

# PUBLIC SUBMISSION

<b>As of:</b> February 08, 2024 <b>Received:</b> February 07, 2024 <b>Status:</b> Posted <b>Posted:</b> February 08, 2024 <b>Tracking</b> <b>No.</b> lsc- awd1-1vpr <b>Comments</b> <b>Due:</b> February 07, 2024 <b>Submission</b> <b>Type:</b> Web
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**Docket:** FTC-2023-0064  
Trade Regulation Rule on Unfair or Deceptive Fees

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

**Document:** FTC-2023-0064-3234  
Comment from CTIA

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## General Comment

Please find attached the comments of CTIA regarding the notice of proposed rulemaking on trade rules on unfair or deceptive fees.

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## Attachments

CTIA Comments on FTC Junk Fees NPRM FINAL

The attachment is restricted to restrict all because it contains personally identifiable information data

CTIA Comments on FTC Junk Fees NPRM FINAL\_Redacted

**Before the  
FEDERAL TRADE COMMISSION  
Washington, DC 20580**

In the Matter of	)	
	)	
Unfair or Deceptive Fees NPRM	)	Matter No. R207011
	)	Docket No. FTC-2023-0064

**COMMENTS OF CTIA**

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February 7, 2024

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**COMMENTS OF CTIA**

CTIA<sup>1</sup> respectfully submits these comments in response to the Notice of Proposed Rulemaking issued by the Federal Trade Commission (“FTC”) proposing to institute a Trade Regulation Rule on Unfair or Deceptive Fees (“Proposed Rule”).<sup>2</sup>

**I. INTRODUCTION.**

The wireless industry is committed to ensuring consumers have accurate and transparent information regarding pricing, billing, and associated information for product and service offerings, both before and after buying decisions are made. This responsibility is informed by existing rules at the Federal Communications Commission (“FCC”) and in states, as well as commitments CTIA and its members have made for two decades as part of the *Consumer Code for Wireless Service*. The *Consumer Code for Wireless Service* is an evolving set of principles and practices designed to help consumers make informed decisions when selecting wireless services.

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<sup>1</sup> CTIA – The Wireless Association® (“CTIA”) ([www.ctia.org](http://www.ctia.org)) represents the U.S. wireless communications industry and the companies throughout the mobile ecosystem that enable Americans to lead a 21st century connected life. The association’s members include wireless providers, device manufacturers, suppliers as well as apps and content companies. CTIA vigorously advocates at all levels of government for policies that foster continued wireless innovation and investment. The association also coordinates the industry’s voluntary best practices, hosts educational events that promote the wireless industry and co-produces the industry’s leading wireless tradeshow. CTIA was founded in 1984 and is based in Washington, D.C.

<sup>2</sup> Trade Regulation Rule on Unfair or Deceptive Fees, 88 Fed. Reg. 77420 (Nov. 9, 2023) (“Proposed Rule”).

While CTIA appreciates the FTC's goal of protecting consumers from unfair and deceptive fees that may undermine a consumer's ability to make informed commercial decisions, the Proposed Rule is unfortunately not the way to meet this objective, especially with respect to the wireless industry. The Proposed Rule will undermine proven efforts by the wireless industry and the FCC to ensure consumers are accurately informed when making purchasing decisions about wireless offerings. The wireless industry is subject to regulation by the FCC, which has its own regulatory regime to protect consumers from surprise or unfair fees and billing practices, including its broadband labeling and Truth-in-Billing requirements. These initiatives, which have been further bolstered by FTC staff recommendations, serve as a regulatory backstop to the proactive steps that the wireless industry has undertaken. States also have a long record of enforcement actions against unfair and deceptive fees, and emerging legislation further requires disclosures regarding mandatory fees and charges. Further regulation is thus unnecessary as it relates to the wireless industry, creating complexity and imposing costs without additional benefits. Among other issues, the FTC's Proposed Rule is ill-suited for nationwide services with a common carriage component subject to state and local fees, fails to account for the impact on nationwide advertising campaigns, and the "Government Charges" exception is too narrowly defined to account for the wide range of government fees wireless providers collect across jurisdictions.

