



# Mt. Hood Cable Regulatory Commission

Serving Multnomah County and the Cities of Fairview, Gresham, Portland, Troutdale & Wood Village

## MEETING NOTIFICATION

September 18, 2023

6:30 p.m.

**In-Person: Open Signal, 2766 NE Martin Luther King Jr. Blvd, Portland**

- Or -

**Virtually: Join Zoom Meeting**

<https://us02web.zoom.us/j/85746422289?pwd=cWRnU2tmUnpWVGv4QUJmMG04YjdFUT09>

Meeting ID: 857 4642 2289

Passcode: 984260

One tap mobile

+16694449171,,85746422289#,,,,\*984260# US

+16699006833,,85746422289#,,,,\*984260# US (San Jose)

- Roll Call
  - Welcome Kathleen Lefebvre, MHCRC Admin Specialist
- Agenda Review
- Disclosures
- Public Comment (non-agenda items)
- Committee & Liaison Appointments
- Community Media Center Updates
  - MetroEast
  - Open Signal
- Franchisee Activity Report
  - Zply
  - Comcast

### **\*CONSENT AGENDA – NO DISCUSSION**

All items listed below may be enacted by one motion and approved as consent agenda items. Any item may be removed from the consent agenda and considered separately if a member of the Commission so requests.

- C1. June 26, 2023 Meeting Minutes
- C2. August 21, 2023 Meeting Minutes

### **REGULAR AGENDA**

- \*R1. Launch the 2024 Community Technology Grant Cycle 5 min



**MHCRC** 1120 SW 5<sup>th</sup> Ave. Suite 405 Portland, Oregon 97204  
503.823.5385 info@mhcr.org www.mhcr.org

\*R2. Off-Cycle Grant Requests: Lewis & Clark College 5 min

R3. City of Portland Charter Reform Update (Information Only) 20 min

- Staff Activity
  - Legislative Advocacy Report
  - Cable Franchise Negotiations Update
  - Franchise Compliance Update
  - Consumer Protection Report
  - Franchise Fee Audit Report
  - MHCRC Strategic Planning Update
  - Budget/Accounting Update
  - I-Net End Fund Update
  - Community Technology Grant Peer Learning Event Update
- Committee Reports
  - Finance Committee
  - Equity Committee
  - Policy Committee
  - Open Signal Board Appointee
  - MetroEast Board Appointee
- New Business; Commissioner Open Comment

Meeting Schedule:

- October 16 – Hybrid In-Person hosted by MetroEast
- November – recess
- December 18 – Hybrid In-Person hosted by Open Signal

- Public Comment
- Adjourn

\*Denotes possible action item

*Please notify the MHCRC no less than five (5) business days prior to our event for ADA accommodations at 503-823-5385, by the City of Portland's TTY at [503-823-6868](tel:503-823-6868), or by the Oregon Relay Service at 1-800-735-2900.*



## **CONSENT AGENDA – NO DISCUSSION**

All items listed on the consent agenda may be enacted by one motion and approved as consent agenda items. Any item may be removed from the consent agenda and considered separately if a member of the Commission so requests.



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Serving Multnomah County and the Cities of Fairview, Gresham, Portland, Troutdale & Wood Village

## MT. HOOD CABLE REGULATORY COMMISSION

Hybrid – virtual or MetroEast: Gresham, OR

June 26, 2023 Meeting Minutes – **DRAFT**

### SUMMARY MINUTES

#### Call to Order 6:34 PM

##### Roll Call

*Present:* Chair Studenmund; Vice Chair Dennerline; Commissioner DeGraw (arrived 6:36 p.m.); Commissioner Harden; Commissioner Roche; Commissioner Thomas; Commissioner Wagner

*Absent:* Commissioner Goodlow

*Staff:* Eric Engstrom, Deputy Director; Rebecca Gibbons, Operations Manager; Rana DeBey, Grants Manager; Julie Ocken, Coordinator

- Agenda Review: none.
- Disclosures: none.
- Public Comment (non-agenda items): none.
- Community Media Center Updates
  - John Lugton, MetroEast reported MetroEast is kicking-off summer camps (YouTube and TicToc) and summer kids in the park events, which is sponsored by the City of Gresham. MetroEast is continuing to work with the Rohingya community as part of a partnership with the Rosewood Initiative Project.
  - Rebecca Burrell, Open Signal shared a PowerPoint presentation. She reported on Open Signal's latest production cohort, new production cohort, studio education programs, studio/lobby upgrades, and a new mission statement. Rebecca said this is her last meeting with the MHCRC as she is leaving Open Signal at the end of this month.

#### **\*CONSENT AGENDA – NO DISCUSSION**

Items listed below may be enacted by one motion and approved as consent agenda items. Any item may be removed from the consent agenda and considered separately if a member of the Commission so requests.

C1. May 22, 2023 Meeting Minutes

**MOTION:** Commissioner DeGraw moved to approve the Consent Agenda. Commissioner Harden seconded.





# Mt. Hood Cable Regulatory Commission

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**VOTE: 7-0** passed

## REGULAR AGENDA

### R1. Community Technology Grant Agreements: 2023 Cycle

Rana DeBey said staff is recommending the Commission approve three Community Technology Grant Agreements. DeBey noted a typo on page 12 – just three are moving forward tonight. The commission selected 18 pre-applicants in January and staff have worked with each applicant in past months to complete final agreements. DeBey noted that the grant request from the City of Portland related to council chamber upgrades will likely move forward at the MHCRC's September meeting.

DeBey provided an overview of each of the three grants.

**MOTION:** Commissioner Wagner moved to approve the Caledara grant for \$32,595. Commissioner Harden seconded.

**VOTE: 7-0** passed

**MOTION:** Commissioner Thomas moved to approve the PAM CUT grant for \$82,450. Commissioner Dennerline seconded.

*Chair Studenmund captioned the event where this was talked about a bit last week. She recused herself from this vote.*

**VOTE: 6-0** passed; **Studenmund abstained**

**MOTION:** Commissioner Harden moved to approve the SEI grant for \$90,090. Commissioner Dennerline seconded.

**VOTE: 7-0** passed

### R2. Election of MHCRC Chair and Vice Chair

Gibbons provided an overview of the elections process and said nominations were made for Julia DeGraw for Chair and Scott Thomas for Vice Chair

**MOTION:** Commissioner Thomas moved to appoint Commissioner DeGraw as the Chair for FY 2023-24. Commissioner Roche seconded.

**VOTE: 7-0** passed

**MOTION:** Commissioner Roche moved to appoint Commissioner Harden as the Vice Chair for FY 2023-24. Commissioner DeGraw seconded.

**VOTE: 7-0** passed

Thanks and appreciations were shared for the new Commission leadership and to Chair Studenmund for her leadership over the past three years.

### Staff Updates

- MHCRC FY2023-24 Budget Approval – Rebecca Gibbons reported that the MHCRC Budget received unanimous approval from Fairview, Wood Village, Gresham, and Multnomah County.





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Gibbons thanked commissioners for presenting the budget. Gibbons said staff and commissioners will present the budget to the City of Troutdale tomorrow and Portland on Wednesday.

- FCC/Federal Legislation – Gibbons referred Commissioners to the documents in the packet (“information only”). This is unprecedented attack on local ROW and franchising. We are monitoring this closely and just wanted to make sure this was on commissioners’ radar. If it moves forward on the legislative agenda, we will need to take a much strong opinion and advocacy efforts.
- Digital Inclusion Network Letter to Oregon Broadband Office – Funding guidelines around BEAD grant funding. Gibbons said that given the digital equity work the commission does, Gibbons share a letter from a local consortium that was sent to the Oregon Broadband Office related to federal funding coming through the state over the next 18 months. Gibbons said the consortium addresses concerns about the lack of engagement opportunities in large metro areas throughout the state. Outreach is happening just a day or two ahead of time via email, so there isn’t lots of opportunity to voice opinions. The letter highlights some of the shortcomings and also provides some recommendations to make this more inclusive.
- Annual Secretary of State Process Update – We were anticipating Michael to provide an update on this. Rebecca will check in with him and provide an update at a later date.

## **Commissioner Open Comment**

Commissioners DeGraw and Dennerline are reappointed to the commission through their respective jurisdictions.

Next MHCRC meeting is Monday, September 18.

**Adjourned: 7:32 PM**

Respectfully submitted,  
Julie Ocken





# Mt. Hood Cable Regulatory Commission

Serving Multnomah County and the Cities of Fairview, Gresham, Portland, Troutdale & Wood Village

## MT. HOOD CABLE REGULATORY COMMISSION

Virtual – Special Meeting

August 21, 2023 Meeting Minutes – **DRAFT**

### SUMMARY MINUTES

#### Call to Order 5:00 PM

#### Roll Call:

*Present:* Vice Chair Harden; Commissioner Studenmund; Commissioner Dennerline; Commissioner Wagner; Commissioner Thomas; Commissioner Roche; Commissioner Goodlow

*Absent:* Chair DeGraw

*Staff:* Rebecca Gibbons, Operations Manager; Andrew Speer, Utility Manager; Kevin Block, Policy Coordinator

- **Agenda Review:** Vice-Chair Harden said Chair DeGraw called this special meeting of the Commission because of the time sensitivity to get an agreement in place to ensure public benefit resources are made available to meet immediate community needs.

#### REGULAR AGENDA

R1. Resolution 2023-01: Authorize the Chair to Enter into an Agreement with Comcast for the Administration of the I-Net End Fund

Rebecca Gibbons, MHCRC staff, said staff is recommending the Commission authorize the Chair to enter into an agreement for the administration of the I-Net End Fund. Gibbons said under a Franchise Side Letter Agreement, Comcast retained the funds remaining in the I-Net Fund at the conclusion of the prior cable franchise. The I-Net Fund retained by Comcast is referred to as the I-Net *End-Fund* and its beginning balance was approximately \$4.2 million. Ten years later, the balance of this fund is about \$4.1 million. Gibbons said staff has been in discussions with Comcast for the past several years about the use of the funds for the intended purposes and alternative options for spending the funds. Gibbons said that over the summer Comcast was approached by Free Geek with a proposal that aligned with the discussion around community digital inclusion challenges and needs. Gibbons said staff, working closely with MHCRC legal counsel at BBK, have agreed on the terms and conditions of the attached administration agreement with Comcast and staff is recommending approval.

Marion Haynes, Vice-President of External Affairs at Comcast, said Comcast continues to invest in digital inclusion initiatives. Haynes said Comcast's effort began with the creation of the Internet Essentials program, which now boast over 172,000 local subscribers. Haynes said Comcast has expanded its efforts to include Lyft Zones and partnering with the City of Portland's Digital Inclusion Fund program. Haynes said Comcast is excited about this unique opportunity to partner with the MHCRC.





## Mt. Hood Cable Regulatory Commission

*Serving Multnomah County and the Cities of Fairview, Gresham, Portland, Troutdale & Wood Village*

**MOTION:** Commissioner Goodlow moved to approve Resolution 2023-01 which authorizes the Chair to enter into an agreement with Comcast for the administration of the I-Net End Fund. Seconded by Commissioners Thomas and Roche

**DISCUSSION:** none.

**VOTE:** 7-0 passed

- New Business; Commissioner Open Comment

**Adjourned:** 5:10pm

Respectfully submitted,  
Rebecca Gibbons





## **REGULAR AGENDA**



# Mt. Hood Cable Regulatory Commission

*Serving Multnomah County and the Cities of Fairview, Gresham, Portland, Troutdale & Wood Village*

## **COVER SHEET – AGENDA ITEM #R1**

For Commission Meeting: September 18, 2023

“Launch the 2024 Community Technology Grant Cycle”

### **Recommendation**

Staff recommends that the Commission allocate \$2,000,000 for Community Technology grants in the FY2023-24 competitive process, and in support of the Off-Cycle grants program.

Staff recommends that the Commission establish a Pre-Application deadline of December 5, 2023.

### **Background**

Annually the Commission allocates funds and establishes an application deadline for the Community Technology Grant cycle.

#### 2024 competitive process summary:

- Pre-application opens online on October 16, 2023; announcement of grant cycle made.
- Informational meetings held in October and November 2023 for interested applicants.
- Organizations apply through an online Pre-Application process by December 05.
- At its January 2024 meeting, the MHCRC decides which Pre-Applications it would like staff to pursue within the approximate funding available.
- Staff works with each chosen organization to finalize a full application and grant contract.
- The MHCRC approves final contracts at a future MHCRC meeting.
- Off-Cycle grants are reviewed on a case-by-case basis following the protocol previously approved by the Commission.

Submitted by: Rana DeBey  
September 7, 2023





# Mt. Hood Cable Regulatory Commission

*Serving Multnomah County and the Cities of Fairview, Gresham, Portland, Troutdale & Wood Village*

## **COVER SHEET – AGENDA ITEM #R2**

For Commission Meeting: September 18, 2023

“Off-Cycle Grant Request: Lewis & Clark College”

### **Background**

The MHCRC acknowledges that opportunities can rise unexpectedly, particularly in the current economic climate, and that community organizations, governments, and educational institutions need to act fast to secure funding for projects that meet ever-changing communication needs. Incorporating intentional responsive grantmaking opportunities outside of the MHCRC’s annual competitive cycle increases the MHCRC’s equity-centered practices by allowing applicants to request funds at the time of their greatest need, rather than on a funder’s timeline.

The MHCRC updated the “Special Funding Request” (aka Off-Cycle) grant program by streamlining the process and updating materials in May 2021 and has awarded four grants through this program since that time.

In accordance with the Off-Cycle grant process, Lewis and Clark’s Graduate School of Education and Counseling submitted a Letter of Interest (LOI) to MHCRC staff in early August. Staff deemed that the proposed request met the Off-Cycle grant eligibility criteria and was time-sensitive in nature. The LOI was sent to the MHCRC Equity Committee for consideration. Committee members agreed that staff should move forward with presenting the application to the full MHCRC for funding.

**Budget Note:** The MHCRC Off-Cycle grant program was originally approved by Commissioners to utilize the Community Grants Contingency Funds (annually allocated at \$800,000/fiscal year) in order to make grant awards, or ending-balance funds unspent by Community Technology Grants requests. The MHCRC has available funds for consideration of this grant request. The combined total (contingency funds and ending-balance) amount available is \$2,800,000 for FY 23-24.

### **Project Summary:**

#### **Lewis and Clark Graduate School of Education and Counseling**

**Grant Request: \$35,849**

Total Project Budget: \$71,698

Public Benefit Area: Improving Service Delivery



**MHCRC** 1120 SW 5<sup>th</sup> Ave. Suite 405 Portland, Oregon 97204  
503.823.5385 info@mhcr.org www.mhcr.org

**Recommendation:**

Staff recommends that the Commission approve an Off-Cycle grant to Lewis and Clark Graduate School of Education and Counseling for the “Art at the Center Video” project for a total of \$35,849.

