FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 25 and 76

[MB Docket No. 23–405; FCC 23–106; FRS ID 192513]

Promoting Competition in the American Economy: Cable Operator and DBS Provider Billing Practices

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Communications Commission (FCC) proposes to adopt customer service protection rules that prohibit cable operators and direct broadcast satellite (DBS) service providers from imposing early termination fees and billing cycle fees on subscribers. This document addresses certain billing practices of cable and DBS providers that penalize subscribers for terminating video service or switching video service providers, and seeks comment on proposals to further protect consumers and promote competition in the video programming marketplace.

DATES: Submit comments on or before February 5, 2024. Submit reply comments on or before March 5, 2024.

ADDRESSES: Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Katie Costello, Policy Division, Media Bureau at *Katie.Costello@fcc.gov* or (202) 418–2233.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking, (NPRM) FCC 23–106, adopted on December 13, 2023, and released on December 14, 2023. These documents will also be available via ECFS *https://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word, and/or Adobe Acrobat.) To request these documents in accessible formats for people with disabilities, send an email to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis. Introduction. This Notice of Proposed Rulemaking (NPRM) initiates a proceeding to consider certain billing practices that may have the effect of inhibiting video service subscribers from choosing the video services they want or result in consumers paying fees for video services they did not choose to receive. We propose to adopt customer service protections that prohibit cable operators and direct broadcast satellite (DBS) service providers from imposing early termination fees (ETFs) and billing cycle fees (BCFs) on subscribers. We have initiated proceedings to review how the Commission's existing cable customer service standards may be updated to protect consumers from misleading pricing and be applied to DBS providers. This item builds upon those efforts and addresses additional junk fee billing practices of cable and DBS providers that penalize subscribers for terminating video service or switching video service providers, and further protects consumers and promotes competition in the video programming marketplace.

Background. Billing Practices. ETFs require subscribers to pay a fee for terminating a video services contract prior to its expiration date, making it costly for consumers to switch services during the contract term. Because an ETF may have the effect of limiting consumer choice after a contract is enacted, it may negatively impact competition for services in the marketplace. This billing practice has been used by video service providers for some time and, in 2008, the Commission heard from expert panelists regarding the use of ETFs by communications service providers, including representatives from cable and DBS providers. More recently, the *Executive Order on Promoting Competition in the American Economy* 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.

BCFs require video service subscribers to pay for a complete billing cycle even if the subscriber terminates service prior to the end of that billing cycle. As such, BCFs penalize consumers for terminating service by requiring them to pay for services they choose not to receive. Video service subscribers may terminate service for any number of reasons, including moving, financial hardship, or poor service. Recently, some states have enacted laws restricting BCFs. The U.S. Court of Appeals for the First Circuit in *Spectrum Northeast, LLC* v. *Frey* recently decided that one such BCF regulation imposed by the State of Maine was not impermissible cable service rate regulation. Likewise, the Supreme Court of New Jersey recently reached the same conclusion regarding a similar New Jersey statute in the *Alleged Failure of Altice* case.

Customer Service Standards. The 1984 Cable Act added Title VI to the Communications Act of 1934 (Act). Section 632, entitled ''Consumer Protection,'' addressed one particular type of consumer protection—''customer service requirements,'' providing specifically that ''[a] franchising authority may require . . . provisions for enforcement of . . . customer service requirements . . .'' Although the term ''customer service'' is not defined in the statute, the legislative history of the 1984 Cable Act defined ''customer service'' as ''the direct business relation between a cable operator and a subscriber'' and ''customer service requirements'' as including requirements related to ''rebates and credits to consumers.'' In 1992, Congress amended section 632 to ''provide protection for consumers against . . . poor customer service'' in part by requiring the Commission to ''establish standards by which cable operators may fulfill their customer service requirements.'' The legislative history of the 1992 Cable Act explained that Congress considered cable customer service ''an area of paramount concern,'' and that the standards are intended to ''provide increased consumer protection.'' In 1993, the Commission implemented this mandate in section 76.309 of its rules, adopting baseline customer service requirements for cable operators. Although section 632 specifies certain topics that must be addressed in the Commission's cable customer service rules, such as ''communications between the cable operator and the subscriber (including standards governing bills and refunds),'' the list is not exhaustive. Because section 632(b) states that the standards must address these topics ''at a minimum,'' the Commission has broad authority to adopt customer service requirements beyond those enumerated in the statute. Indeed, when enacting its customer service standards, the Commission noted that ''we reserve the right to respond to particular circumstances brought to our attention to ensure that customer service satisfaction is achieved nationwide.''

