

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

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

**COMMENTS
OF
NTCA–THE RURAL BROADBAND ASSOCIATION**

NTCA–The Rural Broadband Association (“NTCA”)¹ hereby submits these comments in response to the Notice of Proposed Rulemaking (“Notice”) released by the Federal Communications Commission (“Commission”) in the above-captioned proceeding.² The Commission proposes in the Notice to require video service providers to specify the “all-in” price for service in their promotional materials and on customers’ bills. As the Notice states, this would require cable and DBS providers to “aggregate the cost of the video programming service (that is, any and all amounts that the cable operator or DBS provider charges the consumer for video programming, including for broadcast retransmission consent, regional sports programming, and other programming-related fees) as a prominent single line item on subscribers’ bills.”³ In addition, providers would be required to display this all-in pricing

¹ NTCA–The Rural Broadband Association represents approximately 850 independent, community-based companies and cooperatives that provide advanced communications services in rural America and more than 400 other firms that support or are themselves engaged in the provision of such services.

² *All-In Pricing for Cable and Satellite Television Service*, Notice of Proposed Rulemaking, MB Docket No. 23-203, FCC 23-52 (rel. June 20, 2023).

³ Notice at ¶ 6.

amount “in promotional materials, if they choose to advertise a price in those promotional materials.”⁴ NTCA recognizes the value of transparency in allowing consumers to “comparison shop” and the importance of avoiding “surprise fees” that change the amount they will be charged for the service. To this end, in addition to concerns raised by the Commission, NTCA proposes herein a further step that would enable consumers to identify what they are actually paying for when they subscribe to a video service. More specifically, the Commission should allow (but not require) video service providers to list, in addition to any “all-in” price requirements on consumers’ bills and promotional materials, a line-by-line breakdown of the amount of that price attributable to retransmission fees paid by the video service provider for the channels offered.

I. THE COMMISSION CAN INCREASE TRANSPARENCY BY ALLOWING VIDEO SERVICE PROVIDERS TO IDENTIFY THE AMOUNT OF RETRANSMISSION FEES ATTRIBUTABLE TO THE CHANNELS OFFERED OR PROVIDED TO CONSUMERS.

NTCA supports transparency on consumers’ bills and promotional materials. A number of the steps the Commission is considering, if properly and reasonably calibrated, could advance this objective. As a further measure to enable transparency, however, video service providers should be allowed (but not required) to include a breakdown of the retransmission fees paid for the programming offered to consumers. This is especially pertinent because the 1992 Cable Act requires cable operators to offer a “basic” tier to every subscriber that includes broadcast channels.⁵ Programming distributors, however, bundle broadcast channels with other programming, resulting in higher costs for both cable operators and consumers. Video service

⁴ *Id.*

⁵ 1992 Cable Act, available at <https://www.congress.gov/bill/102nd-congress/house-bill/4850>.

providers could identify the amount these retransmission fees makeup of the total price of service by listing beneath the all-in price the amount that is attributable to the channels included in the subscription. Such information should be very helpful for consumers seeking to understand their bills and changes to those bills over time and in making informed choices about service options in the video marketplace.

Indeed, such a measure would be consistent with the Commission’s stated objective to “provide consumers with the ability to comparison shop among competing cable operators and DBS providers, and to compare programming costs against alternative programming providers, including streaming services.”⁶ While the Commission notes that video service providers are permitted to itemize consumers’ bills “with even more granularity” than required,⁷ retransmission consent agreements routinely include nondisclosure clauses that prohibits these providers from disclosing the specific amount paid per subscriber. Furthermore, small video service providers in particular are unable to negotiate the terms of the agreement and instead are notified they can “take it or leave it,” and as such have no choice but to agree to these kinds of nondisclosure provisions or lose access to valuable content. The Commission can empower transparency notwithstanding such provisions simply by adopting a rule stating video service providers are legally authorized to disclose in promotional marketing materials and consumer bills the amount paid for programming, including the cost per channel, pursuant to retransmission consent agreements – triggering “change of law” provisions that would override

⁶ Notice at ¶ 3.

⁷ Notice at fn. 14.

these strict confidentiality provisions and allow for transparent sharing of such information on an individualized basis with affected consumers on their bills.

Allowing video service providers to make consumers aware of the cost attributable to the different channels offered based upon the retransmission fees paid by the provider will go a long way toward accomplishing this goal as consumers will have the ability to compare the cost of receiving the channels they are interested in receiving from across the many different platforms that offer video services. Furthermore, allowing video providers to identify the cost of programming will help consumers more readily identify the cost of video service when that service is part of a bundled service.⁸

As context, the latest NTCA Broadband/Internet Availability Survey Report found that of those respondents offering linear video service to customers, on average, 36.2% of respondents' total operating expenditures went toward retransmission consent fees in 2022, up from 35% in 2021.⁹ Similarly, in respondents' most recent retransmission consent agreements, retransmission consent fees increased by an average of \$71,545.¹⁰ Finally, 77.2% of these providers passed the increase in retransmission consent fees on to their customers.¹¹ These fees make up a significant portion of consumers' bills; therefore, listing the fees on promotional materials and billing statements will provide consumers with "a transparent and accurate reflection" of the cost of

⁸ See Notice at ¶ 7.

⁹ *NTCA Broadband/Internet Availability Survey Report*, Dec. 2022, at p. 30 (available at <https://www.ntca.org/sites/default/files/documents/2022-12/2022%20Broadband%20Survey%20Report%20%28FINAL%2011-28-22%29.pdf>).

¹⁰ *Id.*

¹¹ *Id.*

video service. Increased programming costs and retransmission costs imposed by broadcasters have consistently driven up prices for rural consumers, and the concept of transparency dictates that consumers be aware of the true source of the consistent upward pressure on the prices they pay for video programming. As the Notice states, “[s]ubscribers are entitled to clear, concise, and understandable information about the elements that comprise their subscription fees,”¹² and allowing video service providers to include a breakdown of the source of their subscription fees would accomplish just that.

II. PERMITTING PROGRAMMING COSTS TO BE LISTED AS A SEPARATE LINE ITEM IS CONSISTENT WITH COMMISSION RULES PERMITTING FEES TO BE IDENTIFIED SEPARATELY.

In response to the Commission’s concern that listing programming fees stemming from retransmission consent agreements on promotional materials and consumer bills could make those fees appear to be government mandated fees,¹³ 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.¹⁴ In the Notice, the Commission proposes to allow cable operators and DBS providers to continue to list these fees as separate line items that make up the total cost (before taxes), provided these fees are included in the “all-in” price of service.¹⁵ Allowing providers to have one or more additional line items identifying the cost per channel or for programming in general would be no different as the cost(s) would also be included in the all-in price – and, importantly, the Commission can make clear that these

¹² Notice at ¶ 8.

¹³ Notice at fn. 14.

¹⁴ *Id.*

¹⁵ Notice at ¶ 8.

programming/retransmission consent fees cannot be listed as government mandated fees but rather must be clearly identified as fees incurred by the video service provider and passed on to the end-user.

Finally, 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.

II. CONCLUSION

NTCA supports the goal of promoting transparency in the video service marketplace and giving consumers the information necessary to compare the cost of service among multiple providers. Due to the significant – and increasing – amount that retransmission fees for video programming account of the price consumers pay for video service, giving consumers the ability to identify the costs of programming as separate line items that are components of the full amount to be charged (excluding taxes) will enhance transparency and allow consumers to compare different video providers' service offerings.

Respectfully submitted,



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