

INFORMATION ONLY



Mt. Hood Cable Regulatory Commission

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

MEMORANDUM

For Commission Meeting: March 2024

To: Mt. Hood Cable Regulatory Commission

From: Kevin Block

RE: March 2024 Policy Update

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FCC NFPRM on “Junk Fees”

On December 13, 2023 the FCC voted to consider a Notice of Proposed Rulemaking that would propose rules to protect consumers from video service junk fees. This rulemaking would prevent providers from charging early termination fees or billing cycle fees to consumers who are cancelling their service. The FCC is proposing this on the grounds that the fees are anti-competitive and qualify as customer service regulation.

The MHCRC participated in a coalition through BBK to submit comments and reply-comments in support of the rulemaking. Both are attached in your packet. Based on the “All-in” pricing rulemaking experience. Staff’s best estimate is that the FCC will vote on adopting the rules in 6-9 months.

FCC Vote on “All-in” Pricing Rules

At the March 14th FCC Open Meeting the Commission will be voting to adopt the “All-in” pricing rules that they proposed in Summer 2023. These rules will 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 participated in a coalition through BBK to submit comments and reply-comments in support of the rulemaking. Additionally, MHCRC staff sent a letter to the FCC commissioners applauding the adoption of the rules.

As the vote will be taking place on the March 14th open meeting (after this memo will be submitted), staff will report the result of the vote at the MHCRC meeting on March 18th.

Federal Legislation Update

Bundling the federal legislation update in one section here as the current situation on Capital Hill makes it highly unlikely that anything other than basic necessity funding bills pass in the coming months.



The Federal bills of primary concern to the MHCRC are:

- *HR 907 – Protecting Community Television Act (Support)*
 - The Act would amend the Communications Act of 1934 to limit the definition of franchise fees to only a tax, fee, or other monetary assessment. This would prevent franchisees from including in-kind services such as PEG channels as part of the franchise fee.

- *HR 3557 – American Broadband Deployment Act (Oppose)*
 - Eliminates cable franchise renewals, thereby removing ability of state or local communities to enforce franchise obligations such as build-out, customer service, and PEG
 - Allows cable franchisees to modify the terms of franchise agreements and to renege on cable franchises
 - Affirmatively grants cable operators the right to provide non-cable services while prohibiting localities from imposing any fees on cable operators' revenue from non-cable services
 - Implements unnecessary shot-clocks and limits the ability of localities to modify requirements based on current and future needs

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For Immediate Release

**FCC TO VOTE ON PRICING TRANSPARENCY REQUIREMENT FOR
CABLE AND SATELLITE VIEWERS**

*Chairwoman Rosenworcel Shared Proposed Final Rules to Address Consumers’
Confusion on Hidden Fees in Cable and Satellite TV Billing*

WASHINGTON, February 21, 2024—FCC Chairwoman Jessica Rosenworcel today proposed final rules to require cable and satellite TV providers to specify the “all-in” price clearly and prominently for video programming services in their promotional materials and on subscribers’ bills. The Chairwoman aims to eliminate the misleading practice of describing video programming costs as a tax, fee, or surcharge. This updated “all-in” pricing format will allow consumers to make informed choices, including the ability to comparison shop among competitors and to compare programming costs against alternative programming providers, including streaming services.

“Working families deserve and expect transparency but cable or satellite TV providers too often hide the real price of their service behind deceptive junk fees,” **said Chairwoman Rosenworcel**. “We’re putting an end to this form of price masking. These rules will increase competition and reduce confusion among consumers.”

If adopted by a vote of the full Commission at its March 14 Open Meeting, these rules will require cable operators and direct broadcast satellite (DBS) providers to state the total cost of video programming services clearly and prominently, including broadcast retransmission consent, regional sports programming, and other programming-related fees, as a prominent single line item on subscribers’ bills and in promotional materials.

These new rules continue a series of consumer-focused proposals to combat junk fees and support transparency for consumers. In addition to this “all-in” pricing, the Commission is preparing for the upcoming launch of the mandatory [Broadband Consumer Labels](#) and has proposed to [eliminate early termination fees](#) from cable and satellite TV providers. These efforts are also in line with the Executive Order on Promoting Competition in the American Economy, which encouraged the Commission to consider “prohibiting unjust or unreasonable early termination fees for end-user communication contracts; enabling consumers to more easily switch providers” in order to promote competition and lower prices.”

Last year the Commission adopted a NPRM to take public comment on this matter; review of that record demonstrates that charges and fees for video programming provided by cable and DBS providers are often obscured in misleading promotional materials and bills, which causes significant and costly confusion for consumers. The proposed Report and Order has been circulated by the Chairwoman to her fellow Commissioners today and, as is customary, will be made public on FCC.gov tomorrow. The March Open Meeting will be streamed live and the full agenda and public drafts of the proposals will be available at: <https://www.fcc.gov/march-2024-open-commission-meeting>.

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This is an unofficial announcement of Commission action. Release of the full text of a Commission order constitutes official action. See MCI v. FCC, 515 F.2d 385 (D.C. Cir. 1974).

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

In the Matter of)	
)	
Promoting Competition in the American)	MB Docket No. 23-405
Economy: Cable Operator and DBS Provider)	
Billing Practices)	
)	

**COMMENTS OF
CITY OF BOSTON, MA; DISTRICT OF COLUMBIA;
MT. HOOD CABLE REGULATORY COMMISSION;
TEXAS COALITION OF CITIES FOR UTILITY ISSUES**

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February 5, 2024

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EXECUTIVE SUMMARY

The City of Boston, Massachusetts, the District of Columbia, the Mt. Hood Cable Regulatory Commission and the Texas Coalition of Cities for Utility Issues (collectively Local Government Commenters) call upon the Commission to adopt the prohibition of early termination fees (ETFs) and billing cycle fees (BCFs) rule as proposed in the Commission’s Notice of Proposed Rulemaking.¹ Local Government Commenters urge the Commission to prohibit cable operators and DBS providers from imposing ETFs and BCFs on consumers who choose to end their current subscription mid-cycle.

The prohibition of such billing practices will protect consumers from fees charging them for services they no longer wish to receive or can no longer use, and will promote competition between providers while encouraging providers to maintain high customer service standards. Such billing practices inhibit subscribers from switching cable providers and making choices about the services they wish to receive. Cancellation fees are a concern across various industries regulated by the Commission and other agencies. Economic scholarship demonstrates the harm to consumers: by locking in buyers ETFs and BCFs can impose an effective barrier to entry. The Commission and Congress have expressed concerns about and prohibited ETFs in other contexts. For example, in 2007, a Commission report found that showed 43 percent of those surveyed reported that paying an ETF was a *major reason* for keeping their current cell phone service. Congress prohibited ETFs for consumers participating in the Emergency Broadband Benefit and Affordable Connectivity Program.

¹ *Promoting Competition in the American Economy: Cable Operator and DBS Provider Billing Practices*, Notice of Proposed Rulemaking, MB Docket No. 23-405 (rel. Dec. 14, 2023) (*NPRM*).

The Commission has authority to adopt the proposed cable rules. The Commission should not, however, preempt state and local consumer protection regulation because state and local officials play an essential and helpful role in assisting consumers. The Commission's rules should be a floor, not a ceiling.

Local Government Commenters recommend that the Commission adopt its proposed rule to prohibit ETFs and BCFs.

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In the Matter of)
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Promoting Competition in the American) MB Docket No. 23-405
Economy: Cable Operator and DBS Provider)
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COMMENTS OF

**CITY OF BOSTON, MA;
DISTRICT OF COLUMBIA;
MT. HOOD CABLE REGULATORY COMMISSION;
TEXAS COALITION OF CITIES FOR UTILITY ISSUES**

I. INTRODUCTION

In response to the Notice of Proposed Rulemaking in the *Promoting Competition in the American Economy: Cable Operator and DBS Provider Billing Practices* docket,² the City of

² *Promoting Competition in the American Economy: Cable Operator and DBS Provider Billing Practices*, Notice of Proposed Rulemaking, MB Docket No. 23-405 (rel. Dec. 14, 2023) (*NPRM*).