Should the FTC move forward with rules regarding unfair and deceptive fees, an exemption for wireless entities is appropriate. Wireless services that include a common carriage component are beyond the FTC's jurisdiction. The FTC should also clearly exempt wireless broadband entities that are regulated by the FCC as they are already subject to various provisions regarding the transparency of their pricing.

## II. FCC RULES, STATE ENFORCEMENT, AND THE WIRELESS INDUSTRY'S OWN CODE OBVIATE THE NEED FOR, OR DESIRABILITY OF, THE PROPOSED RULE.

CTIA's members have for years embraced regulatory efforts already undertaken by the FCC to ensure consumers have clear information about service charges and offerings to help protect them from fraud and unauthorized third-party fees. These rules and policies effectively prevent and hold wireless providers responsible for any unfair or deceptive fees. Such rules are furthered by a record of state enforcement actions, and emerging state legislation could serve as an additional prevention mechanism. Predating many of these efforts, the *Consumer Code for Wireless Service* was developed by CTIA with commitments that service providers agree to voluntarily sign on to comply with.<sup>3</sup> The FTC should continue to embrace these *existing* efforts at the FCC, at the FTC, within the states, and by the industry aimed at facilitating fair and transparent pricing, rather than adopt the Proposed Rule.

### A. The FCC's Rules Already Require the Wireless Industry to Convey Relevant Information to Consumers and Prevent Unfair or Deceptive Fees.

The FCC already regulates the display of pricing and billing information by the wireless industry. The Proposed Rule is unnecessary and would interfere with the FCC's regime.

**Broadband Labeling.** Implementing a recent congressional directive, the FCC last year adopted requirements for broadband labeling.<sup>4</sup> These requirements will ensure consumers are given clear, accurate, and transparent information to guide their purchasing decisions. Under these new rules, all broadband consumers, including those using wireless services, will have

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<sup>3</sup> *Consumer Code for Wireless Service*, CTIA, at 1, Principle 1 (2020), <https://api.ctia.org/wp-content/uploads/2020/03/CTIA-Consumer-Code-2020.pdf> ("*Consumer Code for Wireless Service*"). CTIA first developed the Consumer Code in 2003 and periodically reviews it to ensure that it meets consumers' needs and expectations and reflects industry innovations.

<sup>4</sup> See *Empowering Broadband Consumers Through Transparency*, Report and Order and Further Notice of Proposed Rulemaking, 37 FCC Rcd 13686 (2022) ("*Broadband Labeling Order*").

access to easy-to-understand labels that are designed to help them comparison shop for broadband plans. Importantly, in adopting its directive for the FCC to act on this matter, Congress clearly intended that the FCC should regulate the advertising of broadband on a national level.<sup>5</sup> The FTC should not adopt rules where Congress has expressly directed another agency to regulate, as is the case here. Instead, as discussed below, if the Proposed Rule is adopted without directly exempting communications services regulated by the FCC, the FTC should deem compliant such actions that adhere with the FCC’s broadband labeling requirements.<sup>6</sup>

Significant consumer input was built into the creation of the FCC’s broadband consumer labels. For example, the FCC utilized not only the typical notice and comment administrative process, but it also conducted a series of public hearings and leveraged its Consumer Advisory Committee – a federal advisory group that consists of both industry representatives and consumer advocates – to gain input into the creation of the broadband labeling regulations. Modeled on food product nutrition labels, the labels will clearly lay out key service information about prices (including monthly and one-time fees, and the availability of discounts and bundles), the amount of data included in the base price, typical upload and download speeds that consumers can expect, and a provider’s network management and privacy practices. The “nutrition label” format will

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<sup>5</sup> Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, § 60504(a), 135 Stat. 429, 1244 (2021) (“IIJA”).