With regard to DBS providers, section 303(v) of the Act grants the Commission ''exclusive jurisdiction to regulate the provision of direct-to-home satellite services,'' and section 335(a) provides broad statutory authority to the Commission to impose ''public interest or other requirements for providing video programming'' on DBS providers. While the Commission has not adopted specific customer service obligations for

DBS providers as it has for cable providers, it has adopted rules implementing other public interest obligations.

Discussion. Consistent with the objectives outlined above, we seek comment on our tentative conclusions with respect to ETFs and BCFs. As more thoroughly discussed below, this includes the scope and substance of our proposed rules, our legal authority to adopt these rules, the benefits and impacts of the proposed rules, and the extent to which any alternatives could achieve our policy goals.

Proposed Rules. First, we propose to prohibit cable and DBS service providers from imposing a fee for the early termination of a cable or DBS video service contract. To *the* extent that the existing terms of service between a cable operator or DBS provider and its subscriber provide for an ETF, we seek comment on whether to deem such a provision unenforceable if we were to prohibit ETFs. We seek comment on this proposal to regulate video service ETFs. We tentatively find that our proposed prohibition on ETFs is a reasonable customer service requirement in an area, billing practices, where the Commission receives hundreds of complaints annually. When the Commission first established its customer service standards, it acknowledged that a ''key objective'' of the Act was to ''ensure that cable operators nationwide provide satisfactory service to their customers.'' We tentatively find that the imposition of ETFs inhibits subscribers from switching providers and making choices about the video services they wish to receive. We tentatively find that the prohibition of ETFs will create a standard that protects consumers from a billing practice that may effectively limit their ability to switch video service providers. Limiting such restrictions imposed on consumer choice could serve the public interest by allowing consumers to freely choose among providers, which promotes vibrant competition in the market for video services and encourages providers to maintain high customer service standards to retain subscribers to their service. Although in the past video service providers have generally claimed that ETFs decrease overall consumer costs, individual consumers maintain in general that ETFs are unreasonably restrictive. We tentatively find that our proposed rule preventing ETFs will protect consumers from billing practices that may deter or make it more difficult for consumers to switch providers, and thereby impede competition in the video marketplace. We seek comment on these tentative conclusions.

We also propose to require cable and DBS service providers to grant subscribers a prorated credit or rebate for the remaining whole days in a monthly or periodic billing cycle after the cancellation of service. We seek comment on this proposal, and whether the specific language reflects our intent of relieving a subscriber from payment obligations as of the date the provider receives a cancellation request. To the extent that the existing terms of service between a cable operator or DBS provider and its subscriber provide for a BCF, we seek comment on whether to deem such a provision unenforceable if we were to prohibit BCFs. We tentatively find that this prohibition on BCFs is a reasonable customer service requirement because this practice requires consumers to pay for service they no longer wish to receive. As with ETFs, we tentatively find that prohibition of BCFs will create a standard that protects consumers from poor customer service, specifically, paying for services that have been cancelled, and that such a standard will serve the public interest by protecting consumers from unfair billing practices. BCFs impose significant costs on consumers for services they have cancelled and no longer wish to receive. For instance, based on the average price for cable service, subscribers cancelling mid-billing cycle could pay a significant price even after cancelling their service: the average monthly price for basic tier cable service is $42.63, for expanded basic tier service it is $101.54, for the next most popular cable service tier it is $115.67, and the price for services comparable to expanded basic tier service from DIRECTV and DISH average $123.52 and $90.44 per month, respectively. We tentatively find that our proposed rule preventing BCFs will protect consumers from charges for cancelled cable or DBS service they no longer want. We seek comment on these tentative conclusions.