Boston, Massachusetts,³ the District of Columbia,⁴ the Mt. Hood Cable Regulatory Commission⁵ and the Texas Coalition of Cities for Utility Issues,⁶ (collectively Local Government Commenters), are pleased to submit these Comments.

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

³ 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. The City works to ensure that all of its residents are supported and advocated for in all aspects, especially regarding communications services.

⁴ Washington, D.C. was established in 1790 to serve as the nation's capital and today has a population of almost 700,000. Since home rule was established in 1973, it operates as a state while also performing functions of a city and a county, subject to Congress's authority to modify or reject all DC legislation. DC's Office of Cable Television, Film, Music, and Entertainment (OCTFME) regulates cable television service providers; fields customer service complaints from cable subscribers; produces and distributes programming for the District of Columbia's public, educational, and government access (PEG) cable channels, digital radio station, and streaming and other distribution platforms; and supports the growth of a sustainable creative economy and labor market and entertainment media industry for the District of Columbia.

⁵ 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.

⁶ 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.

the industry on the local level. Local governments retain authority to adopt customer service requirements as part of their cable franchise authority and retain their police power to regulate consumer protection.⁷

Local Government Commenters support the Chair and Commission’s efforts, which are consistent with President Biden’s *Executive Order on Promoting Competition in the American Economy* encouraging the Commission to consider “prohibiting unjust or unreasonable early termination fees for end-user communication contracts; enabling consumers to more easily switch providers” in order to promote competition and lower prices.⁸ President Biden has vocalized his intention to cut down on “junk fees” in efforts to reduce the amount of undisclosed fees imposed by companies on consumers, thereby lowering consumer bills and allowing consumers to pay only for the services they want to receive.⁹

Local Government Commenters support the Commission’s proposal to prohibit cable operators and DBS providers from imposing ETFs and BCFs on consumers who choose to end their current subscription mid-cycle. Local Government Commenters believe that cable and DBS service providers should issue subscribers a prorated credit or rebate in the event that they

⁷ 47 U.S.C. § 552(a), (d).

⁸ Executive Order 14036, 86 FR 36987 (July 9, 2021), § (l)(iv), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/>.

⁹ The White House describes these cancellation fees, they “can harm free and fair competition by increasing switching costs – locking consumers into sub-standard products. Larger switching costs also make it harder for new entrants and more innovative firms to win over market share – reducing market dynamism.” Brian Deese, Neale Mahoney, Tim Wu, *The President’s Initiative on Junk Fees and Related Pricing Practices* (Oct. 26, 2022), <https://www.whitehouse.gov/briefing-room/blog/2022/10/26/the-presidents-initiative-on-junk-fees-and-related-pricing-practices/>.

terminate service with time remaining in their monthly or periodic billing cycle. Adoption of these rules is within Commission authority and is not rate regulation.

Local Government Commenters recommend that these rules be adopted as they will protect consumers from paying for services they no longer want or must cancel, and will promote competition between providers while encouraging providers to maintain high customer service standards.

II. ADOPTION OF THE COMMISSION'S PROPOSALS WILL BENEFIT CONSUMERS AND COMPETITION.

Local Government Commenters support the Commission's proposal to prohibit cable operators and DBS providers from imposing ETFs and BCFs on consumers who wish to terminate their subscription early.¹⁰ Local Government Comments also support the Commission's proposal to require cable and DBS providers to issue subscribers a prorated credit or rebate in the event that they terminate their monthly or periodic billing cycle early.¹¹

Local Government Commenters agree with the Commission's finding that these regulations will serve the public interest by allowing consumers to freely choose among providers, which promotes competition in the market and encourages providers to maintain high customer service standards to retain subscribers to their service.¹² ETFs and BCFs are substantially similar in that both impose a fee on consumers who wish to terminate their service mid-cycle. ETFs impose a fee for terminating a service contract prior to its expiration date, and

¹⁰ *NPRM*, ¶ 7.

¹¹ *Id.*, ¶ 8.

¹² *Id.*, ¶ 7.

BCFs require subscribers to pay for a complete billing cycle even if the subscriber wants to terminate service prior.¹³

Economic scholarship demonstrates that ETFs harm consumers.¹⁴ Increasing switching costs can “lock in buyers” and can be an “effective barrier to entry.”¹⁵ ETFs impose an unfair burden to those who move and *must* cancel their current service if they must move to a new home outside the current provider’s service area. In these cases, the date of termination is not in the consumer’s control as they no longer have the ability to retain their service. Yet they are forced to pay the fee anyway. The Commission has considered the negative impacts of early termination fees in the past, in the mobile phone industry. At that time, the Commission issued a report demonstrating that ETFs discouraged consumers from shopping among various services, often choosing to stay with their current provider.¹⁶ The report showed 43 percent of those surveyed reported that paying an ETF was a *major reason* for keeping their current cell phone service.¹⁷ For example, faced with an ETF or BCF, a consumer that becomes dissatisfied with his

¹³ *Id.*, ¶¶ 2, 3.

¹⁴ *See, e.g.*, Joseph Cullen & Nicolas Schutz & Oleksandr Shcherbakov, *The Welfare Effects of Early Termination Fees in the US Wireless Industry*, University of Bonn and University of Mannheim, Germany, CRC TR 224 (2020), <https://www.crctr224.de/research/discussion-papers/archive/dp247>; Bedre-Defolie, Özlem, and Gary Biglaiser, *Contracts as a Barrier to Entry in Markets with Nonpivotal Buyers*, *American Economic Review*, 107 (7): 2041-71 (2017), <https://aeaweb.org/articles?id=10.1257/aer.20151710>.

¹⁵ Stephanos Avgeropoulos & Tanya Sammut-Bonnici, *Switching costs*, WILEY ENCYCLOPEDIA OF MANAGEMENT (2015), 10.1002/9781118785317.weom120104.

¹⁶ John Horrigan & Ellen Satterwhite, Federal Communications Commission, *Americans’ Perspectives on Early Termination Fees and Bill Shock* at 6 (2010), <https://www.fcc.gov/document/fccs-new-survey-americans-perspectives-early-termination-fees-and>

¹⁷ *Id.* at 5.

or her service may elect to wait until the end of the month to take action, and may accidentally miss the next service cycle, continuing an unwanted subscription.

These fees cause significant damage. One state’s attorney general successfully obtained hundreds of thousands of consumer refunds from Comcast, in part for charging consumers “early termination fees of up to \$240 to cancel long-term contracts, even when they downgraded Comcast services to a more affordable monthly package.”¹⁸ The Commission cited hundreds of complaints were filed by subscribers annually between 2018-2022, and that individual complaints claimed that these fees are unreasonably restrictive.¹⁹ Local Government Commenters agree: subscription TV services like cable and satellite continue to rank at the bottom of consumer satisfaction, year after year.²⁰ As Local Government Commenters explained in the Commission’s *All-In* docket, they often receive complaints from consumers confused or unhappy with cable operator pricing.²¹

Congress and other regulators have found cause for concern with respect to cancellation fees of many kinds. Congress prohibited ETFs when it adopted the Affordable Connectivity

¹⁸ Office of Attorney General Maura Healey, *Comcast to Pay \$700,000 in Refunds and Cancel Debts for More Than 20,000 Massachusetts Customers to Resolve Allegations of Deceptive Advertising*, (2018), <https://www.mass.gov/news/comcast-to-pay-700000-in-refunds-and-cancel-debts-for-more-than-20000-massachusetts-customers-to-resolve-allegations-of-deceptive-advertising>.

¹⁹ *NPRM*, ¶¶ 27, 33.

