

# PUBLIC SUBMISSION

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Trade Regulation Rule on Unfair or Deceptive Fees

**Comment On:** FTC-2023-0064-0001  
Trade Regulation Rule on Unfair or Deceptive Fees

**Document:** FTC-2023-0064-2883  
Comment from Office of the People's Counsel for the District of Columbia

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## Submitter Information

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## General Comment

See attached file(s)

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## Attachments

OPC Comments on FTC Deceptive Fees NPRM



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January 8, 2023

Federal Trade Commission  
Office of the Secretary  
600 Pennsylvania Avenue NW  
Mail Stop H-144 (Annex J)  
Washington, DC 20002  
Docket No.: FTC-2023-0064

**Re: COMMENTS ON THE FEDERAL TRADE COMMISSION'S NOTICE OF  
PROPOSED TRADE REGULATION RULE ON UNFAIR OR DECEPTIVE  
FEES – "Unfair or Deceptive Fees NPRM, R207011"**

## **I. INTRODUCTION**

The Office of the People's Counsel ("OPC-DC" or "Office"), the statutory representative of District of Columbia utility ratepayers,<sup>1</sup> respectfully submits these Comments in response to the proposed rule "Trade Regulation Rule on Unfair or Deceptive Fees" published by the Federal Trade Commission ("FTC" or "Commission") in the Federal Register on November 9, 2023.<sup>2</sup> OPC-DC commends the FTC's initiative to address the pervasive problem of hidden, deceptive, and unfair fees experienced by American consumers, though it should expand its scope in this rulemaking to address issues seen within the utility services sector.

OPC-DC is aware of an increasing number of consumers who are facing deceptive, hidden, and unfair fees and charges on their utility bills, often levied by third-party providers<sup>3</sup>

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<sup>1</sup> D.C. Code § 34-804 (Lexis 2020).

<sup>2</sup> 88 Fed. Reg. 77420 (Nov. 9, 2023).

<sup>3</sup> "Third-party providers" operate in areas where customers have the choice to purchase their electricity from a supplier other than the local utility company; these providers typically source their electricity from various generation sources and offer different pricing plans and customer service options to compete with the traditional utility.

and billers.<sup>4</sup> These charges for essential utility services such as water, gas, and electricity are not only opaque but often presented in a manner that obscures their true nature and cost. The result is a significant and unjust financial burden on consumers, many of whom are already struggling to manage the rising costs of basic utilities. The imposition of these unfounded fees contravenes the principles of fair trading and transparency that are fundamental to consumer protection.

Consumers are frequently unaware of these fees when entering service contracts and are unable to discern them within the complex billing statements they receive. Moreover, given that these fees are largely part of third-party billers or service providers' statements, there are not the traditional billing dispute avenues that customers of the local utility would have due to a lack of contract privity between the end-consumer and the utility itself. This lack of clarity and the difficulty in contesting or understanding these charges not only undermines consumer rights but also erodes trust in the utility markets.

The FTC holds a critical mandate to protect consumers from unfair and deceptive practices in the marketplace. As such, there is a pressing need for the FTC to implement regulatory measures to curb these deceptive billing practices and ensure that all fees and charges are clearly disclosed, justified, and agreed upon by the consumer at the outset of service provision.

## **II. Summary**

The FTC possesses sufficient statutory authority to regulate deceptive, hidden, and unfair fees administered by third-party utility service providers and billers. The proposed rulemaking is a needed measure but could be improved before finalization. OPC-DC supports the FTC's proposed mandatory fee disclosure requirements; however, its regulatory framework should be strengthened by the addition of standards for clear billing statements, prohibition of fees not explicitly agreed upon by consumers, and the inclusion of penalties for non-compliance. Additionally, OPC-DC recommends the FTC partner with national and local stakeholders to

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<sup>4</sup> "Third-party billers" refers to a company or organization that handles the billing and payment collection process for utility services on behalf of a landlord or local utility provider; acting as a middleman between the utility and the user, taking over the responsibility of issuing bills, receiving payments, and managing customer accounts.

engage in robust consumer education, monitoring, and enforcement. OPC-DC notes that the proposed rule's compliance burdens will be minimal for regulated entities but will have a significant long-term benefit for utility consumers.

