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Trade Regulation Rule on Unfair or Deceptive Fees

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Comment from ACA Connects - America's Communications Association

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General Comment

Comment of ACA Connects - America's Communications Association. See attached file.

Attachments

- ACA Connects Comment - FTC Unfair or Deceptive Fees NPRM R207011 (02072024)
- The attachment is restricted to restrict all because it contains personally identifiable information data
- ACA Connects Comment - FTC Unfair or Deceptive Fees NPRM R207011 (02072024)_Redacted

Trade Regulation Rule on Unfair or Deceptive Fees) **R207011**
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ACA CONNECTS – AMERICA'S COMMUNICATIONS ASSOCIATION



I. INTRODUCTION AND SUMMARY

ACA Connects – America’s Communication Association (“ACA Connects”)¹
hereby submits comments in response to the Federal Trade Commission’s
 (“Commission” or “FTC”) November 9, 2023 Notice of Proposed Rulemaking (“NPRM”
or “Proposed Rule”) in the above captioned proceeding, which would prohibit
businesses from “misrepresenting the total costs of goods and services by omitting
mandatory fees from advertised prices and misrepresenting the nature and purpose of

¹ ACA Connects represents approximately 500 small and medium-sized independent companies (“Members”) that provide broadband, phone, and video services to nearly 8 million customers and offer services to 18 percent of households nationwide. Members serve primarily rural and smaller suburban markets across America, in many cases bringing competitive services and connectivity to areas not otherwise served by large providers. Half of ACA Connects’ Members serve fewer than 1,000 subscribers and have 10 or fewer employees.

fees.”² For the reasons set forth herein, ACA Connects opposes adoption of the Proposed Rule to the extent it would apply to providers of broadband, voice, and/or cable communications services (“communications services providers” or “CSPs”), especially smaller CSPs.

As acknowledged in the NPRM, the FTC’s rulemaking authority is limited; under the Magnuson-Moss Warranty Federal Trade Commission Improvements Act (“Magnuson-Moss”),³ the Commission may initiate a rulemaking “only where it has reason to believe that the unfair or deceptive acts or practices which are the subject of the proposed rulemaking are prevalent.”⁴ The evidence cited in the NPRM fails to meet this standard; it contains no meaningful discussion of the prevalence of unfair or deceptive pricing disclosure practices with respect to the communications services ACA Connects Members and other CSPs provide. Rather, the NPRM cherry-picks practices and examples from less than a handful of industries, and it uses those as the basis for

² *Trade Regulation Rule on Unfair or Deceptive Fees*, 88 Fed. Reg. 77420 (proposed Nov. 9, 2023) (to be codified at 16 C.F.R. pt. 464). Specifically, the Proposed Rule would stipulate that “[i]t is an unfair and deceptive practice ... for any Business to offer, display, or advertise an amount a consumer may pay without Clearly and Conspicuously disclosing the Total Price.” Proposed Rule 16 C.F.R. § 464.2(a). The Total Price must be displayed “more prominently than any other Pricing Information.” *Id.* at § 464.2(b). The proposed definition of Total Price is “the maximum total of all fees or charges a consumer must pay for a good or service and any mandatory Ancillary Good or Service, except that Shipping Charges and Government Charges may be excluded.” *Id.* at § 464.1(g). Government Charges are defined to include only fees imposed on consumers by a government agency. *Id.* at § 464.1(d). The Proposed Rule also defines Ancillary Good or Service as “any additional good(s) or service(s) offered to a consumer as part of the same transaction.” *Id.* at § 464.1(a). The proposed definition of “Business” excludes only motor vehicle dealers. *Id.* at § 464.1(b).

³ 15 U.S.C. § 57a.

⁴ *Id.* § 57a(b)(3).

putting forth a broad-brush regulation that would affect providers of goods and services across virtually all sectors of the economy.

