

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Data Caps in Consumer Broadband Plans)	WC Docket No. 23-199
)	

COMMENTS OF CTIA

CTIA¹ submits these comments in response to the Federal Communications Commission’s (“Commission” or “FCC”) Notice of Inquiry in the above-referenced docket regarding “data cap” plans, or more accurately usage-based broadband pricing plans.²

I. INTRODUCTION AND SUMMARY.

U.S. wireless providers are offering consumers more broadband choices with more value options and more price points than ever. Consumers may select from an array of 5G mobile service plans—including unlimited plans, prepaid plans, and other usage-based plans—that make mobile wireless broadband accessible for more consumers. Consumers embrace the variety of wireless options available and, rather than pursuing a regulatory framework that limits

¹ CTIA – The Wireless Association® (“CTIA”) (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. CTIA represents a broad diversity of stakeholders, and the specific positions outlined in these comments may not reflect the views of all individual members. 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.

² *Data Caps in Consumer Broadband Plans*, Notice of Inquiry, FCC 24-106 (rel. Oct. 15, 2024) (“NOI”). The NOI characterizes various plans as “data cap” plans, but these comments more accurately use the term “usage-based,” which better captures that customers can select a pricing plan based on the quantity of data consumed. These comments generally use the word broadband to refer to broadband Internet access service. *See generally* 47 C.F.R. § 8.1(b) (defining broadband Internet access service).

consumers’ options, the Commission should focus on efforts that enable wireless providers to expand their offerings to consumers.

As both a legal and policy matter, the Commission should refrain from any effort to regulate usage-based broadband plans. The *2024 Title II Order*, which asserted authority over broadband services, is under review by the Sixth Circuit, which stayed the order,³ underscoring that broadband is an information service and cannot be subject to rate regulation. And none of the sources of authority referenced in the NOI give the Commission authority to do so or otherwise regulate usage-based pricing. In any event, the Commission has repeatedly asserted that it has no interest in regulating broadband rates.⁴ Usage-based plans are pricing structures based on a given quantity of data, and they constitute broadband rates. For these reasons, the Commission should close the proceeding.

II. THE HIGHLY COMPETITIVE WIRELESS MARKETPLACE GIVES CONSUMERS THE CHOICE OF A WIDE ARRAY OF AFFORDABLE PLANS, INCLUDING PLANS WITH USAGE-BASED PRICING.

The U.S. wireless marketplace delivers unprecedented investment, innovation, and competition, resulting in next-generation networks and service plan choices for American consumers. As Compass Lexecon has concluded, “the wireless industry exhibits strong competitive performance as it features high levels of investment, service improvements (in terms of speed and coverage), declining prices, escalating usage, and expanding competition into new

³ See generally Order Granting Mot. for Stay Pending Rev. of Final Rule, In re: MCP No. 185, No. 24-7000 (6th Cir. Aug. 1, 2024) (No. 71-2) (“Sixth Circuit *Title II Order Stay*”).

⁴ See, e.g., *Safeguarding and Securing the Open Internet et al.*, Declaratory Ruling et al., Order, Report and Order, and Order on Reconsideration, FCC 24-52, ¶¶ 6, 386 (rel. May 7, 2024) (“*2024 Title II Order*”).

areas.”⁵ Wireless providers have invested \$190 billion in their networks since 2018, including \$30 billion in 2023 alone.⁶ The nationwide rollout of 5G happened nearly twice as fast as 4G.⁷ A recent report identified that median download speeds quadrupled over the past seven years and doubled over the past three years.⁸ And consumer pricing reflects fierce wireless competition. The per megabit price of wireless data in nominal terms has declined by 97% in the past decade (and even more when adjusted for inflation), and wireless rates went down from 2022 to 2023 even as inflation led prices across the economy to continue to go up.⁹

Consumers can choose from a wide range of mobile wireless plans with different speeds offered by different providers, ranging from plans with unlimited 5G data to low-cost prepaid plans and various usage-based pricing plans in between that allow consumers to choose the right plan to meet their needs and their budgets.¹⁰ Usage-based wireless plans are attractive to consumers because they generally cost less.¹¹ Among plans examined by Compass Lexecon, monthly prices for plans with data allowances range from as low as \$10 up to \$65, compared to monthly prices for unlimited plans ranging from approximately \$40 to \$90.¹² And prepaid plans,

⁵ Bryan Keating, *An Economic Analysis of Mobile Wireless Competition in the United States*, COMPASS LEXECON, at 4 (Dec. 11, 2023), https://api.ctia.org/wp-content/uploads/2023/12/CL_Dec-2023.pdf (“Compass Lexecon Report”).

⁶ *2024 Annual Survey Highlights*, CTIA, at 5 (Sept. 10, 2024), <https://www.ctia.org/news/2024-annual-survey-highlights> (“CTIA 2024 Annual Survey Highlights”).

⁷ *Communications Marketplace Report*, 2022 Communications Marketplace Report, 37 FCC Rcd 15514, 15517 ¶ 5, 15826 at app. D-5.xxxv (2022) (“2022 Communications Marketplace Report”).

⁸ Compass Lexecon Report at 13.

⁹ CTIA 2024 Annual Survey Highlights at 8.

¹⁰ See generally Compass Lexecon Report at 39.

¹¹ See, e.g., *Plans: Make The Switch Today to Our Best Plans Ever*, Consumer Cellular, <https://www.consumercellular.com/shopping/choose/plan> (last visited Nov. 14, 2024) (offering plans at various price points, including \$20 per month for 1GB and \$35 per month for 10GB data).

