretary to command the disclosure to the public at large of pricing information that bears at best a tenuous, confusing, and potentially harmful relationship to the Medicare and Medicaid programs").

[189] *Merck & Co.*, 962 F.3d 541.

[190] DIRECTV Comments at 3 (citing the Television Viewer Protection Act of 2019, Pub L. No. 116-94, 133 Stat. 2534 (2019)).

[191] 47 U.S.C. § 154(i).

[192] 47 U.S.C. § 552.

[193] *See, e.g.*, *Mobile Comm'ns 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)).

[194] NCTA Comments at 6 ("If anything, the TVPA's mandate that MVPDs itemize all applicable charges on bills if the MVPDs add them to the price of the package *precludes* the Commission's proposal to require" an all-in price.), 9 (arguing that "the TVPA provides no authority for the adoption of the proposed rule and in fact militates against adoption").

[195] *Id*. at 5 (citing the Television Viewer Protection Act of 2019, H.R. 5035, 116th Cong. § 4 (2019)), 6 (arguing "the TVPA's mandate that MVPDs itemize all applicable charges on bills if the MVPDs add them to the price of the package precludes the Commission's proposal to require" all-in pricing), 9-10 ("The express decision to omit statutory authority to impose an all-in pricing rule for advertising and promotional materials in Congress' most recent legislative enactment on consumer disclosures strongly suggests that the Commission lacks such authority."); *See also* State Cable Ass'ns Mar. 5 *Ex Parte* at 3-4.

advertising.[196] With the TVPA, Congress addressed a specific customer service issue, but there is no indication that Congress intended to restrict other authority of the Commission to address these types of issues.[197] First, Congress enacted the TVPA in 2019 to address a specific issue relating to basic protections to consumers when purchasing MVPD services.[198] There is nothing in the TVPA to demonstrate that Congress intended to repeal, supplant or otherwise disturb the Commission's existing statutory authority over cable customer service provided under section 632 or public interest requirements for DBS providers under section 335. Legislative history also makes clear that the TVPA was "provid[ing] basic protections" targeted at a particular concern of Congress, but nowhere does it suggest Congress's intent to repeal, supplant or otherwise disturb the Commission's other existing authority.[199] Second, the TVPA's focus is on electronic billing, but we do not rely on the TVPA to apply the "all-in" rule to promotional materials. Rather, we rely on other authority (sections 632 (cable operators) of the Act, 335 (DBS providers), and 4(i) (ancillary jurisdiction)[200]) to implement customer service obligations that are not foreclosed by the TVPA.

5. The First Amendment

44. We affirm the Commission's tentative conclusion in the *NPRM* that the proposed "all-in" rule is consistent with the First Amendment.[201] When adopting truth-in-billing, advertising, and labeling rules in similar contexts, the Commission has found that "[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."[202] The same is true here. The speech implicated here is

[196] *See* Consumer Reports and Public Knowledge Reply Comments at 5 ("Where Congress has not provided direct instruction to the Commission on how to proceed, the Commission may act pursuant to its general rulemaking power and the grant of authority inherent in an ambiguous statute.") (citing *Alliance for Community Media v. FCC*, 529 F.3d 763, 773-75 (6th Cir. 2008)).

[197] *See* NCTA Comments at 5 ("The TVPA reflects Congress's determination that disclosure of the all-in price at the point of sale ensures that consumers are fully informed and do not 'face unexpected and confusing fees when purchasing video programming'").

[198] *Id.* at 15 ("Congress specifically addressed truth in billing and related disclosure requirements for MVPDs when it enacted the TVPA, and under that statute left the form of those disclosures up to the provider."); H.R. Rep 116–329, at 1 (2019) ("The purpose of this legislation is to address two provisions of law expiring at the end of 2019 that facilitate the ability of consumers to view broadcast television stations over [MVPD] services and to provide basic protections to consumers when purchasing MVPD services and certain broadband equipment.").

[199] H.R. Rep 116–329, at 1 (2019).

[200] 47 U.S.C. §§ 552, 335, 154(i).

[201] *NPRM*, 2023 WL 4105426 at *8, para. 17. *See generally Broadband Transparency Order*, 37 FCC Rcd at 13725, para. 122 (citing *Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges ("Cramming"), Consumer Information and Disclosure, Truth-in-Billing, and Billing Format*, CG Docket Nos. 11-116, 09-158, CC Docket No. 98-170, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 4436, 4482-84, paras. 129-35 (2012) (applying *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626 (1985); *Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n of New York*, 447 U.S. 557 (1980); *Restoring Internet Freedom Order*, WC Docket No. 17-108, Declaratory Ruling, Report and Order, and Order, 33 FCC Rcd 311, 448-50, paras. 235-38 (2017) (concluding that the Commission need not resolve whether *Zauderer* or *Central Hudson* applied because the transparency rule satisfied even the *Central Hudson* standard); Local Government Reply Comments at 18 ("Because the extension of First Amendment protection to commercial speech is justified principally by the value to consumers of the information such speech provides, appellant's constitutionally protected interest in not providing any particular factual information in his advertising is minimal." (citing *American Meat Inst. v. U.S. Dept. of Agric.*, 760 F.3d 18, 22 (D.C. Cir. 2014) (en banc) (quoting *Zauderer*, 471 U.S. at 650)).

[202] *See NPRM*, 2023 WL 4105426 at *8, para. 17 (citing *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 (continued….)

information in bills and promotional materials about the cost of video programming service offered by cable operators and DBS providers, which the record shows consumers currently find misleading.[203] Thus, our proposed rule simply prevents misleading commercial speech, which is afforded no protection under the First Amendment.[204]

45. In the alternative, even if our "all-in" rule regulates only potentially misleading speech, regulations involving commercial speech[205] that require a disclosure of factual information (such as the disclosure of the total cost for video programming service that the "all-in" rule would require) are entitled to more lenient review from courts than regulations that limit speech.[206] A speaker's commercial speech rights are adequately protected as long as disclosure requirements are reasonably related to the government's interest in preventing deception of consumers.[207] We conclude that we have met this standard. As an initial matter, for promotional materials, the rule applies only when the cable or DBS provider chooses to state information about price. The rule we adopt does not mandate pricing information if the cable or DBS provider decides not to state information about price. In those cases where the cable or DBS operator chooses to state information about price, the "all-in" rule requires only that the operator disclose accurate information about the total cost for video programming service, and the disclosure requirement is reasonably related to the government's interest in preventing an oftentimes costly deception of consumers.[208] The rule does not prevent cable operators and DBS providers from conveying any additional information.[209] A cable operator's or DBS provider's constitutionally protected

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(1999) (citing *Central Hudson*, 447 U.S. at 563-64, 566 ("The government may ban forms of communication more likely to deceive the public than to inform it.")). *See also Broadband Transparency Order*, 37 FCC Rcd at 13725-26, para. 123; Consumer Reports and Public Knowledge Reply Comments at 9 ("Rules to prohibit advertising and billing practices that mislead and confuse consumers are not constitutionally protected.").

[203] *See, e.g.*, Colorado Communications and Utility Alliance Reply Comments at 2 (arguing that cable operators and DBS television providers have been using fees associated with broadcast television and regional sports to "obfuscate the true price of cable television services" (citing City of Seattle Comments at 1)); Local Government Reply Comments at 4 ("Like Boston and other Local Government Commenters, other Local Franchise Authority commenters filing in the docket have heard from consumers who easily mistake these charges for government-imposed fees 'when, in fact, they are operator-imposed charges that have been misleadingly itemized outside the price for cable services.'" (quoting Local Franchise Authorities Comments at 1-2; Truth in Advertising Comments at 2-3 (noting a claim of "Cox Communications misleadingly advertising fees for" video programming (citing TINA.org's Class Action Tracker: The Fees for "Advanced TV", https://truthinadvertising.org/class-action/the-fees-for-advanced-tv/)).

[204] *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).

[205] *Id.* at 561 (explaining "commercial speech" as "expression related solely to the economic interests of the speaker and its audience").

[206] *See Zauderer*, 471 U.S. at 651-52. *See also Milavetz, Gallop, & Milavetz v. U.S.*, 559 U.S. 229, 249-50 (2010); Consumer Reports and Public Knowledge Reply Comments at 10 (arguing that regulations involving commercial speech that require a disclosure of factual information (like the all-in cost of service) "are entitled to more lenient review from courts than regulations that limit speech").

[207] *Zauderer*, 471 U.S. at 651.

[208] *See, e.g.*, Truth in Advertising Comments at 4 (reporting that "[o]n average, the cable industry generates close to $450 per customer per year from company-imposed fees" and how fees have led to consumers "exceed[ing] their budgets" (citing CR Cable Bill Report 2019)).

