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Testimony of the Department of Commerce and Consumer Affairs

Office of Consumer Protection

Before the
Senate Committee on Commerce and Consumer Protection
Wednesday, February 14, 2024
9:30 a.m.
Via Videoconference
Conference Room 229

On the following measure:
S.B. 2020, RELATING TO DECEPTIVE TRADE PRACTICES

Chair Keohokalole and Members of the Committee:

My name is Mana Moriarty, and I am the Executive Director of the Department of Commerce and Consumer Affairs' (Department) Office of Consumer Protection (OCP). The Department strongly supports this bill, which require businesses to disclose all mandatory fees, excluding government fees, in advertisements. This truth-in-advertising bill addresses a problem confronting many consumers across numerous sectors of the economy, including online shopping, fitness centers, financial services, rental housing, payday lending, motor vehicle rentals, restaurants, and event ticketing: hidden fees.

Requiring mandatory disclosure of fees across all industries protects consumers from deceptive hidden fees and bait and switch pricing. This bill makes it a deceptive trade practice for anyone to advertise, display, or offer a price for goods or services that

does not include all mandatory non-government fees or charges. Passing this bill will arm consumers with tools to make better decisions in the marketplace while being protected from bait-and-switch pricing.

The OCP supports this bill and recently supported similar efforts at the federal level to combat hidden fees and bait-and-switch pricing. Together with Attorney General Anne E. Lopez and a coalition 19 state attorneys general, OCP expressed strong support for a proposed Trade Regulation Rule on Unfair or Deceptive Fees by the Federal Trade Commission (FTC). The comment letter, filed on February 7, 2024, addressed the provisions of a proposed FTC Rule:

- Prohibiting 'bait and switch' advertising by requiring businesses, from the outset, to clearly and conspicuously disclose the total price, inclusive of any mandatory fees;
- Requiring businesses to more prominently display the total price when pricing information is advertised;
- Prohibiting businesses from misrepresenting the nature and purpose of any fee, and;
- Requiring businesses to clearly and conspicuously disclose the nature and purpose of certain fees (such as shipping charges and optional fees) before the consumer consents to pay.

Thank you for the opportunity to testify on this bill.



Charter Communications
Testimony of Rebecca Lieberman, Director of Government Affairs

SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Hawaii State Capitol
Wednesday, February 14, 2024

COMMENTS ON S.B. 2020 – RELATING TO DECEPTIVE TRADE PRACTICES

Chair Keohokalole, Vice Chair Fukunaga, and Members of the Committee.

Thank you for the opportunity to provide comments on S.B. 2020, a bill that would make it a deceptive trade practice to advertise, display, or offer a price for goods or services that does not include all fees, with certain exceptions.

Charter **offers proposed amendments** to this bill. Charter, and other broadband services providers, are currently complying with federal broadband label requirements mandating rate transparency and which therefore satisfies the goals of this bill.

Under the new Broadband Label rules, which were adopted by the Federal Communications Commission (FCC) in November 2022, internet service providers are required to display easy-to-understand “nutrition-style” labels intended to allow customers to understand their bills. These labels, which are displayed at points of sale, outline pricing, including introductory rates, speeds, data allowances, and other information needed to make an informed decision about selecting a broadband or bundled package.

Additionally, Charter's mobile, voice, and broadband service price advertisements show the total amount to be paid by customers with no unadvertised surcharges. Customers are billed in advance of service with no contract. Customers are also able to see their charges clearly on their bills and can cancel at any time with no early termination fees.

This is also an active area for federal rules. In addition to the FCC's recently imposed Broadband Label requirements, the FCC and Federal Trade Commission (FTC) proposed additional rules in October 2023 to prohibit "hidden" and "bogus" fees across a wide range of industry sectors. With multiple federal agencies actively engaged, wide-ranging state laws risk conflicts and confusion with forthcoming federal rules.

However, if Hawaii is committed to adopting legislation in this area, we encourage Hawaii to look to the approach other states are taking. California's similar law adopted last year granted exceptions to only two groups, entities subject to the FCC's Broadband Label rules and entities when subject to federal financial transparency rules. Other states like Colorado and Pennsylvania have bills pending that likewise exempt entities in compliance with the FCC's Broadband Label rules. Given the FCC's Broadband Label requirement, Charter respectfully offers the following amendments to Page 3,

inserting a new section to read:

Section 481A-5, Hawaii Revised Statutes, is amended to read:

"**[§481A-5] Application.** (a) This chapter does not apply to:

(1) Conduct in compliance with the orders or rules of, or a statute administered by, a federal, state, or local governmental agency;

(2) Publishers, broadcasters, printers, or other persons engaged in the dissemination of information or reproduction of printed or pictorial matters who publish, broadcast, or reproduce material without knowledge of its deceptive character; or

(3) Actions or appeals pending on July 14, 1969.