<sup>6</sup> See, *infra*, Section V; Cal. S. 478, Sec. 3(a)(29)(B) (2023) (amending Cal. Civ. Code § 1770); see also Pa. H.R. 636 (2023), <https://www.legis.state.pa.us/CFDOCS/Legis/PN/Public/btCheck.cfm?txtType=PDF&sessYr=2023&sessInd=0&billBody=H&billTyp=B&billNbr=0636&pn=2085> (proposing to adopt specific pricing disclosures for three particular sectors – event ticketing, lodging, and food delivery); Colo. HB 24-1151, *A Bill for an Act Concerning a prohibition on certain consumer transactions that do not include all mandatory expenses*, § 2 (2024) (exempting persons that advertise broadband internet access service on its own or as part of a bundle, if compliant with the FCC’s broadband consumer labeling requirements), <https://www.leg.colorado.gov/bills/hb24-1151>.

make it easy for consumers to compare across plans and providers. Although prescriptive as to the label format, the rules allow broadband providers, including wireless entities, to display information either directly on the label or via easily accessible links. The compliance deadline for the broadband labeling rules is October 10, 2024 for providers with 100,000 or fewer subscriber lines and April 10, 2024 for all other providers.<sup>7</sup> Compliance with the requirement to make labels accessible in online account portals is required for all providers as of October 10, 2024.

In its broadband labeling decision, the FCC considered and then *rejected* the concept of an “all-in” price – like that proposed in the Proposed Rule – for broadband services.<sup>8</sup> The FCC correctly explained that “consumers are accustomed to seeing base monthly prices, without additional taxes and fees, when shopping for goods and services and thus, the presentation of the base price should enable easy comparison shopping.”<sup>9</sup> Further, the FCC expressed concern that a single “all-in” price may be “potentially misleading” for consumers given the variety of offerings, government taxes, and other factors.<sup>10</sup> The FTC should not embrace a methodology for the display of pricing of these services that the congressionally appointed agency already rejected.

Indeed, as explained in the next section, an important distinction between the FCC’s efforts and the FTC’s Proposed Rule is that Congress expressly supplemented the FCC’s authority over common carriage voice services and authorized the agency to promulgate rules

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<sup>7</sup> *Consumer and Governmental Affairs Bureau Announces Compliance Dates of April 10, 2024 and October 10, 2024 for Broadband Label Rules*, Public Notice, CG Docket No. 22-2, DA 23-943 (CGB rel. Oct. 10, 2023).

<sup>8</sup> See *Broadband Labeling Order* ¶ 24.

<sup>9</sup> *Id.* ¶ 23.

<sup>10</sup> *Id.* ¶ 24. The FCC also noted that an “all-in” pricing approach could prove difficult for providers to implement.



regarding broadband pricing.<sup>11</sup> Congress has taken no such step with respect to the FTC’s jurisdiction.

***Truth-in-Billing.*** For nearly two decades, wireless voice providers have abided by the FCC’s Truth-in-Billing requirements, which are broad, binding principles that ensure voice providers offer information on customers’ bills that is clear and not misleading.<sup>12</sup> These rules have been successful in allowing providers to convey relevant information to consumers and preventing common carriers from engaging in unjust or unreasonable billing. For example, the FCC permits line-items on bills, such as fees collected for and remitted to state and local governments. The Truth-in-Billing rules have also served to help protect consumers from fraud and unauthorized third-party charges. For example, in 2018, the FCC codified a prohibition against cramming – i.e., unauthorized charges – as a part of its Truth-in-Billing rule, indicating that “[c]arriers shall not place or cause to be placed on any telephone bill charges that have not been authorized by the subscriber.”<sup>13</sup> This rule built on previous enforcement action that determined such charges were unlawful as an “unjust and unreasonable” practice.<sup>14</sup>

Importantly, the FCC created a comprehensive framework that affords providers flexibility in their billing procedures without discouraging the introduction of new pricing plans

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<sup>11</sup> See IIJA § 60504(a).

<sup>12</sup> *Truth-in-Billing and Billing Format*, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 7492 (1999) (“FCC Truth-in-Billing R&O”); *Truth-in-Billing and Billing Format*; *National Association of State Utility Consumer Advocates’ Petition for Declaratory Ruling Regarding Truth-in-Billing*, Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking, 20 FCC Rcd 6448 (2005).