Even assuming the Commission could demonstrate the prevalence of unfair or deceptive acts or practices with respect to pricing by CSPs, the Proposed Rule is unnecessary for CSPs because they are subject to numerous pricing disclosure rules from the Federal Communications Commission (“FCC”), as well as state and local regulatory agencies. Further, any rules the Commission might adopt, if applied to CSPs, would almost certainly result in conflicting requirements, leading to additional burdens for CSPs and confusion for consumers. Moreover, because they use complex pricing structures, including many types of bundles, in offering various services, CSPs would find restrictions the Commission might adopt challenging and burdensome to implement. Consumers in turn are likely to be confused by new pricing structures or otherwise harmed should CSPs cease offering bundles altogether.

The NPRM’s benefit-cost analysis does not consider the costs that the Proposed Rule would impose on CSPs in general and smaller providers in particular. As a rule, these smaller providers do not employ personnel dedicated to regulatory compliance and are hard-pressed to find financial resources to hire outside counsel and consultants. Thus, in the face of the proposed new and likely conflicting requirements, smaller providers may forgo up-front pricing displays altogether. Consumers, in turn, would end up with less information and would need to spend more time searching for competitive services and prices.

In sum, the Proposed Rule would provide no real benefits for consumers of communications services while inflicting material costs on CSPs and consumers. The Commission therefore should exclude CSPs from the scope of any final rule.

II. THE COMMISSION’S FINDINGS CANNOT SUPPORT APPLICATION OF THE PROPOSED RULE TO CSPS.

As discussed below, the Commission has not demonstrated the prevalence of unfair or deceptive acts or practices with respect to pricing by CSPs, particularly smaller providers. Moreover, the Proposed Rule is unnecessary to ensure CSPs fully disclose their prices. CSPs are already subject to pricing disclosure rules from other government agencies. In addition, because the Proposed Rule does not align with CSPs’ complex pricing structures for the various services they provide – which may vary within geographic markets and include bundles – CSPs will find it difficult, if not impossible, to implement. Accordingly, the FTC should exclude CSPs from the scope of any final rule it might adopt in this proceeding.

a. The NPRM does not demonstrate “prevalent” unfair or deceptive acts or practices related to pricing disclosures for the provision of communications services.

Under Magnuson-Moss, the FTC has authority to issue an NPRM “only where it has reason to believe that the unfair or deceptive acts or practices which are the subject of the proposed rulemaking are prevalent.”⁵ Conduct is “prevalent” only when the FTC

⁵ *Id.* In contrast, a federal agency seeking to adopt a rule pursuant to the Administrative Procedures Act (5 U.S.C. § 553) needs to provide a “concise statement of their basis and purpose” (i.e. the rule is not arbitrary and capricious).

has previously issued cease and desist orders or there is a “widespread pattern” of the conduct.⁶

The FTC lacks any basis for reasonable belief that unfair or deceptive pricing disclosure practices are “prevalent” within the communications industry. The NPRM cites one example of an FTC enforcement action involving a provider of voice communications services, but it was related to negative option billing, not undisclosed fees.⁷ Moreover, there is no evidence of a “pattern” of misconduct among CSPs; the data collected and analyzed by the FTC and cited in the NPRM pertains primarily to the short-term lodging industry, live-event ticketing, and to some extent the restaurant industry.⁸ Whatever the merits of this data, it could not support a reasonable belief that unfair or deceptive pricing practices are prevalent among CSPs, including ACA Connects Members.⁹

It is unsurprising that there is little commentary in this proceeding relating to CSPs’ pricing practices. First, as explained in more detail below, multiple government agencies regulate CSPs’ pricing practices to ensure that consumers receive clear and complete pricing information. Second, because multiple CSPs offer services in virtually

⁶ 15 U.S.C. § 57a(b)(3).

⁷ *FTC v. Vonage Holdings Corp.*, No. 3:22-cv-6435 (D.N.J. filed Nov. 3, 2022).

