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
	)	

COMMENTS

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COMMENTS

I. INTRODUCTION AND SUMMARY

ACA Connects – America's Communications Association ("ACA Connects") submits these comments in response to the Notice of Proposed Rulemaking ("NPRM") issued in the above-captioned proceeding.[1] In the NPRM, the Commission "propose[s] to enhance pricing transparency by requiring cable operators and direct broadcast satellite (DBS) providers to specify the 'all-in' price for service in their promotional materials and on subscribers' bills."[2] The "all-in" price for a video service would be defined to include all costs paid by a subscriber that are attributable to video programming and to exclude all other costs, such as taxes and equipment rental fees. The Commission asserts that the proposed rule is necessary to ensure consumers have

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[1] *See "All-in" Pricing for Cable and Satellite Video Services*, Notice of Proposed Rulemaking, MB Docket No. 23-203, FCC 23-52 (2023).

[2] *Id.* at para. 3.

"[a]ccess to clear, easy-to-understand, and accurate information about the pricing of video services" to help them "make informed choices" and also to "[encourage] competition in the market."[3] Of particular concern to the Commission is that "[c]onsumers who choose a video service based on an advertised monthly price may be surprised by unexpected fees related to the cost of video programming" – including retransmission consent fees and regional sports network ("RSN") fees – "that raise the amount of the bill significantly."[4]

ACA Connects respectfully disagrees with the Commission's presumption. Consumers may be troubled by the high rates they are charged for video service but not because prices are hidden or not sufficiently disclosed. Rather, consumers are very much concerned by high rates in and of themselves, which are the result of large television broadcasters and Regional Sports Networks ("RSNs") exercising their market power to extract supracompetitive fees for retransmission consent and sports programming.

This is the real crisis for our Members' subscribers, and one that many seek to address by explicitly passing through retransmission consent fees (and sometimes other programming fees, such as RSN fees) as line items on subscriber bills. Their practice is a concession to the harsh reality of the video marketplace, and it promotes transparency by helping customers understand why their cable bills keep increasing and who is responsible.

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[3] *Id*. at para. 1.

[4] *Id.* at para. 2.

By contrast, the NPRM's proposed "all-in" pricing requirement would not advance – and in fact would diminish – the goal of providing consumers with more pricing information. As we explain below, there is scant evidence that the requirement is necessary to address any gap in transparency regarding prices for video service. The proposed rule would also be highly burdensome if not entirely unworkable to implement, and is more likely to be counterproductive than beneficial for consumers. And, it would redirect consumers away from the source of their inflated rates. We therefore urge the Commission not to adopt the proposed rule but instead initiate a proceeding to address the real problem: excessive retransmission consent and RSN fees.

II. THE NPRM IS A MISSED OPPORTUNITY TO ADDRESS A SERIOUS PROBLEM FOR CONSUMERS: EXPLOITATIVE PRACTICES OF LARGE BROADCASTERS AND REGIONAL SPORTS NETWORKS THAT HAVE SADDLED CONSUMERS WITH INFLATED, EVER-INCREASING PRICES FOR CABLE SERVICE

In the NPRM, the Commission proposes adoption of an "all-in" price requirement that would have the stated purpose of making cable service pricing more transparent to consumers. But this proposed rule would do nothing to fix the underlying dysfunction in the video marketplace. If the Commission truly wishes to provide relief to consumers, it should refocus its attention on the fundamental problem: abuse of market power by large broadcasters and RSNs to impose inflated, ever-increasing rates on video providers – especially smaller cable operators – to carry their programming. The ultimate victims of these tactics are consumers, who continue to see their cable service bills increase dramatically every year. In the NPRM, the Commission takes this vicious cycle for granted, and even refuses to note that Members and other cable service

operators are providing a valuable service by exposing the unreasonable rates charged for video programming. We submit that the Commission should focus on the real problem consumers face and examine steps that can be taken to break the cycle once and for all.