[209] *See supra* para. 15 (discussing how the "all-in" rule does not prevent the additional disclosure of additional information, such as costs relating to retransmission consent fees).

interest in not providing the cost a subscriber will be charged for video programming service is "minimal."[210]

46. Further, as the Commission discussed in the *NPRM*, even if our rule is subject to the more stringent test of commercial speech (i.e., intermediate scrutiny), we find 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."[211] We have a longstanding substantial interest in ensuring that consumers receive sufficient information to understand the full cost of video programming to which they subscribe, and make informed purchasing decisions as they consider competing cable and DBS service options. Our "all-in" rule advances this interest by requiring cable operators and DBS providers to identify the cost for video programming as a clear, easy-to-understand and accurate line-item on consumer bills and promotional materials, allowing consumers to identify the full cost of video programming. Finally, the "all-in" rule is narrowly drawn to focus on misleading (and potentially misleading) information, without effect on other speech.

47. Thus, as we explain above and as stated in the *NPRM*, we believe the "all-in" rule we adopt is consistent with the requirements described in *Zauderer*, as well as *Central Hudson* (assuming arguendo that the *Central Hudson* standard is applicable).[212] NCTA disagrees, arguing that the "all-in" rule fails under the standard of *Zauderer* and the test for commercial speech articulated in *Central Hudson*.[213] According to NCTA, "[h]ere, a mandate to provide an all-in price in advertising and promotional materials would be unduly burdensome, particularly for national companies that offer a national base price but have additional charges that vary by state or locality."[214]

48. We disagree that requiring clear, easy-to-understand, and accurate information regarding the price of video programming in promotional material and billing imposes an unreasonable burden or comparative disadvantage.[215] We mitigate potential burdens on cable operators and DBS providers complying with the "all-in" rule by applying it responsively to issues identified in the record (as discussed above). For example, if promotional material is intended for a variety of locations, or is nationwide, our "all-in" price requirement will be satisfied if the promotion includes a range of prices that include the highest "all-in" price a consumer could be charged, or includes more than a single "all-in" price with ability for the consumer to determine his or her "all-in" price.[216] We also were persuaded to add flexibility for marketing of grandfathered serviced plans.

49. NCTA argues that, with regard to the *Central Hudson* inquiry required by courts, "the Commission's proposed rule is woefully underinclusive to serve its supposed substantial interest."[217] NCTA claims that regulating only cable and DBS providers would hinder consumer choice "given that

[210] *Zauderer*, 471 U.S. at 651.

[211] *Central Hudson*, 447 U.S. at 564-65 (finding "the First Amendment mandates that speech restrictions be 'narrowly drawn'").

[212] *See Zauderer*, 471 U.S. 626; *Central Hudson*, 447, U.S. 557.

[213] NCTA Comments at 10-11.

[214] *Id*. at 11.

[215] *See id*. (arguing that the *Zauderer* test is not met because: "The Commission does not offer any explanation for how its proposed rule would apply to national marketing without substantially hobbling it, or without putting national providers at a significant disadvantage with respect to what they can advertise as compared to competitors who are not similarly restricted.").

[216] *Id*.

[217] *Id.* at 11-12 (citing *Nat'l Inst. of Family and Life Advocates v. Becerra*, 138 S. Ct. 2361, 2375 (2018)).

other MVPDs would have greater flexibility in how they present pricing information."[218] We disagree that our effort to restrict misleading promotional and billing material contravenes the test of *Central Hudson*, assuming, *arguendo*, *Central Hudson* is applicable. Under authority granted to the Commission to prevent the types of consumer harm identified in the record, the "all-in" rule simply prevents misleading commercial messages that do not accurately inform current and potential subscribers about the price of video programming service, which is afforded no protection under the First Amendment.[219]

D. Existing Consumer Protections

50. We find the "all-in" rule complements existing state, local, and federal laws and regulations and voluntary consumer protections. The promotional and billing information of competing video programming service providers can be subject to different laws and regulations, depending upon how and where the service is promoted and provided. We share bifurcated authority with state and local governments.[220] For most services provided by cable operators and DBS providers, customer service issues are generally addressed by federal and state governments with shared authority under the Act. The Commission sets baseline customer service requirements at the federal level,[221] and state and local governments tailor more specific customer service regulations based on their communities' needs.[222]

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[218] *Id*. at 12; ABC Television Affiliates Association Reply Comments at 7 ("Fair treatment of consumers should not be based on the technology used to deliver video services, but, rather, on the clear risk to consumers posed by manipulative and unfair advertising and billing practices that are pervasive in the market today.").

[219] *NPRM*, 2023 WL 4105426 at *8, para. 18 (citing *Central Hudson*, 447 U.S. at 563 (holding "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)). One commenter made a passing reference to the possibility of "heightened First Amendment scrutiny" applying because the rule applies only to "certain participants in the video marketplace" thus creating a "speaker-based distinction." *See* NCTA Comments at 10. We reject this argument. The all-in rule does not single out cable operators or DBS providers for different treatment based on content or their viewpoint, such that it might be argued we are imposing a content-based regulation of speech. Nor has any commenter shown that to be the case. Rather, the all-in rule applies to cable operators and DBS operators because the record reveals that these operators, which account for the overwhelming majority of MVPD subscribers, have engaged in misleading pricing information leading to consumer confusion. Most available data does not track other providers, including OVS and MMDS. Based on S&P and other available data, we estimate that cable and DBS combined constitute between 96 and 99 percent of all MVPD subscribership. *See, e.g.*, S&P Global, *U.S. Multichannel Industry Benchmarks* (providing data on subscribers to cable, DBS, and total MVPD subscribers); S&P Global, *Q4'21 leading US video provider rankings* (Apr. 8, 2022); Brian Bacon, S&P Global, *Consumer Insights: US SVOD user trends and demographics, Q1'22* (Apr. 7, 2022); *2022 Communications Marketplace Report*, 37 FCC Rcd 15552, paras. 218 (discussing Multichannel Video Programming Distributors (MVDS) (citing S&P Global, *U.S. Multichannel Industry Benchmarks*), 328 (discussing AVOD (citing Seth Shafer, S&P Global, *Economics of Internet: State of US online video: AVOD 2021* (Nov. 30, 2021)). To the extent information is brought to the Commission's attention about other entities engaging in misleading pricing practices, we will not hesitate to consider appropriate action.

[220] 47 U.S.C. § 552 (Consumer protection and customer service).

[221] 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 [Local Franchise Authorities (LFAs)] from adopting stricter customer service requirements."). *See also* Local Government Comments at 8 (discussing "authority to adopt customer service requirements as part of their cable franchise authority, 47 U.S.C. § 552(a), and … their police power to regulate consumer protection, 47 U.S.C. § 552(d)"); NCTA Comments at 3-4 (citing 47 CFR §§ 76.1602(b), 76.1603(b), 76.1619, 47 U.S.C. § 552(d)(2)).

[222] For example, local franchises often require refunds, prompt credits for service outages, local consumer offices, customer service standards for cable operator personnel, billing practices disclosures, call center hours, response

(continued….)

Aside from legal requirements, we recognize that video programming service providers also "have incentives to provide promotional and billing material clearly to consumers," which is especially true for subscribers with plans that allow them to cancel at any time.[223]

1. State and Local Requirements

51. We find that the "all-in" rule complements existing consumer protection efforts by targeting issues raised in the comments about consumer confusion due to misleading pricing, and in a way that state and local governments support. In support of the "all-in" rule, the Local Franchise Authorities explain that many cable service bills do not currently meet what they consider to be basic standards of presenting clear, easy-to-understand, and accurate charges, despite the TVPA, existing Commission rules, and other formal and informal consumer protections.[224] The Local Government Commenters explain that state and local governments "that adopt consumer protection rules typically adopt, at a minimum, requirements mandating that cable operators provide advance notice, typically 30 days, to consumers for any price change, or publicly available rate card or schedule outlining current prices."[225] In Connecticut, for example, the line items that appear to represent retransmission consent fees, the Connecticut Office of State Broadband explains, are often confusing to consumers, and could be difficult to predict or substantiate.[226] The "all-in" rule addresses these issues by complementing state and local requirements to inform consumers of which costs relate specifically to the provision of video programming service.