⁸ NPRM, 88 Fed. Reg. at 77442. The extensive discussion in the NPRM of those industries stands in contrast to the limited mention of “telecommunications fees.”

⁹ Further illustrating the lack of industry-specific information in this proceeding, the FTC’s regulatory analysis “assumes” that there is a 90 percent compliance rate for the “remainder of the economy” (e.g., firms outside the live-event ticketing, short-term lodging, and restaurant industries). *Id.* at 77448. The Commission offers no evidence to support this assumption either on an economy-wide basis, or for ACA Connects Members or other CSPs.

all markets, and CSPs' inherent business incentives – characterized by high fixed capital costs and low marginal costs – drive them to retain customers, they have no incentive or ability to engage in “unfair” or “deceptive” practices, including with respect to pricing disclosures. CSPs, especially smaller providers like ACA Connects Members, are motivated to ensure the best experience possible for consumers.¹⁰ Otherwise, they risk losing subscribers to competitors and suffering reputational harm that would make it harder to attract new ones.

Because there is no evidence of prevalent deceptive pricing practices for communications services, any final rule in this proceeding should exclude CSPs from its scope.

b. The Proposed Rule is unnecessary because government agencies regulate pricing disclosures by CSPs; the Proposed Rule would be burdensome for CSPs to implement and would confuse consumers.

Not only is there no evidence of a problem with CSP pricing practices, the Proposed Rule is unnecessary because multiple government agencies already oversee CSP pricing practices. CSPs are regulated by federal, state, and local government

¹⁰ ACA Connects recognizes that there are instances where a government agency finds that a CSP has engaged in unfair or deceptive practices regarding the disclosure of prices, terms, and conditions, but these are rare, indicating that existing government oversight and market incentives are sufficient to police the sector and protect consumers.

agencies; these agencies have established regulations which ensure transparency in prices, terms, and conditions. For example:

- The FCC regulates pricing disclosures for providers of fixed and mobile broadband service under the Broadband Labeling Rule.¹¹
- The Television Viewer Protection Act (“TVPA”) regulates pricing disclosures for all cable and direct broadcast satellite (“DBS”) services.¹²

¹¹ *Empowering Broadband Consumers Through Transparency*, CG Docket No. 22-2, Report and Order and Further Notice of Proposed Rulemaking, FCC 22-86 (Nov. 14, 2022) (“Broadband Labeling Rule”). The Broadband Labeling Rule, which will take effect later this year, requires providers of fixed and mobile broadband services to disclose at the point of sale the base monthly price for a stand-alone broadband service offering in a new broadband “nutrition” label format. In adopting its rule, the FCC rejected calls for an all-in pricing structure, *id.*, para. 24, and instead opted to mandate that providers show additional charges and terms separately on the label, including itemized monthly fees, one-time fees at purchase, early termination fees, and government fees.

¹² *Television Viewer Protection Act of 2019*, Pub. L. 116-94, 133 Stat. 2534 (2019). The statute applies to multichannel video programming distributors (“MVPD”), including cable and DBS providers, and requires providers, at the point of sale before entering into a contract and within 24 hours after entering into a contract for the provision of MVPD services to “provide the consumer . . . the total monthly charge for the covered service, whether offered individually or as part of a bundled service, selected by the consumer (explicitly noting the amount of any applicable promotional discount reflected in such charge and when such discount will expire), including any related administrative fees, equipment fees, or other charges, a good faith estimate of any tax, fee, or charge imposed by the federal government or a state or local government (whether imposed on the provider or imposed on the consumer but collected by the provider), and a good faith estimate of any fee or charge that is used to recover any other assessment imposed on the provider by the federal government or a state or local government.” The FCC also is considering the adoption of additional regulations of cable video service pricing. See *All-In Pricing for Cable and Satellite Video Service*, MB Docket No. 23-203, Notice of Proposed Rulemaking, FCC 23-52 (June 14, 2023). ACA Connects submitted comments to the FCC in this proceeding. See Comments of ACA Connects on All-In Pricing for Cable and Satellite Television Service, MB Docket No. 23-203 (filed July 31, 2023) (“ACA All-In Pricing Comments”); see also *Promoting Competition in the American Economy: Cable Operator and DBS Provider Billing Practices*, MB Docket No. 23-405, Notice of Proposed Rulemaking, FCC 23-106 (rel. Dec. 14, 2023) (“Cable Operator and DBS Provider Billing Practices Rule”).

