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

In the Matter of	)	
	)	
Expanding Consumers' Video Navigation Choices	)	MB Docket No. 16-42
	)	
Commercial Availability of Navigation Devices	)	CS Docket No. 97-80

REPLY COMMENTS OF CHARTER COMMUNICATIONS, INC.

Charter Communications, Inc. ("Charter") hereby submits these reply comments in response to the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding. Charter strongly supports the comments submitted by the National Cable and Telecommunications Association, which explain that the Commission's proposals would unnecessarily upend a vibrant video market and cause consumer harm.[1] Charter submits these comments to emphasize our specific concerns regarding the Commission's proposal "to require all MVPDs to state separately a charge for leased navigation devices . . . including modems [and] routers."[2]

As explained below, the Commission lacks the authority to require MVPDs to charge for navigation devices, because such an approach would impose legally impermissible rate regulation. Equally important, the proposed rule is bad policy. Although the Commission suggests that its proposal would increase billing transparency, in fact, the opposite is true. Consumers complain loudly about how difficult it is to understand the prices of service offers

[1] *See* Comments of the National Cable & Telecommunications Association, MB Docket No. 16-42, CS Docket No. 97-80 (filed April 22, 2016) ("NCTA Comments").

[2] *In re Expanding Consumers' Video Navigation Choices; Commercial Availability of Navigation Devices*, Notice of Proposed Rulemaking and Memorandum Opinion and Order, 31 FCC Rcd 1544, 1585, ¶ 84 (2016) ("*Navigation Devices NPRM*").

and of "sticker shock" resulting from added fees. That is why Charter has long used an inclusive pricing model, offering modems at no additional charge in conjunction with high-speed broadband service, and plans to extend that approach to the former Time Warner Cable and Bright House territories. This approach is part of Charter's mission to provide excellent service to consumers at prices that are clear and compelling.[3] Because the Commission's proposed rule is legally problematic, would lead to *less* transparency in billing, and would prohibit Charter from offering consumers the straightforward, inclusive pricing that they desire, the Commission should not adopt this proposed rule.

I. THE CABLE ACT RESTRICTS THE COMMISSION'S AUTHORITY TO IMPOSE THE PROPOSED RULE.

As other parties have stated, the Commission's billing transparency proposal is legally flawed and contravenes Commission precedent.[4] In particular, the proposed rules run afoul of the Cable Act, which explicitly restricts the Commission's ability to "regulate the rates" for cable service and equipment for "a cable system [that] is subject to effective competition."[5] Even when the Commission determines that a cable system is *not* subject to effective competition, moreover, rate regulation may only be exercised by local franchising authorities unless the Commission has disapproved or revoked the relevant local franchising authority's jurisdiction.[6]

A Commission rule requiring cable providers to impose a non-zero line-item charge on customers for a cable modem or other navigation device would conflict with these provisions. The Commission has long held that regulation of "rate levels" and "rate structure" constitutes

[3] Thus, for example, Charter has not charged early termination fees and will be rolling out that policy across its newly acquired footprint.

[4] Comments of AT&T, MB Docket No. 16-42, CS Docket No. 97-80 (filed April 22, 2016) at 97-100 ("AT&T Comments"); NCTA Comments at 170-72.

[5] 47 U.S.C. § 543(a)(2).

[6] *Id*. § 543(a)(2)(A), (a)(6).

rate regulation.[7] The proposed rule would do both—it would set a minimum rate level above zero and impose a structural requirement that the rate be segregated and separately stated.[8] This is precisely what the Cable Act forbids the Commission from doing unless it has established both that the relevant cable system is not subject to effective competition and that the local franchising authority does not have the jurisdiction to act.[9] Because the proposed rule fails to satisfy these requirements, it is unlawful.

II. INCLUSIVE PRICING FOR INTERNET SERVICES AND EQUIPMENT PROVIDES GREATER TRANSPARENCY TO CONSUMERS THAN SEPARATELY STATED CHARGES.

In addition to the legal problems with the Commission's proposed rule, it is bad policy. Charter customers have long benefitted from a single, "bottom line" price for wired Internet services. Charter does not charge its broadband customers for the modems it offers; instead it provides and maintains modems at no additional cost—a practice that will be extended to former Time Warner Cable and Bright House customers.[10] This practice has allowed Charter customers to avoid unwanted "sticker shock"—inclusive prices are stated upfront so that there are no surprises on monthly bills.