**Project Description:**

The “Art at The Center” Video Project seeks to reduce barriers and enhance awareness and access to affordable mental health services. In response to key indicators highlighting the need for additional mental health support services, Lewis and Clark (LC) specifically seeks to attract and reach diverse groups within Multnomah County to participate in a highly effective mental health modality, art therapy. Grant funds will be used to purchase the necessary equipment to outfit a new digital media lab housed within the Community Counseling Center (CCC). The CCC includes an art therapy space for Open Studio groups where LC will offer no-cost, community-based programs focused on art therapy. Participants in the open studio space will (with consent) be interviewed for the film, highlighting their reasons for attending art therapy sessions and the process of engaging with art therapy. The film will also include interviews with group facilitators, faculty and staff. Art making will be captured and the power of community showcased, stressing the impact of creative interventions for health and wellness. Footage of participants and staff will be recorded right from the launch (October 2023) of this innovative studio space; faculty with experience in video production will lead the pre and postproduction of the film. Select pre-practicum students will apply to participate in the creation of the video by interviewing participants and expanding their video production technical skills; the final outcome will be a roughly 20-minute film aired on MetroEast Community Media’s cable channels. The video will also be used as a tool in informing the direction of this newly developed program as it is being built. The digital media lab and equipment will be an ongoing resource for faculty, staff, students, and studio members to produce future films and PSAs, as well as to document Participatory Action Research relating to art therapy community-based activities.

Prepared by: Rana DeBey  
September 7, 2023

*As a normal part of the grantmaking process, Comcast staff are provided the opportunity to review the draft grant contracts in advance of the MHCRC meetings.*

**Attachments:**

Draft Grant Agreement: Lewis and Clark





# Mt. Hood Cable Regulatory Commission

*Serving Multnomah County and the Cities of Fairview, Gresham, Portland, Troutdale & Wood Village*

## **COVER SHEET – AGENDA ITEM R3**

For Commission Meeting: September 18, 2023

City of Portland Charter Reform Update (Information Only)

### **Background/Discussion**

The purpose of this memo is to provide the commission with context and information about the choices being made as the City of Portland implements voter-approved Charter Reform.

In November 2022 Portland voters approved Ballot Measure 26-228, which adopts ranked-choice voting, establishes four geographic city council districts, and transitions day-to-day oversight of bureaus to a mayor elected citywide and a professional city administrator. These changes take effect January 1, 2025.

To implement this change the City is also making changes to its bureau-level organizational structure. For the new structure to be implemented in 2025, decisions must be made with the FY 24/25 budget; which is being developed in late 2023. City Council will consider a resolution setting direction for that organizational structure in October 2023. The City's current Chief Operating Officer, Mike Jordan, released a proposed organizational chart on September 12, 2023. Throughout the summer of 2023 City bureau directors have been meeting in a series of work sessions to inform the recommendation.

Commission staff are currently positioned in the Bureau of Planning and Sustainability (BPS) after the Office for Community Technology was absorbed by the bureau in 2022. The current Community Technology division of BPS includes the MHCRC, Smart Cities, Digital Inclusion, and Franchise Utility teams.

At the highest level, the new structure will consist of a City Administrator, and five to seven Deputy City Administrators (DCAs). Each DCA will manage a service area that will include a group of existing bureaus. The Bureau of Planning and Sustainability is currently assigned to the Community Development Service Area, along with Prosper Portland, the Housing Bureau, and the Bureau of Development Services. There will also likely be a Public Safety service area, a Public Utility service area, and an Administrative service area. A few functions may also report directly to the City Administrator or the Mayor.

The current draft organization chart largely maintains BPS as its currently structured. That said, there have been a number of conversations and proposals that would impact BPS programs. There are scenarios where some of the major functions within BPS move to other service areas. For example, Waste and Recycling, Climate, Planning and Community Technology have all been discussed as elements of other new agency configurations. As the draft organization chart is presented to Council, we expect some of those ideas to be discussed.



There have been numerous proposals floated, but there are four basic scenarios for the MHCRC staff team:

1. MHCRC staff stay within BPS. The current draft organizational chart reflects this scenario. It retains most of BPS' current form within the Community and Economic Development service area and reflects how the MHCRC's funding and grant-making is often seen as a community development function.
2. MHCRC staff move into the Bureau of Technology Services (BTS), within the City Operations service area. This option reflects the MHCRC's focus on media, and technology, and work program connections to BTS related to broadband and work with Open Signal.
3. MHCRC staff move into a work group oriented toward community engagement and public affairs; as part of the City Administrator's Office. This group would also include elements of the former Office of Civic Life. This reflects the role MHCRC plays in civic engagement, public involvement, and communications.
4. MHCRC staff move into the City Operations service area, with Franchise Utility functions. This scenario acknowledges the revenue collection and financial aspects of the MHCRC work.

It should be noted that the discussion of MHCRC staff placement in a future City structure is occurring in the context of a discussion of all of the Community Technology teams. It is not a given that all staff within the Community Technology team in BPS would end up in the same place. For example, some elements of the Smart Cities team may exist in the future as part of a City Data Office, which could be part of BTS-City Operations service area. Similarly, the role of the Franchise Utility team connects with Public Utilities, and City Operations; which also could suggest other organizational structures.

BPS leadership invites MHCRC dialog on this choice, and we will be happy to help promote and convey any comments, expectations, and interests the Commission has to the Chief Operating Officer and Council.

Staff's Recommendations:

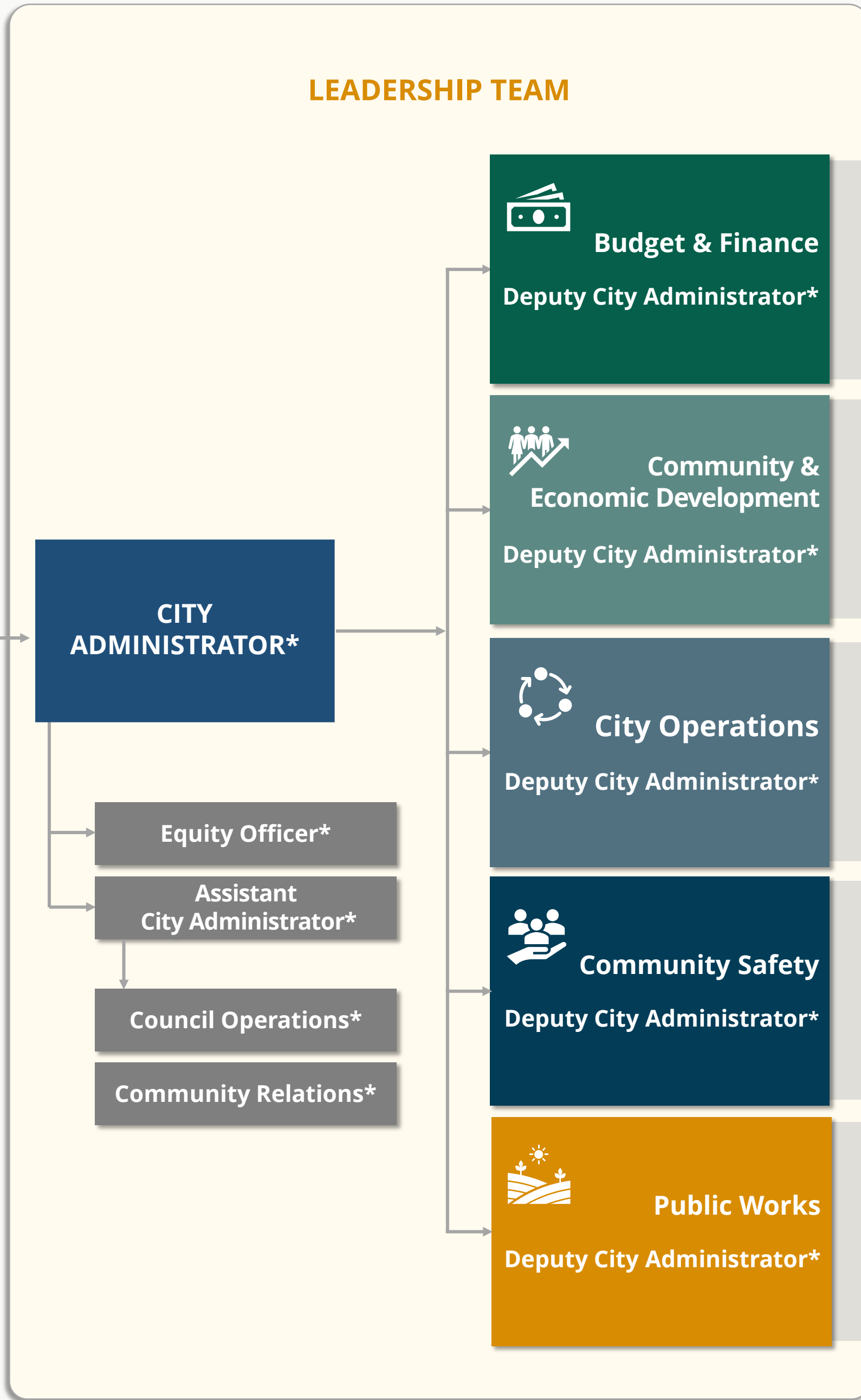
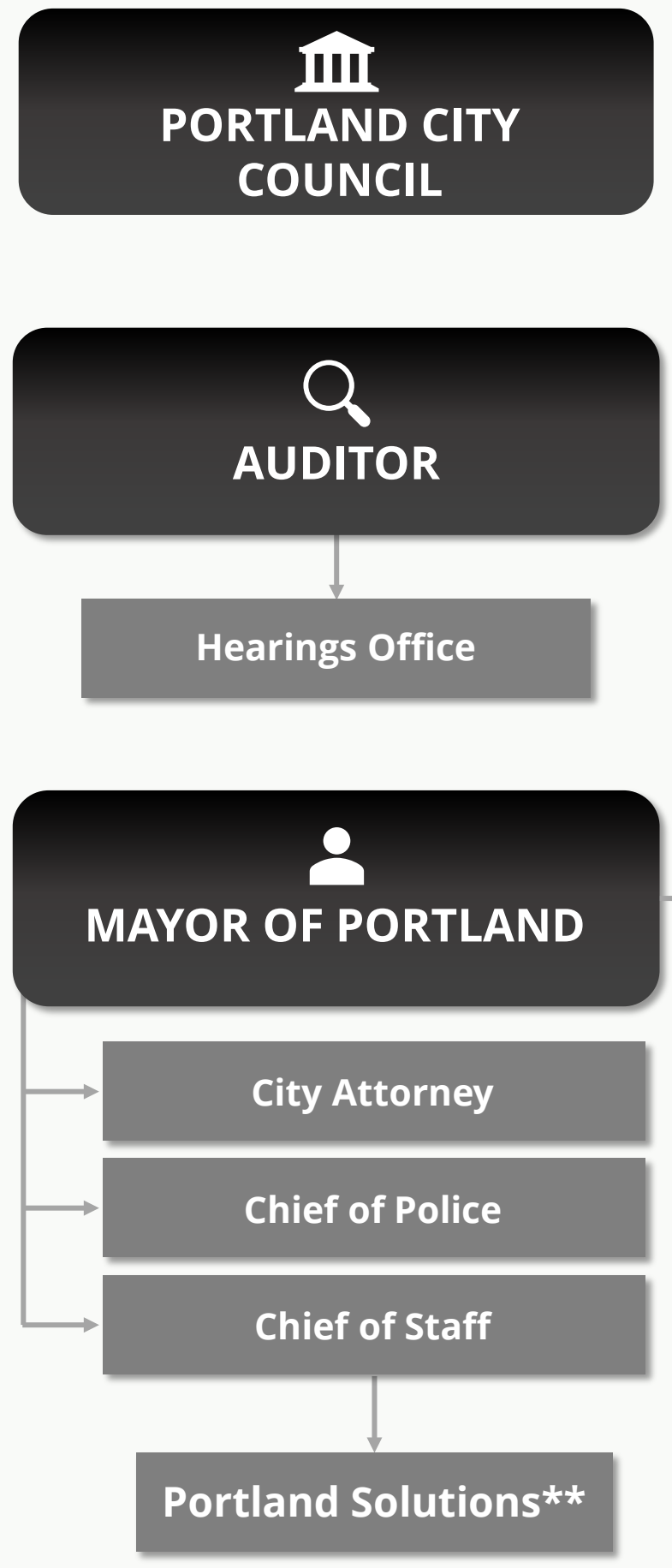
- Engage early and often if the position of staff within the city structure is important
- Consider assigning a Commission member to serve as the liaison to staff and city leadership decision-makers

**Attachments:** Draft City Organizational Chart; Draft MHCRC letter to Mike Jordan

Prepared By: Eric Engstrom, September 13, 2023



# DISCUSSION DRAFT



- Budget & Finance**  
 Budget  
 Revenue and Financial Services  
 Business Operations  
 Fire Police Disability & Retirement  
 Special Appropriations
- Community & Economic Development**  
 Development Services  
 Permitting\*\*  
 Planning & Sustainability  
 Portland Housing Bureau  
 Portland Children's Levy  
 Prosper Portland  
 Spectator Venues
- City Operations**  
 Asset Management\*  
 Fleet and Facilities  
 Human Resources  
 Independent Police Review  
 Integrated Security  
 311 (Information and Referral)  
 Office of Equity & Human Rights  
 Procurement  
 Special Projects & Opportunities  
 Technology Services
- Community Safety**  
 Community Safety  
 Business Operations  
 Emergency Communications  
 Emergency Management  
 Portland Fire & Rescue  
 Portland Police
- Public Works**  
 Arts  
 Environmental Services  
 Natural Resources\*\*  
 Parks & Recreation  
 Transportation  
 Water

**PROSPER PORTLAND COMMISSION**

**Key**  
 \* New program/function  
 \*\* New program/function pending ongoing assessments

Liaison responsibilities will be allocated as appropriate in a future draft



**DISCUSSION DRAFT**

**PORTLAND CITY COUNCIL**

**AUDITOR**

Hearings Office

**MAYOR OF PORTLAND**

City Attorney  
 Chief of Police  
 Chief of Staff

**CITY ADMINISTRATOR\***

Equity Officer\*  
 Assistant City Administrator\*

**Council Operations\***  
 Council Operations and Legislative process\*

**Community Relations\***  
 Adapt to Impact  
 Administration and Support  
 Advisory Boards and Councils  
 Communications Officer\*  
 Diverse Civic Leaders  
 Engagement Officer\*  
 Immigrant and Refugee Program  
 Office of Government Relations  
 Tribal Relations  
 Youth Outreach

**Portland Solutions\*\***  
 Houselessness  
 • Joint Office of Homeless Services IA  
 • Temporary Shelters  
 • Safe Rest Villages  
 Neighborhoods  
 Districts  
 Public Environment Management Office  
 Street Services Coordination Center  
 • Impact Reduction Program

**Budget & Finance**  
 Deputy City Administrator\*

**Community & Economic Development**  
 Deputy City Administrator\*

**City Operations**  
 Deputy City Administrator\*

**Community Safety**  
 Deputy City Administrator\*

**Public Works**  
 Deputy City Administrator\*

**Key**  
 \* New program/function  
 \*\* New program/function pending ongoing assessments

Liaison responsibilities will be allocated as appropriate in a future draft





# Mt. Hood Cable Regulatory Commission

*Serving Multnomah County and the Cities of Fairview, Gresham, Portland, Troutdale & Wood Village*

Michael Jordan  
Chief Administrative Officer  
1120 SW Fifth Avenue, Room 926  
Portland, Oregon 97204

September 19, 2023

Dear Mr. Jordan:

As Chair of the Mt. Hood Cable Regulatory Commission (MHCRC), I am reaching out to ensure we are a collaborative partner and a resource to you in the City's Charter Reform decision-making process. As you may know, the MHCRC was created by Intergovernmental Agreement by Multnomah County and the cities of Fairview, Gresham, Portland, Troutdale, and Wood Village. The IGA includes a staffing and administrative services contract with the City of Portland, through the Bureau of Planning and Sustainability. It is because of this staffing contract that the MHCRC has a vested interest in the outcomes of the Charter Reform process.