<sup>13</sup> *Protecting Consumers from Unauthorized Carrier Changes and Related Unauthorized Charges*, Report and Order, 33 FCC Rcd 5773, at 5788 (2018).

<sup>14</sup> *Id.* at 5785. See also FCC Truth-in-Billing R&O, 14 FCC Rcd at 7506-07 ¶ 25 (“[E]ven where an interexchange carrier (or other carrier) uses the billing and collection services of a LEC or other third-party billing agent, the interexchange carrier still bears the responsibility of ensuring that such charges appear on the bill remitted to the consumer in a manner that complies with the principles set forth in this Order.”).

or impairing the ability of providers to adopt improvements to their billing systems or bill structures.<sup>15</sup> While these provisions apply only to common carriage services, to the extent a service provider is providing both common carriage and non-common carriage services on the same bill, service providers honor the higher standard so that consumers receive the most detailed information available to them.<sup>16</sup>

**FTC Guidance.** Wireless service providers also implemented practices consistent with the FTC’s July 2014 Staff Report on mobile cramming to ensure pricing transparency, exceeding the Staff Report recommendations in some instances.<sup>17</sup> The Staff Report, which addressed “mobile cramming” (defined in the Staff Report as “the unlawful practice of placing unauthorized third-party charges on mobile phone accounts”): (1) urged mobile carriers to “give consumers the option to block all third-party charges on their phone accounts,” (2) stated that “advertisements for products or services charged to a mobile bill must not be deceptive,” (3) found that “it is critical that consumers provide their express, informed consent to charges before they are billed to a mobile account, and that reliable records of such authorizations are maintained,” (4) stated that “all charges for third-party services should be clearly and conspicuously disclosed to consumers in a non-deceptive manner,” and (5) urged that “carriers should implement an effective dispute resolution process.”<sup>18</sup>

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<sup>15</sup> See *id.* at 7499 ¶ 10 (“Our decision to adopt broad, binding principles, rather than detailed, comprehensive rules, reflects a recognition that there are typically many ways to convey important information to consumers in a clear and accurate manner.”).

<sup>16</sup> See generally *Consumer Code for Wireless Service*. The FCC is considering expanding the scope of common carriage to include broadband internet access services. See *Safeguarding and Securing the Open Internet*, Notice of Proposed Rulemaking, FCC 23-83 (rel. Oct. 20, 2023).

<sup>17</sup> *Mobile Cramming: A Federal Trade Commission Staff Report*, FTC (July 2014), <https://www.ftc.gov/system/files/documents/reports/mobile-cramming-federal-trade-commission-staff-report-july-2014/140728mobilecramming.pdf> (“Staff Report”).

<sup>18</sup> *Id.* at i-ii.

Consistent with these recommendations, nationwide providers offer blocking at no charge and prominently disclose their blocking options; have procedures in place to monitor and enforce their policies against third parties that rely on carrier third-party billing; and have processes in place for customers to dispute third-party charges and, when appropriate, receive refunds.<sup>19</sup>

## **B. States Enforcement and Emerging Legislation Further Address Unfair and Deceptive Fees.**

States have a long record of enforcement action against unfair and deceptive fees, just as the FTC does.<sup>20</sup> As with the FTC’s own enforcement and policy statements over the years, the state enforcement actions have addressed, and often redressed, harms caused by unfair and deceptive practices with respect to fees in many industries.<sup>21</sup> Moreover, state enforcement actions provide instructive lessons for the overwhelming majority of companies seeking to comply with the law. In addition to enforcement actions, at least one state recently implemented legislation to require additional disclosures regarding mandatory fees and charges. Specifically, California enacted a law last year to prohibit hidden fees, beginning July 1, 2024.<sup>22</sup> Given the size of California’s economy, this new law is likely to have far-reaching effects when it becomes effective. Importantly, the law provides targeted exceptions, including for certain federally-regulated common carriers and for entities complying with the FCC’s broadband labeling rules,

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<sup>19</sup> Reply Comments of CTIA, CG Docket No. 17-169, at 7-8 (Oct. 13, 2017), <https://www.fcc.gov/ecfs/document/10131193313943/1>.