(b) Sections 481A-3(a)(2) and 481A-3(a)(3) do not apply to the use of a service mark, trademark, certification mark, collective mark, trade name, or other trade identification that was used and not abandoned before July 14, 1969 if the use was in good faith and is otherwise lawful except for this chapter. [L 1969, c 187, pt of §1]

(c) Sections 481A-3(a)(12) does not apply to persons 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, in compliance 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 94 Ch. 400 – 12 – Code of Federal Regulations.”

Charter is committed to providing high-quality high-speed internet and video services to the residents of Hawaii. In 2021 and 2022, Charter extended its network to reach an additional 27,000 homes and small businesses in Hawaii, investing more than \$200 million across the state. Charter is a member of DBEDT’s weekly Broadband Hui to assist in strategic broadband planning and closing the digital divide. Additionally, Charter participated in the FCC’s Emergency Broadband Benefit Program

(EBB) and is now participating in the \$14.2 billion federal Affordable Connectivity Program (ACP). The EBB, and now the ACP, helped connect over 59,000 eligible households in Hawaii with high-speed broadband during the COVID-19 pandemic. Charter is committed to providing our customers clear pricing information to make informed decisions about

Mahalo for the opportunity to provide suggested amendments to S.B. 2020.



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Andy Huang, Incoming Chair - L&L Hawaiian Barbeque **Tambara Garrick, Secretary** –Hawaii Farm Project

Kahili Soon, Treasurer – Hukilau Marketplace **Ryan Tanaka, Past Chairman** –Giovanni Pastrami

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Date: February 9, 2024

To: Sen. Jarrett Keohokalole, Chair
Sen. Carol Fukunaga, Vice Chair
Committee on Commerce and Consumer Protection

From: Victor Lim, Legislative Lead

Subj: SB 2020 Relating to Deceptive Trade Practices

The Hawaii Restaurant Association representing 4,000 Eating and Drinking Place locations in Hawaii, stand opposed to SB2020 as it is currently written. This bill seeks to eliminate all fees or surcharges, forcing restaurant operators to change menus to reflect a single Total Price other than taxes and fees charges by the state or county on the transactions.

While we appreciate the bill's intent to provide increased transparency for consumers, this proposed rule fails to achieve this for the restaurant industry. Restaurant operators make significant efforts to ensure that fees and surcharges are evident and identifiable before consumers receive their check, they also typically provide customers with the option to remove a surcharge from their final bill. These practices differentiate the restaurant industry from the others.

By forcing restaurant operators to include service fees, credit card surcharges, or even delivery fees in menu pricing, this bill in fact forces operators to hide from consumers the costs of the services they value in the restaurant experience. Restaurant customers understand that they will pay extra if they are having their food delivered or are dining with a large party. The consumer understands that these are higher costs a restaurant is taking on to make the customer experience even more convenient.

Restaurant fees that are value adding including service fees and tips that go directly to tipped workers, credit card surcharges, and delivery fees should be preserved.

Thank you very much for allowing us to share our industry's view on this.



Committee on Commerce and Consumer Protection
Hawai‘i State Capitol
415 South Beretania St.
Honolulu, HI 96813

The logo for the American Economic Liberties Project, featuring the text "AMERICAN ECONOMIC LIBERTIES PROJECT" in white, all-caps, sans-serif font on a dark blue rectangular background. The background of the entire page has light blue wavy lines.

Subject: Testimony in Support of SB2020

Dear Chair Keohokalole, Vice Chair Fukunaga, and Members of the Committee,

My name is Pat Garofalo, and I am the director of state and local policy at the American Economic Liberties Project, a research and advocacy organization dedicated to reducing the power corporations wield over our economy and democracy, in pursuit of economic liberty for all. I am writing to express our strong support for SB2020, the proposed legislation to ban junk fees in Hawai‘i.

SB2020 is a crucial step towards safeguarding consumers from exploitative pricing tactics. Hidden and deceptive junk fees have become pervasive in the U.S. economy, with corporations applying them to live event ticket sales, hotel reservations, cable and phone bills, rental housing, storage unit rentals, food delivery services and more. These fees are tacked on at or near the end of transactions without consumers' prior knowledge or consent, drastically altering the final price of a product or service from the price that was initially advertised.

Research has shown that junk fees raise prices by as much as 20 percent¹ and cost the average American family more than \$3,000 per year.² Across the economy, they total billions of dollars every year.