2. The Television Viewer Protection Act of 2019, 47 U.S.C. § 562 (TVPA) and Other Federal Requirements

52. *The Television Viewer Protection Act of 2019 (TVPA)*, 47 U.S.C. § 562. Contrary to some commenters' arguments, we find that the Television Viewer Protection Act of 2019 (TVPA) does not render the "all-in" rule unnecessary; rather, we find that the rule complements the TVPA's consumer protections. Some industry commenters argue that an "all-in" rule is unnecessary because, in addition to other laws and regulations,[227] the TVPA "already requires [MVPDs] to disclose the all-in price for multichannel video programming services, including non-governmental fees and charges, both at the

(Continued from previous page)
times to repair calls, and procedures for unresolved complaints, and collect data regarding cable operator responses to customers." Local Government Comments at 9.

[223] Verizon Comments at 9 n.21. *See also* ACA Connects Comments at 9, 17. Consumer Reports notes, for example, the Verizon "Mix and Match" plan and YouTube TV's "no hidden fees" program as "more consumer-friendly and transparent pricing." Consumer Reports and Public Knowledge Comments at 20. *See also* ACA Connects Comments at 6 (describing efforts of ACA members to increase transparency of the sources of fees and charges).

[224] Local Franchise Authorities Comments at 4, 6 ("More clarity and transparency are needed to help consumers understand their cable bill and make informed decisions about their services"); Colorado Communications and Utility Alliance Reply Comments at 4 ("The proposed [all-in rule] will increase transparency and enable consumers to make more informed choices concerning their options for video programming."); Local Government Reply Comments at 7 (arguing that requiring clear explanations for "teaser" rates will reduce consumer confusion by eliminating "inconsistent implementation of promotional rates").

[225] Local Government Comments at 9 (citing Boston/Comcast Cable Television agreement (May 15, 2021), Sections 7.4 7.5, 12, https://www.boston.gov/sites/default/files/file/2022/03/Comcastlicensesanssides20211005.pdf; and Fairfax County Code, Chapter 9.2 § 9.2-9-9(b) through (d), https://www.fairfaxcounty.gov/cableconsumer/sites/cableconsumer/files/assets/documents/pdf/cprd/fairfax-county-code-chapter-9.2.pdf).

[226] Connecticut Office of State Broadband Comments at 7 (explaining that "the amount itemized on the bill may be an unsubstantiated number … [and] neither the Commission nor any state has ever confirmed that the line item is an accurate reflection of what the owners of the local stations collectively charge of any given billing statement").

[227] NCTA Comments at 4 (citing 15 U.S.C. § 45(a); 16 CFR § 310.3(a)(1)); NCTA Reply Comments at 2.

point of sale and in writing within 24-hours of entering a contract for service, and to provide customers with an opportunity to cancel without penalty."[228] ACA asserts the TVPA is "working effectively."[229] Industry also asserts that the TVPA provides flexibility that allows individual cable operators to implement how much video programming costs "in a way that best suits their customers and existing sales and billing systems."[230]

53. According to the industry commenters, consumers greatly benefit from the TVPA and service providers regularly meet and exceed its requirements.[231] Members of NCTA and ACA, for example, "disclose in promotional materials that the price for video service may include additional fees, typically dependent on what customers purchase and where they live,"[232] and service providers have "every incentive to provide prospective and existing customers with the best experience possible, including by communicating with them clearly and effectively."[233] However, the record also reveals common and widespread frustration from consumers, which reflects that there continue to be significant issues in the marketplace regarding the provision of information about fees and charges associated with video programming.[234]

54. We find the "all-in" rule complements how cable operators and DBS providers comply with the TVPA.[235] The TVPA requires certain consumer protection disclosures be made at the point of sale,[236] as NCTA emphasizes, but the record does not support the conclusion "that consumers are fully informed."[237] We, therefore, disagree that the issues raised by commenters have "already been explicitly

[228] NCTA Comments at 4 (citing 47 U.S.C. § 562(a)); ACA Connects Comments at 8 (describing "robust, existing mechanisms, including sales and billing disclosure requirements enacted as part of the [TVPA] that ensure that consumers signing up for video service understand the rates they will pay").

[229] *See* ACA Connects Comments at 11 ("With the TVPA and other safeguards in place, there is no indication of any gap in transparency that the proposed 'all-in' price requirement is necessary to fill.").

[230] NCTA Comments at 1.

[231] *See* NCTA Reply Comments at 3 (charactering claims that cable operators are not complying "with the law or are otherwise hiding fees from consumers are flatly incorrect and rely either on data from before the enactment of the TVPA or misrepresentations of current industry practices").

[232] NCTA Comments at 2; ACA Connects Comments at 8 (describing the success with implementing the "robust, existing mechanisms, including sales and billing disclosure requirements enacted as part of the [TVPA] that ensure that consumers signing up for video service understand the rates they will pay").

[233] NCTA Comments at 3; Verizon Reply Comments at 8 (describing how many providers, such as Verizon, '"have adopted the practice of breaking out retransmission consent fees and other video programming fees on subscriber bills—not to mislead their customers, but to help them understand the root cause of soaring prices for cable service'" (quoting ACA Connects Comments at 17)).

[234] *See, e.g.*, NAB Comments at 4-5 (reporting that, even several months after the implementation of the TVPA, certain video program service providers continued to separate out "cleverly-named" fees and "company-imposed fees continue to rise in price," without the subscriber understanding the source or cause of a billed fee or charge (quoting Consumer Reports and Public Knowledge Reply Comments, MB Docket No. 21-501 (Mar. 7, 2022)).

[235] As Consumer Reports explains, "Sections 642(a)(2) and 642(b) [(the TVPA)] both refer to situations where a consumer has signed a contract with a provider, thus becoming a 'subscriber,'" and it would be "odd to argue that providers must show the all-in price when the subscriber has the right to cancel within the 24 hour period under Section 642(a), or when a provider provides an electronic bill under Section 642(b), or when a subscriber renews their subscription, but that the provider may lure the consumer into the store or onto its website with a misleading price." Consumer Reports and Public Knowledge Comments at 7

[236] *See* 47 U.S.C. § 562.

[237] *See* NCTA Comments at 5; Local Government Reply Comments at 16 ("A disclosure at the time of purchase will be less effective pursuant to the TVPA if the consumer has already been confused by misleading and inaccurate advertising that led up to a consumer's decision to subscribe.").

addressed and resolved by Congress" and that our action implementing the "all-in" rule is "arbitrary and capricious."[238] Congress, with the TVPA, did not limit the Commission's ability to address consumer issues that are within the scope of the Act, but beyond the requirements of the TVPA.

55. Notably, the TVPA does not address promotional materials that include a price for video programming, as the "all-in" rule does, which we find will address many issues described in the record.[239] The City of Seattle reports, for example, that in their local experience, "even with the congressional oversight and subsequent *Television Viewer Protection Act of 2019*, the practice of separating obligatory programming costs from the service price, and listing them separately as fees continues making it difficult for consumers to find clear service and pricing information and to compare options within a provider or among other providers," especially where customers "expect to use websites to find current service and price options."[240] The "all-in" rule addresses this issue in a way the TVPA does not, and enables awareness of programming fees that consumers will find helpful to understand the sources that "are driving up cable bills."[241]

56. ACA argues that there is the potential for confusion about the "true" "all-in" price because that "is not the all-in price that any subscriber will actually pay."[242] According to ACA, that amount will include programming fees and "also 'taxes and other fees unrelated to programming,' including equipment fees."[243] ACA maintains that in other contexts, the '"all-in' price of a communications service would include such taxes and fees."[244] We recognize that other customer service or consumer protections may require disclosure of a total price that includes fees and charges unrelated to video programming, such as taxes. The "all-in" price complements those requirements, including the TVPA, by addressing the source of misunderstandings about the costs of video programming that will be inclusive of the larger, total price, that includes charges and fess unrelated to video programming.

57. *The Federal Trade Commission (FTC)*. DIRECTV argues that compliance with the "all-in" price rule could cause tension with FTC directives, "particularly with nationwide advertisements advertising across localities with different [regional sports programming] fees."[245] DIRECTV complains that seeking to comply with "at least two sets of potentially overlapping and perhaps conflicting regulation (not to mention state-by-state FTC-like regulation) could present "complications" and "challenges" and could result in an "overly clunky advertisement or bill, likely to be both confusing and ineffective."[246] DIRECTV, however, does not identify any actual regulations that overlap or conflict with

[238] NCTA Comments at 5; NCTA Reply Comments 7-8 (arguing that applying the "all-in" rule "just to cable and DBS providers but not to similarly situated competitors in the video marketplace would be all the more legally suspect").

[239] Consumer Reports and Public Knowledge Reply Comments at 3 ("[T]he TVPA does nothing with respect to the price MVPDs can advertise, preserving the practice of promoting a low teaser rate, with the increasingly expensive raft of fees hidden in the fine print to be revealed later … and it does not clear up any confusion about what these fees are and who is charging them.").