Legal Authority. We seek comment on our authority to adopt ETF and BCF regulations for cable and DBS providers. We tentatively conclude that adoption of restrictions on both ETFs and BCFs is a proper exercise of the Commission's authority under section 632 to ''establish standards by which cable operators may fulfill their customer service requirements.'' Section 632(b)(3) directs the Commission to establish standards governing ''communications between the cable operator and the subscriber (including standards governing bills and refunds).'' Because ETFs and BCFs involve cable operators' billing and refund practices, we tentatively conclude that these are customer service matters within the meaning of section 632(b)(3). In addition, we tentatively find that we may regulate these practices under our general authority in 632(b) to establish ''customer service'' standards. Although the term ''customer service'' is not defined in the statute, the legislative history defines the term ''customer service'' to mean ''in general'' ''the direct business relation between a cable operator and a subscriber,'' and goes on to explain that ''customer service requirements'' include requirements related to ''rebates and credits to consumers.'' We tentatively conclude that the proposed restriction on ETFs and BCFs satisfies the definition of a ''customer service requirement'' because billing practices governing the termination of service, such as ETFs and BCFs, involve the ''direct business relation between a cable operator and a subscriber.'' Additionally, we tentatively find that pro-rata refunds are properly considered ''rebates [or] credits'' given to consumers, which, according to the legislative history, are customer service matters. Furthermore, the list of topics Congress required the Commission to address in terms of customer service was not exhaustive. We tentatively conclude that fees—both those inhibiting 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. Thus, we tentatively find that restrictions on such practices are within the statute's grant of authority. We seek comment on this analysis. We also seek comment on whether there are alternative or additional statutes or arguments that provide a legal basis for our authority to adopt this customer service requirement for cable operators.

We also seek comment on our authority to adopt ETF and BCF regulations for DBS providers. We tentatively find that restrictions on ETFs are in the public interest because the fees unreasonably inhibit competition and consumer choice among video service providers. We tentatively find that restrictions on BCFs are in the public interest because the practice imposes fees on subscribers for services that they did not choose to receive and that the fees can be significant. Excluding DBS from these rules would mean that their subscribers would remain vulnerable to these practices. Do we have authority under section 335(a) to adopt ETF and BCF regulations for DBS providers? Do we have authority under other provisions of Title III? We also seek comment on whether we have—and should exercise—ancillary authority under section 4(i) of the Act to adopt such regulations and whether it is necessary to undertake this regulation for the Commission to effectively perform its responsibilities under the foregoing primary sources of statutory authority? By doing so, we will ensure uniformity of regulation between and among cable operators (regulated under Title VI and by various state consumer protection laws and local franchising provisions) and DBS providers (under Title III), thereby preventing DBS providers from gaining a competitive advantage over their competitors through the use of ETFs and BCFs. We seek comment on this analysis. We also seek comment on whether there are alternative or additional statutes or arguments that provide a legal basis for our authority to adopt these customer service requirements for DBS providers.

Finally, as noted above, based on the language and structure of section 632, Congress authorized the Commission to establish customer service requirements, and franchising authorities to adopt additional laws above and beyond the Commission's baseline requirements. Therefore, we tentatively find that this proposed rule would not preempt existing state and local laws that prohibit ETFs and BCFs or otherwise exceed the requirements we adopt in this proceeding, so long as they are not inconsistent with Commission regulations. We seek comment on this analysis.

