



May 24, 2024

Via Email

The Honorable Lina M. Khan, Chair
Commissioner Rebecca Kelly Slaughter
Commissioner Alvaro Bedoya
Commissioner Melissa Holyoak
Commissioner Andrew N. Ferguson
Federal Trade Commission
600 Pennsylvania Ave, NW
Washington, D.C. 20580

Re: Proposed Trade Regulation Rule on Unfair or Deceptive Fees

Dear Chair Khan and Commissioners:

This letter is submitted by the National Open Commerce and Safer Highways Coalition (“NOCSHC”) to register concerns about potential unintended consequences of the Commission’s proposed “Trade Regulation Rule on Unfair or Deceptive Fees.”¹ NOCSHC is a coalition of towing and recovery companies, allied businesses, and emergency-responder communities dedicated to keeping our roads open and safe. NOCSHC is concerned that the Commission’s broad rulemaking proposal, if adopted as proposed, would have unintended effects on local law enforcement-initiated towing, among other industries and pricing arrangements currently regulated and managed by state and local authorities. However, these kinds of impacts have not been fully explored in the rulemaking process. NOCSHC therefore writes directly to the Commission to request that the Commission avoid such conflicts with state and local authorities in adopting any final rule, and seeks to meet to further discuss these issues.²

Background. NOCSHC is a group of towing and recovery professionals united to foster safety and efficiency on America's roadways. NOCSHC stands as an advocate for our brave towing, recovery, hazardous material remediation, and incident response operators who put their lives on the line to ensure our nation's roads remain safe and functional. NOCSHC also works to

¹ Trade Regulation Rule on Unfair or Deceptive Fees, 88 Fed. Reg. 77420 (Nov. 9, 2023), <https://www.federalregister.gov/documents/2023/11/09/2023-24234/trade-regulation-rule-on-unfair-or-deceptive-fees>.

² As the comment period has closed, NOCSHC makes this submission to the Commission pursuant to 16 C.F.R. § 1.18(c).

promote cooperation between towing professionals and essential public service entities, further contributing to the overall safety and security of our roadways.

A key public safety service performed by our members is responding to law enforcement requests to initiate tows during accident or wreck responses. These tows require towers to work with police, sheriffs, and state highway patrols to remove vehicles and wreckage to help preserve roadway safety and restore regular traffic flows. Towers are often called in emergency circumstances and must work quickly to clear the scene of an accident and help law enforcement prevent secondary accidents and other dangerous situations. Towers often enter into contracts with state and local law enforcement entities which govern rates and fees that can be charged when towers are called by law enforcement.

The Rulemaking Proceeding and Potential Impact of the Rule on Law Enforcement Towing. The FTC’s Notice of Proposed Rulemaking (“NPRM”) does not mention towing, much less point to any issues involving deceptive or unfair fees involving towing arrangements. However, on the last day before the NPRM comment period closed, the Federal Motor Carriers Safety Administration (“FMCSA”), a division of the Department of Transportation, filed comments in response to the rule, arguing that the rule should apply to what it calls “predatory towing practices.”³ NOCSCH disputes the FMCSA’s characterization and its arguments for FTC regulation – but industry members did not have a meaningful opportunity to respond, as the comment period promptly closed. On April 24, 2024, the FTC held an informal hearing on the proposed rules that was limited to previous commenters.

NOCSCH has serious concerns that the broadly worded proposal will lead to a situation where its members will be subject to rules that are not feasible in the context of towing practices, undermine arrangements with state and local authorities, and create safety risks during emergency towing operations.

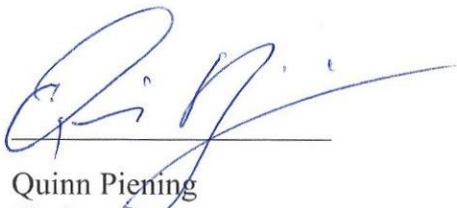
In particular, the FTC’s proposed rule requiring up-front calculation and disclosure of fees, if applied to law enforcement-initiated tows, would result in serious operational and compliance issues for towers working on behalf of state and local law enforcement authorities. When towers are called into emergency situations by law enforcement, the final cost depends on variable circumstances such as the equipment used to perform the tow and the amount of time spent – which cannot be known before a tow is complete. Indeed, at the time that towers are called by law enforcement, they may have little to no visibility into the amount of time and resources that might be required to complete the job. In this context, trying to disclose an up-front “Total Price,” as the proposed rule suggests, is not feasible. If the rule were interpreted to apply to towers, it could be read as requiring them to quote initial prices that are not accurate or compel them to try make extensive price disclosures in the middle of a dangerous towing operation that presents safety difficulties – and where time is of the essence to clear safety hazards and restore the flow of traffic.

³ Comments of FMCSA, Trade Regulation Rule on Unfair or Deceptive Fees (Feb. 7, 2024), available at <https://www.transportation.gov/sites/dot.gov/files/2024-02/FTC%20FMCSA%20Comment%202.7.24.pdf>.

Currently, state and local governments are in charge of overseeing fees that are assessed in this situation, whether by contract or regulation. In fact, Congress has explicitly exempted certain towing operations, including law enforcement-initiated towing, from federal preemption of state motor carrier laws. One provision exempts from regulation – including price regulation – “tow truck operations performed without the prior consent or authorization of the owner or operator of the motor vehicle.”⁴ Another exempts “emergency towing of an accidentally wrecked or disabled motor vehicle” from federal motor carrier laws generally, “unless otherwise necessary.”⁵ It is clear that Congress intended to leave regulation of such towing operations to state and local governments.

In NOCSCH’s view, if the FTC moves forward with a rule, it should not extend to fees that are traditionally regulated or controlled by state or local governments, including fees related to law enforcement-initiated towing. Law enforcement towing is a good example of why the FTC should tread carefully in the scope of its rule, as local law enforcement entities have unique knowledge and experience in dealing with local towing companies that assist with roadside clearance, and they are best positioned to manage price and cost recovery. The up-front “Total Price” calculation and disclosure is not consistent with how fees are calculated and assessed in this area, and in fact interfere with efforts to safely resolve emergency situations being handled on the local level.

NOCSHC representatives would be happy to discuss this matter with each of you further. As noted above, the rulemaking process to date has not afforded NOCSHC and its members the opportunity to address the misguided FMCSA filing, and we appreciate the opportunity to clarify why any final FTC rule should be limited to avoid impact on law enforcement-initiated towing.

A handwritten signature in blue ink, appearing to read 'Quinn Piening', is written over a horizontal line.

Quinn Piening
Chairman

National Open Commerce and Safer Highways Coalition

⁴ 49 U.S.C. § 14501(c)(2)(C).

⁵ 49 U.S.C. § 13506(b)(3).