The services contract affords the MHCRC, which has an operating budget, funding for public benefit projects, and authority to make decisions on behalf of the jurisdictions, with professional level staff. The staff are leaders in national policy arenas that have direct impact on the jurisdictions' authority to manage the public right-of-way, collect fair compensation, ensure public safety, promote civic dialogue, and advocate for equitable access to and use of telecommunications technology.

As we understand it, the current organizational proposal has the MHCRC program staff positioned within BPS as part of the Community and Economic Development service area. We do see our work as being fundamentally about community and economic development. We also believe it is important to maintain close working relationships to the franchise utility and digital inclusion programs.

We understand that there will be continued conversations about the position of staff and work functions (franchising, revenue collection, digital equity, etc.) among the various service areas and departments. Over the past ten years, our staff have been moved among bureaus and left in limbo with regard to leadership and reporting structure, which ultimately has had a significant impact on the scope and success of our work in recent years. We hope to engage early and often with you so that this work does not get overlooked or misrepresented.

While Donnie Oliveira and Eric Engstrom continue to be strong advocates for positioning the MHCRC and its staff appropriately within the City's organizational structure, I'd like to make sure you are aware of my interest on behalf of the MHCRC to be engaged directly with you and the leadership team about the MHCRC's mission and the function of MHCRC staff. Our staff will be in touch to help me arrange for a time for us to meet to discuss next steps.

As community representatives appointed by each of the jurisdictions we are excited about this opportunity to engage with you on this historic path to better governance and services to the community.

Sincerely,

Julia DeGraw,  
MHCRC Chair  
Portland Representative

Cc:  
Richard Roche, MHCRC, Portland Representative  
Leslie Goodlow, MHCRC, Portland Representative

Jeff Dennerline, MHCRC, Fairview Representative  
Cherri Wagner, MHCRC, Gresham Representative  
Norm Thomas, MHCRC, Troutdale Representative  
Scott Harden, MHCRC, Wood Village Representative  
Carol Studenmund, MHCRC, Multnomah County Representative  
MHCRC Staff within the Bureau of Planning and Sustainability: Donnie Oliveira, Eric Engstrom, Rebecca Gibbons



**MHCRC** 1120 SW 5<sup>th</sup> Ave. Suite 405 Portland, Oregon 97204  
503.823.5385 info@mhcrc.org www.mhcrc.org

**INFORMATION ONLY**



# Mt. Hood Cable Regulatory Commission

Serving Multnomah County and the Cities of Fairview, Gresham, Portland, Troutdale & Wood Village

## **MEMORANDUM**

For Commission Meeting: September 18, 2023

To: Mt. Hood Cable Regulatory Commission

From: Kevin Block

RE: September 2023 Policy Update

+++++

### **FCC NFPRM on “All-in” Pricing**

On June 20, 2023 the FCC invited comment on a proposed rulemaking related to pricing transparency. The new rule would require cable and Direct Broadcast Satellite (DBS) providers to aggregate prices in bills and advertising materials to full “All-in” prices. The “All-in” price would include any fees such as broadcast retransmission, franchise, and regional sports broadcast fees.

The MHCRC signed on to a comment letter drafted by Best, Best, and Krieger (BBK) in support of the proposed rulemaking. The MHCRC also signed on to a subsequent comment submitted by BBK which summarizes and refutes industry comments on the proposed rulemaking. Furthermore, the second letter submitted by BBK describes the legal basis for the FCC’s jurisdiction in this matter. As of right now, it is unclear how the FCC will proceed.

The MHCRC has been tracking this issue for nearly 10 years. Here is a brief summary of previous work:

*“The MHCRC has been tracking broadcast TV and RSN fees since service providers began implementing them in 2013. In November of 2014 the MHCRC contracted with Cableworks to better understand the legal and policy implications of the fees. Based on the recommendations from Cableworks and after hearing complaints from residents, the MHCRC (along with the MACC, the City of Milwaukie, and the City of Eugene) sent a letter to the Oregon Department of Justice on May 15, 2017. The letter requests the DOJ’s assistance in addressing complaints related to the fees and potential legal recourse against the service providers.*

*On April 28, 2017, the MHCRC and the other signatories of the letter met with Ellen Klem from the Oregon DOJ. At the end of this meeting the signatories agreed to gather as much detailed information about complaints as possible and the DOJ agreed to provide a link to the DOJ complaint form as well as guidance through the complaint process.*



*On December 5, 2017, the MHCRC emailed the DOJ requesting a second meeting with representatives from Hattis Law and LCHB present. Hattis Law and LCHB are the law firms who filed the class action lawsuit in Northern California against Comcast over the issue of these fees. Ultimately, this meeting never took place and progress on this issue seems to have ceased.”*

Link (<https://www.fcc.gov/document/fcc-seeks-comment-all-pricing-cable-and-satellite-tv>)

The comment letters are attached at the end of this memo.

### **The 5th FCC Commissioner**

The Senate confirmed Democratic telecommunications lawyer Anna Gomez as the fifth FCC commissioner. This comes after months of political deadlock and the failed nomination of Gigi Sohn.

Gomez got her start in the telecommunications industry as a lobbyist for Sprint Nextel and eventually made her way over the government side as a Senior Legal Advisor to former FCC Chairman William Kennard. Most recently, she served as an advisor to the Bureau of Cyberspace and Digital Policy. The addition of Commissioner Gomez gives Democrats a 3-2 majority on the commission.

Having a fifth commissioner unlocks the stalemate on the commission.

### **FCC Comments on Video Programming Landscape**

In July of 2023 Chairwomen Rosenworcel announced that she was circulating a NFPRM regarding the video programming landscape to the other commissioners. If adopted, this NFPRM would start an open comment period regarding *“the obstacles faced by independent programmers seeking multichannel video programming distributor carriage and carriage on online platforms, how this impacts consumers, and the action the Commission may take to alleviate such obstacles so that its policies can promote competition in the marketplace consistent with our statutory responsibilities.”*

As of this meeting the NFPRM has not been adopted. It may have been delayed to allow for Commissioner Gomez to be seated.

### **Local Authority (HR 3557)**

HR 3557 is a Republican and industry lead bill currently being amended in the House Energy and Commerce Committee. The bill has yet to receive a house floor vote, but it could have severe implications for local governments’ authority to manage public rights-of-way and land use. The bill originated out of a larger industry narrative that local regulations that preserve the public interest are especially onerous and impede broadband deployment. The same narrative is being utilized at the state level as well. Industry comments on OBO’s Five-Year Action Plan present a similar discussion of local regulations as impediments rather than guiderails for preserving public interest.

Here are some of the ways HR 3557 may impact the MHCRC and the communities it represents:

- Enactment of shot clock rules and “deemed granted” provisions which place timelines for the review and approval of telecommunications projects
  - Small cells will have a 60-day shot clock and large cells will have 90 days
- Limits ROW fees to “actual, objectively reasonable costs”
- Prohibiting local government requirements that industry remove obsolete equipment from towers (or the tower itself) on public property
- Allows for batched requests that could overwhelm local government’s ability to process permits thus resulting in “deemed granted” requests
- Preemption of state and local zoning authority over the placement of wireless technologies, including towers, equipment, and small cells
- Allowing cable franchisees to modify the terms of franchise agreements and to renege on cable franchises

Link (<https://www.congress.gov/bill/118th-congress/house-bill/3557/actions?s=1&r=1&q=%7B%22search%22%3A%5B%22hr3557%22%5D%7D>)

### **NATOA Conference and Board of Directors Update**

- Staff members from the City of Portland and the MHCRC will be attending the NATOA national conference in Long Beach in October. Some of the topics of discussion will be the future of PEG & franchise revenues as well as BEAD implementation.
- NATOA announced the results of the 2023 Board of Directors elections:

\*\*\*\*\*Drum Roll\*\*\*\*\*

**MHCRC’s own Rebecca Gibbons has been elected to the NATOA Board of Directors**

**Attachments:** All-In Pricing FCC Comments & Reply Comments

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

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

**COMMENTS OF THE TEXAS COALITION OF CITIES FOR UTILITY ISSUES; CITY OF BOSTON, MA; MT. HOOD CABLE REGULATORY COMMISSION; FAIRFAX COUNTY, VA; AND THE NATIONAL ASSOCIATION OF TELECOMMUNICATIONS OFFICERS AND ADVISORS**

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*Counsel for Named Local Governments*

July 31, 2023

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## EXECUTIVE SUMMARY

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) call upon the Commission, consistent with the Congressional mandate and direction of President Biden<sup>1</sup> to adopt the mandatory all-in pricing disclosure rule as proposed in the Commission’s Notice of Proposed Rulemaking.<sup>2</sup> Local Government Commenters urge 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.

This disclosure will establish pricing transparency and eliminate the practice of adding “junk fees”<sup>3</sup> that are separate from the top-line service price so that consumers know exactly what they are paying for when they sign up for a cable subscription.<sup>4</sup> The Commission should ensure cable subscribers are afforded serious protections, continuing and improving upon prior efforts to impose clear disclosures for broadband, telecommunications and mobile wireless customers. An “all-in” pricing format must allow consumers to make informed choices by letting them more easily comparison shop among competing services.

Studies and analysis by journalists demonstrate an ongoing problem with hidden fees that mislead consumers into selecting a higher price than they intended. NATOA compiled data to show increases over time and the benefits and limitations of existing local efforts to require forthcoming price disclosures. These data show:

- Cumulative increases in sports broadcasting and regional sports networks alone were between 68 and 74 percent since 2020 in four major metropolitan areas;
- Broadcast fees increasing as much as five- to sevenfold since 2016, while cable prices have increased 25 to 50 percent;

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<sup>1</sup> Statement from President Joe Biden on Proposed FCC All-in Pricing Rule, White House (June 20, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/06/20/statement-from-president-joe-biden-on-proposed-fcc-all-in-pricing-rule> (*Biden Statement*).

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

<sup>3</sup> President Biden describes “junk fees” as “these hidden charges that companies sneak into your bill to make you pay more and without you really knowing it initially.” *Remarks by President Biden on Protecting Consumers from Hidden Junk Fees*, White House (June 15, 2023), <https://www.whitehouse.gov/briefing-room/speeches-remarks/2023/06/15/remarks-by-president-biden-on-protecting-consumers-from-hidden-junk-fees/>.

<sup>4</sup> Local governments agree that satellite subscribers should also have this right, but as Local Franchise Authorities, we focus on cable regulation and pricing.

- Sharp increases in cable remote fees in the last two to three years; and
- Regional sports fees tripling, quadrupling or even quintupling in the last six years.

The Commission's most recent Communications Marketplace Report found, over the period 2013-2021, the compound average annual increase in broadcast fees per subscriber was 30.6%.<sup>5</sup>

Action is needed. Local Government Commenters recommend that the mandatory disclosure include:

- Service plan name
- Base monthly price for a stand-alone broadband service offering and any other monthly charges or one-time fees, with links to other listings of bundled rates;
- Whether a monthly rate is an introductory rate and the rate that applies following any introductory rate; and
- The length of any rate dependent upon a consumer's commitment to a particular contract term.

Local Government Commenters explain that the all-in price should include not only broadcast TV fees and regional sports fees, but also cable franchise fees, which are "street rent" for the use of the local rights-of-way and therefore are the cost of doing business just like other fees that should be included in the all-in price. Cable operators must be denied the façade of blaming increases on programming costs or the government.

Further, the mandatory disclosure should be required on any notice of a price change for existing subscribers. Such 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.

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<sup>5</sup> *FCC Communications Marketplace Report*, GN Docket No. 22-203, Appendix E at 3 (rel. Dec. 30, 2022), <https://docs.fcc.gov/public/attachments/FCC-22-103A1.pdf>.

**Before the  
Federal Communications Commission  
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In the Matter of	)	
	)	
All-In Pricing for Cable and Satellite	)	MB Docket No. 23-203
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**COMMENTS OF THE TEXAS COALITION OF CITIES FOR UTILITY ISSUES; CITY  
OF BOSTON, MA; MT. HOOD CABLE REGULATORY COMMISSION; FAIRFAX  
COUNTY, VA; AND THE NATIONAL ASSOCIATION OF TELECOMMUNICATIONS  
OFFICERS AND ADVISORS**

**I. INTRODUCTION**

The Texas Coalition of Cities For Utility Issues;<sup>6</sup> City of Boston, Massachusetts;<sup>7</sup> Fairfax County, Virginia;<sup>8</sup> the Mt. Hood Cable Regulatory Commission;<sup>9</sup> and The National Association Of Telecommunications Officers and Advisors (NATOA)<sup>10</sup>, (collectively Local Government Commenters), file these Comments in response to the Notice of Proposed Rulemaking in the *All-In Pricing for Cable and Satellite Television Service* docket.<sup>11</sup> The Commission should require

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<sup>6</sup> The Texas Coalition of Cities For Utility Issues (“TCCFUI”) is a coalition of more than 50 Texas municipalities dedicated to protecting and supporting the interests of Texas cities and citizens with regard to utility issues. The Coalition is comprised of large municipalities and rural villages. TCCFUI monitors the activities of the United States Congress, the Texas Legislature, the Public Utility Commission of Texas, the Texas Railroad Commission, and the Federal Communications Commission on utility issues of importance to cities.