Rate Regulation versus Customer Service Regulation. In *Spectrum Northeast, LLC* v. *Frey,* the First Circuit determined that a state regulation prohibiting BCFs substantially similar to the prohibition we propose here is not rate regulation pursuant to the Act. We tentatively conclude that this same analysis (as described in further detail below) applies to our proposed BCF prohibition. We seek comment on this tentative conclusion. While *Spectrum Northeast, LLC* v. *Frey* addresses the issue of whether a BCF prohibition is impermissible rate regulation, the court did not address ETFs. We tentatively conclude that cable ETF regulations are not rate regulations under section 623 of the Act. We seek comment on this tentative conclusion. The statute does not define the term ''rates'' or explain the meaning of the phrase ''rates for the provision of cable service'' for purposes of section 623. Historically, the Commission's cable rate regulations have not covered service termination fees or termination rebates. The Commission has previously found the regulation of fees similar to the proposed regulation of ETFs and BCFs is not rate regulation. For instance, the Commission has found that limits on late fees are considered customer service regulation and not rate regulation. And, in practice, the Media Bureau and its predecessor bureau (the Cable Services Bureau) have found that local regulations similar to the proposed ETF and BCF regulations herein, were not properly categorized as rate regulation and therefore not pre-empted. Such findings have included local regulations that address unreturned equipment fees, pay-by-phone fees, late fees, returned check fees, and other miscellaneous cable subscriber charges that were found not to be included as part of the Commission's rate regulations. Thus, we tentatively conclude that Commission practice and precedent supports the notion that ETF regulations also are not rate regulation.

Furthermore, our tentative conclusion is consistent with recent court precedent. In the First Circuit's recent decision in *Spectrum Northeast, LLC* v. *Frey,* the court determined that a state BCF regulation is not rate regulation pursuant to the Act. The Maine regulation was enacted after a cable company implemented a new practice of declining to provide refunds when cable service was terminated prior to the end of a billing cycle. The regulation then required cable operators to issue prorated credits or rebates for the days remaining in a billing period after termination of cable service. The court determined that the federal preemption of cable rate regulation ''did not extend to the regulation of termination rebates'' and concluded that the Maine law is not a law governing ''rates for the provision of cable service'' but rather is a ''consumer protection law'' that is not preempted. The court based its decision on four aspects of the structure and legislative history of the Act. First, the court explained that the legislative history of the Act and the Commission's regulations ''focused on preempting monthly 'rates' charged for the provision of basic cable service'' and do not ''suggest that the term 'rates for the provision of cable service' includes termination fees or termination rebates.'' Second, the court noted that Congressional silence concerning termination fees or rebates is ''particularly significant'' because Congress included regulation of rates for ''installation'' fees, but not termination fees, as rates ''for the provision of cable service.'' Third, the court observed that Congress acknowledged multiple potential sources of competition but did not identify termination credits as being controlled by effective competition. Instead, termination credits encourage competition ''by prohibiting cable companies from creating artificial barriers to switching between competitors by charging consumers beyond termination of service.'' Finally, the court found that Congress expressed a purpose to ''preserve state consumer protection laws'' despite preempting the regulation of ''rates for the provision of cable service,'' and this favors ''a narrow reading of the scope of the preemption provision.''

The New Jersey Supreme Court also recently concluded that a New Jersey statute banning BCFs was not rate regulation preempted by federal law. The New Jersey code states that ''[b]ills for cable television service shall be rendered monthly, bi-monthly, quarterly, semi-annually or annually and shall be prorated upon establishment and termination of service.'' In *Alleged Failure of Altice,* the Supreme Court of New Jersey concluded that New Jersey's BCF regulation does not regulate cable rates or control the rates for the provision of cable service. The court based its decision on the ''ordinary meaning'' of the text from the New Jersey statute and the Cable Act. The court determined that ''the plain and ordinary meaning of rate regulation . . . is not so broad as to encompass all laws that affect or concern cable prices.'' With regard to the New Jersey BCF regulation, the court concluded that ''the challenged regulation does not even indirectly affect the actual rate Altice charges . . . the regulation merely uses the rate that the cable provider sets to enforce a price proportional to the quantity of service provided.''