[240] City of Seattle Comments at 4-5 (discussing images of prospective subscribers' chats with customer service agents, who were unable to provide a local rate or price information by providing their zip code), 11-12.

[241] ACA Connects Comments at 6-7; ABC Television Affiliates Association Reply Comments at 4 (reporting that increases in MVPD rates have risen "more than three times the rate of inflation").

[242] ACA Connects Comments at 15.

[243] *Id*.

[244] *Id*.

[245] DIRECTV Comments at 13.

[246] *Id*.

the "all-in" pricing rule we adopt here.[247] In the absence of any evidence of an actual conflict, we decline to refrain from adopting an "all-in" rule based simply on vague, general, and conclusory burden claims. If in the future there arises a concrete conflict, parties can seek clarification or waiver at that time.

E. Competitive Effects

58. We find that the "all-in" rule will increase transparency and enhance competition. As the Commission recently explained, "[c]onsumer 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."[248] The record demonstrates that the "all-in" rule will serve consumers and promote competition by giving consumers access to information so they can shop among various video services providers more effectively.[249]

59. We disagree that competition among service providers has supplanted the need for the "all-in" rule or outweigh its competitive benefits.[250] The Commission's authority in this area is not limited or less beneficial to consumers confronting unexpected charges because the marketplace is now more competitive.[251] Although we recognize that significant entry into the video marketplace has

[247] *See* DIRECTV *Ex Parte* at 1 ("discuss[ing] the possibility that different sets of rules might require different 'all-in' or 'total' prices, calculated differently, but each required to be shown prominently"). *See* Fed. Trade Comm'n, Notice of Proposed Rulemaking; Request For Public Comment, 88 FR 77420 (Jan. 8, 2024), https://www.federalregister.gov/documents/2023/11/09/2023-24234/trade-regulation-rule-on-unfair-or-deceptive-fees (proposing to "prohibit unfair or deceptive practices relating to fees for goods or services, specifically, misrepresenting the total costs of goods and services by omitting mandatory fees from advertised prices and misrepresenting the nature and purpose of fees"); Cal. SB 478, Consumers Legal Remedies Act: Advertisements (Cal. Oct. 2023), https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202320240SB478 ("This bill would … make unlawful advertising, displaying, or offering a price for a good or service that does not include all mandatory fees or charges other than taxes or fees imposed by a government on the transaction, as specified."); HB24-1151, 74th Gen. Assemb., 2nd Reg. Sess. (Colo. 2024), https://www.statebillinfo.com/bills/bills/24/2024a_1151_01.pdf ("prohibit[ing] a person from advertising a price for a product, good, or service that does not include all mandatory or nondiscretionary fees or charges"); NJ S1225, 221st Leg., 2024 Sess. (NJ 2024), https://www.njleg.state.nj.us/bill-search/2024/S1225/bill-text?f=S1500&n=1225_I1 (requiring, for example, a "price advertised to a consumer shall include, but not be limited to, any broadcast programming fee, administrative and service fee, regional sports network fee, or cable television equipment fee per television set, including set-top box and remote rental fee"); NY S07783B, New York Junk Fee Prevention Act (NY Dec. 2023), https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=S07783&term=2023&Summary=Y&Text=Y (requiring disclosure of the "total price" as the full price that a consumer must pay, inclusive of all mandatory fees associated with a transaction); H.B. 1320/S.B. 388, 2024 Gen. Assemb., 2024 Sess., Virginia Consumer Protection Act; Prohibited Practices, Mandatory Fees Disclosure (Va. 2024), https://lis.virginia.gov/cgi-bin/legp604.exe?241+ful+SB388S1+pdf (prohibiting, for example, "a supplier in connection with a consumer transaction from advertising, displaying, or offering any pricing information for goods or services without prominently displaying the total price, which shall include all mandatory fees or charges other than taxes imposed").

[248] *See Broadband Transparency Order*, 37 FCC Rcd at 13687, para. 1.

[249] *See supra* Section III.A (Need for the "All-In" Rule).

[250] Cable Company Reply Comments at 5 (arguing the "all-in" rule is unnecessary, given that consumers have choices from dozens of streaming services); Verizon Comments at 3 (citing *Communications Marketplace Report*, GN Docket No. 22-203, 2022 Communications Marketplace Report, 37 FCC Rcd 15514 (2022) (*2022 Communications Marketplace Report*)), 5 (arguing that "[i]n today's hypercompetitive video marketplace, the Commission should not introduce new regulations on any video providers' billing practices" in the interest of regulatory parity to further the goal of maintaining a competitive marketplace); Verizon Reply Comments at 3 (arguing the intense and growing competition among video program service providers "makes it both unnecessary and counterproductive to adopt new far-reaching regulations on billing practices, especially for competitive providers like Verizon" (citing ACA Comments at 9)).

[251] Verizon Comments at 5-6.

benefited consumers, we do not rely on entry alone, consistent with Congress' directive to protect consumers purchasing services when warranted.[252] The authority for the "all-in" rule, on which we rely, was not solely concerned with competition, but with protecting consumers.[253]

F. Cost/Benefit Analysis

60. We adopt the "all-in" requirement having considered the costs and benefits associated with adopting the proposal. The purpose of this proceeding is to reduce confusion, in an effective and narrow way that complements current consumer protections, and mitigates the cost of unexpected charges and fees for consumers. No commenter submitted a rigorous economic cost/benefit analysis, but we note that certain commenters argued that an "all-in" rule "would create confusion—not clarity—for consumers, and impose undue burdens on the Companies without any countervailing public benefit."[254] We disagree. The "all-in" rule will address consumer confusion identified in the record that has led to household budget issues, billing disputes, and litigation. Requiring clear, easy-to-understand, and accurate pricing disclosure empowers consumer choice, possibly improving customer satisfaction,[255] and increases competition in the video marketplace.

G. Digital Equity and Inclusion

61. The "all-in" rule furthers our continuing effort to advance digital equity for all,[256] 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 affected by persistent poverty or inequality. As part of the *NPRM*, the Commission invited "comment on any equity-related considerations[257] and benefits (if any) that may be associated with the" "all-in" rule and related issues

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[252] *See, e.g.*, 47 CFR § 64.2401 (Truth-in-Billing Requirements); *Truth-in-Billing and Billing Format*, CC Docket No. 98-170, Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 7492, 7501, para. 14 (1999) ("We emphasize that one of the fundamental goals of our truth-in-billing principles is to provide consumers with clear, well-organized, and non-misleading information so that they may be able to reap the advantages of competitive markets.").

[253] Consumer Reports and Public Knowledge Reply Comments at 7 (explaining how, for example, section 632 "protect[s] consumers, and unlike the specific requirements of the program access rules"); Local Franchise Authorities Reply Comments at 3 (contending that the arguments made by NCTA and Verizon are contradicted by the record cited by a large number of commenters (citing Consumer Reports and Public Knowledge Comments at 14-19, and Truth in Advertising Comments at 2-8)).

[254] Cable Company Reply Comments at 2; ACA Connects Comments at 7. *Cf.* ABC Television Affiliates Association Reply Comments at 1 ("The Affiliates Associations fully support the comments of the [NAB], which persuasively explain the public interest benefits that would flow from adoption of new "all-in pricing" requirements." (citing NAB Comments)); NAB Comments at 1.

[255] The American Customer Satisfaction Index 2023 ranked subscription TV series 40th of 43 industries surveyed in terms of customer satisfaction. American Customer Satisfaction Index, *ACSI Telecommunications Study 2022-2023* (June 6, 2023), https://theacsi.org/news-and-resources/press-releases/2023/06/06/press-release-telecommunications-study-2022-2023/.

[256] 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.

[257] 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, (continued….)

and, specifically, on how the "all-in" rule "may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission's relevant legal authority."[258] We agree with the Local Governments Commenters that the "all-in" rule promotes equity by addressing unexpected fees and charges that disproportionately impact lower-income households.[259]

IV. PROCEDURAL MATTERS

62. *Regulatory Flexibility Act Analysis.* The Regulatory Flexibility Act of 1980, as amended (RFA),[260] requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."[261] Accordingly, we have prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of rule changes contained in this *Report and Order* on small entities. The FRFA is set forth in Appendix C.