<sup>7</sup> Dating back to 1630, Boston is the largest city in New England and capital of the Commonwealth of Massachusetts. Boston is home to approximately 690,000 people from all walks of life and is also home to numerous universities and robust technology and finance sectors. Each of these groups is particularly attuned to the critical importance of wireline and wireless broadband access and affordability to enable participation in the digital age. The City of Boston, through the offices of the Mayor, strives to ensure the City and all its residents, in single family homes and multiple dwelling units as well as visitors have competitive, affordable, and robust access to modern communications services. Too often though, the City hears firsthand from its residents that they are unaware of bill increases until after they notice them on their bills, especially as it pertains to cable and broadband services, causing frustration, especially financial frustration among lower-income populations. The City works to ensure that all of its residents are supported and advocated for in all aspects, especially regarding communications services.

<sup>8</sup> Founded in 1742, the County of Fairfax, Virginia encompasses approximately 406 square miles and is home to 1.17 million residents. The County is governed by a ten-member Board of Supervisors and has served as the local franchising authority since 1980. Currently, there are three franchised cable operators in the County.

<sup>9</sup> The Mt. Hood Cable Regulatory Commission negotiates and enforces cable service franchise agreements; manages the public benefit resources and assets derived from the franchises; and advocates on behalf of the public interest on communications policy issues at local, state and federal levels. The MHCRC serves the communities, residents and local governments of Fairview, Gresham, Portland, Troutdale and Wood Village and Multnomah County, Oregon (its member “Jurisdictions”).

<sup>10</sup> NATOA’s membership includes local government officials and staff members from across the nation whose responsibility is to develop and administer communications policy and the provision of such services for the nation’s local governments.

<sup>11</sup> *All-In Pricing for Cable and Satellite Television Service*, Notice of Proposed Rulemaking, MB Docket No. 23-203 (rel. June 20, 2023) (*NPRM*).

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. This disclosure is important so that Consumers know exactly what they are paying for when they sign up for a cable subscription,<sup>12</sup> by establishing pricing transparency and eliminating the practice of adding “junk fees”<sup>13</sup> that are separate from the top-line service price.

## **II. ADOPTION OF THE COMMISSION’S PROPOSAL WILL BENEFIT CONSUMERS AND COMPETITION.**

Local Government Commenters support President Biden’s<sup>14</sup> and the Commission’s proposal 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.<sup>15</sup> Local Government Commenters agree 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. It will enable them to shop among various services more effectively, enabling competition. As the Commission found when it adopted the broadband consumer label, “[c]onsumer access to clear, easy-to-understand, and accurate information is central to a well-

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<sup>12</sup> Local governments agree that satellite subscribers should also have this right, but as Local Franchise Authorities, we focus on cable regulation and pricing.

<sup>13</sup> President Biden describes “junk fees” as “these hidden charges that companies sneak into your bill to make you pay more and without you really knowing it initially.” *Remarks by President Biden on Protecting Consumers from Hidden Junk Fees*, White House (June 15, 2023), <https://www.whitehouse.gov/briefing-room/speeches-remarks/2023/06/15/remarks-by-president-biden-on-protecting-consumers-from-hidden-junk-fees/>.

<sup>14</sup> President Biden describes “junk fees” as “these hidden charges that companies sneak into your bill to make you pay more and without you really knowing it initially.” *Remarks by President Biden on Protecting Consumers from Hidden Junk Fees*, White House (June 15, 2023), <https://www.whitehouse.gov/briefing-room/speeches-remarks/2023/06/15/remarks-by-president-biden-on-protecting-consumers-from-hidden-junk-fees/>.

<sup>15</sup> *NPRM* at ¶¶6, 8.

functioning marketplace that encourages competition, innovation, low prices, and high-quality services.”<sup>16</sup> In fact, studies demonstrate that price transparency generally leads to “lower and more uniform prices, a view consistent with predictions of standard economic theory.”<sup>17</sup> “Drip pricing”—the practice of adding fees after an initial price is disclosed—can prevent consumers from identifying the cheapest offer.<sup>18</sup> The Commission has a long history of taking action to ensure consumers have the information they need to understand their bills and avoid unexpected fees—from the recently-adopted broadband consumer label, to its Truth-in-Billing rules for telecommunications carriers<sup>19</sup> and its efforts to prevent bill shock for consumers of mobile wireless services.<sup>20</sup>

**A. Consumer advocates and studies demonstrate the problem of hidden fees.**

The problem of undisclosed fees in cable has been well-documented. For example, Consumer Reports conducted a study in 2019 showing that 24 percent of a consumer’s bill is attributable to fees “created by the cable industry,” such as “broadcast TV fees, regional sports fees, HD technology fees” and others. Consumer Reports estimated that “on average, the cable

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<sup>16</sup> *Empowering Broadband Consumers Through Transparency*, Report and Order and Further Notice of Proposed Rulemaking at ¶1, CG Docket No. 22-2, FCC 22-86 (rel. Nov. 22, 2022) (*Broadband Label Order*).

<sup>17</sup> E.g., Congressional Research Service, *Does Price Transparency Improve Market Efficiency?* at 2-3 (2008), RL 34101, <https://crsreports.congress.gov/product/pdf/RL/RL34101>.

<sup>18</sup> Shelle Santana, *et al.*, *Consumer Reactions to Drip Pricing*. *Marketing Science* 39(1):188-210 (2020), <https://doi.org/10.1287/mksc.2019.1207>; Alexander Rasch, *et al.*, *Drip pricing and its regulation: Experimental evidence*, *Journal of Economic Behavior & Organization*, 176:353-370 (2020), <https://www.sciencedirect.com/science/article/pii/S0167268120301189>.

<sup>19</sup> 47 CFR § 64.2401.

<sup>20</sup> Federal Communications Commission, *Bill Shock: Wireless Usage Alerts for Consumers* (describing a settlement in which major U.S. mobile carriers committed to providing consumers with plans that incur additional charges for exceeding limits on voice, data, text usage or international usage), <https://www.fcc.gov/general/bill-shock-wireless-usage-alerts-consumers>.

industry generates close to \$450 per year per customer from company-imposed fees,” which means cable operators “could be making \$28 billion a year” from these fees.<sup>21</sup> Journalists and consumer advocates have documented the practices of cable operators, demonstrating the likelihood that consumers will not be well-informed when they are choosing a video product. For example, TechHive documented the practices of Comcast, Charter and Cox in 2021, just after the Television Viewer Protection Act went into effect.<sup>22</sup> The research found that all three providers did not disclose broadcast television fees, regional sports fees, TV connection fees, DVR and set-top box fees during the sign-up process, if at all.<sup>23</sup> Consumer Reports’ survey of 350 consumers documented many instances of consumers that were charged for equipment and routers (or discouraged from purchasing their own equipment) in a way that violates the Television Viewer Protection Act.<sup>24</sup> Companies have been accused of increasing hidden fees even after customers have agreed to a fixed-fee fixed-term contract.<sup>25</sup> Class 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.<sup>26</sup>

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<sup>21</sup> Jonathan Schwantes, Consumer Reports, *What the Fee? CR Cable Bill Report 2019* at ii (October 2019), [https://advocacy.consumerreports.org/wp-content/uploads/2019/10/CR\\_WhatTheFeeReport\\_6F\\_sm-1.pdf](https://advocacy.consumerreports.org/wp-content/uploads/2019/10/CR_WhatTheFeeReport_6F_sm-1.pdf).

<sup>22</sup> Jared Newman, TechHive, *Cable-bill transparency laws haven’t killed sneaky fees*, (Jan. 28, 2021), <https://www.techhive.com/article/579177/cable-bill-transparency-laws-havent-killed-sneaky-fees.html>.

<sup>23</sup> *Id.*

<sup>24</sup> *Media Bureau Seeks Comment on Implementation of the Television Viewer Protection Act of 2019*, Reply Comments of Consumer Reports, MB Docket No. 21-501 (filed March 7, 2022).

<sup>25</sup> Harold Feld, *Junk Fees and Cable TV: Lessons from the Television Viewer Protection Act*, CPI Anti-Trust Chronicle at 5 (April 2023), [https://www.pymnts.com/cpi\\_posts/junk-fees-and-cable-tv-lessons-from-the-television-viewer-protection-act/](https://www.pymnts.com/cpi_posts/junk-fees-and-cable-tv-lessons-from-the-television-viewer-protection-act/).

<sup>26</sup> *E.g., Grillo, et al. v. RCN Telecom Services, LLC et al.*, New Jersey Mercer County Superior Court, Case No. MER-L-1319-22, ; *In the Matter of Comcast Cable Communications, LLC*

Equity concerns arise with these undisclosed fees. For example, in other sectors, such as in banking, extra fees disproportionately impact low-income people or minority neighborhoods.<sup>27</sup> 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.

**B. Local government data demonstrate the impact of increased hidden fees over time.**

In response to the Commission's *NPRM*, NATOA has compiled fee data over time in four major metropolitan areas.<sup>28</sup> The results of that survey are attached in Appendix A. The survey demonstrates the increased consumer costs over time and the increasing contribution of cable operator-created fees toward a consumer's final bill.

The data compilation analysis demonstrates:

- Cumulative increases in sports broadcasting and regional sports networks alone were between *68 and 74 percent* since 2020 in four major metropolitan areas;

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*Superior Court, Suffolk County, Civil Action No. 18 – 3514 (Nov. 9, 2018); State of Minnesota v. Comcast Corporation, Minnesota Fourth Judicial District, Case No. 27-CV-18-20552.*

<sup>27</sup> Consumer Financial Protection Bureau, *Credit card late fees* at 2 (March 2022), [https://files.consumerfinance.gov/f/documents/cfpb\\_credit-card-late-fees\\_report\\_2022-03.pdf](https://files.consumerfinance.gov/f/documents/cfpb_credit-card-late-fees_report_2022-03.pdf); Bankrate, *Minorities, Millennials Among Those Who Pay the Most Bank Fees*, (Jan. 15, 200), <https://www.bankrate.com/pdfs/pr/20200115-best-banks-survey.pdf>; National Consumer Law Center, *Auto Add-Ons Add Up* at 1, 29 (Oct. 2017), [https://www.nclc.org/wp-content/uploads/2022/09/auto\\_add\\_on\\_rpt.pdf](https://www.nclc.org/wp-content/uploads/2022/09/auto_add_on_rpt.pdf) (Hispanic consumers pay more).

<sup>28</sup> The analysis was conducted by Garth Ashpaugh, CPA of Ashpaugh & Sculco. The analysis was prepared to assist clients and their outside counsel in evaluating the impact of Comcast changes in the Broadcast and Sports tier fees without changing the Limited and Expanded rates. Since bundle packages are based on Limited and Expanded rates as components of the bundles at the time of the bundle agreement with no changes in the bundles rates over the agreed term, this methodology allows significant increases in rates since these fees are in addition to and not included in the bundle rates.



- Broadcast fees increasing as much as five- to sevenfold since 2016, while cable prices have increased 25 to 50 percent;
- Sharp increases in cable remote fees in the last two to three years; and
- Regional sports fees tripling, quadrupling or even quintupling in the last six years.

In comparison, the Commission’s most recent Communications Marketplace Report found that, over the twelve months ending January 1, 2022:

- The monthly price for cable subscribers who take only basic service grew by 7.0%, to \$42.63; over the previous five years basic prices rose by an average of 11.2%;
- Prices for expanded basic service increased by 5.2%, to \$101.54; over the previous five years expanded basic prices rose by an average annual increase of 6.2%;
- Price per channel for basic and expanded basic service grew by 5.3% and 9.2% to \$1.09 and 90 cents per channel, respectively.<sup>29</sup>

The Commission also reported that, from 2020 to 2021, total retransmission consent fees paid by cable systems to television broadcast stations increased, on average, by 14.4% but annual fees paid per subscriber increased, on average, by 20.3%, rising from \$168.83 to \$203.03 over the same period. Over the period 2013– 2021, *the compound average annual increase in broadcast fees per subscriber was 30.6%*.<sup>30</sup> In contrast, the general rate of inflation measured by the CPI rose by 7.5% over the twelve months ending January 1, 2022, and at an average annual rate of 2.6% over the last five years.<sup>31</sup>

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<sup>29</sup> *FCC Communications Marketplace Report*, GN Docket No. 22-203 at ¶292 and Appendix E (rel. Dec. 30, 2022), <https://docs.fcc.gov/public/attachments/FCC-22-103A1.pdf> (*FCC Communications Marketplace Report*).

<sup>30</sup> *Id.*, Appendix E at 3.

<sup>31</sup> *Id.*

**C. Despite federal deregulation, local governments retain consumer protection authority.**

As local franchising authorities (“LFAs”), local governments are co-regulators, with the Federal Communications Commission, of cable operators, part of the carefully structured dualism embodied in the Cable Act. As regulators, localities see up close the challenging business practices of many in the industry. LFAs also receive complaints and conduct reviews of the industry on the local level.

At one time, LFAs retained the ability to regulate cable prices, but under the Cable Act and Commission rules, rates cannot be regulated if they are subject to effective competition.<sup>32</sup> Commission decisions defining effective competition have virtually eliminated local rate regulation.<sup>33</sup> In fact, the Commission reported, as of January 1, 2022, the Media Bureau had certified only one cable community in the United States as not subject to effective competition.<sup>34</sup> However, local governments retain authority to adopt customer service requirements as part of their cable franchise authority, 47 U.S.C. § 552(a), and retain their police power to regulate consumer protection, 47 U.S.C. § 552(d).

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<sup>32</sup> 47 U.S.C. § 543(a)(2); 47 CFR § 76.905(a).

<sup>33</sup> In 2015, based on the availability of DBS services, the Commission adopted a rebuttable presumption that cable operators are subject to “competing provider effective competition,” unless a showing is made to the contrary. *Amendment to the Commission’s Rules Concerning Effective Competition, Implementation of Section 111 of the STELA Reauthorization Act*, Report and Order, MB Docket No. 15-53, 30 FCC Rcd. 6574 (2015). In 2019, the Commission found, for the first time, that a cable operator was subject to effective competition from a local exchange carrier (LEC)-affiliated online video distributor (OVD). *Petition for Determination of Effective Competition in 32 Massachusetts Communities and Kauai, HI (HI0011)*, Memorandum Opinion and Order, MB Docket No. 18-283, 34 FCC Rcd. 10229 (2019).

<sup>34</sup> *FCC Communications Marketplace Report*, Appendix E at 4.

The Commission seeks comment on the routine practices of LFAs.<sup>35</sup> 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 a publicly available rate card or schedule outlining current prices.<sup>36</sup> Further, 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 times to repair calls, and procedures for unresolved complaints, and collect data regarding cable operator responses to customers.<sup>37</sup>

Several samples of notifications to Local Government Commenters are included in Appendix B. The advanced disclosures of new or increasing cable prices can assist the public and journalists covering price increases.<sup>38</sup> On the other hand, the lack of uniformity across notifications from various companies and even from the same company over time can make it difficult for regulators, consumers or journalists to track changes over time.

