

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

In the Matter of)	
)	
Unfair or Deceptive Fees Trade Regulation)	Docket No. FTC-2022-24326
Rule Commission Matter No. R207011)	

COMMENTS OF NEW AMERICA’S OPEN TECHNOLOGY INSTITUTE

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I. INTRODUCTION

New America’s Open Technology Institute (OTI) respectfully submits these comments in response to the FTC’s request for comment on regulating unfair or deceptive fees (“junk fees”) throughout the U.S. economy.

For more than a decade, OTI has worked to ensure every community has equitable access to digital technology and its benefits. Few technologies are more important for U.S. residents than affordable and reliable home internet access, which is increasingly a prerequisite for basic participation in society. Critical access to education, employment, government services, banking, health care, and other life-altering areas essentially requires internet service.

If a service is not affordable, it is not accessible. In addition to promoting the accessibility of internet service in unserved and underserved communities, we are also extremely concerned with the prohibitively high cost of home internet service around the country. Many people simply cannot afford adequate internet service, while those who can often shoulder high costs and face a confusing landscape of opaque pricing and hidden fees.

Our research and that of peer organizations confirms that confusing junk fees add significantly to the price of internet service in the United States—often spiking the true monthly price by 75 percent or more—harrying consumers with higher bills and pricing others out of the market.¹ We urge the FTC to consider rules aimed at increasing price transparency in both wireless and wired internet connections, as well as cracking down on the incidence of unnecessary junk fees that provide no value to consumers.

II. JUNK FEES FOR INTERNET SERVICE ARE RAMPANT

A typical bill for internet service includes a confusing mix of charges and fees that many consumers would find difficult to decipher. Many internet plans are advertised with a low monthly rate that does not include ancillary fees, making it hard to shop for an internet plan with an accurate picture of the real price.

OTI’s 2020 *Cost of Connectivity*² research report identified four common types of ancillary fees: (1) installation and activation fees; (2) equipment fees; (3) penalties for exceeding

¹ The Cost of Connectivity 2020. New America’s Open Technology Institute (15 July 2020) <https://www.newamerica.org/oti/reports/cost-connectivity-2020/>

² *Id.*

data caps; and (4) early termination fees and minimum contract lengths. The FTC’s definition of “junk fees” for this ANPR refers to “unfair or deceptive fees that are charged for goods or services that have little or no added value to the consumer, including goods or services that consumers would reasonably assume to be included within the overall advertised price.” The term also comprises “hidden fees” that are “deceptive or unfair, including because they are disclosed only at a later stage in the consumer’s purchasing process or not at all,” regardless of whether the fees are ascribed to “goods or services that have independent value to the consumer.”

The following describes these four common types of junk fees identified by OTI’s research according to the definition put forth by the Commission.

A. INSTALLATION AND ACTIVATION FEES

Consumers are typically charged fees for installation and/or activation of their internet service that are not part of the advertised monthly price. Installation fees usually correspond to a technician’s visit to a customer’s home to install internet service, while one-time activation fees can be charged instead of or in addition to the installation fee, depending on the provider.

OTI’s own research into internet service fees found the average U.S. installation fee is over \$70, with activation fees running an average of over \$26.³ These fees can easily exceed the price of a full month or more of internet service, especially when companies charge both.

In cases where companies charge both installation and activation fees, it is not clear what value consumers receive from a fee simply for “activation” when they are already paying a technician to come to their home and install equipment necessary for service.

B. EQUIPMENT FEES

A home internet connection also requires certain equipment, including a modem and router, and companies charge consumers for this equipment with fees that are not part of the advertised monthly price of service. While some companies offer consumers the option to use their own equipment, many do not have the technical savvy to determine whether their hardware

³ See “Focus on the Fees” *The Cost of Connectivity 2020*. New America’s Open Technology Institute (15 July 2020) <https://www.newamerica.org/oti/reports/cost-connectivity-2020/focus-on-the-fees>

is compatible with the provider’s network, or to purchase their own compatible hardware. Thus for most consumers, renting or buying equipment from the service provider is all but required.