- Telecommunications services (such as voice services) are subject to truth-in-billing requirements under Section 201 of the Communications Act.¹³
- Several states have enacted statutes and regulations with respect to CSP billing practices.¹⁴
- At the local level, cable franchising authorities usually oversee providers' billing practices. The City of Commerce, California is typical, requiring that "[a] franchisee's billing statement must be clear, concise and understandable; must itemize each category of service and equipment provided to the subscriber; and must state clearly the charges therefor."¹⁵

¹³ See 47 C.F.R. § 64.2401; *see also Consumer and Governmental Affairs Bureau Seeks to Refresh the Record on Truth-in-Billing Rules to Ensure Protections for All Consumers of Voice Services*, CC Docket No. 98-170; WC Docket No. 04-36, Public Notice, DA 19-1271 (Dec. 13, 2019) (seeking comment on extending the FCC's common-carrier truth-in-billing rules to interconnected VoIP services).

¹⁴ For example, California requires each cable service provider to establish customer service standards, including "procedures for billing, charges, refunds, and credits." Cal. Gov't Code § 53055. *See also e.g.*, New York Public Service Commission, Cable Television Service Consumer Rights, Billing Practices, available at <https://dps.ny.gov/cable-television-service-consumer-rights> ("Every cable television company must notify its subscribers, in writing of its billing practices and payment requirements. The notice must describe or define, as a minimum: billing procedures (including payments necessary to avoid discontinuance of service and payment due dates), late charges, advance billing options, billing disputes and credit given for service outages."); Wis. Adm. Code § ATCP 123.02 (requiring that, in Wisconsin, providers of telecommunications service, video service, cable service, MVPD service, and internet access service must disclose "material terms" of the service at or before the time when a consumer subscribes, and such disclosure must include both the price for each service offering, and "[a]ll incidental charges that may affect the total amount payable by the consumer."); 207 Code of Mass. Reg. § 10.01 (mandating that cable television operators in Massachusetts not only provide written notice of billing practices to consumers at the time of purchase, but also send copies of their billing practices notices and a sample subscriber bill to the local issuing authority and the Department of Telecommunications and Cable on an annual basis).

¹⁵ City of Commerce, California, Ordinance, Chapter 5.44, Cable Communication Franchise, Section 160(a). *See also e.g.*, Fairfax County, VA Code, § 9.2-9-9(h) ("Bills shall be clear, concise, and understandable, and shall not be such as to mislead a reasonable subscriber as to any matter reflected on the bill. In particular, all line items on a bill shall be explained on the bill in such a way that a reasonable subscriber can understand the general nature of the charge or other entry without reference to information outside the bill.").

Thus, the Commission should find that any concerns it might have with CSPs' pricing practices are being addressed by other government agencies. California, in enacting its own "junk fees" statute, took this approach – finding that the Broadband Labeling statute and regulation was so encompassing that it exempted broadband providers offering either a standalone broadband service or such service bundled with other communications services.¹⁶

Beyond being unnecessary, the Proposed Rule would overlap and conflict with existing laws and regulations that address the disclosure of prices, terms, and conditions by CSPs;¹⁷ any compliance would be burdensome for CSPs and confusing for consumers. First, the offerings of CSPs have complex pricing structures, which do not harmonize with the Proposed Rule's Total Price requirement.¹⁸ For instance, the costs associated with providing video services can vary based on myriad factors. As ACA Connects explained in the FCC's All-In Pricing rulemaking,

For any cable operator, there may be dozens of different total amounts charged for retransmission consent across its markets. There is simply no way to depict a single 'all-in' price that accounts for such a staggering level of variation. Even with much narrower geographic areas, the level of variation in pricing for cable service may be impossible to capture. For instance, residents of apartment buildings and other multiple dwelling units ("MDUs") often receive video service under contracts setting forth rates that apply only within that MDU. It is unreasonable to expect cable operators to identify rates pertaining to individual MDUs on general purpose advertisements and promotions, but if such an advertisement or

¹⁶ See Cal. Civ. Code § 1770(a)(29B).