²⁰ Karl Bode, *US Cable, Broadband Companies Continue To Have The Lowest Satisfaction Ratings Of Any Industry In America*, American Customer Satisfaction Index (2022), <https://theacsi.org/news-and-resources/news/2022/06/10/us-cable-broadband-companies-continue-to-have-the-lowest-satisfaction-ratings-of-any-industry-in-america/>.

²¹ 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, MB Docket No. 23-203 at 8 (filed July 31, 2023), <https://www.fcc.gov/ecfs/search/search-filings/filing/10731536612830>.

Program, which subsidizes low-income households monthly broadband subscription.²² The Commission has noted concerns about ETFs in other areas, such as broadband.²³ When early termination fees were being examined in the mobile phone industry, the National Association of State Consumer Advocates adopted a resolution urging the Commission to reexamine early termination fees and questioning the economic justification for those fees.²⁴ Similarly, the Federal Trade Commission is considering how to address problems with subscriptions that consumers have difficulty cancelling, and is considering rules that permit consumers to cancel a product as easily as they sign up for them.²⁵ Paying an ETF or BCF in any context debilitates competition by imposing a penalty on consumers who wish to leave.

The Commission’s proposed rule will address this problem by prohibiting such billing practices, eliminating ETFs and BCFs altogether. This will enable consumers to shop among various services and choose to switch from their current provider to a new provider more effectively, encouraging providers to establish and maintain higher customer services standards to attract and keep new subscribers, therefore enabling competition.

²² Olivia Wein, *New Federal Benefit Provides Affordable Broadband Access*, National Consumer Law Center (2022), <https://library.nclc.org/article/new-federal-benefit-provides-affordable-broadband-access#content-1>; 47 U.S.C. § 1752(b)(6)(A)(i); 47 C.F.R. § 54.1810(f)(3); *see also* similar provisions of the Emergency Broadband Benefit, Consolidated Appropriations Act (2020) Pub. L. No. 116-260, 134 Stat. 1182 (2020), div. N, tit. IX, § 904(b)(6)(B)(ii)-(iv), <https://www.congress.gov/bill/116th-congress/house-bill/133/text>.

²³ *Empowering Broadband Consumers Through Transparency*, CG Docket No. 22-2, DA 23-617, Order (2023), <https://www.fcc.gov/document/empowering-broadband-consumers-through-transparency-0>.

²⁴ *Early Termination Fees*, Res. 2007-03, National Association of State Utility Consumer Advocates, <https://www.nasuca.org/early-termination-fees-resolution-2007-03/>.

²⁵ The FTC proposes its “Click to Cancel” rule that would require internet sellers, at a minimum, to provide a cancellation method on the same website or application used to sign up. *Negative Option Rule*, 88 FR 24716 at 24728 (proposed April 24, 2023) (to be codified at 16 C.F.R. § 425), <https://www.federalregister.gov/documents/2023/04/24/2023-07035/negative-option-rule>.

III. THE COMMISSION HAS AUTHORITY UNDER SECTION 632 OF THE CABLE ACT TO ADOPT ETF AND BCF REGULATIONS FOR CABLE PROVIDERS.

A. The Cable Act authorizes Commission regulation of cable providers.

The Commission seeks comment on its authority to adopt ETF and BCF regulations for cable operators.²⁶ Local Government Commenters agree with the Commission that Section 632 of the Cable Act grants the Commission authority to establish standards by which cable operators may fulfill their customer service requirements.²⁷ The Commission is directed by Section 632(b)(3) to establish standards governing “communications between the cable operator and subscriber (including standards governing bills and refunds).”²⁸

Because ETFs and BCFs involve cable operator billing and refund practices, the Commission is correct that these are customer service matters within the Commission’s general authority to establish customer service standards.²⁹ Fees that inhibit subscribers from making choices about the video services they wish to receive and those imposing significant costs on consumers for services they did not choose to receive are precisely the type of customer service concerns that Congress meant to address when it enacted Section 632.³⁰

B. Regulating BCFs constitutes customer service regulation under established law.

The Commission seeks comment on whether the proposed rule constitutes rate regulation, which the Commission does not have the authority to impose, or customer service regulation.³¹ It

²⁶ *NPRM*, ¶ 9. Local Government Commenters, as Local Franchise Authorities, focus on cable regulation and pricing.

²⁷ *NPRM*, ¶ 9; 47 U.S.C. § 552(b).

²⁸ 47 U.S.C. § 552(b)(3).

²⁹ *NPRM*, ¶ 9.

³⁰ H.R. Rep. 98-934 at 79 (1984), *reprinted in* 1984 U.S.C.C.A.N. 4655, 4716.

³¹ *NPRM*, ¶ 12.

cited *Spectrum Northeast, LLC v. Frey* and *Alleged Failure of Altice* in its Notice of Proposed Rulemaking, and Local Government Commenters agree with the Commission that the analysis and rulings under both clearly apply to the Commission's proposed rules.³²

In *Spectrum Northeast, LLC v. Frey*, the U.S. Court of Appeals for the First Circuit determined that a Maine statute requiring cable operators to grant subscribers *pro rata* credits/rebates for the remaining days in a billing period after termination of service was not rate regulation pursuant to the Act, and therefore not preempted.³³ As the First Circuit noted, a protection that ensured consumers do not pay during a service outage would be consumer protection, not rate regulation.³⁴ Furthermore, the court correctly found that a rebate for service not provided does not govern the provision of cable service.³⁵ Instead, it regulates only the time period over which the cable operator may continue to impose its chosen rate once a customer has elected to *terminate* service.³⁶ It necessarily follows that the Commission's proposal, like the Maine statute upheld in *Frey*, would also not constitute rate regulation and thus is an appropriate exercise of its regulatory authority.

As the Commission explains, the New Jersey Supreme Court ruled in *Alleged Failure of Altice* that a state statute requiring cable companies to either refund or simply not charge customers who cancel service prior to the end of a billing cycle was not rate regulation preempted by federal law by looking simply to the ordinary language of the Act.³⁷ According to

³² *NPRM*, ¶¶ 12, 14.

³³ *Spectrum Northeast, LLC v. Frey*, 22 F.4th 287 (1st Cir. 2022).

³⁴ *Id.* at 293. The First Circuit did not address whether the statute itself amounted to consumer protection regulation. *Id.* at 303.

³⁵ *Id.*; see also *Cable Television Ass'n v. Finneran*, 954 F.2d 91, 95–96 (2d Cir. 1992).

³⁶ *NPRM*, 15.

³⁷ *Id.*, ¶ 14.

the New Jersey Supreme Court, a pro-rating requirement means that “once a company establishes its own rate, the company must apportion the charge for the final period of service according to that rate.”³⁸ Local Government Commenters agree with the Commission that ETFs and BCFs involve the time period when cable service ends—a restriction on ETFs and BCFs does not cap the amount a cable operator can charge for the provision of cable service, but requires the company to charge its selected rate only for the time period a consumer receives service. The Commission has authority to adopt its proposed rules to cable operators.

C. State and governments should retain their strong consumer protection role.

The cases described above demonstrate the helpful role that state and local officials can play in assisting consumers. Local Government commenters urge the Commission to ensure that any rule it adopts is a floor, not a ceiling, and preserve all state and local consumer protection authority by explicitly declining to preempt except in the case of a direct conflict.³⁹

IV. CONCLUSION

Local Government Commenters congratulate the Commission for proposing this important protection that will allow consumers to make independent decisions and promote competition. We

³⁸ *In the Matter of the Alleged Failure of Altice, USA, Inc. to Comply with Certain provisions of the New Jersey Cable Television Act*, 2021 WL 11594342 at 10 (N.J.).

³⁹ *Chamber of Commerce of the U.S. v. Whiting*, 563 U.S. 582, 607 (2011).