<sup>20</sup> *See, e.g.*, Proposed Rule n.221 (describing state enforcement actions with respect to unfair and deceptive fees).

<sup>21</sup> *See, e.g.*, Proposed Rule at 77426 (observing that “numerous State attorneys general have taken ... enforcement action” related to fees related to rental cars); *id.* at 77437 (“For example, State Attorneys General have brought cases against hotel chains and delivery apps involving unfair or deceptive fees.”)

<sup>22</sup> Cal. S. 478, Sec. 3(a)(29)(B) (amending Cal. Civ. Code § 1770).

whether offering broadband “on its own or as part of a bundle.”<sup>23</sup> These provisions could serve as a potential model should the FTC decide to adopt its Proposed Rule.

FCC rules and requirements – including those developed consistent with congressional mandate – along with state policies, help to ensure consumers understand the pricing for the services they are buying and do not become victims to unfair and deceptive practices with respect to fees. The FCC’s Truth-in-Billing rules are mature and currently protecting consumers, and new rules and laws are on the books that will further protect consumers as compliance dates near. The FTC should allow the marketplace for wireless services to adapt to the new legal developments before considering whether application of the Proposed Rule to wireless services is necessary to protect consumers.

**C. The Wireless Industry is Committed to Ensuring Consumers Have Clear and Accurate Information Regarding Product and Service Offerings.**

CTIA’s members understand that consumer trust is essential for the wireless ecosystem to continue to flourish, and transparency in pricing and billing practices is integral to building and maintaining that trusted relationship with consumers. In the competitive wireless marketplace, CTIA and its members are therefore incentivized to ensure consumers have the information they need to help inform their commercial decisions.

It is this commitment that underpins the *Consumer Code for Wireless Service*, which complements regulatory and legal requirements discussed above, has been regularly updated since it was first created nearly 20 years ago, and today is adopted by wireless service providers that collectively serve nearly all wireless subscribers across the United States<sup>24</sup> Given the importance

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<sup>23</sup> See *id.* § 3 (relationship to the FCC’s broadband labeling rules); *id.* § 12 (exempting air carriers).

<sup>24</sup> See, e.g., Comments of CTIA, CG Docket No. 22-2, at 4 (filed Mar. 9, 2022), <https://www.fcc.gov/ecfs/document/1030985678705/1>.

of transparency in billing and fees, it is no surprise that more than half of the principles contained in the *Consumer Code for Wireless Service* speak to this issue, with disclosure of rates and terms of service being the first commitment.<sup>25</sup> Signatories to the *Consumer Code for Wireless Service* also commit to providing and confirming any new material terms and conditions of the service in the event that a customer initiates or changes service<sup>26</sup> and, where a signatory provider modifies the terms of a post-paid customer's contract "in a manner that is materially adverse" to the customer, the service provider commits to providing a period of at least 14 days for the customer to cancel their contract without triggering an early termination fee.<sup>27</sup>

In a similar vein, signatories commit to notifying customers at points of sale and on provider websites that customers have at least a 14-day trial period during which they may cancel newly initiated postpaid service without an early termination fee. Providers must also disclose any early termination fees that may be applied after the trial period ends.<sup>28</sup>

Signatories to the *Consumer Code for Wireless Service* also make substantial commitments regarding disclosures in their advertising.<sup>29</sup> For example, wireless provider signatories commit to "clearly and conspicuously" disclosing material charges, including any that may relate to service initiation fees; monthly access fees; voice, messaging, or data service allowances and any charges for overages; charges for usage outside of the coverage area; any additional taxes, fees, or surcharges as well as the amount or range of any fees or surcharges that are collected and retained by the service provider; early termination fees; and whether prices or

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<sup>25</sup> *Consumer Code for Wireless Service*, at 1, Principle 1.

<sup>26</sup> *Id.* at 2, Principle 3.

<sup>27</sup> *Id.* at 3, Principle 7.