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<sup>35</sup> *NPRM* at ¶ 5.

<sup>36</sup> *See, e.g.*, 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>; 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>.

<sup>37</sup> *Id.*

<sup>38</sup> *See, e.g.*, Jon Brodtkin, Ars Technica, *Comcast's sneaky Broadcast TV fee hits \$27, making a mockery of advertised rates*, (Nov. 28, 2022), <https://arstechnica.com/tech-policy/2022/11/comcasts-sneaky-broadcast-tv-fee-hits-27-making-a-mockery-of-advertised-rates/>.

### **III. THE COMMISSION SHOULD ADOPT CLEAR, ALL-IN PRICING FOR ALL COSTS OF DOING BUSINESS.**

Local Government Commenters believe 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. Specifically, Local Government Commenters recommend the Commission adopt a robust “all-in” price disclosure requirement that includes the full amount for video programming service the cable operator or satellite provider charges (or intends to charge) the customer – the total amount the customer must pay to obtain the service – and permits cable and DBS operators to separately itemize the elements that compose that aggregate cost: all components including broadcast retransmission consent, regional sports programming, and other programming-related fees and cable franchise fees.

Cable franchise fees are provided to local governments as “street rent” for the use of the rights-of-way. These are costs of doing business just as are the costs of acquiring broadcast programming and infrastructure to serve their consumers. Local Government Commenters believe—as recommended by Next Century Cities and Consumer Reports in the broadband consumer label docket<sup>39</sup>—that taxes could be included in cable operator disclosures; but even if the Commission does not require the inclusion of taxes, franchise fees are not taxes.

The broadband consumer label also offers helpful guidance for the Commission in adopting a consistent and clear obligation for cable services and DBS. For example, the broadband consumer label requires the following:

- Service plan name

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<sup>39</sup> *Empowering Broadband Consumers Through Transparency*, Reply Comments of Next Century Cities and Consumer Reports, CG Docket No. 22-2, at 3 (filed March 16, 2023).

- Base monthly price for a stand-alone broadband service offering and any other monthly charges or one-time fees, with links to other listings of bundled rates;
- Whether a monthly rate is an introductory rate and the rate that applies following any introductory rate; and
- The length of any rate dependent upon a consumer's commitment to a particular contract term.<sup>40</sup>

The mandated cable operator and DBS all-in disclosure should similarly include these factors. In particular, cable video programming is often offered via an introductory rate that increases over time, or a particular bundle is offered only when the consumer commits to a service contract of a particular length. The Commission should clarify that the provider may not violate these disclosure terms. In some cases, providers have claimed that some fees can be changed regardless of a fixed price guarantee.

Local governments often require advance notice of changes to existing subscribers. This is an important consumer protection because existing subscribers can re-evaluate whether they wish to continue with a service at a new, higher price. Local Government Commenters recommend that the all-in price disclosure mandate apply not only when a consumer initially subscribes, but also on any notice that a price will change for existing subscribers. Such 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.

#### **IV. CONCLUSION**

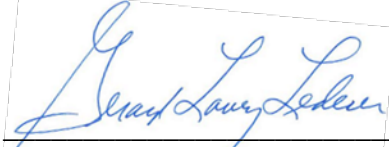
Local Government Commenters congratulate the Commission for proposing this important consumer protection that will allow consumers to make fully-informed decisions and promote

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<sup>40</sup> *Broadband Label Order* at ¶¶22-36.

competition. We stand ready to work with the Commission to develop the most effective proposal to this end.

Respectfully submitted,

A handwritten signature in blue ink, reading "Gerard Lavery Lederer", enclosed in a rectangular box.

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*Counsel for Named Local Governments*

July 31, 2023

## APPENDIX A

ANALYSIS OF RATE CHANGES

COMCAST MONTHLY RATES																								
Year	Baltimore County, MD						Metropolitan Area Communications Commission, OR [A]						Seattle, WA						Boston, MA					
	Limited Basic	Broadcast Fee	Expanded Basic	Regional Sports Fee	Converter (TV Box) + Remote	Total	Limited Basic	Broadcast Fee	Expanded Basic	Regional Sports Fee	Converter (TV Box) + Remote	Total	Limited Basic	Broadcast Fee	Expanded Basic	Regional Sports Fee	Converter (TV Box) + Remote	Total	Limited Basic	Broadcast Fee	Expanded Basic	Regional Sports Fee	Converter (TV Box) + Remote	Total
2016	\$17.95	\$3.75	\$47.00	\$3.00	\$2.68	\$74.38	\$23.69	\$3.75	\$44.65	\$2.00	\$2.65	\$76.74	\$16.40	\$5.00	\$39.95	\$3.00	\$2.65	\$67.00	\$16.00	\$5.00	\$53.95	\$3.00	\$1.00	\$78.95
2017	\$17.95	\$5.50	\$45.00	\$5.00	\$2.68	\$76.13	\$24.49	\$6.50	\$43.85	\$4.50	\$2.65	\$81.99	\$16.40	\$7.00	\$39.95	\$5.00	\$2.65	\$71.00	\$17.00	\$7.00	\$52.95	\$5.00	\$1.00	\$82.95
2018	\$18.95	\$6.00	\$43.00	\$6.75	\$2.68	\$77.38	\$26.75	\$8.00	\$41.59	\$6.50	\$2.65	\$85.49	\$16.80	\$7.00	\$39.95	\$5.00	\$2.65	\$71.40	\$18.00	\$8.00	\$51.95	\$6.75	\$2.50	\$87.20
2019	\$20.95	\$6.75	\$46.32	\$8.25	\$2.68	\$84.95	\$28.75	\$10.00	\$39.59	\$6.65	\$2.65	\$87.64	\$17.25	\$10.00	\$39.95	\$6.50	\$2.65	\$76.35	\$19.00	\$9.75	\$48.27	\$8.25	\$2.50	\$87.77
2020	\$20.95	\$11.60	\$46.32	\$8.75	\$5.00	\$92.62	\$28.75	\$14.95	\$37.24	\$7.00	\$5.00	\$92.94	\$17.25	\$14.95	\$39.95	\$6.90	\$5.00	\$84.05	\$19.00	\$14.10	\$48.27	\$8.75	\$4.60	\$94.72
2021	\$20.95	\$16.10	\$46.32	\$10.75	\$7.50	\$101.62	\$28.75	\$19.45	\$37.24	\$7.50	\$5.00	\$97.94	\$17.25	\$19.45	\$39.95	\$7.55	\$5.00	\$89.20	\$19.00	\$18.60	\$48.27	\$10.75	\$4.60	\$101.22
2022	\$20.95	\$17.00	\$46.32	\$11.85	\$8.50	\$104.62	\$28.75	\$22.65	\$32.93	\$7.75	\$7.50	\$99.58	\$17.25	\$22.00	\$70.00	\$10.00	\$7.50	\$126.75	\$20.00	\$22.25	\$47.27	\$14.10	\$8.50	\$112.12
2023	\$20.95	\$21.70	\$40.73	\$12.35	\$10.00	\$105.73	\$28.75	\$28.95	\$22.93	\$8.00	\$9.00	\$97.63	\$17.25	\$26.85	\$50.00	\$10.35	\$9.00	\$113.45	\$22.00	\$24.70	\$37.50	\$14.45	\$10.00	\$108.65

Year	Baltimore County, MD						Metropolitan Area Communications Commission, OR [A]						Seattle, WA						Boston, MA					
	Total Fee Cost [B]	% Increase in Total Cost	Cumulative Increase	Increase in Fees	Annual Cost of Fee Increase [C]	Annual Cumulative Increase in Dollars	Total Fee Cost [B]	% Increase in Total Cost	Cumulative Increase	Increase in Fees	Annual Cost of Fee Increase [C]	Annual Cumulative Increase in Dollars	Total Fee Cost [B]	% Increase in Total Cost	Cumulative Increase	Increase in Fees	Annual Cost of Fee Increase [C]	Annual Cumulative Increase in Dollars	Total Fee Cost [B]	% Increase in Total Cost	Cumulative Increase	Increase in Fees	Annual Cost of Fee Increase [C]	Annual Cumulative Increase in Dollars
2020	\$20.35						\$21.95						\$21.85						\$22.85					
2021	\$26.85	31.94%		\$6.50	\$78.00		\$26.95	22.78%		\$5.00	\$60.00		\$27.00	23.57%		\$5.15	\$61.80		\$29.35	28.45%		\$6.50	\$78.00	
2022	\$28.85	7.45%	41.77%	\$2.00	\$24.00	\$102.00	\$30.40	12.80%	38.50%	\$3.45	\$41.40	\$101.40	\$32.00	18.52%	46.45%	\$5.00	\$60.00	\$121.80	\$36.35	23.85%	59.08%	\$7.00	\$84.00	\$162.00
2023	\$34.05	18.02%	71.33%	\$5.20	\$62.40	\$164.40	\$36.95	21.55%	68.34%	\$6.55	\$78.60	\$180.00	\$37.20	16.25%	70.25%	\$5.20	\$62.40	\$184.20	\$39.15	7.70%	71.33%	\$2.80	\$33.60	\$195.60

[A] Multiple LFAs. Comcast rates of "West Suburban".

[B] Broadcast + Sport fees

[C] Increase in fees annualized

Limited Basic - Tier one level service, sometimes referred to as B1.

Expanded - Second tier of video services, sometime referred to as B2. Also may include digital service. Comcast dropped "Expanded" in 2022, 2023 and now has "Popular TV" which is a bundle of Limited Basic, Sports & News, Kids & Family, Entertainment, Streampix, HD Programming, and 20 hours DVR Service

01/2019 rate went \$6.30. 05/2019 rate increased to \$6.70



## **APPENDIX B**



July 7, 2023

Re: Charter Communications – Upcoming Changes

Dear Municipal Official:

We value our customers and are committed to providing them with the latest products and technology, and we work hard to keep prices as low as possible. Despite our best efforts, rising costs including programming fees charged by TV networks have impacted our pricing. Customers are being notified via bill message regarding the following price changes that will take effect on or after August 9, 2023. Please note for customers who may be paying a promotional price, the retail price and autopay discount does not take effect until the end of the promotional period.

Services/Products	Change
Broadcast TV Surcharge	Will increase by \$1.00/month.
Broadcast TV Surcharge for Spectrum TV Choice and Spectrum TV Stream	Will increase by \$2.20/month.
Spectrum Sports Programming Fee (Legacy Time Warner Cable Plans Only)	Will increase by \$2.00/month.
Spectrum Lifestyle Plan, Silver, and Gold	Will increase by \$5.00/month.
Spectrum TV Choice 10 <ul style="list-style-type: none"> <li>Impacted customers are eligible to call to add 5 additional channels to their lineup starting 7/12/2023; On or after 8/9/2023, customers can visit <a href="https://Spectrum.net/YourChoice">Spectrum.net/YourChoice</a> to choose channels</li> <li>Customers currently paying \$34.99 per month will only increase \$5.00 to \$39.99 per month with a \$10.00 credit for 12 months</li> <li>Customers currently paying \$39.99 per month will only increase \$5.00 to \$44.99 per month with a \$5.00 credit for 12 months</li> </ul>	Depending on a customer's subscription, will increase by either \$10.00/month or \$15.00/month.
Spectrum TV Choice 15	Will increase by \$5.00/month.
Spectrum TV Stream	Will increase by \$5.00/month.
Spectrum Sports Pack	Will increase by \$2.00/month.
Spectrum Sports View	Will increase by \$1.00/month.
Spectrum Bundled Voice <ul style="list-style-type: none"> <li>Only impacts customers that are not already at current \$19.99 rate</li> </ul>	Will increase by \$5.00/month.

We remain committed to providing excellent communications and entertainment services in your community. If you have any questions, please feel free to contact me at [REDACTED].

Wed 6/29/2022

Dear Municipal Official:

This is to notify you of an upcoming Fios® TV pricing change.

On or after October 1, 2022, the Fios TV Broadcast Fee will increase by \$5 per month. This increase helps cover a portion of the costs local TV stations charge Verizon for their programming and is subject to change.

Verizon is notifying subscribers of the above by bill message, a sample of which is attached.

We realize that our customers have other alternatives for entertainment and our goal is to offer the best choice and value in the industry. Verizon appreciates the opportunity to conduct business in your community. Should you or your staff have any questions, please contact me.

Kind regards,  
[REDACTED]  
Verizon Consumer Group

*Sample bill message:*

The Verizon logo, consisting of the word "verizon" in a bold, lowercase, sans-serif font, followed by a red checkmark symbol.

**Fios® TV Broadcast Fee**

Effective on or after 60 days from the date of this message, you will receive a \$5 increase in your monthly Fios TV Broadcast Fee. This increase helps cover a portion of the costs local TV stations charge Verizon for their programming and is subject to change.

Tue 8/2/2022

Dear Municipal Official:

This is to notify you of an upcoming Fios® TV pricing change.

On or after January 1, 2023, the Fios TV Broadcast Fee for business customers will increase to \$11.49. This increase helps cover a portion of the costs local TV stations charge Verizon for their programming and is subject to change.

Verizon is notifying subscribers of the above by bill message, a sample of which is attached.

We realize that our customers have other alternatives for entertainment and our goal is to offer the best choice and value in the industry. Verizon appreciates the opportunity to conduct business in your community. Should you or your staff have any questions, please contact me.

Kind regards,  
[REDACTED]  
Verizon Consumer Group

*Sample bill message:*

The Verizon logo, consisting of the word "verizon" in a bold, lowercase, sans-serif font, followed by a red checkmark symbol.

**Fios® TV Broadcast Fee**

Effective on or after 60 days from the date of this message, you will receive a Fios TV Broadcast Fee of \$11.49/month. If you currently have a Fios TV Broadcast Fee on your bill, it will increase to \$11.49/month. This helps cover a portion of the costs local TV stations charge Verizon for their programming and is subject to change.



November 15, 2022

[Redacted]  
[Redacted]  
Fairfax County  
[Redacted]  
Fairfax, VA 22035

*RE: Important Information—Price Changes*

[Redacted]

At Comcast, we are always committed to delivering the entertainment and services that matter most to our customers in Fairfax County, as well as exciting experiences they won't find anywhere else. We are also focused on making our network stronger in order to meet our customers' current needs and future demands. As we continue to invest in our network, products, and services, the cost of doing business rises. Rising programming costs, most notably for broadcast TV and sports, continue to be the biggest factors driving price increases. While we absorb some of these costs, these fee increases affect service pricing. As a result, starting December 20, 2022, prices for certain services and fees will be increasing, including the Broadcast TV Fee and the Regional Sports Network Fee.