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

Respectfully submitted,



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**REPLY COMMENTS OF THE CITY OF BOSTON, MASSACHUSETTS;
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COMMISSION; THE TEXAS COALITION OF CITIES FOR UTILITY ISSUES;
AND THE COUNTY OF FAIRFAX, VIRGINIA**

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March 5, 2024

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INTRODUCTION AND SUMMARY

In response to the Notice of Proposed Rulemaking (NPRM) in the *Promoting Competition in the American Economy: Cable Operator and DBS Provider Billing Practices* docket,¹ the City of Boston, Massachusetts; the District of Columbia; the Mt. Hood Cable Regulatory Commission; the Texas Coalition of Cities for Utility Issues and the County of Fairfax, Virginia (collectively Local Government Commenters), are pleased to submit these Reply Comments and support the Commission’s proposals to prohibit early termination fees (ETFs) and billing cycle fees (BCFs).

The record strongly aligns with Local Government Commenters’ initial comments, that adoption of the Commission’s proposals will benefit consumers and competition and the Commission has authority under the Cable Act to regulate ETFs and BCFs imposed by cable providers. The Commission should act as proposed in this docket because consumers are

¹ *Promoting Competition in the American Economy: Cable Operator and DBS Provider Billing Practices*, Notice of Proposed Rulemaking, MB Docket No. 23-405 (rel. Dec. 14, 2023) (NPRM). Unless otherwise noted, all references to comments herein are to the comments submitted in response to the NPRM in MB Docket No. 23-405 filed on December 14, 2023.

legitimately frustrated, these fees inhibit competition, and the Commission has the requisite legal authority. The record, including comments from industry, state and local governments and public interest advocates alike, agrees that enabling consumers to choose freely among video services will benefit competition.

I. CONSUMERS ARE FRUSTRATED.

The record demonstrates the burdens that ETFs and BCFs impose on consumers. State and local governments explained they have received complaints from frustrated consumers who were unaware of an ETF or had no control over when they terminated service. DIRECTV also acknowledges that the Commission's efforts are rooted in helping consumers who are increasingly frustrated with their bills.²

The State of Hawaii reported that it has received complaints and feedback from consumers confirming that ETFs and BCFs impede competition and prevent consumers from switching to more affordable and attractive services without incurring excessive fees. The State recognizes the unnecessary burdens such fees place on consumers who must end their subscriptions for reasons unrelated to competition, such as consumers who move.³ To illustrate such burdens, the State of Hawaii offered an example of an ETF imposed on a hotel that was forced by the State Governor to close due to the COVID-19 pandemic, yet the cable operator refused to waive the ETF.⁴

² DIRECTV at i.

³ The State of Hawaii at 1-2.

⁴ *Id.* at 2.

The New York State Department of Public Service provided a crucial example further highlighting the harm ETFs and BCFs impose on consumers. During the 2023 Charter-Disney negotiations 15 million subscribers, including 1.5 million New York residents, were left without program access even though they were still being billed. “Had the proposed protections in the NPRM been in place, customers seeking to switch to an alternative video service provider still offering the Disney-owned networks would have been able to do so without the threat of additional and excessive fees before being able to cancel their existing video services.”⁵

Additionally, the South Carolina Department of Consumer Affairs reported that it received 258 complaints related to cable service cancellation issues, and that cancellation related complaints increased sharply between 2019 and 2020.⁶ The Ohio Department of Commerce received various complaints showing “ample examples of consumer confusion, surprise and anger in their interactions with cable service providers.”⁷ One complaint easily illustrates the problem with these fees:

“I canceled my service one day after the next bill cycle began and was told that I had to pay for the entire month (even though I returned my equipment). So now I’m paying for service with my previous provider AND my new provider, basically I’m paying twice for the same service.”⁸

⁵ New York State Department of Public Service at 2.

⁶ South Carolina Department of Consumer Affairs at 2-3.

⁷ Ohio Department of Commerce at 1-2.

⁸ *Id.* at 1.

NATOA provided an illustrative example of the difficulties consumers face in terminating their service, citing the text of an actual ETF:

<p>You must notify us that you want to terminate in one of the following ways:</p> <ol style="list-style-type: none">i. mail a written notice to our local business office;ii. send an electronic notice to the email address specified on www.-----iii. provide notice in person at a service center; oriv. call our customer service number during normal business hours.
<p>Applicable fees and charges for the Services may accrue until</p> <ul style="list-style-type: none">• the Services have been disconnected,• all ----- Equipment has been returned, and• this Agreement has been terminated, subject to applicable law or the terms of any agreements we have with governmental authorities.¹⁵
<p>At our election, and subject to applicable law,</p> <ul style="list-style-type: none">• We may change our policy to continue all Services (or any part of them) through the end of the billing cycle in which we received your notice, which means those Services will terminate at the end of the applicable billing cycle.• We may refund all prepaid monthly service fees charged for the Services after the effective date of termination, and we reserve the right to subtract from your refund any outstanding amounts due to us for the Services, for any affiliate or third-party services, or for other applicable fees and charges.• Certain fees and charges are non-refundable and are also excluded.

NATOA explained, “in addition to noticing the provider by mail, email, call or visit, a subscriber also needs to disconnect rental equipment; return equipment to the provider; and ascertain that their service agreement had been terminated ‘subject to applicable law or the terms of any agreements we have with governmental authorities.’ The operator retains complete control over any decision to bill through the billing cycle and excludes any fees and charges from any possible refund.”⁹ This example highlights just how confusing and unfair ETFs and BCFs are, and demonstrates why consumers would benefit from Commission action prohibiting such confusing and unfair fees.

⁹ NATOA at 5.

II. ELIMINATING UNREASONABLE FEES WILL BENEFIT COMPETITION AND DRIVE DOWN PRICES.

A. Unreasonable fees hamper competition.

Industry, consumer groups, and local and state governments agreed that consumers should benefit from maximum choice and that ETFs and BCFs hinder competition, resulting in poor customer service. The South Carolina Department of Consumer Affairs explained that ETFs and BCFs stifle competition “resulting in an unsatisfied consumer limiting their options for live TV alternatives.”¹⁰ The National Association of Broadcasters also agreed with the Commission that ETFs and BCFs hinder competition by effectively “locking in” consumers and obstructing their ability to switch providers.¹¹ Several opposing commenters have conceded that the billing practices at issue are problematic. The International Center of Law and Economics (ICLE) notes that ETFs are prevalent in everyday lives.¹² DISH supports the Commission in its efforts to ensure consumers are not burdened with undisclosed fees¹³ or penalized for terminating service,¹⁴ and agrees that billing practices that have “the effect of inhibiting video service subscribers from choosing the services they want or result in consumers paying fees for video services they did not choose to receive” should be subject to reform.¹⁵

State and local governments explained that ETFs and BCFs charge consumers for services that are, by definition, not provided in many cases where the consumer has no control

¹⁰ South Carolina Department of Consumer Affairs at 4.

¹¹ National Association of Broadcasters at 5-6.

¹² ICLE at 2.

¹³ DISH at 1.

¹⁴ *Id.* at 7.

¹⁵ *Id.* at 5.

over the reason for or timing of termination.¹⁶ Local Government Commenters and NATOA believe the Commission’s efforts are consistent with President Biden’s *Executive Order on Promoting Competition in the American Economy*, encouraging the Commission to consider “prohibiting unjust or unreasonable early termination fees for end-user communication contracts; enabling consumers to more easily switch providers” in order to promote competition and lower prices.¹⁷ The cable industry incorrectly claims that ETFs are not “unjust or unreasonable” fees under President Biden’s *Executive Order*. For example, NCTA claims fees are reasonable because “providers waive ETFs for a variety of reasons, including military deployments, natural disasters, the death of a customer, or when restarting service at a new location within the provider’s footprint.”¹⁸ Imposing an anti-competitive fee and then waiving it in selected humanitarian circumstances does not make the fee reasonable in the first place.