63. *Final Paperwork Reduction Act Analysis*. This document may contain new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA).[262] Any such requirements will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the information collection requirements contained in this proceeding. The Commission will publish a separate document in the *Federal Register* at a later date seeking these comments. In addition, we note that, pursuant to the Small Business Paperwork Relief Act of 2002 (SBPRA),[263] we requested specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.[264]

64. *Congressional Review Act*. The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, OMB concurs, that these rules are "non-major" under the Congressional Review Act, 5 U.S.C. § 804(2). The Commission will send a copy of the Report and Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

V. ORDERING CLAUSES

65. Accordingly, **IT IS ORDERED** that, pursuant to the authority found in sections 1, 4(i), 303, 316, 335(a), 632(b), and 642 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 303, 316, 335(a), 552(b), and 562, this Report and Order **IS ADOPTED**, and Part 76 of the Commission's rules, 47 CFR Part 76, **IS AMENDED** as set forth in Appendix B.

(Continued from previous page)
Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (January 20, 2021).

[258] *NPRM*, 2023 WL 4105426 at *9, para. 21.

[259] Local Government Comments at 6 ("Equity concerns arise with these undisclosed fees. … Regardless of whether vulnerable households are more likely to pay junk fees, the same level fee will account for a disproportionate share of a lower-income household's total funds than that of a higher-income household.").

[260] 5 U.S.C. §§ 601–612. The RFA 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).

[261] 5 U.S.C. § 605(b).

[262] The Paperwork Reduction Act of 1995 (PRA), Pub. L. No. 104-13, 109 Stat. 163 (1995) (codified in Chapter 35 of title 44 U.S.C.).

[263] The Small Business Paperwork Relief Act of 2002 (SBPRA), Pub. L. No. 107-198, 116 Stat. 729 (2002) (codified in Chapter 35 of title 44 U.S.C.). *See* 44 U.S.C. § 3506(c)(4).

[264] *NPRM*, 2023 WL 4105426 at *11, para. 26 ("seek[ing] specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees"). No commenter addressed SBPRA.

66. **IT IS FURTHER ORDERED** that this *Report and Order* **SHALL BE EFFECTIVE** thirty (30) days after the date of publication in the Federal Register. Compliance with section 76.310, 47 CFR § 76.310, which may contain new or modified information collection requirements, will not be required until (i) nine months after the release of this *Report and Order* or (ii) after the Office of Management and Budget completes review of any information collection requirements that the Media Bureau determines is required under the Paperwork Reduction Act, whichever is later; with the exception of small cable operators, which will have (i) twelve months after the release of this *Report and Order* or (ii) after the Office of Management and Budget completes review of any information collection requirements that the Media Bureau determines is required under the Paperwork Reduction Act, whichever is later, to come into compliance. The Commission directs the Media Bureau to announce the compliance date for section 76.310 by subsequent Public Notice and to cause section 76.310 to be revised accordingly. The Commission's rules **ARE HEREBY AMENDED** as set forth in Appendix B.

67. **IT IS FURTHER ORDERED** that the Commission's Office of the Secretary **SHALL SEND** a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

68. **IT IS FURTHER ORDERED** that Office of the Managing Director, Performance Program Management, **SHALL SEND** a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

List of Commenters

Commenters

ACA Connects – America's Communications Association

Mitchell Bakke

Jonathan Bates

Aaron Challancin

The City of Oklahoma City, Oklahoma; City of Minneapolis, Minnesota; Metropolitan Area Communications Commission; Northwest Suburbs Cable Communications Commission; North Metro Telecommunications Commission; South Washington County Telecommunications Commission; North Suburban Communications Commission; City of Edmond, Oklahoma; City of Coon Rapids, Minnesota; and City of Aumsville, Oregon (collectively, the Local Franchise Authorities))

The City of Seattle

Connecticut Office of Consumer Counsel Connecticut Office of State Broadband

Consumer Reports (with Public Knowledge)

Daniel Drake

DIRECTV, LLC

Kenneth Lubar

Matt Mann

Maureen

M Mondesir

National Association of Broadcasters

NCTA - The Internet & Television Association

NTCA - The Rural Broadband Association

One Ministries, Inc.

The Texas Coalition of Cities For Utility Issues, City of Boston, Massachusetts, the Mt. Hood Cable Regulatory Commission, Fairfax County, Virginia and National Association of Telecommunications Officers and Advisors (NATOA) (collectively, Local Government Commenters)

Truth in Advertising, Inc. (TINA.org)

USTelecom – The Broadband Association

Verizon

Reply Commenters

The ABC Television Affiliates Association, CBS Television Network Affiliates Association, FBC Television Affiliates Association, and NBC Television Affiliates (collectively, the Affiliates Associations)

Charter Communications, Inc., Comcast Corporation, Cox Communications, Inc., Mediacom Communications Corporation, Midcontinent Communications, and TDS Telecommunications Corporation

The City of Oklahoma City, Oklahoma; City of Minneapolis, Minnesota; Metropolitan Area Communications Commission; Northwest Suburbs Cable Communications Commission; North Metro Telecommunications Commission; South Washington County Telecommunications Commission; North Suburban Communications Commission; City of Edmond, Oklahoma; City of Coon Rapids, Minnesota; City of Aumsville, Oregon; and City of Mustang, Oklahoma (collectively, the Local Franchise Authorities)

The Colorado Communications and Utility Alliance (CCUA)

Consumer Reports (CR) and Public Knowledge

NCTA - The Internet & Television Association

NTCA - The Rural Broadband Association

The Texas Coalition of Cities For Utility Issues, City of Boston, Massachusetts, the Mt. Hood Cable Regulatory Commission, Fairfax County, Virginia and National Association of Telecommunications Officers and Advisors (NATOA) (collectively, Local Government Commenters)

USTelecom – The Broadband Association

Verizon

APPENDIX B

Final Rule

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.

(a) Cable operators and DBS providers shall state an aggregate price for the video programming that they provide as a clear, easy-to-understand, and accurate single line item on subscribers' bills, including on bills for legacy or grandfathered video programming service plans. If a price is introductory or limited in time, cable and DBS providers shall state on subscribers' bills the date the price ends, by disclosing either the length of time that a discounted price will be charged or the date on which a time period will end that will result in a price change for video programming, and the post-promotion rate 60 and 30 days before the end of any introductory period. Cable operators and DBS providers may complement the aggregate line item with an itemized explanation of the elements that compose that single line item.

(b) Cable operators and DBS providers that communicate a price for video programming in promotional materials shall state the aggregate price for the video programming in a clear, easy-to-understand, and accurate manner. If part of the aggregate price for video programming fluctuates based upon service location, then the provider must state where and how consumers may obtain their subscriber-specific "all-in" price (for example, electronically or by contacting a customer service or sales representative). If part or all of the aggregate price is limited in time, then the provider must state the post-promotion rate, as calculated at that time, and the duration of each rate that will be charged. Cable operators and DBS providers may complement the aggregate price with an itemized explanation of the elements that compose that aggregate price. This requirement shall not apply to the marketing of legacy or grandfathered video programming service plans that are no longer generally available to new customers. For purposes of this section, the term "promotional material" includes communications offering video programming to consumers such as advertising and marketing.

(c) Compliance with this section will not be required until the later of (i) December 19, 2024, or (ii) after the Office of Management and Budget completes review of any such requirements pursuant to the Paperwork Reduction Act; except that for small cable operators, compliance with this section will not be required until the later of (i) March 19, 2025, or (ii) after the Office of Management and Budget completes review of any such requirements pursuant to the Paperwork Reduction Act. For the purpose of this section, small cable operators are those with annual receipts of $47 million or less. The Commission will publish a document in the Federal Register announcing the compliance dates and revising this paragraph (c) accordingly.

APPENDIX C

Final Regulatory Flexibility Act Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] an Initial Regulatory Flexibility Act Analysis (IRFA) was incorporated into the *All-In Pricing for Cable and Satellite Television Service*, *Notice of Proposed Rulemaking* (*NPRM*) released in June 2023.[2] The Federal Communications Commission (Commission) sought written public comment on the proposals in the *NPRM*, including comment on the IRFA. No comments were filed addressing the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[3]

A. Need for, and Objectives of, the Report and Order

2. The *Report and Order* (*Order*) reflects the Commission's effort to enhance pricing transparency by requiring cable operators and direct broadcast service (DBS) providers to provide the "all-in" price for video programming service in their promotional materials and on subscribers' bills. The Commission received comments and *ex parte* filings from individuals, consumer advocates, cable operators, DBS providers, broadcast industry members, trade associations, state and local governments, and franchising authorities. A number of comments describe general consumer frustration with unexpected "fees" (for example, for broadcast television programming and regional sports programming charges 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.