<sup>28</sup> *Id.* at 2, Principle 4.

<sup>29</sup> *Id.* at 2-3, Principle 5.

benefits apply only for a limited time and, if so, whether any different fees or charges will apply for the remainder of the contract term.

The commitment for clear and conspicuous disclosures also applies to service conditions, including any network management practices that will have a material impact on the customer's wireless data experience; whether a fixed-term contract is required and its duration; any terms and conditions related to receiving a product or service for "free"; the period of time during which any balance is available for pre-paid service plans; and, for nationwide service plans, coverage maps or other substantiation of that claim.

Customers of service providers that signed the *Consumer Code for Wireless Service* also are entitled to a bill that distinguishes monthly charges that are collected and retained by the provider from taxes, fees, and charges that are remitted to the government (federal, state, and local).<sup>30</sup> Importantly, for more than a decade, the *Consumer Code for Wireless Service* has contained Principle 11, which calls on service providers to send free usage alerts to post-paid customers to help them avoid unexpected overage charges, and to clearly and conspicuously disclose tools that enable consumers to track, monitor, and/or set limits on voice, messaging, and data usage.<sup>31</sup>

As noted above, CTIA continues to regularly evaluate the *Consumer Code for Wireless Service* and revise it as needed to reflect wireless industry innovations and consumers' evolving expectations and needs. By doing so, CTIA and its members have demonstrated their long-standing and ongoing commitment to ensuring consumers have clear and accurate information about their wireless service offerings.

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<sup>30</sup> *Id.* at 3, Principle 6.

<sup>31</sup> *Id.* at 4-5, Principle 11.

### **III. THE PROPOSED RULE POSES SIGNIFICANT COMPLIANCE CHALLENGES WITHOUT CONSUMER BENEFITS AND WILL POTENTIALLY INCREASE CONSUMER COSTS.**

Consumers can already be assured of receiving clear, accurate, and complete information about their wireless service options, as detailed above. The Proposed Rule fails to account for the consumer benefits of these existing requirements and commitments, and indeed paints with too broad a brush by further ignoring the layers of local and state regulatory fees and the intricacies of nationwide advertising of regulated services. Any effort to layer additional requirements on top of the above-discussed advertising and billing requirements and commitments would be more likely to increase costs and confuse consumers than to help them.

#### **A. The Proposed Rule Fails to Account for Wireless Providers' Compliance with a Multitude of Contrasting Fees and Taxes.**

Wireless services are subject to a wide variety of payments to various government authorities that severely complicates compliance with the Proposed Rule. For example, wireless providers regularly must remit to the federal, state, and local governments monies related to universal service, 911, and state sales tax. NTCA—The Rural Broadband Association (“NTCA”) observed in response to the FTC’s Advance Notice of Proposed Rulemaking in this proceeding that common fees on telecommunications bills “support everything from local emergency services to assistance for low-income subscribers to schools and libraries, [and] arise out of defined Federal and local regulatory programs that are related directly to the communications service offered.”<sup>32</sup> NTCA continued:

Federal Universal Service Fund assessments contribute toward the deployment and maintenance of communications networks throughout the country; increased access to these networks by schools and libraries; the use of these communications services to

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<sup>32</sup> Comments of NTCA – The Rural Broadband Association, No. R207011, at 4 (Jan. 9, 2023), [https://downloads.regulations.gov/FTC-2022-0069-3393/attachment\\_2.pdf](https://downloads.regulations.gov/FTC-2022-0069-3393/attachment_2.pdf).

provision healthcare; and programs to ensure affordability for low-income users. Likewise, state or local E911 fees relate directly to the purchased service by supporting emergency call centers that are reached by that purchased communications service to ensure public health and safety.<sup>33</sup>

These fees vary widely by jurisdiction, making it nearly impossible for wireless providers to advertise a nationwide “Total Price” in compliance with the Proposed Rule. In particular, the FTC’s proposed exception for “Government Charges” is too narrow to account for the wide range of monies wireless providers collect at the behest, and with the blessing, of government regulators. The Proposed Rule defines “Government Charges” as fees or charges imposed *on* consumers and expressly excludes fees the government imposes on a business and that the business passes on to consumers. A partial (but incomplete) solution to this concern would be to broaden the definition of “Government Charges” to include pass-throughs such as the Universal Service Fund (“USF”), E911, and other government-mandated fees.<sup>34</sup>