Fees to rent a router and modem average around \$6 (each) per month, with many plans charging \$10 or more for these required pieces of equipment.⁴ These additional fees can significantly inflate what consumers pay every month, taking their costs well beyond the advertised price of service. For example, one Kansas City, KS Comcast plan in our data has an advertised price of \$19.99, but carries a modem fee of \$13, bringing the true monthly price close to \$35.⁵ Similarly, a San Francisco plan by Wave advertised at \$19.95 per month carries a \$15 modem fee, meaning the modem alone costs three quarters as much as the plan itself.⁶

Given that a large portion of consumers opt to rent their equipment from internet providers, the price of equipment rental fees should be considered as part of the true monthly price of internet service and incorporated into advertised prices.

C. PENALTIES FOR EXCEEDING DATA CAPS

Many providers place a cap on the amount of data subscribers are allowed to use in a particular month, charging a penalty for additional data usage beyond the cap—typically around \$10 for an additional 50 GB of data use, although fees can vary.⁷

Deciding how much data one needs and choosing the correct package is difficult for many consumers, with research suggesting that they often choose packages with too much or too little data.⁸ Without the detailed knowledge of one’s own data usage habits required to make an informed decision, it is easy to overpay for too much data or select an inadequate package and be subjected to penalties.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ See Appendix B., *The Cost of Connectivity 2020*. New America’s Open Technology Institute (15 July 2020) <https://www.newamerica.org/oti/reports/cost-connectivity-2020/appendices>

⁸ *Broadband Internet: FCC Should Track the Application of Fixed Internet Usage-Based Pricing and Help Improve Consumer Education*. United States Government Accountability Office. (November 2014) <https://www.gao.gov/assets/gao-15-108.pdf>

The technical rationale behind data caps lacks support;⁹ while ISPs claim they institute data caps to protect against service disruptions during peak use, this assertion doesn't hold up under scrutiny. One obvious discrepancy is that data caps apply at all times, and not just peak hours.¹⁰ Emergency measures taken during the COVID-19 pandemic¹¹ and subsequent lockdowns offer a further rejoinder: many ISPs lifted their data caps in March 2020 to accommodate an increase in home internet use, suggesting that networks had significant additional capacity all along.¹² More likely, the purpose of data caps is to create artificial scarcity and prod consumers into paying more for service, either through paying for a higher cap or paying overage penalties.

The arbitrary nature of overage penalties classifies them as a junk fee, and we urge the Commission to examine this and other examples of industries using service limitations to generate junk fees.

D. EARLY TERMINATION FEES AND MINIMUM CONTRACT LENGTHS

Internet service providers often lock consumers into a particular plan with a service contract—more than 40% of the plans in our U.S. data had a 12-month contract term.¹³ Leaving these plans early, for instance to switch to another plan, can incur an early termination fee that may approach \$200 or more.¹⁴ If a consumer instead waits until the end of their contract, they can typically (but not always, as some providers charge a “disconnection fee” regardless of any contract term) switch providers with no fee; thus, it is unclear what value is added by an early termination fee beyond penalizing consumers for pursuing better or more affordable service.

⁹ Karl Bode, *Cable Industry Finally Admits Caps Not About Congestion*. DSLReports (18 January 2013) https://www.dslreports.com/shownews/Cable-Industry-Finally-Admits-Caps-Not-About-Congestion-122791?utm_source=dlvr.it&utm_medium=twitter

¹⁰ *Artificial Scarcity: How Data Caps Harm Consumers and Innovation*. New America's Open Technology Institute. (June 2015) https://static.newamerica.org/attachments/3556-artificial-scarcity/DataCaps_Layout_Final.a7ef6b9029da4dd29324757e5710b903.pdf

¹¹ Rob Pegoraro, *The Coronavirus Might Have Just Killed ISP Data Caps*. Fast Company. (March 21, 2020) <https://www.fastcompany.com/90480069/the-coronavirus-might-have-just-killed-isp-data-caps>

¹² Kathleen Burke, *Keep All Americans Connected By Prohibiting Data Caps During the COVID-19 Pandemic*. Public Knowledge. (March 27, 2020) <https://publicknowledge.org/keep-all-americans-connected-by-prohibiting-data-caps-during-the-covid-19-pandemic/>

¹³ See “Focus on the Fees” *The Cost of Connectivity 2020*. New America's Open Technology Institute (15 July 2020) <https://www.newamerica.org/oti/reports/cost-connectivity-2020/focus-on-the-fees>

¹⁴ *Id.*

Many internet plans are “no contract” plans with no early termination fee for consumers who switch. However, internet service providers will often advertise significant cost savings for plans with a minimum contract length, attracting consumers who may not realize how these plans limit their options and may cost them money.¹⁵ This further increases the difficulty of comparison shopping and obscures the true price of plans.