Enclosed are the notices customers will receive within their bill starting November 20, 2022. We know you may have questions about these changes. If I can be of any further assistance, please contact me at (410) 960-1566.

Sincerely,

[Redacted Signature]

Enclosures: Customer Notices

# Important information regarding your Xfinity services and pricing

Effective December 20, 2022

<b>Xfinity TV</b>		
	Current	New
Broadcast TV Fee	\$21.00	\$25.40
Regional Sports Fee	\$11.85	\$12.45
Choice TV Select	\$32.50	\$37.50
Choice TV Select - with TV Box	\$41.00	\$47.50
Service to Additional TV with TV Adapter	\$8.50	\$10.00
TV Box and Remote	\$8.50	\$10.00
HD TV Box and Remote Limited Basic	\$8.50	\$10.00

<b>Pay-Per-View and On Demand Subscription Services</b>		
	Current	New
Acorn TV On Demand	\$5.99	\$6.99

<b>Installation</b>		
	Current	New
In-Home Service Visit - After Initial Installation of Service	\$70.00	\$100.00

<b>Xfinity Internet</b>		
	Current	New
Modem Rental	\$14.00	\$15.00

**Important Information - Price Changes**  
**December 20, 2022**  
**Additional Information Continued**

<b>SERVICES NO LONGER AVAILABLE FOR NEW SUBSCRIPTIONS</b>	Current	New
DIGITAL PREMIER TIER	\$ 64.95	\$ 67.00
PERFORMANCE INTERNET & VOICE	\$ 109.90	\$ 111.95
DOUBLE PLAY BUNDLE WITH BLAST! INTERNET & VOICE	\$ 129.90	\$ 131.95
DIGITAL PREMIER PACKAGE WITH 5 PREMIUM CHANNELS	\$ 132.22	\$ 134.27
EXTRA XF DOUBLE PLAY	\$ 132.22	\$ 134.27
DIGITAL PREMIER WITH SPORTS AND 4 PREMIUM CHANNELS	\$ 134.17	\$ 136.22
DIGITAL PREMIER WITH SPORTS AND 5 PREMIUM CHANNELS	\$ 136.17	\$ 138.22

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

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

**REPLY COMMENTS OF THE TEXAS COALITION OF CITIES FOR UTILITY  
ISSUES; CITY OF BOSTON, MA; MT. HOOD CABLE REGULATORY COMMISSION;  
FAIRFAX COUNTY, VA; AND THE NATIONAL ASSOCIATION OF  
TELECOMMUNICATIONS OFFICERS AND ADVISORS**

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*Counsel for Named Local Governments*

August 29, 2023

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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. Within 24 hours of signing up, a provider must send a written disclosure of that information, and the law offers a customer the right to cancel within 24 hours of receiving the written notice without a penalty.<sup>1</sup> But 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.

Local Government Commenters propose the following:

- Companies must advertise the all-in price, *i.e.*, the total amount consumers will pay, including all programming, equipment, franchise fees, and taxes, but excluding local sales taxes.
- Advertising should include accurate information regarding consumer rights pursuant to the Television Viewer Protection Act (TVPA), including the opportunity to cancel without penalty within 24 hours of receiving the final price.
- In a case where the video programming is bundled with a non-programming product, this obligation will be met if either: 1) the bundle is advertised via an all-in price for the bundle, or 2) the provider breaks out the all-in price for video programming only.
- Any line item that is not optional should be included in the all-in price and any optional costs must be clearly disclosed in advertising.

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<sup>1</sup> 47 U.S.C. § 562(a). The TVPA also provides the right to a clear breakdown of any charges for the covered service, including the termination date of the contract and any promotional discount, and protections against paying for equipment a customer does not use or need. *Id.*, § 562(b)-(c).

- 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.<sup>2</sup>
- Local service and rate information should be available on operator web sites.

**I. Action is needed.**

All commenters agree consumers are entitled to clarity. Consumer advocates, local and state governments and the National Association of Broadcasters support Commission action.<sup>3</sup> MVPDs agree consumers should receive accurate information. “NTCA’s members agree that consumers are entitled to clear, concise, and easily digestible information about their video programming services.”<sup>4</sup> “DIRECTV supports the Commission’s twin goals here: promoting transparency and preventing companies from blaming the government for fees not imposed by the government.”<sup>5</sup> “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.”<sup>6</sup>

**A. Consumers are confused.**

The record shows that state and local governments receive complaints from confused consumers or consumers pressed by rising expenses to reduce their bills. The City of Boston’s Broadband & Cable Office fields over 2000 calls, emails, and 311 reports annually, ranging from downed lines, poles, billing and service issues, of which 20-25 percent are from seniors or those assisting an elderly family member/neighbor and residents on fixed incomes, looking for ways to

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<sup>2</sup> 47 U.S.C. § 562(a)(1), (b)(3).

<sup>3</sup> City of Oklahoma et al. at 1-2; Consumer Reports at 14-15; Truth in Advertising at 2-3, 5-7.

<sup>4</sup> NCTA at 2 (quotations omitted); see also NAB at 1 (“NAB agrees with the FCC’s proposal and urges the Commission to require cable and DBS providers to provide an “all-in” price on promotional materials and bills.”)

<sup>5</sup> DIRECTV at 1.

<sup>6</sup> NTCA at 2.

lower their monthly bills. 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.”<sup>7</sup> The City of Seattle explains that ten years of tracking shows “the cable industry practice of using ‘broadcast TV’ and ‘regional sports’ to obfuscate the true price of cable TV services. ... [T]he cable industry has taken what are nondiscretionary programming costs to consumers, that used to be part of the basic programming price for buying their services, added a designation of ‘fees’, and placed them away from the now artificially low ‘price’ on separate parts of advertising and bills.”<sup>8</sup> The City of Minneapolis reports it has received 83 questions so far this year from consumers confused by these practices, the Northwest Suburbs Cable Commission and the Metropolitan Area Communications Commission receive many complaints every year from cable consumers confused by charges on their bills.<sup>9</sup> Connecticut’s State Office of Broadband reports receiving many complaints.<sup>10</sup> NAB also correctly contends that segregating out these charges lead consumers to believe these cost inputs are different from other costs incurred by MVPDs.<sup>11</sup>

Consumer Reports documents a secret shopper study showing consumers received inaccurate or confusing charge-related information as they attempted to sign up for MVPD programming.<sup>12</sup> Companies, most importantly, did not acknowledge that broadcast and regional sports charges were broken out in line items apart from the base service price solely at the

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<sup>7</sup> City of Oklahoma et al. at 1-2.

<sup>8</sup> City of Seattle at 1.

<sup>9</sup> City of Oklahoma et al. at 5, 7.

<sup>10</sup> Connecticut at 6.

<sup>11</sup> NAB at 5.

<sup>12</sup> Consumer Reports 14-15.

election of the cable operator.<sup>13</sup> Consumer Reports' surveys demonstrate that nearly 6 in 10 (59 percent) Americans who encountered unexpected or hidden charges or fees while using telecom services in the past two years say the charges caused them to exceed their budgets.<sup>14</sup>

Increases in charges like broadcast and regional sports charges continue even though consumers believe they are protected by "fixed-rate" contracts.<sup>15</sup> Truth in Advertising's comment is replete with consumer confusion and concern when faced with advertising for bundled products, video and internet offerings.<sup>16</sup> The City of Seattle documents the confusing advertising on web sites for services offered in its community.<sup>17</sup> Consumers should not have to scrutinize the fine print to figure out what they will be paying for a service.<sup>18</sup>

#### **B. Economic theory and common sense show a need for the proposed rules.**

Companies claim that robust competition increases their incentives for clear pricing,<sup>19</sup> but the literature does not accord with their claims. As Local Government Commenters explained in our opening comments, and as the evidence of consumer confusion and harm submitted into the record demonstrates, competition has not resolved the issue. Moreover, as the Consumer Finance Protection Bureau has pointed out, improperly disclosed charges and fees undermine competition. They make it harder for consumers to price shop for products and thereby "undermine competition" and create "a serious ripple effect on people's finances," causing

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<sup>13</sup> *Id.*

<sup>14</sup> Consumer Reports at 5.

<sup>15</sup> Consumer Reports at 5; City of Seattle at 6 ("providers are able to increase the fees over time, while keeping the promotional or minimum-term price guarantee the same").

<sup>16</sup> Truth in Advertising at 2-3, 5-8.

<sup>17</sup> City of Seattle, attachments.

<sup>18</sup> City of Oklahoma et al. at 6.

<sup>19</sup> NCTA at 4 (NCTA states "consumers today can access linear and on-demand video programming from a wide variety of sources. In this robust environment, cable operators must compete fiercely for consumers' eyeballs."; ACA at 9, 11 (no indication of any gap in transparency that the proposed "all-in" price requirement is necessary to fill).

consumers to experience greater difficulty meeting basic needs, such as rent, utilities and food.<sup>20</sup> According to one author, unregulated charges exacerbate wealth inequality, resulting in a massive transfer of wealth from the many to the few – to a few large wealthy corporations.<sup>21</sup>

Competition will function better if customers know what they must pay, and what they are paying for, when they shop in the marketplace.

## **II. The Commission should adopt an all-in marketing disclosure rule.**

### **A. The rule should require clarity in advertising.**

Taking into account the record, the needs of consumers and of competition, Local Government Commenters propose the following formulation of the “all-in” rule:

- Companies must advertise the all-in price, *i.e.*, the total amount consumers will pay, including all programming, equipment, franchise fees, and taxes, but excluding local sales taxes.
- Advertising should include accurate information regarding consumer rights pursuant to the Television Viewer Protection Act, including the opportunity to cancel without penalty within 24 hours of receiving the final price.
- In a case where the video programming is bundled with a non-programming product, this obligation will be met if either: 1) the bundle is advertised via an all-in price for the bundle, or 2) the provider breaks out the all-in price for video programming only.

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<sup>20</sup> Truth in Advertising at 4 (citing The Hidden Cost of Junk Fees, Consumer Financial Protection Bureau, Feb. 2, 2022,

<https://www.consumerfinance.gov/about-us/blog/hidden-cost-junk-fees/>.)

<sup>21</sup> Devin Fergus, LAND OF THE FEE: HIDDEN COSTS AND THE DECLINE OF THE AMERICAN MIDDLE CLASS (Oxford Univ. Press 2019).

- Any line-item that is not optional should be included in the all-in price and any optional costs must be clearly disclosed in advertising.
- 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.<sup>22</sup>
- Local service and rate information should be available on operator web sites.<sup>23</sup>

Local Government Commenters agree with Consumer Reports that the monthly lease or cost of any device—such as a DVR or set-top box—must be included in the all-in price.<sup>24</sup> Further, as in the proposed formulation, optional charges for optional products or services should be disclosed.<sup>25</sup> Local Government Commenters’ proposed formulation aligns with Connecticut’s suggestion that the rules should not be exempted if the cable services are bundled with phone or internet service,<sup>26</sup> and addresses Verizon’s concerns with respect to the display of pricing for bundled services<sup>27</sup> by offering the provider a choice and also offering the consumer clear information. The Commission should make clear, however, that the advertisement must accurately disclose what is in the advertised bundle and how any bundle discount applies.

Requiring clear explanations with respect to “teaser” rates will reduce consumer confusion, similar to the kind of problems the Commission has addressed with bill shock policies. 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.

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<sup>22</sup> 47 U.S.C. § 562(a)(1), (b)(3).

<sup>23</sup> *Accord* City of Seattle at 7.

<sup>24</sup> Consumer Reports at 10-11.

<sup>25</sup> Verizon at 10.

<sup>26</sup> Connecticut at 5.

<sup>27</sup> Verizon at 11-13.

The Commission should permit the exclusion of sales taxes because sales taxes are effectively collected on behalf of the government,<sup>28</sup> as opposed to “other fees that are best characterized as ‘regulatory pass-through fees,’” as Consumer Reports explains.<sup>29</sup> Just as the Fifth Circuit ruled in *City of Dallas v. FCC*, any fee or tax that is legally imposed on the operator (whether generally applicable or not) is an expense of the operator not deductible from gross revenues.<sup>30</sup> Therefore, the operator must recover that expense through its retail (*i.e.*, all-in) price. Those taxes and fees therefore should be included in the all-in price.

The City of Seattle demonstrates effectively the problem with locating clear prices online. For this reason its suggestion of a mandatory web disclosure is a good one.<sup>31</sup> Local Government Commenters support the Connecticut Office of State Broadband recommendation that the Commission codify the new rules at 47 C.F.R. § 76.309 because many state laws and franchise agreements reference those rules.<sup>32</sup>

**B. The industry’s objections and proposed exemptions should be rejected.**

Industry claims a wide variety of reasons why the proposed rule should not be adopted or, alternatively, proposes exemptions and grandfathering that would negate most of the positive impact of the proposed rule. These objections and exemptions are unsound.

The industry is attempting to “have its cake and eat it, too,” by protesting that a rule requiring accurate advertising would prohibit certain kinds of advertising, such as national

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<sup>28</sup> 16 McQuillin Mun. Corp. § 44:262 (3d ed.) (“Under some laws, a city sales tax is on the buyer, and the seller is merely the collecting agent of the city....”).

<sup>29</sup> Consumer Reports at 7.

<sup>30</sup> *City of Dallas, Tex. v. FCC*, 118 F.3d 393, 398 (5th Cir. 1997) (“[E]ven if franchise fees were treated as a tax, they would still be treated as a normal expense of doing business unless the tax was imposed directly upon the subscriber. Courts have held that gross revenue generally includes revenues collected for taxes.”)

<sup>31</sup> *City of Seattle* at 7.

<sup>32</sup> Connecticut at 4.



advertising. Typically, businesses must choose between offering a single price nationwide and absorbing the differences in cost that might impact relative profitability for various consumers. Similarly, most businesses must set pricing and promotional deals based on their projections for the cost of their inputs. But as the City of Seattle explains, cable operators know their local broadcast and regional sports costs are “*among the fastest growing components of our programming costs.*”<sup>33</sup> There is no reason to permit cable operators and DBS operators to mislead consumers in order to avoid a burden faced by all other businesses.

It is up to cable and DBS providers to decide whether they want to offer term contracts with price guarantees. But if they do, the all-in contract price must be the price for the entire term of the contract. If companies want the flexibility to change that subscriber’s price at any time, they can simply not offer the price guarantee. That is what the streaming services typically do: there is no fixed-term contract, and price increases are implemented with reasonable notice. Cable operators can take either course – fixed-price contracts or increases at will – but they cannot pretend to be offering the former when they are really providing the latter.