¹⁷ See NPRM, 88 Fed. Reg. at 77480 (The NPRM seeks comment on whether "compliance with the proposed rule along with the specific disclosure provisions for certain types of sectors or transactions" would be "impossible" or "overly burdensome.").

¹⁸ *Id.* at 77441.

promotion displayed an “all-in” price that ignored MDU-specific rates, the result would be less transparency, not more, for the MDU’s residents.”¹⁹

In addition, CSPs often sell services in bundles, where the price is not simply the sum of individual service component prices. Because of these differences, it would be difficult, if not impossible, for a CSP to calculate a Total Price that it could use in advertisements shown to all consumers in a market or that would be relevant to consumers shopping for different combinations of services.²⁰ To comply with the Proposed Rule while avoiding confusion to consumers, a CSP would have to spend significant sums to target its advertised prices to each media market or locality within the relevant geographic market, assuming that is even technically and operationally feasible. Alternatively, a CSP could circulate advertisements with a range of fees, thereby shifting the burden to the consumer to figure out which fees apply. Given these impractical solutions, a CSP

¹⁹ ACA All-In Pricing Comments at 13-14.

²⁰ The Proposed Rule requires businesses to clearly and conspicuously disclose, before a consumer consents to pay, the “nature and purpose” of any fees not included in the Total Price. Proposed Rule 16 C.F.R. § 464.3(a). “Clearly and Conspicuously,” the NPRM explains, “is defined consistently with longstanding Commission interpretation and practice.” NPRM, 88 Fed. Reg. 77439. Disclosures must include the refundability of such fees and the identity of the goods or services for which the fees are charged. *Id.* The NPRM also provides examples of such disclosures that, if presented together, would be quite lengthy and burdensome for the consumer to scroll or flip through in order to understand their actual fees/prices. *Id.* Historically, the FTC has taken the position that with certain advertising, hyperlinks are not sufficient under the Clear and Conspicuous standard. However, to avoid inundating consumers with confusing and potentially unnecessary (or inapplicable) disclosures, the FTC should decrease the required information to be disclosed or clarify that prominent and proximate links (consistent with the FTC’s .com Disclosure guidance) are acceptable and encouraged. The FTC’s guidance states that “if the details about the additional fees are too complex to describe adjacent to the price claim, those details may be provided using a hyperlink.” See “.com Disclosures: How to Make Effective Disclosures in Digital Advertising,” Federal Trade Commission, at 10 (2013) available at <https://www.ftc.gov/system/files/documents/plain-language/bus41-dot-com-disclosures-information-about-online-advertising.pdf>.

is more likely to omit pricing information from its advertising altogether, all but eliminating a consumer's opportunity to efficiently compare prices between providers.²¹ In sum, compliance with the Proposed Rule would be impractical for CSPs, harmful to consumers, and a hindrance to comparison-shopping.