A. There is Indeed a Big Problem with Cable Service Bills – The Soaring Price Increases Imposed by Large Broadcasters and RSNs Through the Exercise of Market Power Over Smaller Cable Operators

The retransmission consent regime is a disaster for cable and other multichannel video consumers, which only continues to get worse. The rates that large broadcasters impose on ACA Connects Members and other providers to carry their "free TV" signals have skyrocketed – far beyond those that would exist in a competitive market – and show no signs of leveling off. The total amount charged annually for retransmission consent increased from $200 million in 2006 to $11.7 billion in 2021 – a staggering 5,000 percent increase in only fifteen years – and the Pew Research Center has projected that this figure will reach $13.3 billion by 2025.[5] These price increases do not reflect any comparable increase in the value of the programming being carried; they are simply an exercise of broadcasters' bargaining power within an unbalanced regulatory environment.

In addition to exorbitant fees, video providers are saddled with onerous terms and conditions, including demands that they carry – and pay for – lower-rated programming and multicast signals if they want to receive the higher-rated channels and

[5] *See* Pew Research Center, "Retransmission fee revenue for U.S. local TV stations," (July 13, 2021), https://www.pewresearch.org/journalism/chart/sotnm-local-tv-u-s-local-tv-station-retransmission-fee-revenue/.

stations their customers actually want. An operator can hardly resist such demands, since the almost certain cost of taking a stand is a programming blackout.[6] This can be a devastating outcome, especially if it coincides with the Super Bowl or another major televised event. During blackouts, subscribers lose access to video programming for no reason other than to serve the broadcaster's bottom line. Moreover, affected subscribers may simply switch to other video providers who carry the relevant programming, a situation that further increases the broadcasters' leverage and fuels unreasonable rate increases.

As the Commission's own data make clear, the warped dynamics of the retransmission consent marketplace hit smaller operators – and their subscribers – the hardest. In the 2022 *Communications Marketplace Report*, the Commission reported that large cable operators paid an average of $1.90 per subscriber per station per month in retransmission consent fees, while small operators paid an average of $2.94 – more than 1.5 times as much.[7] The total amounts paid annually by small cable operators are equally staggering – more than $231 per year per subscriber, according to the Commission's data.[8] These disproportionate impacts are not surprising, as smaller operators suffer from greater imbalances in bargaining power with large

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[6] *See* American Television Alliance ("ATVA"), Retrans Blackout Tracker, https://americantelevisionalliance.org/wp-content/uploads/2023/01/Retrans-Blackouts-Overview-%E2%80%93-2010-January-10-2023.xlsx (download required) (last visited July 31, 2023).

[7] *See Communications Marketplace Report*, GN Docket No. 22-203, 2022 Communications Marketplace Report at Appx. E ("Report on Cable Industry Practices"), Fig. 11 ("2022 CMR"). The data on retransmission consent fees reported in the 2022 CMR is from 2021.

[8] *Id*. The 2022 CMR reports that large operators paid $200 per year per subscriber. *Id*.

broadcast station groups relative to large cable operators. Broadcasters continue to exploit this bargaining power to extract higher fees and impose more onerous terms, year after year.[9] To make matters worse, large station groups have evaded the FCC's media ownership rules to amass duopolies, triopolies and even quadropolies of "Big Four" networks in some markets, further strengthening their leverage, especially over smaller operators.[10] This consolidation drives retransmission consent fees – and with them, cable bills – ever higher.[11]

In response to these skewed dynamics, some ACA Connects Members explicitly pass through retransmission consent fees and RSN fees as line items on subscriber bills. Breaking out these fees promotes transparency by helping subscribers understand who is responsible for the massive fee increases on their cable bills, which reflect a broken marketplace with which the typical consumer is unlikely to be familiar. 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