3. The *Order* largely adopts the rule proposed in the *NPRM*, with certain limited exceptions or modifications, in response to comments in the record. In the *Order*, we adopt the proposal in the *NPRM* to require that cable operators and DBS providers provide the "all-in" cost of video programming service as a prominent single line item on subscribers' bills and in promotional materials. We require compliance with the "all-in" rule when the price for video programming increases during the term of the subscriber's service agreement and to national and regional promotional materials where charges to consumers varies by geography. We also acknowledge limitations that apply when the customer has a residential legacy or grandfathered plan, and recognize that how providers comply with the "all-in" rule may vary, if the price for video programming is clear, easy-to-understand, and accurate.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

4. There were no comments filed that specifically addressed the proposed rules and policies presented in the IRFA.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

5. Pursuant to the Small Business Jobs Act of 2010, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.[4]

6. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

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[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] *See All-In Pricing for Cable and Satellite Television Service*, MB Docket No. 23-203, FCC 23-52, Notice of Proposed Rulemaking, 2023 WL 4105426 (rel. June 20, 2023) (*NPRM*).

[3] 5 U.S.C. § 604.

[4] *Id.* § 604(a)(3).

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

7. 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 rules adopted herein.[5] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[6] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act (SBA).[7] 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.[8]

8. The rule adopted in the *Order* will directly affect small cable systems operators and DBS providers. Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

9. *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.[9] 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.[10] The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers.[11] The SBA small business size standard for this industry classifies firms with annual receipts less than $47 million as small.[12] Based on U.S. Census Bureau data for 2017, 378 firms operated in this industry during that year.[13] 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.[14] Based on this data, the Commission estimates that a majority of firms in this industry are small.

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[5] *Id.* § 604(a)(4).

[6] *Id.* § 601(6).

[7] *Id.* § 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.*

[8] 15 U.S.C. § 632.

[9] U.S. Census Bureau, *2017 NAICS Definition, "515210 Cable and Other Subscription Programming,"* https://www.census.gov/naics/?input=515210&year=2017&details=515210.

[10] *Id.*

[11] *Id.*

[12] 13 CFR § 121.201, NAICS Code 515210 (as of 10/1/22, NAICS Code 516210).

[13] 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).

[14] *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….)

10. *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.[15] Based on industry data, there are about 420 cable companies in the U.S.[16] Of these, only seven have more than 400,000 subscribers.[17] In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.[18] Based on industry data, there are about 4,139 cable systems (headends) in the U.S.[19] Of these, about 639 have more than 15,000 subscribers.[20] Accordingly, the Commission estimates that the majority of cable companies and cable systems are small.

11. *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."[21] For purposes of the Telecom Act Standard, the Commission determined that a cable system operator that serves fewer than 498,000 subscribers, either directly or through affiliates, will meet the definition of a small cable operator.[22] Based on industry data, only six cable system operators have more than 498,000 subscribers.[23] 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.[24] Therefore, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

12. *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

(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.

[15] 47 CFR § 76.901(d).

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

[17] 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).

[18] 47 CFR § 76.901(c).

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

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

[21] 47 U.S.C. § 543(m)(2).

[22] *FCC Announces Updated Subscriber Threshold for the Definition of Small Cable Operator*, Public Notice, DA 23-906 (MB 2023) (*2023 Subscriber Threshold PN*). In this Public Notice, the Commission determined that there were approximately 49.8 million cable subscribers in the United States at that time using the most reliable source publicly available. *Id*. This threshold will remain in effect until the Commission issues a superseding Public Notice. *See* 47 CFR § 76.901(e)(1).

[23] S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 06/23Q* (last visited Sept. 27, 2023); S&P Global Market Intelligence, Multichannel Video Subscriptions, Top 10 (Apr. 2022).

[24] 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).

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.[25] Transmission facilities may be based on a single technology or combination of technologies.[26] 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.[27] By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.[28]

13. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[29] U.S. Census Bureau data for 2017 show that 3,054 firms operated in this industry for the entire year.[30] Of this number, 2,964 firms operated with fewer than 250 employees.[31] 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.[32] 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.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

14. The *Order* requires cable operators and DBS providers to state the aggregate cost for video programming service in bills and any promotional material that presents a cost for service as clear, easy-to-understand, and accurate information.

15. The "all-in" rule must be fully implemented no later than (i) 9 months after release of the *Report and Order* or (ii) when the Commission announces an effective date in the Federal Register pursuant to the Paperwork Reduction Act, whichever is later; except that compliance with this section is required no later than (i) 12 months after release of the *Report and Order* or (ii) when the Commission announces an effective date in the Federal Register pursuant to the Paperwork Reduction Act, whichever is later, for small cable operators. For the purpose of the rule, small cable operators are defined as those

[25] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[26] *Id.*

[27] *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).

[28] *Id.*

[29] 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[30] 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.

[31] *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.

[32] *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).

with annual receipts of $47 million or less, consistent with the SBA's small business size standards. We find that this is a reasonable amount to time based upon prior experience with how the industry has implemented TVPA billing requirements.[33] The record does not include a sufficient cost/benefit analysis that would allow us to quantify the costs of compliance for small entities, including whether it will be necessary for small entities to hire professionals to comply with the adopted rules. However, the transparent pricing requirements of the "all-in" rule will benefit competition for small and other video programming providers by providing consumers with more clarity when comparing costs for video programming services.

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

16. The RFA requires an agency to provide, "a description of the steps the agency has taken to minimize the significant economic impact on small entities … including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected."[34]

17. As explained in the *Order*, the "all-in" rule is necessary to equip consumers to make informed decisions about their service and comparison shop among video programming providers with clear, easy-to-understand, and accurate information about the charges related to video programming.[35] This rule includes flexibility that should make it easier for small and other entities to comply. For example, the Commission does not limit compliance with the "all-in" rule to a specific manner to disclose the aggregate price when charges for video programming are part of a bundled service or when video programming is marketed regionally or nationally, other than requiring a clear, easy-to-understand, and accurate "all-in" price. We also considered whether the "all-in" rule should differentiate between residential, small business, and enterprise subscribers, and determined that it should not apply to bulk purchasers of non-residential services or enterprise customers because those are typically customized, individually negotiated pricing plans. We believe the rule will protect consumers from deceptive bills and advertising with minimized costs and burdens on small and other entities. In the absence of evidence to the contrary in the record, the Commission does not expect the adopted requirements to have a significant economic impact on small entities. Finally, we provide small cable operators, defined as those with annual receipts of $47 million or less, with an additional three months to come into compliance with the rule.

G. Report to Congress

18. The Commission will send a copy of the *Order*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.[36] In addition, the Commission will send a copy of the *Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. The *Order* and FRFA (or summaries thereof) will also be published in the *Federal Register.*[37]

[33] *See* Television Viewer Protection Act of 2019, Pub. L. No. 116-94, 133 Stat. 2534 (2019) § 1004(b) (requiring a six month implementation requirement).

[34] 5 U.S.C. § 604(a)(6).

[35] *Order* at para. 6.

[36] 5 U.S.C. § 801(a)(1)(A).

[37] *Id.* § 604(b).

STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL

Re: *All-In Pricing for Cable and Satellite Television Service*, Report and Order, MB Docket 23-203.

Across the economy, consumers are frustrated with junk fees. They are tired of seeing one advertised price and then paying something different when the bill comes due. They are fed up with special surcharges, line items, and tacked-on costs. That is why nearly four out of five people in this country support federal legislation to crack down on junk fees. This is no surprise because these fees make it hard to contrast like services and can quickly turn what seemed like a good deal into a not-so-good one.

So today at the Federal Communications Commission we are doing something simple to address this problem. We are requiring cable and satellite television providers to state clearly the "all-in" price consumers pay for video services. No one likes surprises on their bill. The advertised price for a service should be the price you pay when your bill arrives. It shouldn't include a bunch of unexpected junk fees that are separate from the top-line price you were told when you signed up. But right now this isn't the case. In fact, our record in this proceeding demonstrates that 24 to 33 percent of consumer bills are special fees like "broadcast subscription" and "regional sports assessments." It is not just annoying; it makes it hard for consumers to compare services in a market that is evolving and has so many new ways to watch.

This effort to cut down junk fees on consumer bills is part of a larger initiative at this agency. In fact, next month, broadband providers will be rolling out new Broadband Nutrition Labels, with easy-to-understand facts about service plans to help improve transparency and increase competition. We have also proposed rules to limit unfair early termination fees, which can restrict consumer choice. On top of that, we have put forward rules to grant prorated credits or rebates for the remaining days in a billing cycle after the cancellation of service.

The bottom line is we do not have to have junk fees. We can have bills that are transparent and fair. This is a step in that direction and that is good news for consumers.

Thank you to the team responsible for this effort, including Holly Saurer, Lori Maarbjerg, Maria Mullarkey, Brendan Murray, and Joseph Price of the Media Bureau; Andrew Wise and Kim Makuch of the Office of Economic Analysis; Susan Aaron and David Konczal of the Office of General Counsel; Joycelyn James of the Office of Communications Business Opportunities; and Cathy Williams of the Office of Managing Director.