The Free State Foundation unconvincingly argued that competition already exists, and that data showing consumers switching from cable or satellite to streaming services proves “an abundance of competitive options.”¹⁹ The fact that some consumers do switch in spite of an ETF does not mean that ETFs do not impede competition. Public Knowledge explained that these

¹⁶ South Carolina Department of Consumer Affairs at 4 (arguing that ETFs and BCFs permit companies to retain consumer money for services not provided, in some instances due to their own “inefficiencies in completing a disconnection” outside of the consumer’s control); Connecticut Office of State Broadband at 2 (raising the concern that because many cable services require advanced payment, the BCF often constitutes payment of a service not wholly provided, “often for reasons beyond the subscriber’s control in the case of seniors”); Local Government Commenters at 5.

¹⁷ Exec. Order No. 14036, 86 FR 36987 (July 9, 2021), § 1(i)(iv), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/>; NATOA at 2.

¹⁸ NCTA at 6.

¹⁹ Free State Foundation at 5-6.

billing practices harm competition by making it more difficult to compare costs, and that consumers who terminate their subscription mid-cycle and are hit with an ETF or BCF are “forced for the remainder of the billing cycle to pay for the same product to two different providers.”²⁰ Similarly, ICLE erroneously argued that “consumers who enter contracts with ETFs do so willingly with an expectation that they will pay a lower price over the term of their agreement than if they did not have such a contract.”²¹ NATOA’s example, cited in Part I, of real ETF contract language shows that many consumers may not understand they are committing to a subscription with an ETF due to the vagueness of the terms—it is not clear whether an ETF or BCF will be charged, and how much. The language leaves all options in the hands of the provider.²²

ICLE incorrectly claims the Commission’s recently-adopted broadband consumer label will address ETFs for cable and DBS services,²³ but those rules apply only to “stand alone” broadband internet access service (BIAS).²⁴ The Commission specifically did not apply the new disclosure regulation to bundles that include both BIAS and other services.²⁵

Local Government Commenters oppose Hotwire Communications’ suggestion that the Commission should exempt so-called “Customized Services” from the ETF and BCF prohibition rule if adopted.²⁶ Hotwire describes these services as individually negotiated, multi-year

²⁰ Public Knowledge at 4, 2.

²¹ ICLE at 3.

²² NATOA at 5.

²³ ICLE at 6.

²⁴ 47 C.F.R. § 8.1(a)(1).

²⁵ *Empowering Broadband Consumers Through Transparency*, 37 FCC Rcd 13686, ¶ 31 (2022).

²⁶ Hotwire Communications at 2-3.

agreements for customized retail video services between customers and cable/DBS providers.²⁷ Hotwire claims that “sophisticated” customers typically enter into these agreements,²⁸ committing to multi-year agreements and the negotiated terms therein, which specify when and under what circumstances each party can exit and the associated consequences of not satisfying the negotiated contract’s terms, including fees, damages, or both. The company claims that the Customized Services sector is competitive and customers obtain favorable rates, terms, and conditions and should not be subject to any prohibition on ETFs or BCFs.²⁹

Local Government Commenters maintain that ETFs and BCFs harm *all* consumers, regardless of “sophistication.” The example provided by the State of Hawaii, cited above, that a hotel was subjected to an ETF after being forced to shut down due to the COVID-19 pandemic,³⁰ is a perfect example showing that even enterprise accounts aren’t immune to the harms addressed by the NPRM. Moreover, exemptions such as the one proposed by Hotwire can easily turn into loopholes with adverse consequences. It is not clear how “Customized Services” could be defined or limited in such a way as to prevent the loophole from swallowing the rule.

B. Eliminating anti-competitive fees will not drive up prices.

Some commenters claim, without foundation, that eliminating anti-competitive fees will drive up prices. Local Government Commenters believe the contrary; competition that promotes consumer choice will promote lower prices and will permit consumers to choose the highest-value products for their budgets. If consumers have more freedom to switch providers, prices

²⁷ *Id.* at 1-2.

²⁸ *Id.* at 3.

²⁹ *Id.* at 2-3.

³⁰ State of Hawaii at 2.

should go down as consumers choose lower-priced services and companies recognize they will lose customers if they do not compete on price.

ICLE made several incorrect arguments in its comments, claiming that eliminating ETFs will drive prices up. In support of this claim, ICLE cited the same 2010 FCC survey that Local Government Commenters did, arguing that the survey results are irrelevant because “they did not address what share of households are subject to an ETF but unaware of it.”³¹ This reasoning misses the point that, of those cell phone and broadband users who *were* aware that they would be subject to an ETF, 47 percent and 64 percent, respectively, did not know the amount.³² Consumers unaware of the amount of an ETF could not make a rational decision to accept the cost.

ICLE argues that an indirect link exists through subscriber-acquisition costs, revenue projections, and investment returns, thus establishing ETFs as a form of rates.³³ They argue that because cable providers incur up-front costs for setting up a new subscriber, the ETF is inextricably calculated into the rates they offer clients in order to recoup that lost revenue, and that if ETFs are prohibited providers will have to raise prices to recoup such revenue as a result.³⁴ Similarly, the Free State Foundation claims that prohibiting ETFs will deny providers

³¹ ICLE at 5 (citing John Horrigan & Ellen Satterwhite, *Americans’ Perspectives on Early Termination Fees and Bill Shock: Summary of Findings*, FCC (May 2010), <https://docs.fcc.gov/public/attachments/DOC-298414A1.pdf>).

³² John Horrigan & Ellen Satterwhite, *Americans’ Perspectives on Early Termination Fees and Bill Shock: Summary of Findings* at 1 (May 2010), <https://docs.fcc.gov/public/attachments/DOC-298414A1.pdf>.

³³ ICLE at 3.

³⁴ *Id.* at 9-10.

the ability to “amortize one-time upfront costs beyond the first-month of service.”³⁵ This is incorrect. As Public Knowledge explained, “There is no offsetting benefit to consumers from early termination fees. Unlike the mobile phone market, multichannel video programming distributors (MVPDs) cannot justify their ETFs as a subsidy for equipment that the consumer eventually owns. MVPDs rent equipment, and the customer must return the equipment after terminating the contract. Nor can providers claim that ETFs compensate providers for lower subscription costs. Even where providers offer an introductory rate, they remain free to raise the equipment rental fees and whatever other junk fees that they choose to impose.”³⁶

Moreover, neither ICLE, Free State Foundation, nor MVPDs have made any credible case that consumers who cancel their service are imposing costs on providers that cannot be recovered through the ordinary price of the service. These fees share many attributes with the fees the Commission is prohibiting in the All-In docket, which merely create artificial fees that should be advertised and communicated as part of the price of the service.³⁷ If a provider loses a customer, they should not be able to impose a penalizing fee simply to try and recoup that billing cycle’s lost revenue.

Despite claiming that ETFs do not hinder competition, ICLE stated that ETFs are the equivalent of a *quid pro quo* between companies and consumers, effectively binding consumers to the agreement and penalizing them if they leave.³⁸ ICLE cites a study that estimated savings of

³⁵ Free State Foundation at 4.

³⁶ Public Knowledge at 5 (citing Jonathan Schwantes, *What the Fee? How Cable Companies Use Hidden Fees to Raise Prices and Disguise the True Cost of Service*, Consumer Reports (2019)).

³⁷ *All-In Pricing for Cable and Satellite Television Service*, Notice of Proposed Rulemaking, MB Docket 23-203 (rel. June 30, 2023).