[9] As part of the TVPA, Congress adopted requirements that "large station groups" negotiate, pursuant to the "good faith" bargaining framework for retransmission consent, with "qualified MVPD buying groups" designated by smaller MVPDs. *See* 47 U.S.C. § 325(b)(3)(C)(vi) (as added by section 1003(a)(3) of the TVPA). As ACA Connects has explained, the TVPA "buying group" provision appears to have achieved the modest aims set out for it, but it has not—and never could have—meaningfully narrowed the gap between what large and small MVPDs pay for retransmission consent. *See* Comments of ACA Connects on TVPA Implementation, MB Docket No 21-501 at 6-7 (filed Feb. 3, 2022) ("ACA Connects TVPA Comments").

[10] *See* Further Comments of ATVA on Quadrennial Review, MB Docket No. 18-349 (filed Sept. 2, 2021).

[11] *See id*. at 18-21 (presenting evidence that higher retransmission consent fees lead to higher consumer bills).

programming fees that are driving up cable bills, they can at least help customers understand the source of these increases.

B. The Commission Should Refocus Its Attention on the Dysfunction in the Retransmission Consent Marketplace That Is Driving Up Cable Bills

The premise of the NPRM is that consumers need more and better information about cable service pricing to avoid confusion and to make informed purchasing decisions. We explain in detail below why this concern is misplaced and unsupported by data, but in any event, no amount of "all-in" pricing transparency will change the underlying dynamics that lead cable service bills to increase much faster than inflation. If the Commission and other policymakers want to deliver meaningful relief to consumers of cable and other multichannel video services, the only way is to fix retransmission consent – or, at minimum, to mitigate its harms. We therefore urge the Commission to refocus its efforts on finding ways to reform the retransmission consent marketplace for the benefit of consumers.[12]

III. THE NPRM'S PROPOSED "ALL-IN" PRICE REQUIREMENT IS UNLIKELY TO DELIVER BENEFITS TO CONSUMERS THAT OUTWEIGH THE POTENTIAL FOR CONFUSION AND OTHER HARMS

The NPRM proposes requiring cable and satellite video providers to prominently display, both on subscriber bills and in promotions that advertise a price for video service, the "all-in" price for the video programming components of the service. This "all-in" price would need to include "any and all amounts that the cable operator or DBS

[12] The Commission should begin this examination with a Public Notice or Notice of Inquiry that seeks comment broadly on the state of the marketplace and on potential regulatory or statutory reforms.

provider charges the consumer for video programming, including for broadcast retransmission consent, regional sports programming, and other programming-related fees" and exclude all other component costs, such as taxes or set-top box rental fees.[13]

The stated rationale for this proposed rule is to ensure "that cable operators and DBS providers represent their subscription charges transparently, accurately, and clearly."[14] Yet the NPRM presents little or no data indicating that there is any problem with video pricing transparency that the proposed rule is necessary to solve. Moreover, there are robust, existing mechanisms, including sales and billing disclosure requirements enacted as part of the Television Viewer Protection Act of 2019 ("TVPA"), that ensure that consumers signing up for video service understand the rates they will pay. With these mechanisms already in place, the proposed "all-in" price requirement is unnecessary to ensure the transparency of fees that are charged for cable video service. In fact, 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. The Commission should therefore decline to adopt the proposal.

A. There is Insufficient Evidence of a Problem That the Proposed "All-in" Price Requirement is Necessary to Solve

The key question posed by the NPRM is whether consumers face challenges in obtaining "clear, easy-to-understand, and accurate information about the pricing of

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[13] *See* NPRM at para. 6.

[14] *Id*. at para. 5.

video services" that the proposed "all-in" price requirement would help address.[15] There is insufficient evidence that this is the case.

First, as discussed above, there are strong mechanisms already in place that promote transparent pricing for cable service. As community-based providers, ACA Connects Members have always been committed to maintaining high standards of honesty and transparency when engaging with existing and potential subscribers, who are often neighbors, friends and family. That means disclosing sufficient information about the prices of their offerings so that subscribers can select services that are right for them and within their budget.