With regard to cable ETFs, we tentatively conclude that the courts' logic in *Spectrum Northeast, LLC* v. *Frey* and *Alleged Failure of Altice* applies to the ETF regulation we propose in this *NPRM.* Similar to a BCF, an ETF is assessed upon *termination* of service, *i.e.,* it concerns the time period when cable service ends. Thus, a restriction on ETFs does not appear to cap the amount a cable operator can charge for the provision of cable service; rather, it regulates only the charge that a cable operator may impose on a customer *after* the customer has elected to *terminate* service. Further, we tentatively find that the structure and legislative history of the Act does not support treating ETFs as a form of rate regulation, just as the courts found with regard to BCFs. Also, we tentatively find that an ETF does not fall within the plain and ordinary meaning of rate regulation, similar to the court's reasoning regarding BCFs. Thus, we tentatively conclude that regulation of ETFs is not ''rate regulation.'' In addition, our tentative conclusion is consistent with case law evaluating whether State regulation of cellular telephone ETFs is preempted by federal rate regulation. In *In re Cellphone Termination Fee Cases,* the California Court of Appeals for the First District concluded that a cellular telephone ETF regulation was not preempted by federal law. Although the court was not addressing cable rate regulation specifically, it was addressing a similar statutory provision that carves out the universe of ''other terms and conditions'' from rate regulation of wireless services, similar to how ''consumer protection'' and ''customer service'' is distinct from rate regulation in the cable statute. The scope of both carveouts appears to be similar in nature and includes billing issues, consumer protection, and customer service. The court concluded that the ''purpose in adopting the cellular telephone ETF was to control churn'' and prevent customers from leaving, and because the State law invalidating the ETFs had ''only an indirect and incidental effect on . . . rates,'' it was not preempted by federal law. We find this reasoning and that of the BCF cases discussed above to be applicable to the question of whether cable ETF regulations are rate regulations under the Act, and tentatively conclude that they are not. We therefore tentatively conclude that, consistent with case law and the Commission's own precedent, regulations concerning cable ETFs also are not rate regulations. Thus, we tentatively find inapplicable section 623's prohibition on the Commission's regulation of ''the rates for the provision of cable service'' in franchise areas where effective competition exists. Nearly all, if not all, cable operators now face effective competition and are not subject to rate regulation. However, there is no such prohibition found in section 632's customer service provision. Accordingly, the applicability of ETF and BCF regulations are not affected by the existence of effective competition in a community. We seek comment on this analysis.

Implementation. We seek comment on how to tailor our rules to best protect consumers and promote competition. As an initial matter, we seek specific comment on the interplay of our proposed rules and any state or local ETF and BCF regulations. To what extent are State and local authorities currently regulating ETFs and BCFs with respect to cable and DBS services? Do local authorities have adequate resources to enforce the proposed rules effectively? To the extent the Commission were to enforce its own rules in individual cases, how could it best coordinate enforcement with local authorities?

We also seek specific comment from State and local authorities on our proposed prohibition on cable and DBS ETFs and BCFs as proposed in appendix A. Should we adopt something less than a total ban and allow variations within States or communities? Given our shared jurisdiction with local authorities over cable customer service issues, we seek comment regarding their local subscriber complaints and regulation experiences. We seek comment on what enforcement mechanisms should be implemented at the federal level. We also seek comment on what enforcement mechanisms have been or could be implemented at the local level and how those might inform enforcement mechanisms at the federal level. To the extent we adopt a ban on DBS ETFs and BCFs, would this need to be enforced by the Commission given that DBS providers are not required to have local or state franchises? If so, are there additional rules we should adopt to ensure an effective enforcement scheme?

If the Commission adopts the proposals to ban ETFs and BCFs, what is a reasonable amount of time for cable and satellite providers to implement this change? How should our proposed rule banning BCFs be implemented for the benefit of current subscribers? Do operators require time to implement changes to their current billing systems? What effect, if any, will our proposed rule banning ETFs have on consumers' existing contracts? If commenters argue that our proposed rule should apply only to new contracts entered into after its effective date, what are the legal and policy justifications for treating agreements of existing customers differently than new customers? Should there be a grace period to accommodate existing contracts with ETF provisions? If so, what effect, if any, will our proposed rule have on existing ETFs? In lieu of the rules proposed in appendix A, we seek comment on whether the Commission should, on the other hand, adopt more detailed cable and DBS regulations that include grace periods, limiting or extenuating circumstances, or other factors for determining when an ETF or BCF might be appropriate. Is there any justification for less than a total ban on ETFs and BCFs? For example, should our rules exempt small cable operators or rural cable operators? Any party advocating for an exception should explain the reason they believe a carve-out from the prohibition is necessary. We seek comment on these issues.

