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DEPARTMENT OF CONSUMER AFFAIRS
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PROTECTING CONSUMERS SINCE 1975

February 5, 2024

Via Electronic Submission
Federal Communications Commission
Office of the Secretary
MB Docket No. 23-405
45 L Street NE
Washington, DC 20554

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

Dear Secretary Dortch:

The South Carolina Department of Consumer Affairs ("SCDCA"/"Department") is pleased to offer comments in response to the Federal Communication Commission's ("FCC"/"Commission") proposed rule regarding cable operators and direct broadcast satellite ("DBS") billing practices and imposition of early termination fees ("ETF") and billing cycle fees ("BCF") on subscribers.

SCDCA is South Carolina's consumer protection agency. Established in 1974, SCDCA is responsible for the administration and enforcement of over 120 state and federal laws. A large part of our authority stems from Title 37 of the South Carolina Code of Laws, the Consumer Protection Code (the "Code"). The Code requires the Department to undertake activities to encourage business and industry to maintain high standards of honesty, fair business practices, and public responsibility in the production, promotion and sale of consumer goods and services.[1]

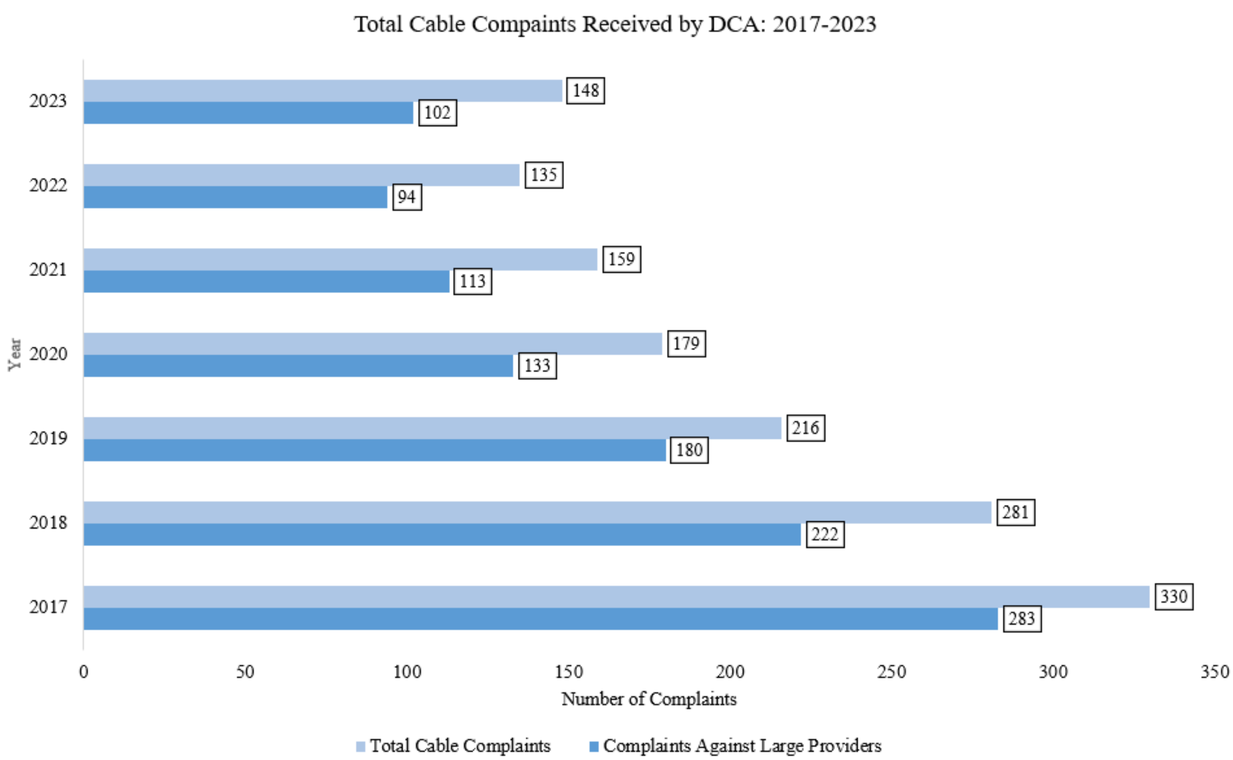
SCDCA supports the Commission's efforts to "prohibit cable operators and direct broadcast satellite (DBS) service providers from imposing early termination fees (ETF) and billing cycle fees (BCF) on subscribers" and "require service operators to grant subscribers a prorated credit or rebate for the remaining days in a monthly or periodic billing cycle after the cancellation of service."[2] The Department collects and handles consumer complaints against both businesses