By enacting this legislation, you can ensure that your constituents have access to transparent pricing information, allowing them to make informed decisions about their purchases through honest comparison shopping. Banning junk fees empowers individuals by providing them with the knowledge that the advertised price is the actual price, and allows consumers to navigate the marketplace with trust and confidence. It enhances consumer protection and promotes a more equitable economy that works for everyone.

Moreover, banning junk fees sends a clear message to corporations that exploitative pricing practices will not be tolerated in Hawai‘i. Upfront pricing practices promote healthy competition, driving innovation and improved quality in the market, and protect honest businesses by no longer privileging corporations that depend on bogus fees to capture market share. Corporations should be transparent about the costs associated with their products and services, rather than resorting to hidden, deceptive fees to boost their profits. Local businesses with transparent

¹ Santana, Dallas, and Morwitz (2020), "Consumer Reactions to Drip Pricing," *Marketing Science*, 39 (1), 188 - 210.
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3924320

² Wang, Penelope, "Protect Yourself From Hidden Fees," *Consumer Reports*, May 29, 2019.

<https://www.consumerreports.org/money/fees-billing/protect-yourself-from-hidden-fees-a1096754265/>

pricing practices shouldn't be harmed by appearing artificially more expensive than those that rely on backloaded junk fees.

To be clear, this legislation only covers *mandatory fees* that the consumer can not avoid. It does not tell businesses what price they can charge, and it does not prevent the use of optional add-ons that the consumer affirmatively chooses. It simply says that if a fee must be paid in order to complete the transaction, that fee must be disclosed, up front, so consumers know the actual price they are agreeing to pay.

The public overwhelmingly supports measures to ban junk fees. The Federal Trade Commission and the Consumer Financial Protection Bureau have recently proposed new rules to protect consumers from junk fees, and states across the country have introduced legislation like SB2020. Consumers are tired of being nickel-and-dimed by hidden charges and are demanding greater transparency and fairness in pricing. It's time for Hawai'i to join the fight.

So I urge you to support the proposed legislation to ban junk fees. By doing so, you will help ensure that consumers are treated fairly and honestly in the marketplace, and that businesses engage in fair competition based on quality and service, not deception. Thank you for considering my testimony, and I urge you to take swift action in support of SB2020.

Sincerely,

Pat Garofalo
Director of State and Local Policy
American Economic Liberties Project
pgarofalo@economicliberties.us



February 13, 2024

The Honorable Jarrett Keohokalole
Chair
Senate Committee on Commerce and Consumer Protection
Hawai'i State Capitol, Room 205
415 S Beretania St.,
Honolulu, HI

RE: Oppose SB 2020: Relating To Deceptive Trade Practices.

Dear Representative Keohokalole and members of the Committee:

On behalf of the Chamber of Progress, a tech industry coalition promoting technology's progressive future, I write to **oppose SB 2020 based on its current drafting**. While we support efforts to eliminate deceptive practices and manipulative pricing in certain industries, SB 2020 could unfortunately have the effect of eliminating many consumer-friendly pricing options in other industries.

We agree that deceptive practices in industries like hotels, ticketing, and airlines should be addressed. Inconsistent prices and a lack of transparency make it more difficult for consumers to do "apples to apples" comparisons between competing services and hinder fair competition.

Unfortunately, the bill as drafted doesn't reflect the complexity of some three-sided online marketplaces, like many app-based services, that have a fundamentally different structure.

SB 2020 could limit consumers' ability to make price comparisons. In three-sided online marketplaces - including many sharing, e-commerce, and delivery services - independent sellers offer and set the prices for their goods and services. The market operator connects the independent sellers with customers, and may offer additional services like delivery, product authentication, or order processing. In these marketplaces, the total cost a customer pays reflects separate inputs: the

prices set by the independent sellers and the prices set by the market operators for their services.

By requiring all sellers to display the total price for each item, inclusive of any “mandatory fees or charges other than taxes or fees imposed by a government,” this bill could require three-sided online marketplaces to combine pricing of separate services into a single price. As a result, consumers would have less pricing information.

Additionally, this bill could result in marketplace operators being held liable when the independent sellers exclude mandatory fees or other charges from their listed price. In the transient accommodation industry, many hotels and resorts advertise available rooms on online lodging rental or home sharing platforms. Hotels and resorts, like homeowners renting out their homes, are responsible for the list price and any applicable fees.

Under SB 2020, the platforms could be held liable if the hotel or resort failed to incorporate all resort fees into the price they post on the platform. This concern could be addressed by including a safe-harbor provision for three-sided marketplaces and platforms that do not independently set prices for listings.