To the extent cable or DBS video service is part of a bundled package with non-video services, could ETF and BCF rules be applied to the entire bundle, and if so, under what authority? We therefore seek comment on enforcement issues relating to an ETF or BCF ban when video services are bundled with non-video services. With respect to cable, does permitting state and local government enforcement of an ETF or BCF ban conflict with other sections of Title VI of the Act or the scope of local franchise authority under Title VI when video services are included as part of a bundle? We recognize that section 624(b)(1) provides that franchising authorities ''may not . . . *establish* requirements for . . . information services.'' Does this provision limit franchising authorities' ability to enforce a Commission-established ban on ETFs or BCFs when video services are part of a bundle with non-video services? We seek comment on these issues.

State of the Video Marketplace. We seek comment on how cable operators and DBS providers currently handle ETFs and BCFs. As noted above, BCFs are a more recent development than ETFs. Were there changes in the video marketplace that prompted introduction of ETFs and/or BCFs? Are there video service providers who currently do not impose ETFs and/or BCFs? Are there providers that offer multiple subscription choices including plans with and without ETFs? Are providers offering long term contracts at reduced prices without ETFs? If so, what other differences are there between offerings with and without ETFs? How likely are consumers to elect a plan that does not include ETFs when such offerings are available? If such offerings are available, what is the cable operator's or DBS provider's rationale for offering that plan or option? Would the absence or presence of an ETF impact a consumer's choice of provider? Are there any cable operators or DBS providers that offer multiple subscription choices including plans with and without BCFs? If so, what is the cable operator's or DBS provider's rationale for offering that plan or option? Are there cable operators or DBS providers that only impose BCFs in certain circumstances and not in other circumstances? If so, what are the circumstances in which the BCF is not imposed? What is the cable operator's or DBS provider's rationale for not imposing the BCF in those circumstances? Would the absence or presence of BCFs impact a consumer's choice of provider? How would prohibiting or limiting cable operators and DBS providers from imposing ETFs and/or BCFs change providers' current customer services?

Cost/Benefit Analysis. If a ban on ETFs were implemented, we expect consumers to benefit because they would have the ability to switch video service providers more easily and cancel video service without cost. In addition, a ban on BCFs would benefit consumers because it would prevent consumers from paying for services they choose not to receive. If ETFs are eliminated, would video service providers still choose to offer long term contracts for reasons other than price, for instance in order to avoid churn? Could the elimination of ETFs alter the price of long term contracts and if so how? What would be the impact of such changes on consumers? If video service providers were to decide not to offer long term contracts or to offer them at higher prices, would the higher prices be offset by the consumer savings in avoiding ETFs? How would these possible outcomes affect low-income and new consumers? Further, would eliminating ETFs and BCFs affect billing cycles? We seek comment on how the Commission should assess the likelihood and magnitude of these potential benefits and costs to consumers.

We also seek comment on how a ban on ETFs and BCFs would affect competition among video providers. By reducing consumer switching costs, could a ban on ETFs foster competition between developing online video services and cable and satellite video providers? For example, might consumers who have signed multi-year contracts with cable and satellite video providers benefit from earlier opportunities to choose among all options? Would this additional choice enhance competition? For cable and satellite video customers, what are the shares of customers with month-to-month, one-year, two-year, or other service agreements subject to ETFs or BCFs?

We also seek comment on any potential costs that would be imposed on regulatees if we adopt the proposals contained in this *NPRM.* Do these costs differ between large and small cable providers? Would a ban on ETFs and BCFs impose substantial or unnecessary burdens on small cable operators? Further, would a ban on ETFs limit entry by new providers by limiting their ability to recoup upfront costs through an ETF? Would a ban on ETFs and BCFs have a positive impact on video service provider negotiations with broadcast stations and cable networks for programming by allowing consumers more freedom to switch providers to obtain preferred programming? Could programming costs be affected by a ban on ETFs and BCFs? What amounts do cable and DBS operators charge for early termination fees? Comments should be accompanied by specific data and analysis supporting claimed costs and benefits.