[1] *S.C. Code Ann.* § 37-6-117(f) (2019).
[2] 89 FR 740

that are regulated by the SCDCA, as well as those that are not regulated by SCDCA or other agencies in the state.[3] SCDCA is specifically required to receive complaints regarding cable companies and the Department's contact information must be printed on customer bills. *See* S.C. Code Ann. § 58-12-360. To help the Commission assess the extent of the ETF/BCF issue, the Department has reviewed its complaint data regarding cable companies.

From January 2017 through December 2023, the Department received over 28,200 formal complaints. Approximately 1,448 (5.1%) of those complaints were against cable/DBS companies. Complaints against larger cable or DBS companies[4] made up over 77% of the category (1,127).

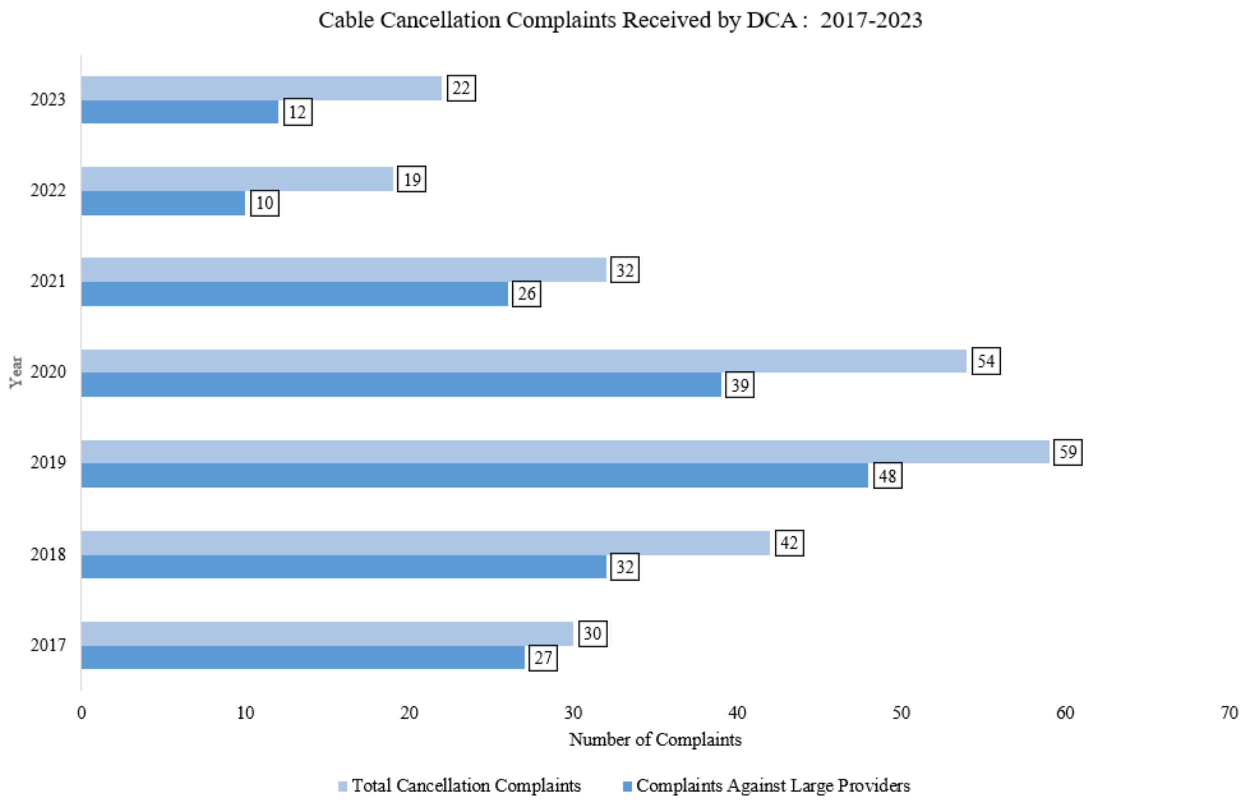
Chart 1



Of the total 1,448 cable complaints filed, 258 (17.8%) were specifically related to cancellation issues[5] and 194 (75.2%) of those cancellation complaints involved larger cable or DBS companies.