The bill could also end up inadvertently raising prices for consumers. Some sellers offer discounts on bundles of goods, like “buy one get one free” offers or discounts on bulk orders. In these cases, the total price of each good could vary depending on the other items in a customer’s cart. In order to reduce confusion while complying with this rule, sellers may abandon these discounts - which would harm consumers.

Similarly, the bill risks eliminating dynamic pricing and forcing service providers to switch to flat fees.

Many online platforms use dynamic pricing for delivery services, in which prices fluctuate based on the type or amount of goods being delivered and the availability of delivery drivers. With dynamic pricing, the price of delivery services could change throughout the day, thereby changing the total price for each item.

For example, the price of a late-night delivery of heavy items might be higher than a delivery of a small order during peak hours. Online platforms would likely face difficulty in predicting and accurately incorporating these variable costs into the

total prices of individual items. Instead, they may abandon dynamic pricing and adopt a flat fee structure, which would increase the price of deliveries for smaller orders or orders during peak hours. In the above example, the customer placing a small order would likely pay more for their delivery under a flat fee structure than they would with dynamic pricing.

We support efforts to crack down on industries that deceive customers and use manipulative pricing tactics. However, applying a blanket rule on all industries, without accounting for differences in market structures, could end up harming consumers. Unless these differences can be addressed during the drafting stage, we urge you to **oppose SB 2020**.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ruth Whittaker', with a large, stylized initial 'R'.

Ruth Whittaker,
Director of Civic Innovation Policy

SB-2020

Submitted on: 2/8/2024 12:27:13 PM

Testimony for CPN on 2/14/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Richard S. Ekimoto	Individual	Oppose	Written Testimony Only

Comments:

I have concerns that this bill proposes to change from the Uniform Deceptive Trade Practices Act by adding a provision relating to costs. One of the advantages of using a uniform act is that the provisions are well vetted and you can look to commentary and case law dealing with the provisions.

In this case, the proposed amendment creates problems because the exception for not including mandatory fees or charges only includes taxes or fees imposed by the government or postage or carriage charges. There are a lot of situations where businesses provide services and pass on other costs that are not necessarily known at the time that a price is provided. For instance, businesses often provide that other costs will be charged to the client or customer, including copying charges, title reports, consulting reports, etc. In many of these instances, the business providing the price doesn't receive the cost, but is simply passing those costs on to the customer or client with notification to the client that these costs will be passed on.

The exception for postage or carriage charges is also unnecessarily narrow in that it only applies to the shipment of goods. Service businesses sometimes charge postage for items sent to the customer or others.



February 13, 2024

The Honorable Jarrett Keohokalole
Hawaii Senate Committee on Commerce and Consumer Protection
State Capitol
Honolulu, HI 96813

Dear Chair Keohokalole:

On behalf of CTIA®, the trade association for the wireless communications industry, I write in opposition to Senate Bill 2020, relating to deceptive trade practices. We appreciate the goal of protecting consumers from practices that may undermine a consumer’s ability to make informed commercial decisions, and our industry is committed to ensuring consumers have accurate and transparent information. However, robust federal regulations and public industry commitments already exist, thereby making any new state-specific law imposed on our industry potentially duplicative and not in the consumer’s interest.

Industry is Committed to Keeping Consumers Informed

In the competitive wireless marketplace, CTIA and its members have established the *Consumer Code for Wireless Service*¹ —an evolving set of principles designed to help consumers make informed decisions when selecting wireless services. This code has been regularly updated since it was first created nearly 20 years ago. Importantly, more than half of the principles contained in the *Consumer Code for Wireless Service* speak to this important issue, with disclosure of rates and terms of service being the first commitment. Further, Principle 5 *establishes a commitment to “clearly and conspicuously” disclosing material charges.*

Wireless services are used every day to connect consumers to school, work, and loved ones, and as of 2022, there were roughly 1.6 wireless connections for every person in the United States.² Consumers tend to use their wireless devices throughout the day, which serves as a tangible reminder of the services they are receiving. Wireless services are thus distinguishable from other products and services where consumers may not even be aware that they are being charged for a service, such as services that may renew on an annual basis. Moreover, wireless providers typically have regular engagement with their customers, including through monthly notices regarding plan terms and itemized costs, as well as through alerts that may be sent in accordance with commitments made as part of the *Consumer Code for Wireless Service*.

¹ CTIA, *Consumer Code for Wireless Service* (2020), <https://api.ctia.org/wp-content/uploads/2020/03/CTIA-Consumer-Code-2020.pdf> (“*Consumer Code for Wireless Service*”).