DISSENTING STATEMENT OF
COMMISSIONER BRENDAN CARR

Re: *All-In Pricing for Cable and Satellite Television Service*, Report and Order, MB Docket 23-203.

In this item, the Commission requires cable operators and direct broadcast satellite (DBS) providers to disclose the "all-in" price of video programming in subscribers' bills and promotional materials. The disclosure regime covers four scenarios: (1) cable billing, (2) DBS billing, (3) cable advertising, and (4) DBS advertising. Because we lack statutory authority over all but the first, I must dissent from today's decision.

The text of the item suggests that it is implementing the Television Viewer Protection Act of 2019 (TVPA),[1] which requires multichannel video programming distributors (MVPDs) to disclose, at the point of sale, "the total monthly charge" of the individual or bundled service "selected by the consumer."[2] The TVPA also requires an itemized breakdown of MVPD fees in subscriber bills.[3] As relevant to this proceeding, the TVPA has two key features. First, the law's disclosures are limited to the point of sale. The TVPA does not regulate how prices are shown in advertising. In fact, Congress considered and ultimately rejected extending the law to advertisements.[4] Second, the TVPA speaks for itself. It does not delegate rulemaking power to the Commission.[5] Congress codified the TVPA outside of the Communications Act, and it has governed MVPDs well before this proceeding started. The FCC thus lacks the power to adopt price disclosure rules without a separate grant of statutory authority.

Only in the case of cable billing does that authority arguably exist. A separate statutory provision allows us to establish "consumer service requirements," including "communications between the cable operator and the subscriber (including standards governing bills and refunds)."[6] That language provides the clarity we ordinarily need, and I agree that the Commission may regulate cable bill disclosures, so long as those rules are consistent with the TVPA.

If the item were so limited, I could have supported it. But the item goes further and strays markedly from our statutory authority.

[1] Television Viewer Protection Act of 2019, Pub. L. No. 116-94, 133 Stat. 2534 (2019), *codified at* 47 U.S.C. § 562.

[2] 47 U.S.C. § 562(a).

[3] 47 U.S.C. § 562(b) (requiring "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").

[4] *Compare* Television Viewer Protection Act of 2019, H.R. 5035, 116th Cong. § 4 (2019), https://www.congress.gov/bill/116th-congress/house-bill/5035/text/ih (original bill introduced in the House of Representatives) ("A provider of a covered service may not advertise the price of the covered service unless the advertised price is the total amount that the provider will charge for or relating to the provision of the covered service, including any related taxes, administrative fees, equipment rental fees, or other charges, to a consumer who accepts the offer made in the advertisement.").

[5] The only authority that the TVPA gave the Commission was to extend the compliance date by six months, which the Commission already did. *See Implementation of Section 1004 of the Television Viewer Protection Act of 2019*, Order, MB Docket No. 20-61, DA 20-375 (MB rel. Apr. 3, 2020).

[6] 47 U.S.C. § 552(b)(3).

For starters, the Commission is powerless to extend its cable billing rules to DBS providers. Nothing gives us authority to regulate what appears on DBS bills, in contrast to our authority to adopt "standards governing [cable] bills." Nonetheless, the item seeks refuge in Section 335(a), which states:

> *The Commission shall, within 180 days after October 5, 1992, initiate a rulemaking proceeding to impose, on providers of direct broadcast satellite service, public interest or other requirements for providing video programming*. Any regulations prescribed pursuant to such rulemaking shall, at a minimum, apply the access to broadcast time requirement of section 312(a)(7) of this title and the use of facilities requirements of section 315 of this title to providers of direct broadcast satellite service providing video programming. Such proceeding also shall examine the opportunities that the establishment of direct broadcast satellite service provides for the principle of localism under this chapter, and the methods by which such principle may be served through technological and other developments in, or regulation of, such service.[7]

Focusing on the first sentence, the Commission claims freestanding authority here to "impose … public interest or other requirements for providing [DBS] video programming."[8]

That interpretation is unsupportable. It effectively reads the express limitation—"providing video programming"—out of the statute. If "providing video programming" includes the way prices are presented, then there is no limiting principle on the scope of FCC regulation over DBS. The item does not even try to draw such a line. In fact, Section 335 tells us what "providing video programming" means by listing the specific DBS activities the Commission may regulate. They include access to broadcast time, the use of facilities, and the permissible use of channel capacity for noncommercial purposes.[9] Tellingly, the statute authorizes us to prescribe "reasonable prices, terms, and conditions" that DBS operators assess on *educational programmers*.[10] But no similar provision covers *DBS subscribers*. Congress was thus clear what it meant. Beyond the text, the Commission concedes that "the legislative history suggests that when enacting section 335(a), Congress was focused on potential requirements to be placed on DBS providers with respect to public service programming."[11] The item does not—and cannot—suggest that Congress intended the expansive authority the Commission gives itself here.

It only gets worse, for the item conjures sweeping new powers to regulate how video prices are advertised.[12] In the cable context, the Commission has authority to enact rules only for the benefit of "subscribers"—think service outages, customer service hours, rate change notifications, consumer contracts, or as noted above, "communications between the cable operator and the subscriber (including standards governing bills and refunds)."[13] In other words, the statute covers contractual relationships between cable companies and their customers. Advertisements are exactly the opposite. They are directed at *non-subscribers*—people who have *no* contract with the provider. The distinction between subscribers and non-subscribers is no trifling detail. It goes to the very heart of the law. As for DBS, Section 335 is completely silent; it says nothing about subscribers *or* the public at large.[14]

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[7] 47 U.S.C. § 335(a) (emphasis added).

[8] *Report and Order* at para. 37.

[9] 47 U.S.C. § 335(b).

[10] 47 U.S.C. § 335(b)(3).

[11] *Report and Order* at para. 40.

[12] I use "advertisements" interchangeably with "promotional materials." The latter term is used in the final rule.

[13] 47 U.S.C. §§ 552(a), (b).

[14] 47 U.S.C. § 335.

Recognizing its predicament when it comes to advertising, the item falls back on the FCC's ancillary jurisdiction under Section 4(i) of the Communications Act.[15] That Hail Mary falls incomplete. As the D.C. Circuit has recognized, Section 4(i) "does not give the FCC unlimited authority to act as it sees fit with respect to all aspects of television transmissions, without regard to the scope of the proposed regulations."[16] Instead, to properly invoke Section 4(i), the FCC must (1) point to a general jurisdictional grant under Title I that covers the regulated subject; and (2) show that the regulations are reasonably ancillary to the FCC's effective performance of statutorily mandated responsibilities.[17]

The Commission's claim of ancillary authority falters at both steps. For one, Title I does not give us generalized authority over consumer protection. It would be quite odd if it did, for that is the province of the Federal Trade Commission, which routinely polices unfair and deceptive trade practices[18] and advertising in particular.[19] For another, the item cannot point to an FCC statutory responsibility to which the new advertising rules are ancillary. While the item tries to bootstrap off the TVPA, that law does not speak to advertising (indeed, as noted above, Congress considered whether to extend the law to advertising and ultimately did not), and in any event it gives the FCC no powers or responsibilities. The D.C. Circuit has repeatedly rejected similar FCC attempts of mission creep based on Section 4(i).[20]

* * *

This item is yet another example of the new normal at the FCC. After three years of restraint, the Commission is now unlawfully arrogating authority over every aspect of a communications provider's business. At this point, only the courts can put an end to this raw assertion of power. I dissent.

[15] *Report and Order* at paras. 36, 42. *See* 47 U.S.C. § 154(i) ("The Commission may perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this chapter, as may be necessary in the execution of its functions.").

[16] *Motion Picture Ass'n of America, Inc. v. FCC*, 309 F.3d 796, 798-99 (D.C. Cir. 2002).

[17] *American Library Ass'n. v. FCC*, 406 F.3d 689, 691-92 (D.C. Cir. 2005).

[18] *See* 15 U.S.C. § 45(a)(2) (vesting power in the FTC to "prevent," subject to enumerated exemptions, "unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce").

[19] In fact, the FTC has an ongoing proceeding to regulate the disclosure of the very category of so-called "junk fees" that the Commission says are at issue here. *See Rule on Unfair or Deceptive Fees*, Notice of Proposed Rulemaking, 88 F.R. 77420 (Nov. 9, 2023), https://www.federalregister.gov/documents/2023/11/09/2023-24234/trade-regulation-rule-on-unfair-or-deceptive-fees.