For similar reasons, residents of multi-dwelling units (MDUs) can often be the most vulnerable consumers and should not be excluded from the proposed rule’s protections. The Commission should reject ACA’s and NCTA’s argument that their special pricing packages would exempt them from this important consumer protection rule.<sup>34</sup>

Local Government Commenters oppose categorically DIRECTV’s proposal to exclude all national advertising campaigns,<sup>35</sup> which would hamstring the rule. ACA cites similar

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<sup>33</sup> City of Seattle at 6.

<sup>34</sup> ACA at 14; NCTA at 8.

<sup>35</sup> DIRECTV at 16.

concerns as to the accuracy of marketing in regions while maintaining accuracy.<sup>36</sup> DIRECTV states it might be impossible or impractical to comply with new regulations for things like sponsored web search results, web banners and flash ads.<sup>37</sup> Such space-constrained advertisements invariably link to a web page with more details. As Consumer Reports explains, however, generating a single price for video service that accounts for company-imposed charges should not be as complex as creating a Broadband Nutrition Label, which the Commission successfully adopted.<sup>38</sup>

DIRECTV's proposal to require instead that that "bills and advertisements would have to be accurate" and "the price of related programming fees would have to be disclosed clearly and conspicuously and in close proximity to the price" is inadequate.<sup>39</sup> Not only is the proposed rule insufficient to protect consumers, but it is inadequate for another reason. As the NAB explains,<sup>40</sup> and as the MVPD industry acknowledges,<sup>41</sup> broadcast and regional sports charges often do not actually represent the costs incurred by the cable operator. Unless the industry is willing to support the robust accuracy controls put forward by the Connecticut Office of Consumer Counsel, Office of State Broadband,<sup>42</sup> mere proposals for generally "accurate" advertising and

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<sup>36</sup> ACA at 12-13. DIRECTV similarly states that it advertises nationally but charges varying regional sports costs, depending on the market. DIRECTV at 11.

<sup>37</sup> DIRECTV at 16.

<sup>38</sup> Consumer Reports at 12.

<sup>39</sup> DIRECTV at 2.

<sup>40</sup> NAB at 3-4 & n.7.

<sup>41</sup> NTCA at 3 ("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' ....").

<sup>42</sup> Connecticut Office of State Broadband at 2-3 (providers "should be required to attest in writing – both to the FCC and the state or local authority that issues the provider's license to provide service – what specific 'costs' these surcharges purport to cover and be subject to review and audit by the Commission or such local authority."); *Id.* at 6 (the Commission should "do spot audits of the veracity and accuracy of the 'broadcast TV fee' being assessed in a particular market or to allow state utility commissions or other such agencies to conduct such audits.").

line items fall short. As they are currently employed in the industry, these charges do not correspond to actual costs.

Local Government Commenters further caution the Commission from adopting a wholesale exemption for all enterprise customers. The Commission should be clear that small businesses are protected in the same way as household consumers under the proposed rule.<sup>43</sup>

The Commission should reject the MVPD industry arguments that they should not be subject to the proposed rules because streaming services would not be required to offer an all-in price, limiting the utility for consumers who are comparison shopping.<sup>44</sup> Improving a consumer's understanding of what she is purchasing for one service does not make it more difficult for her to compare with other products. As Verizon states, most streaming services offer very different products from cable and DBS providers.<sup>45</sup>

Moreover, DIRECTV's example shows exactly why an all-in price will aid consumers. DIRECTV offers an example where three competing companies might offer different numbers of channels at varying prices, noting that a single price could yield 165 channels from DIRECTV, 120 channels from DISH, and 125 channels from Xfinity, each with its own mix of programming.<sup>46</sup> But this scenario is exactly the point: with all-in pricing, a consumer will better be able to compare a 190 channel package to a 125 channel package. If a consumer believes she must only pay \$80 for 125 channels, only to discover the actual price is \$125 when she receives a bill, she might inadvertently choose a less cost-effective package given her needs.

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<sup>43</sup> *Id.*

<sup>44</sup> ACA at 16.

<sup>45</sup> Verizon at 7.

<sup>46</sup> DIRECTV at 9-10.

ACA argues that most of its members do not find video-only services profitable and they may react by advertising fewer video-only offerings if they must comply with the Commission's proposed rule.<sup>47</sup> As long as the Commission applies the rule to bundled services, the ACA contention that its members would stop advertising or offering video services seems to be an empty threat.<sup>48</sup>

### **C. Itemization in advertising and bills**

Local Government Commenters emphasize that providers should clearly identify the all-in price in marketing and on bills, even if the Commission elects to permit providers to break out costs on invoices as they request.<sup>49</sup> Contrary to Verizon's contention, a prominent disclosure is needed to clarify for confused consumers the difference between the most important, all-in price, and the subcategories of charges that contribute to the overall price.<sup>50</sup>

Local Government Commenters note that cable operators are permitted, by law, to break out franchise fees, PEG costs and taxes on their bills.<sup>51</sup> But, as Consumer Reports explains, the law does not make any provision for mandatory disclosure of other kinds of charges or costs.<sup>52</sup> Consumer Reports makes a valid point that the Commission helped create the problem we see today with misleading fees when it interpreted Section 622 to bless the separate itemization of non-governmental fees.<sup>53</sup>

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<sup>47</sup> ACA at 16.

<sup>48</sup> ACA at 16-17.

<sup>49</sup> See ACA at 17; NCTA at 2; NTCA at 2.

<sup>50</sup> Verizon at 2.

<sup>51</sup> 47 U.S.C. § 542(c), (f).

<sup>52</sup> Consumer Reports at 7.

<sup>53</sup> Consumer Reports at 5-6 (citing 8 FCC Rcd. at 5967, n.1402).

To address this problem, at a minimum the Commission should ensure that the labels for any charges that are not sales tax, but are broken out, are not misleading on consumer bills. Using the term “fee” (particularly given that the Cable Act uses the term “franchise fee” for the cost of using the public right-of-way) suggests a government imprimatur for these costs, when they are not governmental at all.<sup>54</sup> Perhaps the Commission should require a disclosure regarding any additional charge beyond the legally specified line items, making clear that such charges are not government-imposed. Or the Commission could prohibit the term “fee” as misleading. The term “charge” might more accurately capture the true nature of these costs. Or the placement of the charges on an invoice could help indicate to consumers the true source of these costs. The City of Seattle demonstrates that some cable operators utilize a broadcast charge on their bills, but do not help their consumers understand the connection between this charge and access to broadcast channels on cable.<sup>55</sup>

The Commission should also clarify that the TVPA does not permit the kind of mischief put forward by NCTA in interpreting that law’s treatment of these junk fees. NCTA claims that the legislative history indicates programming charges “are separate from and in addition to the monthly service charge and must therefore be itemized on bills.”<sup>56</sup> It further alleges that “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 the opposite as part of an aggregated total.”<sup>57</sup> The legislative history says, when quoted in full: “Consumers often face

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<sup>54</sup> *Accord* DIRECTV at 2.

<sup>55</sup> City of Seattle at 5 (Comcast’s practice is to refer to the charges as “Service Fees” and place them at the end of the Regular Monthly Charges bill section, making no direct connection with them being video programming costs.)

<sup>56</sup> NCTA 6-7.

<sup>57</sup> *Id.* Section 47 U.S.C. § 562(b) states:

(b) Consumer rights in e-billing

If a provider of a covered service provides a bill to a consumer in an electronic format, the provider shall include in the bill—

unexpected and confusing fees when purchasing video programming. These *include* fees for broadcast TV, regional sports, set-top box, and HD technology.”<sup>58</sup> Nothing about this language sanctions excluding made-up charges from the retail price to mislead consumers about the impact on their wallets.

Further, as to the legislation requiring all charges and fees to be itemized, the TVPA does not excuse similarly misleading behavior. The statute’s definition of “covered service” informs the statute’s use of the term “the service itself” and refers to a multi-channel video programming distributor acting as such,<sup>59</sup> and an MVPD is defined broadly as a wide array of providers who offer “video programming” the definition of which, in turn, references programming comparable to that provided by a television broadcast station.<sup>60</sup> These references demonstrate the broad sweep of the statute and contradict arguments that charges which are intended to recover costs related to broadcast television should be excluded from the covered service’s price. Local Government Commenters also support the Commission’s legal analysis with regard to the meaning of the terms in the TVPA, particularly the Commission’s conclusion that listing below-the-line charges will confuse consumers by leading them to believe those charges are not for the core video programming service purchased.<sup>61</sup> Moreover, the legislative history is clear that Congress was concerned consumers were confused about the charges for cable and satellite

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(1) 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 ....

<sup>58</sup> H. Rept. 116-329 at 6 (emphasis added).

<sup>59</sup> 47 U.S.C. § 562(d)(3) states, “The term ‘covered service’ means service provided by a multichannel video programming distributor, to the extent such distributor is acting as a multichannel video programming distributor.”

<sup>60</sup> 47 U.S.C. §522(13), (20).

<sup>61</sup> Notice at ¶16.

service, exactly the concerns the Commission is addressing here.<sup>62</sup> To interpret the TVPA as NCTA proposes would be to turn the statute on its head.

These industry arguments reveal that Commission action is needed because they incorrectly claim current law permits, and even requires them, to mislead consumers as to the total amount and the components of the price consumers will pay for a service. The Commission should adopt, in this proceeding, a declaratory ruling clarifying the meaning of the TVPA in order to prevent any further misleading industry behavior.<sup>63</sup>

### **III. The Commission possesses legal authority to adopt the proposed rule.**

As we explain, the FCC should rely upon its combined authority under Sections 335, 552, 562 (the TVPA), and its ancillary authority under 154(i).<sup>64</sup> NCTA argues the Commission’s proposal exceeds its authority, while acknowledging the FCC has already imposed substantial transparency requirements pursuant to its existing authority. But nothing about the FCC’s current proposal exceeds its jurisdictional bounds. As NCTA admits, FCC rules already impose substantial transparency requirements.<sup>65</sup> DIRECTV argues the Commission cannot use Section 335 to regulate marketing by DBS providers because Section 335 confers authority on the Commission to impose “public interest or other requirements for providing video

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<sup>62</sup> *Id.*

<sup>63</sup> 5 U.S.C. 554(e).

<sup>64</sup> 47 U.S.C. §§ 335, 552, 562, 154(i).

<sup>65</sup> NCTA n.7. See, e.g., 47 C.F.R. § 76.1602(b) (requiring that all cable subscribers be given a notice at installation, at least once annually, and also upon request, that includes a description of the products and services offered; the prices, options, and conditions of the subscriptions to programming and other services; and billing and complaint procedures, among other information); 47 C.F.R. § 76.1603(b) (requiring at least 30 days written notice to subscribers of any changes in rates or services); 47 C.F.R. § 76.1619 (requiring that bills be clear, concise, understandable, and fully itemized). These requirements are typically enforced by cable franchising authorities, many of which also have adopted additional customer service requirements for video service. See 47 U.S.C. § 552(d)(2); Implementation of Section 8 of the Cable Television Consumer Protection and Competition Act of 1992—Consumer Protection and Customer Service, Report and Order, 8 FCC Rcd 2892, 2895-96 ¶ 12 (1993); *id.* at 2897-98 ¶ 20.

programming,”<sup>66</sup> but the TVPA provides the Commission the jurisdictional hook it needs when section 335 is combined with Sections 562 and 154(i).

The Commission’s primary focus should be in ensuring the efficacy of the TVPA to adopt these rules. “The Commission may exercise this ‘ancillary’ authority only if it demonstrates that its action ... is ‘reasonably ancillary to the ... effective performance of its statutorily mandated responsibilities.’” *Am. Library Ass’n v. FCC*, 406 F.3d 689, 692 (D.C. Cir. 2005). In this case, the combination of the authority under Section 562 (TVPA), Section 632 (cable) and Section 335 (DBS) can be combined with its ancillary 154(i) authority to adopt the rule. With respect to its DBS authority, the limiting principle for the use of 154(i) would be to ensure the TVPA is effective for services the Commission regulates under Section 335. The TVPA clearly reaches DBS programming. Authority under the combination of 562 and 335 is clear.

Specifically, the TVPA gives the Commission authority by adding to the Cable Act a requirement that consumers receive a disclosure “before” they subscribe to a service and offer an option to cancel a service within 24 hours. This focus on consumer decision-making with regard to prices of MVPD products and services evidences Congress’s concern that consumers would be misled as to the total cost of a product when signing up. 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. Moreover, this also indicates the Commission should consider billing disclosures as discussed above in Part II.C, because a consumer will have a harder time knowing if she has been misled

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<sup>66</sup> DIRECTV at 3-5.



under the TVPA if she does not receive information in her bill that is accurate and similarly labelled to the initial disclosure she received under the TVPA.

As NCTA says, the Commission should adopt the same rules for all providers under the TVPA.<sup>67</sup> Streaming services, as the commenters explain, offer different services under different regulations. However, consumers who are choosing among several streaming services and an MVPD package will want to know how much the total, final cost will be in order to determine which services, or combination of services, will best meet their needs and budget. The TVPA does not cover streaming services, so the Commission should act in accordance with its bounds in terms of regulated services. The Commission should act as expansively as possible, however, to protect consumers within its jurisdiction.

The Commission's broad authority to implement provisions of the Cable Act and the Communications Act have been upheld previously with respect to Section 621 of the Cable Act.<sup>68</sup> *Alliance for Community Media v. FCC*, 529 F.3d 763 (6th Cir. 2008). The same legal analysis applies here. The Commission must act consistently: it cannot assert broad Commission authority to interpret the Cable Act when it is acting favorably to the industry, but reject it when consumers will benefit.

NCTA argues that, since Congress required disclosure of the all-in price at the point of sale in the TVPA, a decision by the FCC to adopt a new rule governing marketing would be arbitrary and capricious.<sup>69</sup> NCTA claims that Congress's action to adopt the TVPA means the FCC does not have the authority to impose pricing transparency regulation.<sup>70</sup> But NCTA

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<sup>67</sup> NCTA at 7.

<sup>68</sup> 47 U.S.C. § 541.

<sup>69</sup> NCTA at 5.

<sup>70</sup> NCTA at 4-5.

overstates the effect of the Congressional decision to adopt the TVPA. The Supreme Court has not consistently applied a “rejected proposal” rule.<sup>71</sup>

NCTA is wrong that the Commission’s authority under Section 632(b)(3) is limited to existing subscribers and customers only, not potential subscribers,<sup>72</sup> because Section 632 says the Commission’s customer service standards must address communications between subscribers and cable operators “at minimum.”<sup>73</sup>

NCTA is wrong that the Commission’s proposed rules do not meet the *Zauderer* test because it would be unduly burdensome for national companies to conduct national marketing campaigns if their product prices vary by state or locality.<sup>74</sup> “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.” *American Meat Institute v. U.S. Dept. of Agriculture*, 760 F.3d 18, 22 (D.C. Cir. 2014) (*en banc*) (quoting *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626, 650 (1985)).