The Proposed Rule is virtually certain to be inconsistent with the laws and rules adopted by other government agencies, rendering compliance burdensome, particularly for smaller providers. The NPRM only touches upon possible overlap between the Proposed Rule and one FCC requirement – the Broadband Labeling Rule. In that limited inquiry, the NPRM finds that information on the label appears “generally compatible” with the FTC’s proposal,²² while noting that the Broadband Label’s disclosure differs because it does not provide for the monthly price to include the itemized fees. This NPRM downplays the significance of this disparity, but it would complicate compliance with the proposed rule for any broadband provider. Moreover, the FCC’s Broadband Label proceeding is ongoing, and the agency has the authority to amend the label in ways that would further conflict with the Proposed Rule.²³

²¹ Adoption of the Proposed Rule may undermine competition among CSPs by giving an unfair competitive advantage to larger firms that can afford to expend the financial resources to take on the legal risk of continuing to advertise pricing to consumers. This result would be contrary to the NPRM’s stated objective of “promot[ing] a level playing field that enables comparison shopping and allows honest business to compete.” See NPRM, 88 Fed. Reg. at 77440.

²² *Id.* at 77480.

²³ Indeed, the FCC order that implemented the Broadband Labeling Rule also included a further notice of proposed rulemaking seeking comment on possible changes to the label. See Broadband Labeling Rule, paras. 131-152 (Nov. 14, 2022). Numerous parties, including ACA Connects, submitted comments in response to the further notice of proposed rulemaking, which remains pending.

The NPRM also fails to review the disclosure requirements applicable to video service providers under the TVPA, where conflicts are apparent. For instance, the NPRM would allow only “Government Charges” (defined as fees that governments impose directly on consumers) to be excluded from the Total Price, but not those imposed on businesses and passed along to consumers.²⁴ The TVPA, on the other hand, takes a different approach, requiring “a good faith estimate” disclosure of government fees whether or not they are imposed directly on consumers or passed along.

With existing regulatory requirements addressing pricing disclosures by CSPs, there is no need for further regulation from the FTC. Indeed, the NPRM acknowledges that its Proposed Rule can be unnecessary when other appropriate regulations occupy the field.²⁵ The Commission should apply this same rationale to exclude CSPs, to whom multiple laws and regulations apply.²⁶

III. THE NPRM’S PROPOSED PREEMPTION STANDARD ADDS COMPLEXITY, BURDENS, AND CONFUSION.

The preemption provision of the Proposed Rule would bar inconsistent state laws, but stipulates that “a State statute, regulation, order, or interpretation is not inconsistent with the [Proposed Rule] if the protection such statute, regulation, order, or

²⁴ NPRM, 88 Fed. Reg. at 77439.

²⁵ *Id.* at 77438-39. The NPRM would exclude motor vehicle dealers from the rule, on the basis that “if the Commission finalizes the proposed Motor Vehicle Dealers Rule’s Offering Price ... motor vehicle dealers subject to that part would be excluded from coverage under the proposed Rule.”

²⁶ See *supra* n. 14.

interpretation affords any consumer is greater than the protection provided under [the Proposed Rule].”²⁷ This standard would be unworkable in practice for CSPs. Whether a state law provides “greater” protection than the FTC’s rule may not be self-evident; a law that requires more extensive disclosure is not, for that reason alone, more protective of consumers.²⁸ Furthermore, it would be challenging and costly, especially for smaller CSPs that possess limited resources and often lack in-house counsel, to sort out discrepancies among various state laws and the FTC’s rule. If the FTC wishes to achieve its stated objective of creating “harmonized, nation-wide compliance requirements”²⁹ – and it does not exempt CSPs from any rule it adopts – it should adopt a national framework that more broadly preempts conflicting state and local requirements.

IV. THE FTC’S BENEFIT-COST ANALYSIS FAILS TO SUPPORT APPLICATION OF THE PROPOSED RULE TO CSPs, ESPECIALLY SMALLER PROVIDERS.

The NPRM does not conduct a benefit-cost analysis specific to the communications services industry. The only benefits that the NPRM cites are “general” in scope and are extrapolated from an analysis of a mere three industries.³⁰ The NPRM cites as benefits the potential harmonization with state laws and a reduction in

²⁷ Proposed Rule 16 C.F.R. § 464.4.

²⁸ See, e.g., Broadband Labeling Rule at para. 3 (stressing the importance of providing consumers with the “key information [they] need to make smart choices without overwhelming them with information.”).