More generally, cable operators and other video providers have every incentive to depict their prices with enough clarity and accuracy to avoid "bill shock" or other negative reactions that could result in complaints or even the loss of customers to a competitor. This is especially true for ACA Connects Members and other providers who offer video services through "no contract" plans that allow subscribers to cancel at any time without incurring early termination fees: if such a provider were to enroll a new subscriber only by misleading them into taking service at a higher rate than they expected, the subscriber would simply cancel the service when they discover the true rate. Providers also have incentives to avoid engaging in advertising or billing practices that could be construed as "unfair or deceptive" and subject the provider to an

[15] *See* NPRM at para. 1.

enforcement action from the Federal Trade Commission ("FTC") or a state consumer protection agency.[16]

Furthermore, the NPRM comes on the heels of the TVPA, enacted in 2019 and implemented in 2020, which requires cable operators and other multichannel video programming distributors ("MVPDs") to make prescriptive changes to their sales and billing practices aimed at promoting transparency. Under the TVPA, there are multiple layers of protection to ensure that consumers signing up for video service from an MVPD understand the rates they will pay. First, an MVPD entering a contract with a consumer for multichannel video service must first provide the subscriber with the "total monthly charge," which is defined to include

> any related administrative fees, equipment fees, or other charges, a good faith estimate of any tax, fee, or charge imposed by the Federal Government or a State or local government (whether imposed on the provider or imposed on the consumer but collected by the provider), and a good faith estimate of any fee or charge that is used to recover any other assessment imposed on the provider by the Federal Government or a State or local government.[17]

The provider must also note "the amount of any applicable promotional discount reflected in such charge and when such discount will expire."[18] Within 24 hours of entering the contract, the provider must send the consumer a copy of the information it provided before the sale regarding the "total monthly charge."[19] The provider must then

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[16] *See* 15 U.S.C. § 45.

[17] 47 U.S.C. § 562(a)(1).

[18] *Id*.

[19] *Id*. at (a)(2).

give the consumer 24 hours to cancel the service "without paying early cancellation fees or other disconnection fees or penalties."[20]

ACA Connects reported in 2021 that our Members had faithfully implemented the TVPA's sales and billing provisions and found them to be working effectively.[21] That remains true today. As we reported then, our Members were committed to transparency in their sales and billing practices before enactment of the TVPA, so the impact of the legislation on their business operations and on reported levels of customer satisfaction was modest at best. In any event, our Members continue to follow the TVPA requirements, and they find that consumers are generally satisfied by the level of pricing transparency for the cable services they offer.

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. The NPRM is correct to observe that Congress, in considering the TVPA, "expressed specific concern that consumers face 'unexpected and confusing fees when purchasing video programming,' including 'fees for broadcast TV.'"[22] But Congress went on to address these concerns by adopting the legislation. As explained above, the TVPA requires disclosure at the point of sale of the "total monthly charge" for video service, inclusive of all programming fees, and gives consumers a right to cancel without penalty after

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[20] *Id*. at (a)(3). The TVPA also requires cable operators and satellite video providers to itemize certain fees and to disclose contract termination dates on customer bills when provided in electronic format. *See id*. at (b).

[21] *See* ACA Connects TVPA Comments at 10-11.

[22] NPRM at para. 4 (citing H.R. Rep. 116–329, the House report that accompanied the TVPA).

receiving a copy of this information. These are powerful mechanisms for protecting consumers from being charged rates for cable service they did not expect.