Digital Equity and Inclusion. Finally, the Commission, as part of its continuing effort to advance digital equity for all, including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations and benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, we seek comment on how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission's relevant legal authority.

Ex Parte Rules—Permit-But-Disclose. The proceeding this Notice initiates shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Filing Requirements—Comments and Replies. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

Electronic Filers: Comments may be filed electronically using the internet by accessing the ECFS: *https://apps.fcc.gov/ecfs/.*

Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554. Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. During the time the Commission's building is closed to the general public and until further notice, if more than one docket or rulemaking number appears in the caption of a proceeding, paper filers need not submit two additional copies for each additional docket or rulemaking number; an original and one copy are sufficient.

Regulatory Flexibility Act. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' Accordingly, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the possible/potential impact of the rule and policy changes contained in this *NPRM.* The IRFA is set forth below. Written public comments are requested on the IRFA. Comments must be filed by the deadlines for comments on the *NPRM* indicated on the first page of this document and must have a separate and distinct heading designating them as responses to the IRFA.

Paperwork Reduction Act. This document does not contain any proposed information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

Providing Accountability Through Transparency Act. Consistent with the Providing Accountability Through Transparency Act, Public Law 118–9, a summary of this document will be available on *https://www.fcc.gov/proposed-rulemakings.*

People with Disabilities. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530.

Initial Regulatory Flexibility Act Analysis. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in this Notice of Proposed Rulemaking (NPRM). The Commission requests written public comments on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments specified in the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

Need for, and Objectives of, the Proposed Rules. The NPRM initiates a proceeding to consider billing practices that inhibit video service subscribers from choosing the video services they want and that result in consumers paying fees for video services they choose not to receive. The Commission has received numerous complaints from cable and DBS subscribers about two billing practices: early termination fees (ETFs) and billing cycle fees (BCFs). An ETF is a fee that a provider charges a subscriber when the subscriber terminates its service contract prior to its expiration. ETFs remove consumer choice, negatively impacting competition for services in the marketplace. A BCF is a fee that subscribers pay when they cancel service prior to the end of a billing cycle and the service provider refuses to refund a pro-rated share of the billing cycle charge for the unused service. BCFs harm consumers by requiring them to pay for services they did not choose to receive. Both of these fees place a financial burden on subscribers and can create barriers to competition. The proposed rules in the NPRM will prevent the imposition of ETFs and BCFs, protecting consumers and promoting competition.

Legal Basis. The proposed action is authorized under §§ 1, 4(i), 303(v), 335(a) and 632(b), of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 303(v), 335(a) and 552(b).

Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rule revisions, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act (SBA). A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

Cable and Other Subscription Programming. The U.S. Census Bureau defines this industry as establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. The broadcast programming is typically narrowcast in nature (*e.g.,* limited format, such as news, sports, education, or youth-oriented). These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers. The SBA small business size standard for this industry classifies firms with annual receipts less than $41.5 million as small. Based on U.S. Census Bureau data for 2017, 378 firms operated in this industry during that year. Of that number, 149 firms operated with revenue of less than $25 million a year and 44 firms operated with revenue of $25 million or more. Based on this data, the Commission estimates that a majority of firms in this industry are small.

Cable Companies and Systems (Rate Regulation). The Commission has developed its own small business size standard for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers nationwide. Based on industry data, there are about 420 cable companies in the U.S. Of these, only seven have more than 400,000 subscribers. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Based on industry data, there are about 4,139 cable systems (headends) in the U.S. Of these, about 639 have more than 15,000 subscribers. Accordingly, the Commission estimates that the majority of cable companies and cable systems are small.