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[7] *See In re Southwestern Bell Mobile Systems, Inc. Petition for a Declaratory Ruling Regarding the Just and Reasonable Nature of, and State Challenges to, Rates Charged by CMRS Providers when Charging for Incoming Calls and Charging for Calls in Whole-Minute Increments,* Memorandum Opinion and Order, 14 FCC Rcd 19,898, 19,906-07, ¶¶ 18-20 (1999).

[8] *Cf. Verizon v. FCC*, 740 F.3d 623, 654, 658 (D.C. Cir. 2014) (requiring providers to furnish service at no cost imposes common carrier obligations by essentially prescribing the rates for which those services are offered).

[9] 47 U.S.C. § 543(a)(2), (a)(6).

[10] Charter has not charged separate modem fees for new customers since 2012. However, a small number of Charter's legacy customers that continue to subscribe to certain discontinued service packages do continue to incur modem fees, and former Time Warner Cable and Bright House customers may also continue to incur such fees as long as they remain on legacy plans.

Customer complaints concerning extra fees on monthly bills for Internet and MVPD services are numerous,[11] as are consumer advisories warning potential customers that because of line-item charges routinely added by service providers, consumers cannot rely on the price they are quoted upfront being the price they end up paying.[12] As a result, customers seeking an Internet service provider "are attracted to simplified, inclusive pricing."[13] Charter's policy of not imposing a separate modem fee thus provides the kind of pricing consumers prefer.

Moreover, and notwithstanding the fact that some other MVPDs separately state charges for modems, the reality is that these charges often do not reflect the actual cost of the modem. This is because an accurate reflection of the cost of providing customers with the equipment needed for Internet service is not merely the purchase price of the modem itself, but also expenditures on delivery, warehousing, maintenance, software updates, customer support, and the many other items that ensure customers have access to appropriate equipment and can use it to enjoy the services to which they subscribe. Calculating a separate modem charge based on these constantly varying inputs only results in a number that is arbitrary.[14] That is evident from the fact that providers that do levy separate charges for modems assess widely varying fees.

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[11] *See, e.g.*, Letter from United States Senators Ron Wyden et al. to The Honorable Thomas Wheeler, Federal Communications Commission (Feb. 3, 2016) (reporting consumer complaints and dissatisfaction with the addition of "numerous and often obtuse fees" to service bills), *available at* https://www.wyden.senate.gov/download/?id=3296d068-a39c-43fd-b936-e68b5c4ec179&download=1.

[12] *See, e.g.*, Consumer Reports, *Beware of Triple-Play TV Bundles Costs*, Apr. 15, 2015, http://www.consumerreports.org/cro/news/2015/04/beware-triple-play-tv-bundle-package-costs/index.htm (listing nine types of extra fees sometimes added to service bills).

[13] NCTA Comments at 170.

[14] Other parties have made similar observations regarding the artificiality of calculating a separate equipment charge in the context of bundled services. *See* AT&T Comments at 99 (observing that a separate equipment charge requirement is essentially an "artificial pricing requirement[]"); NCTA Comments at 171 (citing economic study finding that, in the context of set-top boxes bundled with video programming services, "the nominal prices for such boxes have no meaning independent of the prices" charged for the service component).

Requiring service providers to charge customers a separate fee for modems will only entrench this approach and will in no way further the Commission's stated purpose of increasing billing transparency. Instead, consumers would need to add two charges together in order to understand the cost of what is fundamentally a single service—Internet access.

III. MANDATORY LINE ITEM CHARGES FOR MODEMS HARM CONSUMERS.

The line-item pricing that the Commission proposes to require not only fails to promote transparency, it will harm consumers in other ways. Over the very same years in which Charter provided customers with modems at no additional cost, there has been a significant increase in the prices that other providers charge for modems. Indeed, some providers have as much as quadrupled the modem lease fees they charge new customers over the past four years, while others have raised modem charges by between 25% and 33% in the past year alone. Customers may not realize that these charges are increasing, and when they do realize, they may not understand the basis for the increase. Rather than benefitting consumers, a mandated cable modem charge would eliminate the opportunity for a provider to give its customers a single defined rate for its Internet service, one for which any rate increase is straightforward and immediately discernible.

CONCLUSION

For the reasons stated herein, the Commission should decline to require a separate charge for cable modems.

May 23, 2016

Respectfully submitted,

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