[3] SCDCA's Consumer Services Division processes and mediates written consumer complaints, seeking to find equitable solutions for the consumer and the business, including refunds, adjustments and credits to consumer accounts.
[4] Spectrum, Time Warner Cable, Comcast, Dish, DirectTV, and AT&T
[5] Chart 3 was created by sorting and searching the Department's cable complaints for the terms "cancel" or "terminate" in order capture variations of the words "cancel" or "terminate" while avoiding potential duplication. Therefore, this data is an approximation.

Chart 2



The reasons listed within the complaints for cancellation include, but are not limited to: poor service, bill increases, "misleading" sales tactics, failure to cancel a portion of the bundle as requested, equipment damage during delivery, customer death, "deceptive" free trials, and unresolved billing disputes. For relief, customers generally requested billing adjustments, proration, refunds, or to cancel service without a BCF or ETF. In some complaints, the consumer tried to cancel the service yet was unable to due to lag on the companies end thus leading to the customer being charged a BCF.

As the above data demonstrates, the Department is aware of ETFs and BCFs and has received numerous complaints pertaining to the issues since 2017. The data shows that overall complaints against cable companies have generally decreased each year since 2017. However, cancellation related complaints sharply increased in 2019 and 2020 before decreasing in recent years. The Department feels this trend highlights the expanding and changing landscape of the "cable" market, which now includes numerous options for streaming services that often do not require lengthy, or any, term contracts and fall outside of the definitions of "cable operators" and "direct broadcast service." [6]

The Department supports the FCC's efforts as ETFs and BCFs can hinder consumer choice and constitute an unfair practice. Such a practice permits the cable company to retain money for services not provided, sometimes due to their own inefficiencies in completing a disconnection. There is often a window of time between when the consumer notifies the cable company of their desire to cancel and when the cancellation of services actually takes place. This time period is out of the consumer's control but can lead to a consumer being charged for a full billing cycle although services were disconnected at the beginning of the cycle. These fees may also stifle competition, resulting in an unsatisfied consumer limiting their options for live TV alternatives based on potential fees they could incur from their current provider if they cancel.

The Department is also aware that having regulated entities and unregulated entities (cable operators and streaming services) in the same live TV sphere without creating a level playing field for both can also be harmful. Looking at the final service - live TV- there appears to be little difference between a direct broadcast service, a cable operator, and a streaming service (live TV exclusively), creating a potential gap in the rule's proposed coverage. However, an industry that previously required cable boxes and physical wiring, is now occupied by services that require little more than an internet connection. While the Department opposes the early termination and billing cycle fees, we understand that the "traditional" cable operators may deem them necessary to compete with non-FCC regulated entities.

The Department supports the FCC's rulemaking efforts to prohibit ETFs and BCFs, but, as articulated in the Commission's request for comments, also recognizes the need to evaluate the impacts on the industry as a whole. While the Department does not have the expertise to address many of the industry specific questions raised in the request, we hope the FCC finds the data we provided beneficial as it decides a path forward for this issue. We commend the Commission for the work and effort put into this process and appreciate the opportunity to comment. Should you have any questions pertaining to our comments, please feel free to contact me at 803-734-4233.

Regards,

Roger Hall, Esq.
Deputy Consumer Advocate

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[6] According to The Gauge, compiled by Nielsen, streaming services have slowly overtaken the market share from cable. In September 2022, 31.6% of viewership belonged to streaming services, 33.8% belonged to cable, and 24.2% belonged to broadcast. A year later in September 2023, 37.5% of viewership belonged to streaming, 29.8% belonged to cable, and 23.0% belonged to broadcast. *Sports gave broadcast channels a second straight month of viewing gains in September*, Nielsen, (January 19, 2024, 8:58am), https://www.nielsen.com/insights/2023/sports-gave-broadcast-channels-a-second-straight-month-of-viewing-gains-in-september/.