Consumer protection rules are needed in the marketplace, and the lower levels of competition in the MVPD market demonstrates that Verizon is wrong to dismiss relying on Section 552 because it was “designed for the monopoly cable era.”<sup>75</sup>

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<sup>71</sup> The Supreme Court has adopted a statutory interpretation that Congress supposedly rejected legislatively. E.g., *Compare* *Murphy v. Smith*, 138 S.Ct. 784, 789 (2018) *with id.* at 794-95 (Sotomayor, J. dissenting); compare *Rapanos v. United States*, 547 U.S. 715, 749-52 (2006) *with id.* at , 797 (Stevens, J. dissenting); *compare* *Sale v. Haitian Centers Council, Inc.*, 509 U.S. 155, 176 (1993) *with id.* at 202 (Blackmun, J., dissenting).

<sup>72</sup> NCTA at 8-9.

<sup>73</sup> 47 U.S.C. § 552(b).

<sup>74</sup> NCTA at 11.

<sup>75</sup> Verizon at 6.

## CONCLUSION

Local Government Commenters support the Commission’s proposals to eliminate confusing “junk fees” and promote competition by ensuring that consumers can price shop in the video programming marketplace. The Commission’s proposed rule will work in conjunction with, and ensure the proper operation of, the Television Viewer Protection Act (TVPA). Local Government Commenters urge the Commission to adopt its proposed formulation of the all-in pricing rule. Consumers should receive accurate and clear pricing information, and should not be misled into believing that ordinary costs of doing business are actually government-imposed fees or taxes.

Respectfully submitted,



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*Counsel for Named Local Governments*

August 29, 2023



# Mt. Hood Cable Regulatory Commission

*Serving Multnomah County and the Cities of Fairview, Gresham, Portland, Troutdale & Wood Village*

## 2023 Annual Complaint Report

From March through August of 2023 the staff at City of Portland Franchise & Utility License Program (FUP) continue to track and escalate complaints for the MHCRC who monitor an info line via phone and email. There are no serious issues or concerns that went unresolved.

- Billing, service costs, and fees made up 12.5% of all complaints.
- Service quality and installation/repair made up 25% of all complaints.
- Phone issues made up 12.5% of all complaints.
- Other issues made up 76% of all complaints.

The MHCRC planned to implement a new complaint tracking database that would allow viewing the data in a variety of ways through a real-time dashboard. That was anticipated to be shared through MHCRC website in early 2022, but it has not been launched. Stay tuned!





# CITY OF PORTLAND

MT HOOD CABLE REGULATORY COMMISSION  
BUREAU OF REVENUE AND FINANCIAL SERVICES

**Revenue Division**  
111 SW Columbia Street  
Suite 600  
Portland, Oregon 97201-5840  
(503) 823-5359

**Ted Wheeler, Mayor**  
**Michelle Kirby, Chief Financial Officer**  
**Thomas W. Lannom, Director of Revenue**

## FINAL DETERMINATION

May 22, 2023

Comcast of Illinois/Ohio/Oregon, LLC & Comcast of Oregon II, Inc.

DBAs: Comcast  
ATTN: Charlie Carey  
200 Cresson Blvd  
Phoenixville, PA 19460

### RE: Franchise Audits FY 4Q17 – 4Q20

Dear Mr. Carey:

The City of Portland Revenue Division (“Revenue”), on behalf of the Mount Hood Cable Regulatory Commission (“MHCRC”), has completed its compliance review of **Comcast of Illinois/Ohio/Oregon, LLC & Comcast of Oregon II, Inc.** (collectively referred to as “Franchisee”). This compliance review was conducted pursuant to the current Franchise, effective January 1, 2012 through December 31, 2021 (“Franchise”), and sought to determine whether all franchise fees due and payable were calculated correctly during the audit period, **04-01-2018** through **09-30-2021**.

### DETERMINATION: ASSESSMENT → ~~\$421,737~~ \$5,093

In order to corroborate the accuracy of the remittances sent by Franchisee, the City requested customer invoices, tax returns, financial information, and other relevant information pertaining to this compliance review. Franchisee submitted all information requested.

	OTT Revenues Excluded	PPV/VOD Revenues Excluded	Total Revenues Excluded	Franchise Fee Rate	PEG Fee Rate	Franchise/PEG Fees Owes	Interest	Total Amount Due
2018	-	-	-	5%	3%	-	-	-
2019	-	-	-	5%	3%	-	-	-
2020	-	46,300	46,300	5%	3%	3,704	1,389	5,093
2021	-	-	-	5%	3%	-	-	-
<b>Total</b>	-	<b>46,300</b>	<b>46,300</b>			<b>3,704</b>	<b>1,389</b>	<b>5,093</b>

*An Equal Opportunity Employer*

*To help ensure equal access to programs, services and activities, the Office of Management & Finance will reasonably modify policies/procedures and provide auxiliary aids/services to persons with disabilities upon request.*

[www.portlandoregon.gov/revenue](http://www.portlandoregon.gov/revenue)

## Summary

Prior to this compliance review, Revenue most recently audited Franchisee for the periods 04-01-2015 through 03-31-2018, which resulted in a “no change” determination. On 01-24-22, Revenue issued to Franchisee the Notice of Intent to Audit, along with the Initial Information Request for this compliance review, for the audit periods 04-01-2018 through 09-30-2022. After Franchisee submitted all documents requested, both Revenue and Franchisee worked together to tie-out Franchisee’s workpapers to Franchisee’s filed returns. The field audit concluded on 02-22-23 and the Initial Determination was issued. On 03-08-23, before the protest deadline, Franchisee successfully submitted a protest to rebut the findings in the Initial Determination, in part. Revenue, in collaboration with MHCRC, has carefully reviewed Franchisee’s protest and now issues the Final Determination.

## Authority

### Section 12.9 Audits and Reviews

(A) *Acceptance of Payment and Recomputation*. “...All amounts paid under Section 7.1 or Section 12.1 of this Franchise shall be subject to audit by the City, provided that only the payments which occurred during a period of thirty-six (36) months prior to the date the City notifies Grantee of its intent to perform an audit shall be subject to such audit.”

### Over-the-Top (OTT) Services - \$314,102 \$0

On October 21, 1998, the United States Congress signed into law the Internet Tax Freedom Act (Pub.L.105-277, Sec. 1100), which was later made permanent on February 24, 2016 via the Trade Facilitation and Trade Enforcement Act of 2015 (Pub.L.114-125; Sec. 922). The entire premise behind the codification of the Internet Tax Freedom Act was to reduce regulation and better encourage the expansion of internet and broadband technology to the general public.

To accomplish these ends, the Internet Tax Freedom Act created a moratorium whereby, “[n]o State or political subdivision thereof shall impose any of the following taxes during the period beginning on Oct. 1, 1998... (1) *taxes on internet access*, unless such tax was generally imposed and actually enforced prior to Oct. 1, 1998...(.)” Pub.L.105-277, Section 1101(a). (Emphasis Added)

“Internet Access Service” is defined as, “a service that enables users to access content, information, electronic mail, or other services offered over the Internet and may also include access to proprietary content, information, and other services as part of a package of services offered to consumers...(.)” Id. at Section 1101(e)(3)(D).

“Tax” is defined as, “(i) any charge imposed by any governmental entity for the purpose of generating revenues for governmental purposes, *and is not a fee imposed for a specific privilege, service, or benefit conferred...*(.)” (emphasis added) Id. at Section 1104(8)(A).

The exception in Section 1104(8)(A)(i), directly above, is more specifically enumerated under Section 1104(8)(B), which states,

“Such term [tax] *does not include a franchise fee* or similar fee imposed by a State or local franchising authority, pursuant to section 622, or 653 of the Communications Act of 1934 (47 U.S.C. 542, 573), or any other fee related to obligations or telecommunications carriers under the Communications Act of 1934 (47 U.S.C. 151 et seq.).” (emphasis added)

Franchisee excludes “internet access” revenues from their assessable gross revenue base on which franchise fees are paid. Revenue disagrees that these “internet access” revenues should be excluded from franchise and PEG fee assessment because franchise and PEG fees are specifically excluded from the definition of, “tax,” defined under ITFA. Instead, these fees are paid for, at least in part, the privileges and benefits of placing assets under the City’s rights-of-way, clearly within the exception cited in both Section 1104(8)(A)(i) and Section 1104(8)(B), cited above.

However, these internet access revenues are not at issue in this audit, mainly because Franchisee and Revenue have established a course of performance by which those revenues were never intended to be included in the gross revenue definition. What is at issue are the revenues generated “over-the-top” (“OTT”) of the internet access service. Where the internet access revenues are charged for accessing the internet, the revenues from video streaming services after the internet is already “accessed” are not considered access to the internet and, thus, are to be included in the gross revenue definition.

In the prior audit, it was evident that Franchisee both generated OTT revenues and included them in assessable gross revenues. In addition, Franchisee generated OTT revenues and included those revenues in their assessable gross revenue base through the end of December 2018, 3 quarters into this review period. However, in January 2019, without notice to MHCRC, Franchisee began excluding OTT revenues from their assessable base, depriving MHCRC of their fees for those revenues. During the audit, Revenue asked Franchisee to, “describe the particular method of accounting used to determine gross revenues (i.e. GAAP) and how (if applicable) that method has changed since 04-01-2018,” whereby Franchisee incorrectly stated, “As a publicly traded company Comcast uses Generally Accepted Accounting Principles (GAAP). We are unaware of any changes since April 1, 2018.”

Franchisee’s workpapers prove that statement to be untrue. There was a change to their accounting methodology in January 2019 when Franchisee unilaterally decided to exclude OTT revenues from their assessable gross revenue base. This change was not only unwarranted by statute, but it violated years of course of performance between both Franchisee and Revenue which clearly shows an intent of both parties to include those revenues in Franchisee’s assessable gross revenue base.

## **Protest**

Franchisee disagrees that revenues generated from OTT services should be included in the Franchisee’s definition of Gross Revenues for two reasons: (1) OTT services are “information services” within the meaning of the Communications Act; and (2) OTT services are not classified as a “cable service” under the Act.

### **Information Services**

Franchisee claims because OTT services are currently available on “Flex or X1” and are internet-based streaming services, they are to be characterized as “information services” under federal law 47 U.S.C.

§153(24). See *Restoring Internet Freedom Order* ¶30. Franchisee proceeds by stating because of this classification, revenues generated from OTT services cannot be subject to Franchise or PEG fees, citing 47 U.S.C. §544(b)(1); *Third 621 Order* ¶¶72-74; *City of Eugene v. FCC*, 998F.3d 701, 714-16 (6<sup>th</sup> Cir. 2021).

Franchisee’s “information service” argument hinges entirely on an unstated assumption: That under the Act, “information service” and “cable service” are mutually exclusive terms. However, neither the FCC nor any court has ever ruled as such. In fact, both history and the text of the Act support the conclusion that “cable service” is one type of “information service.” For example, 47 U.S.C. Section 544(b) refers to “video programming *and other* information services” (emphasis added). Moreover, video programming is part of the Act’s “cable service” definition, 47 U.S.C. Section 522(6)(A).

### **Cable Service**

Franchisee claims OTT services are not Title VI Cable Services as defined in the Franchise and, thus, cannot be included in the definition of Gross Revenues for two main reasons: (1) they don’t carry any signals, so they do not carry signals “in fulfillment of” the statutory requirements under 47 U.S.C §§534 and 535; and (2) they do not contain “video programming,” which, as Franchisee claims, are limited to linear programming comparable to broadcast television, as these services are only available to their broadband customers.

Franchisee’s argument that OTT video services carried over a cable system are not a “cable service” ignores the statutory cable service definition. Contrary to Franchisee’s assertion, the Act’s “video programming” definition does not contain the term “linear,” and it is hard to argue that OTT video programming is not “generally considered comparable to” programming provided by TV broadcast stations. And even if OTT weren’t “video programming,” it could be an “other programming service” (“information that a cable operator makes available to all subscribers generally”), which is also part of the Act’s “cable service definition, 47 U.S.C. Section 52(6)(A). Franchisee doesn’t even mention, much less explain why, OTT doesn’t fit the latter definition.

### **Conclusion**

Revenue believes OCT has several legitimate arguments in favor of the inclusion of OTT revenues within the definition of Gross Revenues, as defined in the Franchise, especially considering both parties have a course of performance of inclusion during the Franchise. However, Revenue chooses not to pursue the fees associated with those revenues at this time. Please note, this decision is not meant to be taken as a legal forfeiture of the City’s claim to these revenues in the future.

### **PPV/VOD Revenues - \$2,315**

Franchisee provides for and receives revenue from Pay-Per-View (“PPV”) and Video-on-Demand (“VOD”) services. In all quarters except for one (CY 1Q20), Franchisee correctly included those revenues in their assessable gross revenue base. Revenue assessed fees on those excluded revenues in period CY 1Q20 here.



## Protest

Franchisee agrees with Revenue that a portion of their PPV/VOD revenues during 1Q20 were erroneously excluded from Gross Revenues. Franchisee did not protest this item.

## Calculation

For all periods under review, for all jurisdictions, Franchisee erroneously excluded \$46,300 in PPV/VOD revenues from their assessable gross revenue base. Multiplied at both the 5% franchise fee rate and the 3% PEG fee rate, it was determined that Franchisee underpaid both franchise fees and PEG fees by a total of **\$2,315**. All calculations can be found in the file, "Com2\_Cable\_Final Calculations."

## Interest - ~~\$103,932~~ \$1,389

Section 12.3 of the Franchise states, "payments not received within forty-five (45) days from the quarter ending date shall be assessed interest compounded at the rate of one percent (1%) per month from the due date." Revenue employed the following formula to determine the interest owed for each quarter that contained an assessment over and above the amount already paid:

$$I = P * \left( \left( 1 + \frac{r}{n} \right)^{nt} \right) - P$$

P = principal; r = rate of interest; n = time period

For all periods under review, it was determined that Franchisee underpaid both their franchise fee and PEG fee obligations by a total of \$3,704. After applying the above formula to all periods in which contained an underpayment, the total interest owed came out to **\$1,389**. All calculations can be found in the file, "Com2\_Cable\_Final Calculations," in both the "Summary" and "Interest" tabs.

## **DETERMINATION: ASSESSMENT - \$5,093**

Franchisee owes MHCRC a total of **\$5,093** for the audit period **04-01-2018** through **09-30-2021**. Franchisee now must pay the assessment within 30 days to Janice Hammond Getten. Janice can be reached by phone (503) 865-2491 or email [Janice.HammondGetten@portlandoregon.gov](mailto:Janice.HammondGetten@portlandoregon.gov).

Sincerely,



Nicholas D. Hooyman, J.D., LL.M.  
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CC: Andrew Speer, Director – OCT; Matthew Thorup, Audit Manager – Revenue Division, OMF