### III. Background and Context

Third-party billing in utility markets has become an increasingly common practice as landlords and utility companies often outsource billing and customer service operations to specialized firms. These third-party billers and service providers may handle an array of responsibilities such as meter reading, customer inquiries, and most crucially, the collection of utility service payments. The appeal for landlords is clear: outsourcing these services can lead to reduced operational costs and, ostensibly, a more streamlined process. However, this shift has also given rise to a troubling trend—the pervasiveness of deceptive or hidden fees on consumer utility bills.

Consumers throughout the District of Columbia have reported encountering a variety of undisclosed, unclear, or unfair fees on their utility bills.<sup>5</sup> These charges are often vaguely described and may appear as 'service fees,' 'administrative charges,' or 'billing fees.' In some cases, consumers are billed for services that are unclear or for which they did not knowingly sign up. Such fees can add a significant and unexpected burden to a household's monthly financial obligations, which are particularly concerning when considering the essential nature of utility services.

The impact on consumers can be substantial and multifaceted. For many, these unexpected costs can strain already tight budgets, leading to financial stress and hardship. In the worst cases, they can contribute to delinquency on bills, resulting in late fees, further charges, or even the disconnection of vital utility services – which may result in problems with housing stability and child protective services.<sup>6</sup> For low-income households living paycheck to paycheck,

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<sup>5</sup> OPC-DC's consumer outreach specialists have reported that numerous water, gas, and electric utility consumers within the District receiving service through a third-party have opaque fees within bills or seen bills inexplicably rise.

<sup>6</sup> See, e.g., Child Health Impact Working Group, *Unhealthy Consequences: Energy Costs and Child Health*, April 2007, <https://www.pewtrusts.org/-/media/assets/2018/07/childhiaofenergycostsandchildhealth.pdf?la=en&hash=A78716D84BFA3>

these fees—no matter how small they may seem—can have devastating consequences, forcing them to make difficult choices between paying utility bills and other necessities.

Regrettably, the current regulatory environment has not kept pace with these developments. While utility rates themselves are typically subject to strict regulatory oversight, the fees imposed by third-party billers often fall into a gray area. Many of these charges escape the rigorous scrutiny typically applied to utility rates, leading to a landscape where consumers are left vulnerable to potentially unfair practices. The lack of clear, enforceable standards on third-party billing transparency and accountability creates a regulatory gap, leaving consumers without adequate protection and recourse. To protect consumers and ensure the integrity of utility billing, regulatory bodies like the FTC must close these gaps and establish robust consumer protections against such unfair billing practices.

#### **IV. Consumer Protection Concerns**

Third-party utility billing and service fees have raised significant consumer protection concerns, particularly in the context of fair trade practices. When consumers sign up for essential utility services, they expect transparency and fairness in billing. However, the addition of third-party fees often violates these expectations. These fees can be misleading, leading consumers to pay more than the advertised or expected cost of service. Such practices not only contravene the principles of fair trade but also undermine consumer trust in the utility market.

The lack of transparency and informed consent is at the core of the issue. Consumers are frequently unaware of the existence of these third-party fees until they appear on their bills in the form of vague descriptions. Without clear, upfront communication, consumers cannot make informed decisions about their utility services. This obscurity is compounded by the often complex and confusing nature of utility bills, making it challenging for the average consumer to understand what they are being charged for and why.

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[27E8C14C6D01AB4E4F7963D2D66](#) ; Laura E. Gultekin, et al., *Health Risks and Outcomes of Homelessness in School-Age Children and Youth: A Scoping Review of the Literature*, Journal of School Nursing, Vol. 36, Issue 1, Sept. 15, 2019, <https://doi.org/10.1177/1059840519875182>.