² See CTIA, *2023 Annual Survey Highlights*, at 5 (July 25, 2023), <https://www.ctia.org/news/2023-annual-survey-highlights>.

Robust Federal Regulation of the Wireless Industry Already Exists

FCC Broadband Labeling: The wireless industry is regulated by the FCC, which has its own regulatory regime to protect consumers from surprise or unfair fees and billing practices, including broadband labeling and Truth-in-Billing regulation. The FCC's rules already require the wireless industry to convey relevant information to consumers and prevent unfair or deceptive fees. CTIA's members have for years embraced regulatory efforts already undertaken by the FCC to ensure consumers have clear information about service charges and to help protect consumers from fraud and unauthorized third-party fees. These rules and policies effectively prevent and hold wireless providers responsible for any unfair or deceptive fees.

Implementing a recent Congressional directive, the FCC adopted requirements for broadband labeling in 2023.³ These requirements will ensure consumers are given clear, accurate, and transparent information to guide their purchasing decisions. Under these new broadband consumer label rules, all wireless consumers will have access to easy-to-understand labels modeled on the nutrition labels that appear on food products. The labels will clearly lay out key 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. Importantly, in adopting its directive, Congress clearly intended that the FCC should regulate the advertising of broadband on a *national* level.⁴ Hawaii should not enact laws where Congress has expressly directed a federal agency to regulate for the country, as is the case here.

FCC's 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.⁵ The Truth-in-Billing rules have also served to help protect consumers from fraud and unauthorized third-party charges. Importantly, the FCC created a comprehensive framework that affords providers flexibility in their billing procedures without discouraging the introduction of new pricing plans or impairing the ability of providers to adopt improvements to their billing systems or bill structures.⁶

Therefore, the law should clearly exempt services that are regulated by the FCC. Likewise, the new law should deem exempt those businesses already subject to the rules set forth by the FCC, such as broadband labeling.

FTC Regulations: The Federal Trade Commission ("FTC") has a pending proceedings regarding unfair and deceptive consumer fees, whereby it may ultimately adopt provisions applicable to the wireless industry that are preemptive at best, and duplicative or inconsistent at worse, with this legislation.⁷ In

³ See *Empowering Broadband Consumers Through Transparency*, Order, CG Docket No. 22-2, DA 23-617 (CGB rel. July 18, 2023).

⁴ Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, § 60504(a), 135 Stat. 429, 1244 (2021).

⁵ *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).

⁶ See FCC Truth-in-Billing R&O, 14 FCC Rcd at 7499, ¶ 10

⁷ The FCC is also considering rules related to cable and DBS pricing. *All-In Pricing for Cable and Satellite Television Service*, Notice of Proposed Rulemaking, MB Docket No. 23-203, FCC 23-52 (rel. June 20, 2023).

November 2023, the FTC published a Notice of Proposed Rulemaking (“FTC NPRM”) that proposes to prohibit unfair or deceptive practices relating to fees for goods or services.⁸ The rule, if adopted, would prohibit businesses from offering, displaying, or advertising amounts consumers may pay without clearly and conspicuously disclosing the “Total Price,” as considered in the legislation.

Title 47 U.S.C.: It is not clear if the requirements in the bill is consistent with federal law, which plainly states that “no State or local government shall have any authority to regulate the entry of or *the rates charged by any commercial mobile service . . . except that this paragraph shall not prohibit a State from regulating the *other* terms and conditions of commercial mobile services.*”⁹ It is also not clear if the proposed exceptions in the legislation related to “tax or fees imposed by a government on the transaction” would include the wide range of monies wireless providers collect at the behest and with the blessing of government regulators.

Wireless Services are Already Regulated by the FCC

Commitments made by wireless service providers through the *Consumer Code for Wireless Service*, coupled with regulatory protections adopted by the FCC, 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, CTIA urges Hawaii to recognize the dynamics within the competitive wireless marketplace and refrain from imposing a new state law on the wireless industry that would be unnecessary, duplicative, and not in the consumer interest.

If Hawaii ultimately enacts a law regarding unfair and deceptive fees, any new law should expressly exempt services already regulated by the FCC for the reasons stated above.

Sincerely,



Mike Blank
Director of State Legislative Affairs

⁸ See Trade Regulation Rule on Unfair or Deceptive Fees, 88 Fed. Reg. 77420 (Nov. 9, 2023).

⁹ 47 U.S.C. § 332(c)(3)(A) (emphasis added); see also, e.g., *MCI Telecommunications Corp. v. FCC*, 822 F.2d 80 (D.C. Cir. 1987).