We urge the Commission to examine these early termination fees as an example of a junk fee. Additionally, it is worth noting the anticompetitive potential of minimum contract lengths, which prevent consumers from switching providers easily and reduce incentives for providers to keep customers satisfied by providing high-quality service. We encourage the Commission to consider exploring this topic further in another proceeding.

III. JUNK FEES MAKE INTERNET PRICES OPAQUE, IMPEDE COMPARISON SHOPPING, AND HARM COMPETITION

The proliferation of junk fees for internet service contributes to a significant negative outlook for consumers as they shop for this critical technology. A Consumer Reports study of thousands of consumers’ bills found many that were confusing and difficult to decipher, due in no small part to the confusing addition of junk fees.¹⁶ CR’s analysis also confirmed OTI’s earlier research: junk fees for internet service usually aren’t included in the advertised price of internet plans, and consumers would need to comb through fine print to avoid being surprised by additional charges on their monthly bill.¹⁷ OTI’s own research has consistently identified junk fees as a problem as far back as 2012.¹⁸

As the Commission notes in its ANPR, junk fees often impair comparison shopping. This is especially true in the market for internet service, where companies rely heavily on the appearance of discounted service to attract consumers. As noted by CR, internet service bills also make it difficult to tell whether a consumer is receiving a promotional discount, and what the

¹⁵ *Id.*

¹⁶ James K. Willcox, *You May Be Paying Too Much for Your Internet*. Consumer Reports. (17 November 2020) <https://www.consumerreports.org/electronics-computers/telecom-services/you-may-be-paying-too-much-for-your-internet-a7157329937/>

¹⁷ *Id.*

¹⁸ The Cost of Connectivity 2012. New America’s Open Technology Institute. (19 July 2012) <https://www.newamerica.org/oti/policy-papers/the-cost-of-connectivity-2012/>

total price may rise to when a promotional period is over.¹⁹ Add to this the unknowns about a service provider’s junk fees, and comparing two plans or exploring a switch from one plan to another is extremely difficult. This erodes consumers’ ability to find the best plan for them and switch from one plan to another, dampening competition in the marketplace even without the addition of early termination fees and minimum contract lengths that punish consumers for seeking a better deal.

IV. INCREASING PRICE TRANSPARENCY AND CURTAILING JUNK FEES

Given the difficulty of determining the actual monthly price of internet service, OTI has long called for greater “truth in billing” in the internet service industry, advocating for a mandated standardized disclosure for internet plans that clearly states any ancillary fees, as well as speeds, data caps, and other important plan information.^{20 21} This disclosure, often called the “broadband nutrition label” by advocates (with some proposals modeled directly on the FDA’s “Nutrition Facts” food label), was mandated by the 2021 Infrastructure Investment and Jobs Act and adopted by the Federal Communications Commission in 2022, and is currently undergoing its own rulemaking process (See FCC CG Docket No. 22-2).

OTI encourages the FTC to examine the potential of similar standardized price disclosures across industries, creating a recognizable consumer label that would eliminate the “hidden” nature of many junk fees and clarify the actual price of services.

Transparency alone, however, does not eliminate the possibility of junk fees. OTI is heartened by the Commission’s willingness to examine the deceptive billing practices at the heart of the junk fee phenomenon, including charging consumers for services that appear mandatory but may actually be avoided and charging consumers fees that add no value to their service. As noted above, fees with no clear value are prevalent when purchasing internet service.

¹⁹ *Id.*

²⁰ James Losey, *Denial of Service*. Slate. (28 April 2010) <https://slate.com/technology/2010/04/broadband-access-in-the-united-states-is-even-worse-than-you-think.html>

²¹ Amir Nasr and Austin Adams, *We Need a Broadband Internet Pricing Equivalent of Nutrition Labels*. Slate. (10 December 2020) <https://slate.com/technology/2020/12/broadband-internet-pricing-nutrition-labels.html>

V. CONCLUSION

It is clear that junk fees are pervasive in the U.S. economy, harrying consumers across industries, contributing to a downward trend in consumer trust, market competition, and bank account balances nationwide. This is especially true when shopping for internet plans, where junk fees can represent a significant portion of the overall cost of service and are rarely included as part of advertised prices. OTI welcomes the Commission's examination of this issue, and would be happy to help in any way with the Commission's understanding of junk fees in the internet service market.