³⁸ ICLE at 3.

approximately \$17 a month on a contract with an ETF.³⁹ The same report, however, actually described the harm ETFs impose on consumers. The report section cited by ICLE was titled “Early Termination Fees and Contract Lengths Make it Difficult to Switch Providers,” and the authors went on to say that despite these alleged savings, consumers face trade-offs: “[C]ontract length requirements and early termination fees lock in consumers and stifle competition. The ability to switch between providers serves as an important check on market power that encourages ISPs to compete with lower prices, better customer service, and innovative offers.”⁴⁰

C. Cable and DBS service providers should issue subscribers a prorated credit.

In their comments, Local Government Commenters supported the Commission’s proposed rule requiring cable and DBS service providers to issue subscribers a prorated refund or credit in the event that they terminate service with time remaining in their monthly or periodic billing cycle.⁴¹ However, the State of Hawaii correctly raised the concern that a “refund” and “credit” may not be synonymous.⁴² A “refund” is a monetary payment provided to consumers. A “credit” arguably does not require a monetary payment, instead constituting a discount or free amount of time using future services. “Obviously, a subscriber that is ending its service agreement with a cable or DBS operator because the subscriber is no longer able to receive services from that MVPD operator – such as because they are moving out the area – would be

³⁹ *Id.* at 8 (citing Becky Chao, Claire Park, & Joshua Stager, *The Cost of Connectivity 2020*, NEW AMERICA & OPEN TECHNOLOGY INSTITUTE (Jul. 2020) at 50, https://d1y8sb8igg2f8e.cloudfront.net/documents/The_Cost_of_Connectivity_2020__.pdf).

⁴⁰ Becky Chao, Claire Park, & Joshua Stager, New American & Open Technology Institute, *The Cost of Connectivity 2020* at 50 (Jul. 2020), https://d1y8sb8igg2f8e.cloudfront.net/documents/The_Cost_of_Connectivity_2020.pdf.

⁴¹ NPRM at ¶ 8.

⁴² State of Hawaii at 5.

unable to take advantage of a credit on future services and therefore would benefit only from a refund and not a credit.”⁴³

In the case of BCFs specifically, and as a matter of consumer protection and basic fairness, consumers are explicitly penalized for terminating their service mid-cycle by being charged the full billing cycle price. As mentioned above in Part II(B), companies should not be able to impose such a fee simply to try and recoup that billing cycle’s lost revenue. Losing a customer is a common consequence of business that the company should bear the burden of, and instead should ensure the quality of their product keeps the customer subscribed instead of imposing a penalization to try and recoup the lost funds.

III. THE COMMISSION HAS AUTHORITY TO ACT.

A. The Cable Act authorizes the Commission to prohibit ETFs and BCFs.

Local Government Commenters agree with the Commission’s finding that Section 632 of the Cable Act grants the Commission authority to establish standards by which cable operators may fulfill their customer service requirements, and its reliance on *Spectrum Northeast LLC v. Frey*’s holding that the Commission can regulate ETFs and BCFs under Section 632 since the fees involve billing and refund.⁴⁴ Moreover, Public Knowledge supports the Commission’s reliance on Section 335(a) as authorization for the Commission to impose these rules prohibiting ETFs and BCFs on DBS providers, because these billing practices work against the public interest “by inhibiting consumer choice and forcing payment for unwanted services.”⁴⁵ Since

⁴³ *Id.*

⁴⁴ NPRM at ¶¶ 9, 12.

⁴⁵ Public Knowledge at 6.

Section 335(a) authorizes the Commission to impose “public interest” requirements on DBS providers, Public Knowledge argues, the proposed rules fall within this statutory authority.⁴⁶

Local Government Commenters agree with Public Knowledge that the Commission also has authority under Section 628(b) of the Communications Act, 47 U.S.C. § 548(b), to adopt the proposed rules.⁴⁷ While adopted in the context of Congressional concern about program access—that is, access to programming by competing MVPDs—this provision states that it is unlawful for cable and satellite companies to “to engage in unfair methods of competition or unfair or deceptive acts or practices, the purpose or effect of which is to hinder significantly or to prevent any multichannel video programming distributor from providing satellite cable programming or satellite broadcast programming to subscribers or consumers.”⁴⁸ The language, by its terms, prohibits unfair practices the effect of which is to hinder service by other MVPDs. The statutory language plainly covers the fees at issue in this docket, for both cable and satellite providers.

Public Knowledge correctly cites *Nat. Cable & Telecommunications Assoc. v. FCC*, 567 F.3d 659 (D.C. Cir. 2009).⁴⁹ In this case, the FCC proposed rules prohibiting the exclusive agreements between cable companies and multi-tenant buildings. NCTA and other petitioners claimed the Commission did not have authority to do so under Section 628 because Congress’s purpose in enacting the provision was to prohibit exclusive contracts between programmers and distributors.⁵⁰ The Commission argued, and the D.C. Circuit agreed, that “statutory prohibitions

⁴⁶ 47 U.S.C. § 335(a); *id.* at 6.

⁴⁷ *Id.* at 7.

⁴⁸ 47 U.S.C. § 548(b).

⁴⁹ Public Knowledge at 7.

⁵⁰ *Nat. Cable & Telecommunications Assoc. v. FCC*, 567 F. 3d 659, 663 (D.C. Cir. 2009).

often go beyond the principal evil to cover reasonably comparable evils, and it is ultimately the provisions of our laws rather than the principal concerns of our legislators by which we are governed.”⁵¹

The D.C. Circuit Court found for the Commission because exclusive service agreements with cable companies are “an evil that easily falls within the literal terms of the statute and is reasonably comparable to the paradigmatic anti-competitive practices that Section 628 specifically targets.”⁵² The U.S. Court of Appeals for the D.C. Circuit followed the same reasoning in *Cablevision Sys. Corp. v. FCC*, 649 F.3d 695, 705 (D.C. Cir. 2011), holding, as it did in *Nat. Cable & Telecommunications Assoc. v. FCC*, that “Congress’s enumeration of specific, required regulations in subsection (c) actually suggests that Congress intended subsection (b)’s generic language to cover a broader field.”⁵³

As the D.C. Circuit noted, “‘statutes written in broad, sweeping language should be given broad sweeping application’ ... Section 628(b)’s broad and sweeping terms ... prohibit[] practices ‘the purpose *or effect* of which is to *hinder significantly* or to prevent *any* multichannel

⁵¹ *Id.* (quoting *Oncala v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 79 (1998)).

⁵² *Nat. Cable & Telecommunications Assoc. v. FCC*, 567 F. 3d 659, 663-64 (D.C. Cir. 2009) (finding “little that suggests any congressional intent to limit section 628(b) to competition for programming”).

⁵³ *Cablevision Sys. Corp. v. FCC*, 649 F.3d 695, 705 (D.C. Cir. 2011) (finding that “section 628(c)(2) establishes a floor rather than a ceiling, the Commission’s reliance on subsections (b) and (c)(1) to regulate conduct that subsection (c)(2) leaves unrestricted in no way contravenes congressional intent.”).

video programming distributor from providing satellite cable programming or satellite broadcast programming to subscribers or consumers.”⁵⁴

B. ETF and BCF regulations constitute customer service regulation, not rate regulation.

Local Government Commenters and Public Knowledge agreed with the Commission, in their initial comments, that the Commission’s proposed rules to prohibit ETFs and BCFs constitute customer service regulation, not rate regulation preempted under the Cable Act.⁵⁵

Industry opponents incorrectly argue that the Cable Act’s definition of “customer service standards” is too narrow to encompass the proposed rules and erroneously claim the Commission’s proposed rules constitute rate regulation. Similarly, two opposing commenters employed the Oxford Dictionary definition of “customer service,” which is “assistance and advice provided by a company to those people who buy or use its products or services,” and concluded that the Commission’s proposed rules to prohibit ETFs and BCFs did not constitute customer service regulations.⁵⁶ NCTA misreads the Cable Act’s language in Section 552(b) to include only communications between a provider and consumer regarding billing and refunds,⁵⁷ despite Congress’s clear direction in the statutory language that the listed examples are the “minimum” required customer service standards the Commission must adopt.⁵⁸ Furthermore, Congress’s combination of both “consumer protection” and “customer service” under a single

⁵⁴ *Nat. Cable & Telecommunications Assoc. v. FCC*, 567 F. 3d 659, 664 (D.C. Cir. 2009), (quoting *Consumer Elecs. Ass’n v. FCC*, 347 F.3d 291, 298 (D.C. Cir. 2003) and 47 U.S.C. § 548(b) (emphasis added by D.C. Circuit)).