[20] *See, e.g.*, *Comcast Corp. v. FCC*, 600 F.3d 642, 661 (D.C. Cir. 2010) (no ancillary authority over network management practices); *American Library Ass'n.*, 406 F.3d at 700-705 (no ancillary authority over broadcast receivers unrelated to signal reception); *Motion Picture Ass'n of America, Inc. v. FCC*, 309 F.3d at 806 (no ancillary authority to issue video description rules); *see also Illinois Citizens Committee for Broadcasting v. FCC*, 467 F.2d 1397 (7th Cir. 1972) (no ancillary authority over the Sears Tower construction as it affected broadcast reception).

STATEMENT OF
COMMISSIONER GEOFFREY STARKS

Re: *All-In Pricing for Cable and Satellite Television Service*, Report and Order, MB Docket 23-203.

Today, we take a stand. The hard-to-understand asterisks and fine print that litter advertisements and bills for cable and satellite TV service soon will be extinct. We impose a simple requirement: these ads, and these bills, must include the "all-in" price – the total amount that the consumer will pay for video programming service. This just makes plain sense. In fact, in 2019 Congress passed a law *requiring* cable and satellite providers to provide customers with transparent pricing information, both before the consumer enters into a contract for video service, then in writing within 24 hours of the consumer entering into that contract, and then monthly on the consumer's electronic bill.

And yet, the record shows that many consumers are still confused. Deeply confused. Providers split out programming fees so as to make them appear optional, when in reality they charge the "broadcast television fee" to all subscribers.[1] Too many families are surprised by the bottom-line price they pay for video service on a monthly basis. Too many experience bill shock, and have their monthly budgets blown by unexpected line-item fees. That's not fair.

Generally, providers may choose to charge whatever price they believe the market will bear. But to keep that market robust and equitable, consumers must have the ability to make informed choices. By adopting the all-in rule today, we are ensuring that they do. We are empowering them to more easily comparison shop and choose the plan that is right for them. We are making certain that consumers may trust that the deal they believe they're entering into is the one they'll actually get. And that trust benefits consumers and providers alike.

I want to thank the Commission staff for their good work on this item, and their continued work on our pending consumer protection-focused items in this space. The all-in rule has my full support.

[1] These fees may be substantial. *See* Jon Brodkin, "Comcast's sneaky Broadcast TV fee hits $27, making a mockery of advertised rates," Ars Technica (Nov. 28, 2022), https://arstechnica.com/tech-policy/2022/11/comcasts-sneaky-broadcast-tv-fee-hits-27-making-a-mockery-of-advertised-rates/.

DISSENTING STATEMENT OF
COMMISSIONER NATHAN SIMINGTON

Re: *All-In Pricing for Cable and Satellite Television Service*, Report and Order, MB Docket 23-203.

Americans deserve to know what they are paying for their products. On that issue, I am aligned with my colleagues today who are voting to approve this item. Indeed, I asked my colleagues to implement a targeted edit to this item that I believe would have paved the way to a unanimous vote while still taking action to implement all-in pricing for cable billing. Leadership rejected that edit in favor of the item presented today. Permit me to explain my thinking on my vote to dissent.

Think of this item as a two by two matrix for pricing disclosure requirements. At the top, you have billing and promotional materials. On the side, you have cable and satellite video providers. The Commission's authority today only even arguably covers one of the four "quadrants" of this matrix: that is, cable billing. Satellite billing is a harder lift, and cable and satellite promotional material pricing disclosure requirements are fully without authority. While I would have had reservations with the particular *way* in which the item implements cable billing pricing requirements, at least we *can* do so under the TVPA. I am happy to concede that point. Section 642 empowers the Commission to act on cable billing practices, including to regulate how pricing is denominated therein. While I do not agree with the particular approach in today's item in implementing the all-in pricing disclosure requirement, at least our authority over some aspects of cable billing is clear.

The rest of the item, however—the rest of our toy management consultant matrix—is just analytical error. We lack authority under Section 335(a) to require satellite operators to change their bills to reflect these new disclosures, but much more distressingly: there is no world in which Section 335(a), Section 632 or Section 642 empower the Commission to regulate price formatting on promotional materials. It just is not there.

Section 632 relates to customer service rules for cable operators. While I will discuss why I am skeptical of Section 632 authority as it relates to billing in a moment, there is clearly no language indicating that Section 632 can extend to non-subscribers, as most of those targeted by promotional materials are. Nor could a promotional material plausibly be read to be a “communication between the cable operator and the subscriber” within the meaning of Section 632, which relates to already-extant relationships between cable operators and their subscribers. While some subscribers will, inevitably, see promotions for service from their current video provider, those are not *communications* within the meaning of Section 632, which clearly relates to the sorts of communications appurtenant to the *specific* and *existing* relationship between a cable operator and customer. It strains the tensile strength of ‘communication’, when read in the context of the whole of Section 632, to suggest otherwise. And the argument provided in the item—that there is some kind of “general grant” of authority under Section 632 for the Commission to establish customer service requirements for cable operators that is “read out” when the language is “narrowed” so as to apply to cable *customers*—is an absurdity. There is no “general grant” of authority under Section 632 that was ever intended to govern the relationship between a cable operator and a non-customer. So there is no authority as it relates to promotional materials in this Section.

Section 335(a) relates essentially to the provision of political programming. While my colleagues rely on the sentence empowering the Commission to impose “public interest or other requirements for video programming” on satellite video providers, the very next sentence indicates that “[a]ny regulations prescribed pursuant to such rulemaking shall, at a minimum, apply to [access to advertising time for candidates for political office].” This would seem to indicate the domain to which our “public interest” regulations were intended to apply, and the rest of the Section does nothing to undercut the basic principle that the thrust of the Section is about public service programming carriage. The bare existence of the term "public interest" does not entitle a reading that is fully contrary to context. Indeed, the item suggests

that its reading of this Section is "clear and common sense." Yet, just as had Congress intended to extend Section 335(a) to cover how satellite providers advertise their prices or bill their customers, they presumably we have said so by any words other than "public interest." Even one additional word. It is in no way clear, nor is it common sense—at least to me—that the Commission is entitled to impute meaning into a statute that Congress clearly could have included, but legislative history makes clear that it elected not to include.

And then there is the TVPA. As recently as 2019, Congress considered and explicitly rejected extending Commission authority to regulate promotional materials when passing the TVPA. Ought that not to be a clear indicator as to what clarity and common sense demand when reading Congressional intent as to what the Act says in Sections passed years earlier? Had the Commission authority to act today under Sections 335(a) or Section 632 to act as it relates to cable or satellite billing or promotional materials, for what purpose was the TVPA passed? It would seem to me that the very existence of the TVPA indicates clearly the precise boundaries Congress intended to draw as it relates to linear video billing and pricing disclosures and the Commission's authority to act thereon.

What is left to implement these requirements? The authority of the gunslinger: Section 4(i) ancillary authority. Suffice it to say, I do not find the exercise of Section 4(i) authority in any way related to the effective performance of our statutorily-mandated responsibilities, since this item is purely voluntary on the Commission's part. The full rejection of ancillary authority I will leave as an exercise for the litigant.

So our authority to act is weak where it exists at all, but is today's item a good idea? Well, in some respects, sure! Okay, all-in video pricing on my bill. Great, in some respects: now instead of a few lines on my monthly bill, I have one. Maybe I am a young and savvy consumer who was on the fence about cord-cutting. Maybe this revision looks a little tech-y, or the all-in price is a punchy serif font or something. At any rate, I appreciate the aesthetics of a single line item for my video package. Maybe I stay an additional year, because that single line item helps me do a little back-of-the-envelope comparison shopping, and I determine I'm actually doing all right with my traditional provider by comparison to a bundle of streaming services. This probably isn't so bad.

Yet the new rules are less great in other respects, like when instead of a few lines on my monthly bill, I have one. And I'm an older consumer with a legacy plan that has provided me a bill in the same format for the last decade. And now it looks like I'm being charged more. And now I'm calling my cable company or my grandchild to explain. This probably isn't so good.

And then not good at all, of course, is that we are yet again adding additional regulatory burden and complexity on an industry that is shedding customers by the millions. Traditional linear video is on the way out, but we don't have to shoo them away like the last guest who hasn't gotten the hint that the party's over. For every mote of regulatory complexity we add to legacy providers, unregulated online video providers become more nimble by comparison.

While an argument can be made for consumer benefit for all-in pricing on billing (although, if I were to guess, I think it will largely wind up being a push), we lack the authority to do most of what we did in this item, and we have no hope of prevailing on promotional materials if challenged. For those reasons, and for the general good of the order—in the hopes that we one day soon stop treating media regulation like a term paper word count minimum we have to meet—I dissent.