²⁹ NPRM, 88 Fed. Reg. at 77447.

³⁰ *Id.* As referenced above, for industries outside of live event ticketing, short-term lodging, and restaurants, the NPRM assumes a non-compliance rate of 10 percent, while suggesting that this may be an overestimate. *Id.* at 77448.

consumers' "search time."³¹ However, the Proposed Rule is more likely to sow confusion than create harmony if applied to CSPs, especially if states are permitted to continue to enforce their unfair and deceptive acts and practices laws or enact their own specific pricing disclosure laws, without the benefit of broad FTC preemption. In any event, there is no effort to harmonize the Proposed Rule with FCC requirements.

The NPRM wrongly assumes that consumer "search time" relates solely to price when, for the communications sector, consumers will search for the best option based on a number of factors such as speed, content, and convenience.³² Pricing information is readily available to consumers, and they will continue to search for all of these factors even if pricing disclosures change. The Proposed Rule would increase consumer search times if CSPs are forced to either (1) present consumers with multiple pricing formats or (2) forgo providing up-front pricing information because they cannot risk providing an inaccurate Total Price.

Moreover, the NPRM's cost analysis is poorly tailored to CSPs.³³ It projects costs of compliance based only on a range of hours for a limited set of workers (i.e., lawyers, data scientists, and web developers).³⁴ ACA Connects submits that this is a simplistic projection, particularly given the broad scope of the Proposed Rule; the Proposed Rule ignores that fact that CSPs are certain to incur significant costs for both

³¹ *Id.*

³² *Id.*

³³ *Id.* at 77448.

³⁴ The NPRM then estimates compliance costs ranging from 5-10 hours of lawyer time, 40-80 hours of data scientist time, and 40-80 hours of web developer time to become compliant with the proposed rule. *Id.* at 77448-77449.

initial and ongoing compliance with the Proposed Rule. These costs will be especially burdensome for smaller CSPs, who have limited resources and will need to shift those resources towards compliance (including through outside counsel fees) rather than developing innovative and competitive service offerings for consumers.

Before moving forward in this proceeding, the FTC should conduct a robust benefit-cost analysis examining the communications sector. The analysis should consider how the Proposed Rule would impact smaller providers, including how the costs could impact their ability to compete against larger players in the marketplace.

V. THE NPRM LEAVES CRITICAL QUESTIONS UNANSWERED AND DISPUTED ISSUES THAT SHOULD BE RESOLVED AT AN INFORMAL HEARING.

As demonstrated in these comments, there are numerous unanswered questions and disputed issues of material fact in this proceeding that should be resolved prior to adoption of a final rule, warranting a period of rebuttal comments or an informal hearing.³⁵ These include:

- Do CSPs engage in a widespread pattern of deceiving consumers through deceptive or misleading fee disclosures?
- Will consumers be confused by duplicative and/or conflicting disclosure requirements?
- Will the Proposed Rule impose significant costs on CSPs?
- Will the costs imposed by the Proposed Rule result in decreased competition in the communications marketplace?

³⁵ ACA Connects herein reserves its right as an interested party to this proceeding to participate in such hearing by presenting its position on these issues orally or by documentary submission (or both), and requests that it be permitted to present rebuttal submissions as to disputed issues of material fact. 15 U.S.C. § 57a(c)(2).

- Will the Proposed Rule as applied to CSPs result in less transparency or greater consumer confusion about prices, terms, and conditions?
- Will the Proposed Rule effectively reduce consumer “search time” for broadband, voice, and cable services?

Without additional consideration of these disputed issues of material fact, any rule adopted through this proceeding will not rest on a firm foundation – nor will it meet the FTC’s statutory burden.

VI. CONCLUSION

ACA Connects appreciates the opportunity to comment in this proceeding and urges the Commission, should it adopt the Proposed Rule, not apply it to CSPs.

Respectfully submitted,

By:



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