

ALERT

FCC Proposes “All In” Pricing for Cable and DBS Operators

June 23, 2023

On June 20, 2023, the Federal Communications Commission (FCC or Commission) released a Notice of Proposed Rulemaking (NPRM) proposing to require cable operators and direct broadcast satellite (DBS) providers to specify the “all-in” price for their service—i.e. the total cost of their video programming service—in their promotional materials and on subscribers’ bills.

The NPRM was published in the Federal Register on June 30, 2023. Comments and Reply Comments will be due July 31, 2023 and August 29, 2023, respectively. We have provided a brief overview of the NPRM below.

Background

Congress passed the Television Viewer Protection Act of 2019 (TVPA) to add Section 642 to the Communications Act, which, among other things, requires greater transparency in multichannel video programming distributor (MVPD) subscribers’ bills.

In 2021, the FCC’s Media Bureau sought comment on the steps MVPDs had taken to implement the TVPA requirements and on whether consumers found those steps effective. In response, Consumer Reports commented that “below-the-line” fees “which are solely the creation of the provider . . . made up the bulk” of costs that are added to advertised rates and subscriber bills.

In the NPRM, the Commission asserts that “[i]t appears that since adoption of the TVPA, the practice of charging subscribers unexpected ‘fees’ (for example, for broadcast television programming and regional sports programming listed separately from the monthly

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subscription rate for video programming service) that are actually charges for the video programming service for which the subscriber pays, has continued.” The Commission also explains that “promotional materials may advertise a top-line price that does not note prominently the mandatory programming costs that make up the service until the customer signs up for service.”

Specifics of the Proposal

The Commission proposes to require that cable operators and DBS providers aggregate the cost of their video programming service—that is, any and all amounts that the cable operator or DBS provider charges the consumer for video programming, including for broadcast retransmission consent, regional sports programming, and other programming-related fees—as a prominent single line item on subscribers’ bills and in promotional materials (if they choose to advertise a price in those promotional materials). This aggregate amount would 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).” However, the NPRM clarifies in a footnote that cable operators and DBS providers would not be required to include equipment costs in this aggregate amount.

The Commission further proposes to allow cable operators and DBS providers to complement the aggregate cost with an itemized explanation of the elements that compose that aggregate cost.

The NPRM raises several specific questions about the proposal, including: (i) whether the proposal is sufficient to ensure that subscribers and potential subscribers have accurate information about the cost for video service; (ii) the extent to which providers are already advertising an “all-in” price; (iii) whether cable operators or DBS providers that bundle video programming with other services like broadband can readily identify the amount of the bill that is attributable to video programming; (iv) whether the Commission should require cable operators and DBS providers that choose to itemize portions of their bills to provide a full accounting of how a subscriber’s bill is apportioned; and (v) how the Commission should apply the proposal to different types of promotional materials. The FCC also asks whether the proposal should apply to “other types of MVPDs” and on what basis.

Other Issues for Comment

Beyond the “all-in” proposal, the NPRM seeks comment on the following issues:

1. Existing federal, state, and local requirements related to truth-in-billing;
2. The marketplace practices regarding advertising and billing, including whether there is a business purpose for characterizing these service rate increases as taxes, fees, or surcharges;
3. The Commission’s legal authority to adopt this proposal;
4. The costs and benefits of the proposal to both consumers and industry; and
5. How the proposal may promote or inhibit advances in diversity, equity, inclusion, and accessibility.

Looking Ahead

In a statement accompanying the NPRM, Chairwoman Rosenworcel emphasized that the Commission's proposal would not only "reduce cost confusion and make it easier for consumers to compare services" but would also "increase competition among cable and broadcast satellite providers through improved price transparency." The NPRM follows the Commission's adoption of rules this past November that require broadband providers to display "Broadband Nutrition Labels" to allow consumers to comparison shop for broadband services.

If you have any questions about the Commission's proposal, or are interested in filing comments, please contact one of the attorneys listed on this alert or your usual Wiley contact.