If the FTC does not allow pass throughs, the Proposed Rule would require providers to unfairly absorb increased program costs that change often and/or raise prices for all in anticipation of such increased program costs. For example, the federal USF contribution rate is now at 34.5 percent of telecommunications service revenues. This rate changes quarterly and has risen steadily over time – the rate was 20 percent five years ago. In addition, the Proposed Rule would contrast with the FCC’s expert agency view, which expressly allows wireless providers to list most government charges as separate line items on bills, provided they are not misleading, and adopted specific formats for displaying broadband pricing. To avoid such anti-

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<sup>33</sup> *Id.* (internal citation omitted).

<sup>34</sup> *See, e.g.*, 47 C.F.R. § 54.712 (USF pass through).



consumer results, the FTC should exempt the wireless industry from the scope of the Proposed Rule.

**B. Consumer Prices May Increase as the Transparency of Government Programs and Passthroughs Decreases.**

The Proposed Rule also potentially raises costs for consumers because local and state governments may be incented to increase fees that will be spread to consumers outside their jurisdictions. For example, a wireless provider may seek to advertise on a local Washington, DC television station. That advertisement would likely be viewed in the District of Columbia, Maryland, and Virginia. Each jurisdiction, however, imposes different regulatory fees that are typically passed through to consumers as well as directly imposed costs (such as sales taxes). Under the narrow definition of “Government Charges,” only the first category would be exempt from the “Total Price” requirement. To comply, service providers would thus likely have to average costs they can no longer pass through to consumers and then include this average in the advertised Total Price. Consumers in a lower fee jurisdiction would thus see their prices go up.

In addition, necessitating an averaging for non-pass-through costs introduces moral hazard for jurisdictions (which include, in some cases, individual cities as well as states/territories) to increase regulatory fees because the Total Price obscures the source of previously passed-through costs. That is, if a government entity can raise or levy new fees on providers (but not consumers directly), those fees would have to be absorbed by all consumers, not just the consumers in the jurisdiction in which the fees were raised. This could encourage jurisdictions to raise fees, since the cost would be shouldered by consumers outside of their own jurisdictions.

An alternative for service providers to averaging costs and prices would be to stop advertising prices across jurisdictions or at all, which means consumers would have less

information about pricing altogether. Consumers would have to go site-to-site or store-to-store to get pricing information and likely would not be able to access even high-level pricing information without providing personal information (such as the location of their residence) first.

In any event, attempting to comply with the Proposed Rule would introduce substantial compliance burdens on wireless providers, with almost no net benefit to consumers, as wireless providers try to tease out and then display various allowed and forbidden government collections in advertising. As discussed throughout these comments, wireless providers already provide clear pricing information to consumers and these practices have strong regulatory backstops. Should the FTC move forward without expressly exempting common carrier activities and wireless providers from the Proposed Rule, it would need to reexamine its cost assessment to account for the layers of regulation with which wireless providers must comply and the work it will take to ensure nationwide campaigns can conform with the rules.

#### **IV. SHOULD THE FTC MOVE FORWARD, AN EXEMPTION FOR FCC-REGULATED SERVICES IS APPROPRIATE.**

##### **A. It Would Be Unlawful to Impose the Proposed Rule on the Common Carrier Activities of CTIA's Members.**

The FTC lacks the authority to impose rules, including the Proposed Rule, to the common carrier activities of CTIA's members. Section 5 of the FTC Act expressly exempts common carriers from the purview of the FTC's jurisdiction, and the FTC may only impose trade regulation rules where the agency has Section 5 authority.<sup>35</sup> Thus, aside from unwise policy as detailed above, it would be unlawful to apply the proposed rules to CTIA's members providing common carrier service. In addition, as CTIA has previously explained, wireless customers