Cable System Operators (Telecom Act Standard). The Communications Act of 1934, as amended, contains a size standard for a ''small cable operator,'' which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' For purposes of the Telecom Act Standard, the Commission determined that a cable system operator that serves fewer than 498,000 subscribers, either directly or through affiliates, will meet the definition of a small cable operator. Based on industry data, only six cable system operators have more than 498,000 subscribers. Accordingly, the Commission estimates that the majority of cable system operators are small under this size standard. We note however, that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million. Therefore, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

Direct Broadcast Satellite (''DBS'') Service. DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic ''dish'' antenna at the subscriber's location. DBS is included in the Wired Telecommunications Carriers industry which comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution; and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.

The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that 3,054 firms operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Based on this data, the majority of firms in this industry can be considered small under the SBA small business size standard. According to Commission data however, only two entities provide DBS service—DIRECTV (owned by AT&T) and DISH Network, which require a great deal of capital for operation. DIRECTV and DISH Network both exceed the SBA size standard for classification as a small business. Therefore, we must conclude based on internally developed Commission data, in general DBS service is provided only by large firms.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements. The *NPRM* proposes to adopt rules that prohibit cable and DBS service providers from imposing ETFs and BCFs. This may impose new or additional compliance obligations on small entities. When subscribers wish to terminate their services contract prior to its expiration date, small entity cable operators may need to use additional accounting and finance processes to determine the prorated credit or rebate to provide subscribers for the remaining days in a billing cycle. These operators must then determine how to return this fee to the subscriber. The *NPRM* seeks comment on any potential costs that would be imposed on regulatees and whether a ban on ETFs and BCFs would impose unnecessary burdens on small cable operators. The Commission anticipates the information received in comments including where requested, cost and benefit analyses, will help identify and evaluate relevant compliance matters for small entities, including compliance costs and other burdens that may result from the proposals and inquiries made in the *NPRM.*

Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for such small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

To assist in the Commission's evaluation of the economic impact on small entities, as a result of actions that have been proposed in the *NPRM,* and to better explore options and alternatives, the Commission seeks comment on whether any of the burdens associated with the compliance requirements described above can be minimized for small entities. An alternative option that may reduce burdens on small entities considered in the *NPRM* is whether the Commission should adopt more detailed cable and DBS regulations that include grace periods, limiting or extenuating circumstances, or other factors for determining when an ETF or BCF might be appropriate. Additionally, the Commission seeks comment on whether potential costs associated with a ban on small entities imposing ETFs and BCFs would impose unnecessary burdens on small cable operators. The Commission expects to more fully consider the economic impact and alternatives for small entities based on its review of the record and any comments filed in response to the *NPRM* and this IRFA.

Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rule. None.

It is ordered that, pursuant to the authority found in §§ 1, 4(i), 303(v), 335(a) and 632(b), of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 303(v), 335(a) and 552(b), this Notice of Proposed Rulemaking *is adopted. It is further ordered* that the Commission's Office of the Secretary, Reference Information Center, *shall send* a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 25

Administrative practice and procedure, Satellites.

47 CFR Part 76

Television.

Federal Communications Commission

Marlene H. Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 25 and 76 as follows:

PART 25—SATELLITE COMMUNICATIONS

■ 1. The authority citation for Part 25 is revised to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 309, 310, 319, 332, 335, 605, and 721, unless otherwise noted.

■ 2. Amend § 25.701 by revising the introductory text of paragraph (a) and by adding paragraph (g) to read as follows:

§ 25.701 Other DBS Public interest obligations.

(a) DBS providers are subject to the public interest obligations set forth in paragraphs (b), (c), (d), (e), (f) and (g) of this section. * * *

* * * * *

(g) Customer service obligations. A DBS provider shall not charge a subscriber a fee for terminating a DBS services contract before its expiration date. A DBS provider must provide a subscriber a prorated credit or rebate for the remaining days in a billing cycle after the cancellation of DBS service.

* * * * *

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

■ 3. The authority citation for Part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

■ 4. Amend § 76.309 by adding paragraph (c)(5) to read as follows:

§ 76.309 Customer service obligations.

* * * * *

(c) * * *

(5) A cable operator shall not charge a subscriber a fee for terminating a cable services contract before its expiration date. A cable operator must provide a subscriber a prorated credit or rebate for the remaining days in a billing cycle after the cancellation of cable service.

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