

**DISSENTING STATEMENT OF  
COMMISSIONER NATHAN SIMINGTON**

Re: *All-In Pricing for Cable and Satellite Television Service*, Report and Order, MB Docket 23-203.

Americans deserve to know what they are paying for their products. On that issue, I am aligned with my colleagues today who are voting to approve this item. Indeed, I asked my colleagues to implement a targeted edit to this item that I believe would have paved the way to a unanimous vote while still taking action to implement all-in pricing for cable billing. Leadership rejected that edit in favor of the item presented today. Permit me to explain my thinking on my vote to dissent.

Think of this item as a two by two matrix for pricing disclosure requirements. At the top, you have billing and promotional materials. On the side, you have cable and satellite video providers. The Commission's authority today only even arguably covers one of the four "quadrants" of this matrix: that is, cable billing. Satellite billing is a harder lift, and cable and satellite promotional material pricing disclosure requirements are fully without authority. While I would have had reservations with the particular *way* in which the item implements cable billing pricing requirements, at least we *can* do so under the TVPA. I am happy to concede that point. Section 642 empowers the Commission to act on cable billing practices, including to regulate how pricing is denominated therein. While I do not agree with the particular approach in today's item in implementing the all-in pricing disclosure requirement, at least our authority over some aspects of cable billing is clear.

The rest of the item, however—the rest of our toy management consultant matrix—is just analytical error. We lack authority under Section 335(a) to require satellite operators to change their bills to reflect these new disclosures, but much more distressingly: there is no world in which Section 335(a), Section 632 or Section 642 empower the Commission to regulate price formatting on promotional materials. It just is not there.

Section 632 relates to customer service rules for cable operators. While I will discuss why I am skeptical of Section 632 authority as it relates to billing in a moment, there is clearly no language indicating that Section 632 can extend to non-subscribers, as most of those targeted by promotional materials are. Nor could a promotional material plausibly be read to be a “communication between the cable operator and the subscriber” within the meaning of Section 632, which relates to already-extant relationships between cable operators and their subscribers. While some subscribers will, inevitably, see promotions for service from their current video provider, those are not *communications* within the meaning of Section 632, which clearly relates to the sorts of communications appurtenant to the *specific* and *existing* relationship between a cable operator and customer. It strains the tensile strength of ‘communication’, when read in the context of the whole of Section 632, to suggest otherwise. And the argument provided in the item—that there is some kind of “general grant” of authority under Section 632 for the Commission to establish customer service requirements for cable operators that is “read out” when the language is “narrowed” so as to apply to cable *customers*—is an absurdity. There is no “general grant” of authority under Section 632 that was ever intended to govern the relationship between a cable operator and a non-customer. So there is no authority as it relates to promotional materials in this Section.

Section 335(a) relates essentially to the provision of political programming. While my colleagues rely on the sentence empowering the Commission to impose “public interest or other requirements for video programming” on satellite video providers, the very next sentence indicates that “[a]ny regulations prescribed pursuant to such rulemaking shall, at a minimum, apply to [access to advertising time for candidates for political office].” This would seem to indicate the domain to which our “public interest” regulations were intended to apply, and the rest of the Section does nothing to undercut the basic principle that the thrust of the Section is about public service programming carriage. The bare existence of the term “public interest” does not entitle a reading that is fully contrary to context. Indeed, the item suggests

that its reading of this Section is “clear and common sense.” Yet, just as had Congress intended to extend Section 335(a) to cover how satellite providers advertise their prices or bill their customers, they presumably we have said so by any words other than “public interest.” Even one additional word. It is in no way clear, nor is it common sense—at least to me—that the Commission is entitled to impute meaning into a statute that Congress clearly could have included, but legislative history makes clear that it elected not to include.

And then there is the TVPA. As recently as 2019, Congress considered and explicitly rejected extending Commission authority to regulate promotional materials when passing the TVPA. Ought that not to be a clear indicator as to what clarity and common sense demand when reading Congressional intent as to what the Act says in Sections passed years earlier? Had the Commission authority to act today under Sections 335(a) or Section 632 to act as it relates to cable or satellite billing or promotional materials, for what purpose was the TVPA passed? It would seem to me that the very existence of the TVPA indicates clearly the precise boundaries Congress intended to draw as it relates to linear video billing and pricing disclosures and the Commission's authority to act thereon.

What is left to implement these requirements? The authority of the gunslinger: Section 4(i) ancillary authority. Suffice it to say, I do not find the exercise of Section 4(i) authority in any way related to the effective performance of our statutorily-mandated responsibilities, since this item is purely voluntary on the Commission's part. The full rejection of ancillary authority I will leave as an exercise for the litigant.

So our authority to act is weak where it exists at all, but is today's item a good idea? Well, in some respects, sure! Okay, all-in video pricing on my bill. Great, in some respects: now instead of a few lines on my monthly bill, I have one. Maybe I am a young and savvy consumer who was on the fence about cord-cutting. Maybe this revision looks a little tech-y, or the all-in price is a punchy serif font or something. At any rate, I appreciate the aesthetics of a single line item for my video package. Maybe I stay an additional year, because that single line item helps me do a little back-of-the-envelope comparison shopping, and I determine I'm actually doing all right with my traditional provider by comparison to a bundle of streaming services. This probably isn't so bad.

Yet the new rules are less great in other respects, like when instead of a few lines on my monthly bill, I have one. And I'm an older consumer with a legacy plan that has provided me a bill in the same format for the last decade. And now it looks like I'm being charged more. And now I'm calling my cable company or my grandchild to explain. This probably isn't so good.

And then not good at all, of course, is that we are yet again adding additional regulatory burden and complexity on an industry that is shedding customers by the millions. Traditional linear video is on the way out, but we don't have to shoo them away like the last guest who hasn't gotten the hint that the party's over. For every mote of regulatory complexity we add to legacy providers, unregulated online video providers become more nimble by comparison.

While an argument can be made for consumer benefit for all-in pricing on billing (although, if I were to guess, I think it will largely wind up being a push), we lack the authority to do most of what we did in this item, and we have no hope of prevailing on promotional materials if challenged. For those reasons, and for the general good of the order—in the hopes that we one day soon stop treating media regulation like a term paper word count minimum we have to meet—I dissent.