⁵⁵ Local Government Commenters at 8-9; Public Knowledge at 6.

⁵⁶ NCTA at 14; ACA Connects at 6.

⁵⁷ NCTA at 14.

⁵⁸ 47 U.S.C. § 552(b).

heading in 47 U.S.C. § 552 suggests that the section does not limit the Commission to regulation based on a narrow dictionary definition of the latter.⁵⁹ It is clear that the statutory language is aimed at regulating how cable and satellite companies treat their customers generally, whereas the narrow and simplistic dictionary definition is aimed at a company's internal functions.

NCTA and ACA Connects incorrectly equate the Commission's proposal to prohibit consumers from being forced to pay for services they do not receive with requiring providers to set a daily rate for service, thus mandating the unit by which they charge for service and constituting rate regulation.⁶⁰ To support its claim, ACA Connects cited a Commission decision preempting state laws that prohibit cell phone providers from billing in minute increments rather than by the second.⁶¹ In *Southwestern Bell*, the Commission found "a 'rate' has no significance without the element of service for which it applies," and so accordingly prohibited states from regulating the unit of time that cell phone providers use to charge for phone service."⁶² This position is incorrect. The Commission in this instance is simply prohibiting cable providers from penalizing subscribers for terminating their service early. Providers would not be required to change or propose new rates. They would simply be prohibited from requiring consumers to pay for services they will not receive.

⁵⁹ *Id.*

⁶⁰ NCTA at 12-13; ACA Connects at 11.

⁶¹ ACA Connects at 12 (citing *Southwestern Bell Mobile Systems*, Memorandum Opinion and Order, 14 FCC Rcd. 19898 (1999) (*Southwestern Bell*)).

⁶² *Southwestern Bell*, 14 FCC Rcd. at 19906-19907, ¶¶ 19-20 (1999).

C. The Commission should affirm state and local consumer protection authority and address the overdue Section 621 Remand.

The record supports Local Government Commenters' position that the Commission should not preempt state and local government laws and regulation except in the case of express conflict; the rules should be a floor not a ceiling.⁶³ NATOA correctly explains that "state and local governments can deliver responsive consumer protections because local governments are adept at resolving the discrete issues that arise from local conditions and circumstances."⁶⁴ The language of 47 U.S.C. § 552(d) recognizes the importance of state and local laws and regulations regarding consumer protection laws and customer service safeguards, specifically recognizing the ability of states and localities to go beyond federal protections, "Nothing in this subchapter shall be construed to prevent the establishment or enforcement of any municipal law or regulation, or any State law, concerning customer service that imposes customer service requirements that exceed the standards set by the Commission under this section, or that addresses matters not addressed by the standards set by the Commission under this section."⁶⁵

The First Circuit Court of Appeals in *Northeast Spectrum v. Frey* agreed with this interpretation, finding that customer service requirements are exempt from preemption under 47 U.S.C. § 552(d)(2).⁶⁶ They further found that Congress, in its 1992 Amendment to the statute,

⁶³ Local Government Commenters at 10; State of Hawaii at 3; New York State Department of Public Service at 3.

⁶⁴ NATOA at 8.

⁶⁵ 47 U.S.C. § 552(d).

⁶⁶ *Spectrum Ne., LLC v. Frey*, 22 F.4th 287, 289 (1st Cir. 2022).

clarified that “state and local authorities retain all authority to enact and enforce consumer protection laws that they have under current law.”⁶⁷

In addition to the efforts the Commission has undertaken to protect cable and DBS consumers in this docket and the All-In docket,⁶⁸ Local Government Commenters urge the Commission to complete the pending remand of the Commission’s *Section 621 Third Report & Order*.⁶⁹ The litigation before the U.S. Court of Appeals for the Sixth Circuit has been complete since February 2022.⁷⁰ As NATOA explained, its local government “members are noting cable operators’ actions that conflict with the existing obligations to local governments because the Commission has not yet had the opportunity to address the court’s ruling.”⁷¹ The Commission should hold cable operators accountable to their obligations under the Sixth Circuit’s ruling because solid consumer protection requires not only Commission action, but also upholding the clear authority of local franchise authorities to provide for their local cable-related community needs and interests through the franchising process.⁷² Failure to implement the changes pursuant to that decision is burdening local taxpayers.

⁶⁷ *Id.* at 297.

⁶⁸ *All-In Pricing for Cable and Satellite Television Service*, Notice of Proposed Rulemaking, MB Docket 23-203 (rel. June 30, 2023).

⁶⁹ *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as Amended by the Cable Television Consumer Protection and Competition Act of 1992*, Third Report and Order, 34 FCC Rcd. 6844 (2019).

⁷⁰ *City of Eugene, Oregon v. Federal Communications Commission*, 998 F.3d 701 (6th Cir. 2021), *cert. den.* 142 S.Ct. 1109 (2022).

⁷¹ Ex parte, December 5, 2023, board members and staff of the National Association of Telecommunications Officers and Advisors (NATOA) <https://www.fcc.gov/ecfs/document/1207128701627/1>

⁷² 47 U.S.C. § 546(a)(1).

IV. CONCLUSION

Given the overwhelming support evidenced in the record, and the lack of compelling counterarguments, Local Government Commenters recommend that the Commission adopt the proposed rules prohibiting ETFs and BCFs. Doing so will save consumers money, promote competition, and improve the customer service standards of cable and DBS service providers. The Commission has the authority to adopt the rules and the record supports a decision to do so.

Respectfully submitted,



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Counsel for
Local Government Commenters

March 5, 2024



Mt. Hood Cable Regulatory Commission

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

February 29th, 2024

Re: MB23-203 All-in Pricing Docket

Chairwoman Rosenworcel, Commissioner Carr, Commissioner Starks, Commissioner Simington,
Commissioner Gomez

Federal Communications Commission
45L Street NE
Washington, DC 20554

The Mt. Hood Cable Regulatory Commission (MHCRC) applauds the Federal Communications Commission and Chairwoman Jessica Rosenworcel for proposing final rules to require cable and direct broadcast satellite (DBS) TV providers to specify the “all-in” price clearly and prominently for video programming services in their promotional materials and on subscribers’ bills.

As an advocate for both consumer protections and local control, the MHCRC strongly supports requiring cable and DBS providers to clearly disclose the “All-in” price for their services on bills and advertising materials. Furthermore, this price must be inclusive of all components of the cost, including broadcast retransmission consent; regional sports programming, any other programming-related fees, and cable franchise fees. Consumers should know the ultimate price they will pay and should not be misled into believing that ordinary costs of doing business are government-imposed fees or taxes. This requirement serves to both protect consumers and encourage competition by making services easier to compare.

We would like to thank Chairwoman Rosenworcel, all the Commissioners, and their staff for their time and effort on this important consumer protection and we look forward to the vote at the upcoming open meeting on March 14th.