Though the NPRM alleges that there may be a continued "practice of charging subscribers unexpected 'fees'" for video service that implementation of the TVPA has not addressed, it presents meager and insufficient evidence that this is the case. Indeed, the only evidence cited for this proposition in the NPRM is a news article reporting that a large cable operator's "'broadcast TV' and 'regional sports' fees [in Philadelphia] increased from $48 per year in in 2014 to over $415 per year in 2023."[23] There is no doubt that retransmission consent (i.e., "broadcast TV") fees have increased dramatically in the past decade, even more so for smaller cable operators than for larger ones, and that exorbitant price increases for cable service cause serious consumer harm. But it does not follow that there is a systemic problem with pricing transparency that would make an "all-in" price requirement necessary. In the example cited in the NPRM, the operator would already need to disclose the total monthly charge – inclusive of any "broadcast TV" and "regional sports" fees – before entering a contract with a Philadelphia resident to provide cable service. Whether or not an operator may have been able to "hide" such fees before passage of TVPA, it cannot do so any longer.

[23] *Id*. at para. 4, n.7.

B. The Proposed "All-in" Price Requirement is Not Well Designed to Provide Video Consumers with Greater Transparency

The proposed "all-in" price requirement is not only unnecessary to protect consumers, but would be more likely to undermine than to advance the Commission's transparency goals, for a variety of reasons discussed below.

Staggering Variation in Pricing. The specific amounts paid for carriage of broadcast programming and RSNs are set forth in agreements negotiated separately with each broadcaster or RSN, and these amounts vary from one agreement to the next depending on the parties involved, the nature of the programming being carried, and the service territory of the provider. This variation creates substantial complexity in determining the "all-in" price that would need to be displayed in any given advertisement or promotion.

The Commission appears to recognize this concern, but it may not appreciate its severity. In the NPRM, it seeks comment on how its proposed "all-in" price requirement 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 variations."[24] This scenario is far from unusual. As the NPRM recognizes, promotions and advertisements for video service come in a wide variety of forms: website promotions, direct mail solicitations, social media advertisements, billboards, banners on the sides of busses, radio and television spots, and more. While the geographic scope of an advertisement can be as narrow as a single mailing

[24] *See* NPRM at para. 9.

address, it is very common for advertisements to cover a much broader geographic area, up to and including a provider's entire service footprint. In the latter scenario, the "all-in" price associated with an advertised service may vary considerably among those consumers that receive, or are targeted by, the advertisement. For any cable operator, there may be dozens of different total amounts charged for retransmission consent across its markets. There is simply no way to depict a single "all-in" price that accounts for such a staggering level of variation.

Even within much narrower geographic areas, the level of variation in pricing for cable service may be impossible to capture. For instance, residents of apartment buildings and other multiple dwelling units ("MDUs")[25] often receive video service under contracts setting forth rates that apply only within that MDU. It is unreasonable to expect cable operators to identify rates pertaining to individual MDUs on general purpose advertisements and promotions, but if such an advertisement or promotion displayed an "all-in" price that ignored MDU-specific rates, the result would be less transparency, not more, for the MDU's residents.

Additional concerns about pricing variation arise in the context of providers' websites. There is language in the NPRM suggesting that "websites" may be treated similarly to "advertisements and other promotional materials" for purposes of the

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[25] Multiple dwelling units make up about 30% of all housing units in the U.S. *See* National Association of Home Builders, "Multifamily," https://www.nahb.org/other/consumer-resources/types-of-home-construction/multifamily (last visited July 31, 2023).

requirement,[26] but operators rely on their websites not only to advertise and promote their services but also as a point of sale. In providers' online purchase flows, 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 or the services they intend to purchase. In such cases, displaying the "all-in" price that is applicable to the consumer would be impracticable.

Potential for Confusion About the True "All-in" Price. The proposed "all-in" price for video programming discussed in the NPRM is not the all-in price that any subscriber will actually pay. The latter amount will include not only programming fees but also "taxes and other fees unrelated to programming," including any equipment fees. In other contexts, the "all-in" price of a communications service would include such taxes and fees: for instance, as part of the Affordable Connectivity Program ("ACP") data collection, the Commission has defined the "all-in" price of ACP-supported broadband offerings to include "the price of any associated equipment, taxes, and fees as well as any non-ACP discounts or promotions offered to the customer."[27] Accordingly, a consumer who encounters an "all-in" price for cable service might reasonably—but mistakenly—assume that the price includes all taxes and fees, leading them to experience "sticker shock" when they receive a bill or inquire with the operator about the service. It may be possible to mitigate this concern by clarifying that the "all-in" price is

[26] *See* NPRM at para. 4 (raising concerns about how video prices are displayed on "websites, advertisements, and other promotional materials").