Identifying and contesting these fees presents another layer of difficulty. Consumers may struggle to determine whom to contact—the utility provider or the third-party service provider/biller—and are often met with bureaucratic obstacles when they attempt to challenge or inquire about these charges. This is especially true for renters who lack privity of contract with utility providers that many homeowners enjoy, thus denying them the opportunity for straightforward administrative bill dispute processes. The process can be time-consuming and frustrating, with no guarantee of a resolution in the consumer’s favor.

Perhaps most concerning, the impact of these practices is disproportionately felt by vulnerable populations, including low-income households, the elderly, and non-native English speakers. These groups are the least equipped to absorb unexpected costs, are often preyed upon by third-party electricity providers, and may lack the resources or knowledge to detect or contest unfair charges. As a result, they are the most susceptible to the negative consequences of third-party billing fees: financial strain, utility debt, and loss of service.

## **V. Need for Regulation**

The regulation of third-party utility billers and service providers by the FTC is a necessity to safeguard consumer interests in an increasingly complex utility market. The FTC is empowered to regulate in this instance as its statutory authority allows it to, among other things:

- a. prevent unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce;
- b. seek monetary redress and other relief for conduct injurious to consumers;
- c. prescribe rules defining with specificity acts or practices that are unfair or deceptive, and establishing requirements designed to prevent such acts or practices;
- d. gather and compile information and conduct investigations relating to the organization, business, practices, and management of entities engaged in commerce; and
- e. make reports and legislative recommendations to Congress and the public.<sup>7</sup>

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<sup>7</sup> 15 U.S.C. §§ 41-58.

As a federal body charged with protecting consumers and promoting competition, the FTC is well-positioned to establish and enforce guidelines that ensure fair billing practices.<sup>8</sup> This involves setting clear rules about fee disclosures, billing transparency, and consumer consent. By holding third-party billers accountable for their practices, the FTC can prevent deceptive billing, protect consumers from unfair financial burdens, and maintain a level playing field among service providers. When compared to other regulated markets, such as banking and telecommunications,<sup>9</sup> the utility sector's regulation of third-party billing is noticeably lacking. These sectors have seen significant benefits from stringent regulatory frameworks, including improved consumer protection, reduced fraudulent activities, and increased consumer confidence.<sup>10</sup>

There are numerous potential consumer benefits of FTC regulation in this area, such as greater clarity and predictability in utility billing, protection against unforeseen charges, and an enhanced ability for consumers to make informed choices about their utility services. For the market as a whole, regulation can lead to healthier competition, as it removes unfair advantages gained through deceptive practices. Moreover, ensuring fair practices in utility billing can significantly enhance consumer trust – particularly in a market reliant upon regulated regional utility monopolies.

## **VI. Proposed Regulatory Framework**

OPC-DC agrees with the proposed regulatory framework addressing hidden and misleading fees, especially as it relates to the regulation of third-party providers and billers for utility services. However, this framework should enhance transparency, ensure fairness, and

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<sup>8</sup> The FTC has issued several regulations that specifically address deceptive advertising. *See*, 16 C.F.R. §§ 408-421.2.

<sup>9</sup> *See, e.g.*, 12 U.S.C. § 5531 and 5536.

<sup>10</sup> *See, e.g.*, the Federal Communications Commission's "Truth-In-Billing" Policy, <https://www.fcc.gov/general/truth-billing-policy>; the Consumer Financial Protection Bureau's guidance to halt illegal junk fees for basic services from large banks, <https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-guidance-to-halt-large-banks-from-charging-illegal-junk-fees-for-basic-customer-service/>.

maintain consumer trust in the utility market. OPC-DC recommends that the FTC integrate these concerns into its final rule:

- a. Mandatory Fee Disclosure Requirements:** OPC-DC supports the FTC’s proposed regulations at 16 C.F.R. § 464, *et seq.*, as it should curtail deceptive practices from third-party utility service providers and billers and require full disclosure of all fees to consumers before any agreement is made. This includes a detailed breakdown of each fee, its purpose, and how it is calculated. Transparency in fee disclosure is key to ensuring that consumers can make informed decisions and are not caught off guard by hidden, unexpected, or excessive charges.
- b. Standards for Clear Billing Statements:** Despite support for the proposed regulatory provisions at § 464, the FTC should require standardized billing statements for utility services to ensure clarity and ease of understanding for all consumers. These statements should clearly itemize all charges, including those from third-party providers, and should be written in plain language. Any technical terms or billing codes must be accompanied by straightforward definitions or explanations. The goal is to make utility bills easy to understand, allowing consumers to clearly see what they are being charged for and why.
- c. Prohibition of Fees Not Explicitly Agreed Upon by Consumers:** The FTC should prohibit third-party billers from adding any charges to bills that have not been explicitly agreed upon by the consumer. Rules should outlaw practices such as adding ‘opt-out’ fees or charges where consumers are automatically billed unless they specifically decline the service. Any changes to the fee structure should be communicated in advance and agreed upon by the consumer, ensuring that all charges are consensual.
- d. Penalties for Non-Compliance:** To enforce these regulations, the framework should include a system of penalties for non-compliance. These penalties could range from fines and mandatory customer refunds to the revocation of the right to operate within the utility market. The severity of the penalties should depend on the nature and frequency of the violations and the extent of harm caused to consumers. Additionally, the FTC should



establish a mechanism for consumers to report suspected violations, and all complaints should be investigated promptly.

Without such regulatory oversight, the financial and social equity gap will likely widen, disproportionately affecting the most vulnerable consumers who are already facing economic hardships, especially renters. It is the role of the FTC to intervene decisively in this matter, fostering a fairer and more transparent utility market for all.

## VII. **Consumer Education and Awareness**

It is vital that consumers are well-informed and aware of their rights against hidden, deceptive, or unfair billing practices from third-party utility providers and billers. The FTC plays a crucial role in consumer education and awareness given the complexities of utility billing and the potential for unfair practices.

Understanding utility billing is essential for consumers to manage their expenses effectively and avoid falling victim to deceptive practices. Clear knowledge of billing components, such as service charges, third-party fees, and usage costs, enables consumers to question unjust charges and make informed decisions about their utility services. This understanding is especially critical in an era where third-party billing is becoming increasingly common. As such, the FTC should take the lead in developing and disseminating educational materials and programs focused on utility billing. This could involve creating easy-to-understand guides that explain utility bills, highlighting areas where third-party charges might appear, and providing tips on what to look out for in billing statements. The FTC can also host workshops, webinars, and public awareness campaigns in coordination with state and local public advocates (like OPC-DC) to educate consumers about their rights and responsibilities when dealing with utility bills issued by third-parties.

This could be done through a variety of avenues, including but not limited to:

1. **Online Resources:** The FTC should utilize its website to host a range of educational materials, including FAQs, videos, infographics, and articles that explain third-party utility billing practices.

2. **Partnerships:** Collaborating with national and state consumer advocacy groups, utility commissions, and community organizations can help amplify the FTC’s educational efforts. These partners can provide localized support and share resources within their networks.
3. **Social Media Campaigns:** Leveraging social media platforms can increase the reach of the FTC’s educational messages, engaging consumers where they are most active.
4. **Targeted Outreach:** Special efforts should be made to reach vulnerable populations who may be more susceptible to deceptive billing practices, such as first-generation immigrants and low-income communities. This includes creating materials in multiple languages and formats accessible to all.
5. **Consumer Hotlines and Helpdesks:** Coordinating dedicated helplines, be they federal or state, where consumers can ask questions and seek clarification on their utility bills can be a direct and effective way to support consumers.