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<sup>35</sup> See 15 U.S.C. § 57a(b)(2); see also Comments of CTIA, Project No. P064202, Docket No. FTC-2023-0033, at 14 (June 23, 2023), <https://www.regulations.gov/comment/FTC-2023-0033-0866> ("CTIA Negative Option Rule Comments") (citing *FTC v. AT&T Mobility*, 883 F.3d 848 (9th Cir. 2018)).

typically purchase bundled talk, text, and data services, and these services are presented to consumers as a combined cost on their monthly bills.<sup>36</sup> It would be operationally impossible to subject wireless providers to the proposed rules solely with respect to non-common carriage services. Applying the Proposed Rule to the bundled services would thus mean the FTC would be regulating common carriage activities despite its lack of jurisdiction to do so.<sup>37</sup>

**B. Any Rule Adopted by the FTC in Response to the Notice of Proposed Rulemaking Should Exempt FCC-Regulated Wireless Broadband Entities.**

If the FTC ultimately adopts a trade regulation regarding unfair and deceptive fees, any new rule should expressly exempt all wireless broadband entities and their affiliates that are regulated by the FCC. The advertising and delivery of services by entities that provide broadband services are already regulated by the FCC, the expert federal agency. The FTC should not substitute its judgment for that of Congress or the FCC. Importantly, as described above, the FCC was already granted Congressional authority to address broadband service transparency via the broadband labeling requirements and many earlier obligations, making any application of these rules by the FTC even more unnecessary and highlighting the need to exclude such services from the FTC rule.<sup>38</sup>

Should the FTC not directly exempt wireless broadband entities regulated by the FCC, the FTC should deem compliant with any new rules adherence with the FCC's transparency rules, such as the broadband labeling rules and Truth-in-Billing requirements. Specifically, any

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<sup>36</sup> See CTIA Negative Option Rule Comments at 14-15.

<sup>37</sup> Further, the FCC is considering adopting requirements that would classify broadband as a common carrier service, making it premature at best to make any rules affecting broadband service or any service bundled with common carrier services. See *Safeguarding and Securing the Open Internet*, Notice of Proposed Rulemaking, FCC 23-83 (rel. Oct. 20, 2023).

<sup>38</sup> California's law is an example of an express exemption for certain types of common carriers. See Cal. SB 478, Sec. 12.

final regulation could include a provision that mimics similar steps taken in a recently enacted consumer protection statute in California, which states that “[c]ompliance by a person providing broadband internet access service on its own or as part of a bundle, as defined in Section 8.1(b) of Title 47 of the Code of Federal Regulations, with the broadband consumer label requirements adopted by the Federal Communications Commission in FCC 22-86 on November 14, 2022, codified in Section 8.1(a) of Title 47 of the Code of Federal Regulations, shall be deemed compliance” with the relevant requirements.<sup>39</sup> CTIA continues to encourage the FTC to rethink the applicability of the Proposed Rule to wireless provider entities, but if such requirements are adopted, we encourage adoption of a safe harbor similar to California’s, here.

## **V. CONCLUSION.**

Commitments made by wireless service providers through the *Consumer Code for Wireless Service*, coupled with regulatory protections adopted by the FCC, recommended by the FTC, and enforced by the states, serve today to provide protection and clarity to consumers regarding their commercial decisions. Given the incentives wireless providers have to ensure their trusted relationship is maintained with consumers in the competitive wireless marketplace and Congress’s express direction regarding the FTC’s authority over common carrier services, CTIA urges the FTC to refrain from imposing a new trade regulation on the wireless industry with respect to fees. If the agency ultimately determines to impose a new rule with respect to fees, the FTC should expressly exempt, or create a safe harbor for, wireless broadband entities regulated by the FCC, and their affiliates.

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<sup>39</sup> See *id.* Sec. 3(a)(29)(B) (amending Cal. Civ. Code. § 1770). CTIA requests that in addition to this exemption, the agency also clearly exempt all FCC-regulated services such as voice telephony and cable services.

Respectfully submitted,

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February 7, 2024