[27] *See Affordable Connectivity Program*, WC Docket No 21-450, Fourth Report and Order and Further Notice of Proposed Rulemaking, FCC 22-87, para. 25. (2022).

an all-in price only for video programming, but from our Members' experience, it is likely that at least some consumers will fail to understand and appreciate this distinction.[28]

Potential to Suppress Advertising of Video Prices. As the discussion above makes clear, the proposed "all-in" requirement would pose substantial challenges for providers that opt to advertise rates for their video services. Because video service is no longer a profitable line of business for many, if not most, ACA Connects Members, they are decreasingly likely to highlight rates for video service in their advertisements and promotions. The Commission's adoption of the proposed rule would only accelerate this trend by imposing substantial compliance costs on providers that advertise video service prices. Consumers would end up with less information about available video offerings, an outcome that would directly undermine the Commission's transparency goals in this proceeding.

Non-Application to Competing Video Services. Finally, it bears emphasis that the proposed rule would not apply to "over-the-top" linear video offerings, such as Sling TV and Hulu + Live TV, that are increasingly popular competitive alternatives to video services offered by MVPDs. Thus, the proposed rule would have limited utility for consumers seeking to "comparison shop" among video offerings, and may even lead consumers to make "apples-to-oranges" comparisons between MVPD and non-MVPD offerings that are inaccurate or misleading.

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[28] Similarly, consumers may not appreciate the distinction between the "aggregate cost of video *programming*" and the aggregate cost of the video *service*, inclusive of taxes and fees. *See* NPRM at Appendix A (Proposed Rule 47 CFR § 76.310) (emphasis added). At any rate, this is an empirical question that the NPRM seems to overlook.

IV. THE COMMISSION SHOULD PRESERVE THE ABILITY OF CABLE OPERATORS AND OTHER VIDEO PROVIDERS TO INFORM THEIR SUBSCRIBERS OF THE PROGRAMMING COST INCREASES THAT ARE DRIVING UP THEIR BILLS

Though ACA Connects urges the Commission to rethink its proposed "all-in" price requirement, we agree that, if the Commission adopts the proposal, it should "explicitly state" that cable operators and other video providers "may complement the ["all-in" price] with an itemized explanation of the elements that compose that aggregate cost."[29] As explained above, many ACA Connects Members 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. Cable operators and other video providers may use different language (*e.g.*, "broadcast TV fee") to delineate these fees, but the message to subscribers is much the same: these are fees imposed by broadcasters to permit their channels to be included in the subscriber's video service package.

Restricting our Members' ability to break out these fees would mean reduced transparency for consumers, who may be led to assume – again, mistakenly – that the high and rising prices they are charged for cable service are merely an effort by the operator to generate unreasonable profits. The reality is that the typical ACA Connects Member makes little to no profit or may even lose money from cable service: they simply pass through to subscribers the retransmission consent fees they are obligated to pay broadcasters in exchange for carriage of their signals and that are the product of

[29] NPRM, para. 8.

a legal and regulatory regime that endows broadcasters with tremendous bargaining power over smaller cable operators. Our Members' practice in fact promotes transparency by helping subscribers understand that it is not the cable operator, but rather broadcasters – operating within a legal paradigm that favors their interests – who are responsible for these fees. Descriptions such as "broadcast TV fee" accurately convey this message.

V. CONCLUSION

ACA Connects appreciate the opportunity to participate in this proceeding and urges the Commission to take its comments into consideration.

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