Through these efforts, the FTC can empower consumers to better understand their utility bills, recognize unfair billing practices, and know how to take action if they encounter such practices. Educated consumers are the first line of defense against deceptive billing, and the FTC’s role in facilitating this education is paramount.

## VIII. Implementation Considerations

The implementation of regulations governing billing fees from third-party utility providers and billers by the FTC should include these key considerations to ensure effectiveness and compliance.

- a. **Collaboration with State Regulatory Bodies:** Effective regulation of third-party utility billers and providers requires coordination with state utility commissions, consumer advocates, and other regulatory bodies. These state-level organizations often have direct oversight of utility operations and can provide valuable insights and support for the implementation of federal regulations. Collaboration can include sharing data, joint enforcement actions, and co-developing educational materials for consumers and utility

providers. This cooperative approach ensures consistency in regulation across different jurisdictions and leverages existing regulatory frameworks at the state level.

- b. Monitoring and Enforcement Mechanisms:** The FTC should establish robust mechanisms to monitor compliance and enforce regulations effectively. This could include regular audits of third-party utility providers and billers, along with a system for addressing consumer complaints. The FTC should also develop clear penalties for non-compliance, ranging from fines to more severe operational sanctions for repeat offenders. Furthermore, the Commission should set up a transparent reporting system, allowing for public access to information about billing practices and enforcement actions, which can help hold third-party utility providers and billers accountable and build consumer trust. Additionally, the FTC should consider setting up a dedicated task force or division responsible for overseeing the utility billing market. This unit could focus on analyzing market trends, investigating complaints, and staying ahead of evolving billing practices that might circumvent the regulations.

## **IX. Impact Assessment**

### **a. Evaluation of the potential economic impact on consumers**

Regulation of deceptive, hidden, and excessive fees in third-party billing practices would significantly benefit utility consumers. By ensuring transparency and fairness in billing, consumers are protected from hidden fees and unanticipated charges, leading to potentially lower overall utility costs. This can be particularly beneficial for low-income households, for whom utility bills represent a larger portion of their monthly expenses. The elimination of deceptive billing practices could also result in increased consumer trust and satisfaction and could empower consumers with the ability to easily cancel their accounts, preventing lock-ins with providers that fail to meet expectations. However, it is important to note that regulatory compliance costs for utility providers and billers may be transferred to consumers, albeit in a more transparent and justified manner.

#### **b. Assessment of the administrative burden on utility providers and billers**

For third-party utility providers and billers, the introduction of new FTC regulations could mean an initial increase in administrative burden. Providers may need to overhaul their billing systems, train staff on new compliance requirements, and possibly engage with third-party auditors or legal advisors to ensure adherence to the new regulations. This could result in short-term increased operational costs. However, these initial expenses should be weighed against the potential for long-term efficiency gains and the avoidance of costs associated with consumer disputes and litigation over unfair billing practices.

#### **c. Long-term benefits to the utility service market**

Overall, while the implementation of FTC regulations on third-party utility billing may present initial challenges, the anticipated benefits for both consumers and the utility market are considerable. In the long term, the regulation of third-party utility billers and providers is likely to bring substantial benefits to the utility service market. Enhanced transparency and fairness can lead to increased consumer confidence and trust, which are crucial for the stability and reputation of the utility sector. Furthermore, clear regulatory guidelines can provide a more predictable business environment, facilitating long-term planning and investment in utility services.

### **X. Conclusion**

In summary, the need for decisive FTC action in regulating third-party providers and billers of utility services cannot be overstated. Given the growing prevalence of unfair and opaque billing practices, it is imperative that the FTC steps in to establish clear, enforceable rules that protect utility consumers from deceptive charges. Prompt rulemaking in this area is not only necessary for safeguarding consumer interests but also for ensuring the integrity and trustworthiness of the utility service market. OPC-DC urges the FTC to act swiftly and collaborate with state and local stakeholders to ensure the highest standards of fairness and transparency in the utility market, benefiting consumers in both the District of Columbia and across the nation.

Respectfully Submitted,

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