Sincerely,

Julia DeGraw, Mt. Hood Cable Regulatory Commission Chairperson



MHCRC 1810 SW 5th Ave. Suite 710 Portland, Oregon 97201
503.823.2005 info@mhcr.org www.mhcr.org



Mt. Hood Cable Regulatory Commission

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

February 1, 2024

Dear Mr. Wood,

On behalf of the Mt. Hood Cable Regulatory Commission (MHCRC) we are sorry there was not better communication with you about your complaint against Comcast. We agree with you that staff should have done a better job of following up with you directly to keep you informed of their efforts in response to receiving your outreach. The Commission is dedicated to supporting the cable customers in our communities and ensuring the cable providers in our jurisdictions follow all legal requirements under their agreements. Anytime a community member has a negative experience, we take that very seriously and use it as an opportunity to reflect on any needed improvements at the Commission itself as well as whether it is appropriate to bring enforcement actions against a cable provider. We also want to say thank you for being persistent in raising your concerns and allowing us to learn from them. The Commission strongly believes that consumer advocacy is critical to making our communities safe, strong, and vibrant.

We know we cannot go back in time and rectify your experience and we understand there is no further remedy you seek from Comcast, having terminated your contract with them. However, we agree with staff that providing you with additional details on what happened in your situation and improvements we have made is the right thing to do. This letter will address those subjects.

First, your emailed complaint received on April 12 was promptly routed by MHCRC staff to Comcast representatives. The Comcast representatives timely acknowledged the information, investigated it, and updated MHCRC staff on the status of your account and their communication with you. However, we understand that MHCRC staff did not also follow-up with you to keep you informed of their efforts on your behalf. As a result of you bringing this to our attention, we have been able to reaffirm with staff our expectations and their commitment to the following:

- Ensuring timely (typically within one business day) contact with subscribers by our staff.
- We commit to making sure subscribers receive communication (email or phone) from us acknowledging receipt of the complaint/inquiry and next steps.
- Our staff are now working with the City of Portland's 311 system to track subscriber complaints. 311 provides a single point of access to help with any questions or local government service needs within Multnomah County. It is staffed 7 days a week from 7 a.m. until 8 p.m. (excluding federal holidays). This means a subscriber is more likely to be able to speak with a person immediately. It also means that all complaints are entered into a centralized database for tracking purposes. The report Vice Chair Harden showed you at the meeting you attended was generated with data from the 311 database. Finally, the 311 database has an interface that allows the cable providers we regulate to access the system and triage complaints in that system. Therefore, we can see how long it took the cable provider to respond and resolve the complaint and how it was resolved.



MHCRC 1810 SW 5th Ave. Suite 710 Portland, Oregon 97201
503.823.5385 info@mhcrc.org www.mhcrc.org



Mt. Hood Cable Regulatory Commission

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

In closing, thank you again for bringing your concerns and experience to our attention. We hope that by sharing about our reflections and improvements we have taken a step toward rebuilding your trust in the MHCRC.

Sincerely,

Julia DeGraw
Mt. Hood Cable Regulatory Commission Chair



Cable Complaints Summary

1/13/2024  3/11/2024 



Comcast

Complaints Avg Days to Solve
32 **3.3**

ZiPLY

Complaints Avg Days to Solve
1 **4.0**

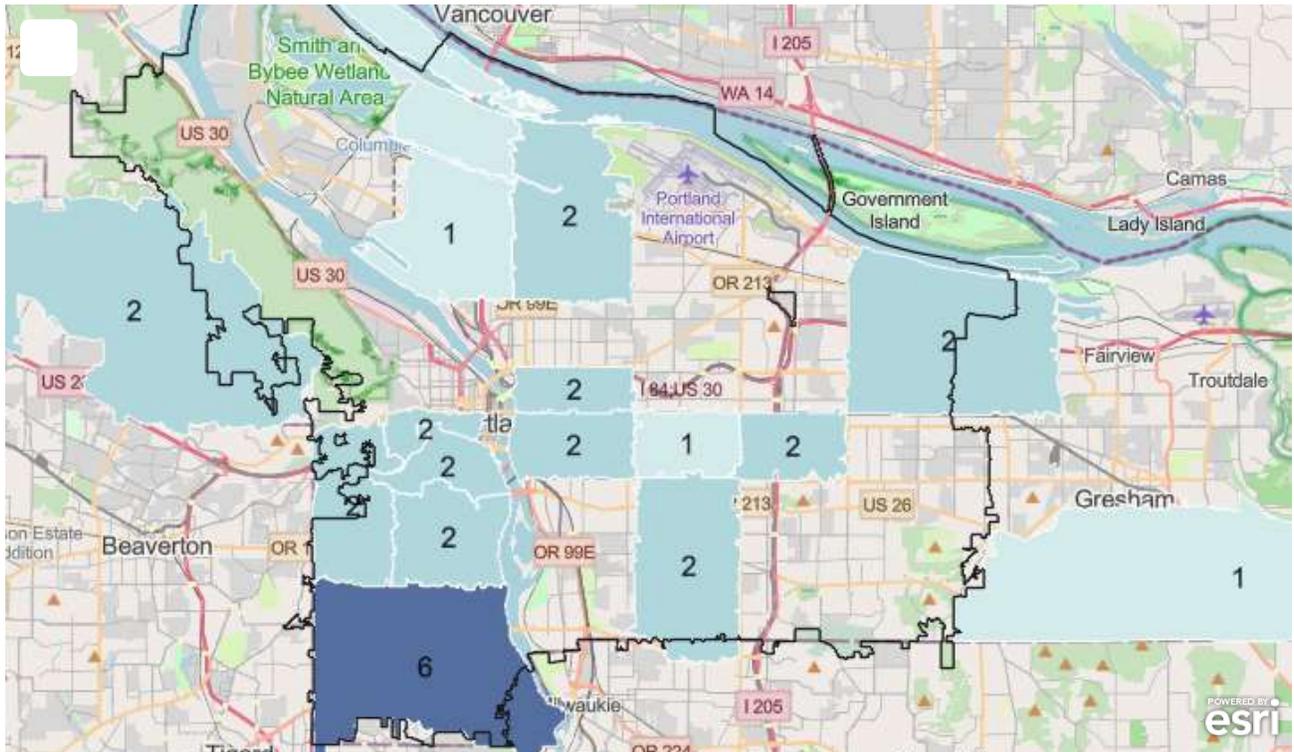
Complaints by Issue

Issue Type	Count of Tickets
Billing/Cost	14
Installation/Repair	3
Other	4
Phones	2
Service Quality	9
Total	32

Complaints by Issue

Issue Type	Count of Tickets
Billing/Cost	0
Installation/Repair	0
Other	1
Phones	0
Service Quality	0
Total	1

Complaint Volume by Zip Code





February 21, 2024

SENT VIA EMAIL TO Rebecca.gibbons@portlandoregon.gov
Melvin.riddick@portlandoregon.gov

Mt. Hood Cable Regulatory Commission
c/o Office for Community Technology
111 SW Columbia Street, Suite 600
Portland, Oregon 97201

Dear Mt. Hood Cable Regulatory Commission:

In accordance with Section 9.1 and Exhibit D of the Cable Franchise Agreement between the City of Gresham and Frontier Communications, Ziplly Fiber hereby provides the Customer Service quarterly report for the most recent quarter.

MHCRC 2023 Report	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
% Calls Answered within 30 Seconds	84.62%	86.48%	86.78%	97.92%
% Calls Receiving a Busy	0.00%		0.00%	0.00%
% Completed Service Interruption Troubles < 24 Hours	100.00%	100.00%	23.08%	100.00%
% Non-Service Interruption Response < Next Bus. Day	57.14%	50.00%	100.00%	52.00%
% Appointment Windows Met - Install and Service	100.00%	100.00%	23.08%	100.00%
% Appointment Windows Not Cancelled - Install and Service	0.00%	0.00%	100.00%	100.00%
% Appointment Windows Not Rescheduled - Install and Service	0.00%	0.00%	23.08%	100.00%
% Installs Completed w/i 7 business days, if ONT in place on Order Creation Date	100.00%	33.33%	0.00%	100.00%
% Installs Completed w/i 14 business days, if ONT in place on Order Creation Date	100.00%	0.00%	100.00%	0.00%

If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

Jessica Epley
Vice President - Regulatory & External Affairs