¹² Compass Lexecon Report at 39, 40 fig.15. Prices are for a single line and account for autopay and paperless billing discounts. Taxes and fees are excluded for most plans. *Id.* at 40.

which the NOI does not mention, are an important form of usage-based pricing for wireless customers. Prepaid plans do not require long-term contracts, so they allow consumers to have better control over their expenses; and they do not require credit checks.¹³ Consumers want choice and are embracing a wide range of plans that wireless providers offer.

According to the Multicultural Media, Telecom & Internet Council, wireless’s “varied and attractive pricing tiers” are among the reasons that wireless is “a significant factor in bridging the digital divide and providing underserved communities with the 21st century tools they need for advancement.”¹⁴ Consumers can choose to save money buying wireless data “a la carte” rather than “all you can eat.” And some consumers would decline service entirely if low-cost usage-based options were not available. These plans thus make broadband more affordable for more people, including seniors and low-income individuals. In addition, usage-based plans facilitate the offering of Lifeline-supported mobile plans at no cost to eligible consumers, as providers design those plans to meet the Commission’s minimum standards that expressly permit usage allowances.

Wireless providers also are introducing additional choice in the home broadband marketplace. 5G home broadband—also called 5G Fixed Wireless Access (“FWA”)—is the fastest-growing type of broadband connection in the nation. In 2023, FWA accounted for 104% of the approximately 3,522,000 net broadband additions (inclusive of both wireline losses and

¹³ See *2022 Communications Marketplace Report*, 37 FCC Rcd at 15592 ¶ 99 n.291 (noting that “prepaid subscribers may lack the credit background or income necessary to qualify for postpaid service”); *Application of Verizon Communications Inc. and América Móvil, S.A.B. de C.V. For Consent to Transfer Control of International Section 214 Authorization*, Memorandum Opinion and Order, 36 FCC Rcd 16994, 17018 ¶ 58 (2021) (discussing low-cost prepaid services from MVNOs that Verizon supplies).

¹⁴ *Wireless in Communities of Color: Bridging the Digital Divide*, MULTICULTURAL MEDIA, TELECOM & INTERNET COUNCIL, at 6 (2022), <https://www.mmtconline.org/wp-content/uploads/2022/07/Wireless-in-Communities-of-Color-July-2022.pdf>.

fixed wireless additions).¹⁵ FWA is becoming available in more communities as networks expand, including more than 94 million U.S. households in 2023—more than doubling the number of households in the previous year.¹⁶ Providers employ various mechanisms to enable sufficient data access for this very data-hungry form of broadband. Offering usage-based mobile plans aids in efficient allocation of spectrum and managing congestion so that providers have adequate capacity to offer FWA and other innovative wireless offerings.

The Commission and Congress should take steps to help wireless providers continue to make more capacity available for mobile service, FWA, and other innovations. Most importantly, Congress should restore the Commission’s spectrum auction authority and government stakeholders should identify a pipeline of spectrum for full-power commercial licensing that will help deliver even more and even better wireless broadband options.

Consumers are also well-informed about the choices they have in the wireless marketplace. Industry practices, along with Commission transparency requirements and broadband consumer labels, ensure that consumers have all the information they need to make informed decisions regarding the wide variety of options available.¹⁷ Approximately 18 percent of mobile wireless customers change providers annually, demonstrating that consumers make use of this information and experience “competition in action.”¹⁸

¹⁵ *1Q 2024 Research Notes: Actionable Research on the Broadband, Media & Entertainment Industries*, Leichtman Research Group, at 4 (2024), <https://tinyt.io/Ajyn>.

¹⁶ Comments of CTIA, GN Docket No. 24-119, at 7 (dated June 6, 2024).

¹⁷ See NOI ¶¶ 11-12; 47 C.F.R. § 8.1.

¹⁸ Compass Lexecon Report at 46-47.

III. THE COMMISSION LACKS LEGAL AUTHORITY TO REGULATE WIRELESS USAGE-BASED PLANS.

Asserting new regulatory authority over wireless usage-based pricing would not be sound policy *or* lawful. Broadband is not and should not be subject to the sort of heavy-handed regulation—particularly rate regulation—that the NOI contemplates.¹⁹ The pricing differences that exist across a wide range of mobile wireless plans illustrate why “[p]rohibiting customers from choosing to purchase plans with data caps—which are more affordable than unlimited ones—necessarily regulates the service rates they are paying for.”²⁰

The *2024 Title II Order* refrained from regulating broadband rates but adopted a general conduct rule that would give the Commission generalized oversight over usage-based pricing.²¹ A Sixth Circuit panel stayed the *2024 Title II Order*.²² In other words, broadband Internet access service is a Title I service, as the Sixth Circuit stay decision yet again demonstrated. As Commissioner Carr observed in his dissent to the NOI, “the Sixth Circuit has stayed the FCC’s Title II decision, which is based on the same claims of authority that the FCC invokes today.”²³ Rather than pursue activity that is beyond the Commission’s Title I legal authority, the Commission should instead allow the successful wireless broadband marketplace to continue delivering a diverse array of plans to consumers.

¹⁹ See NOI, Dissenting Statement of Commissioner Nathan Simington (stating that the NOI “is the first step down a path toward further rate regulation” because “regulation of usage-based plans of any variety is rate regulation by another name”).

²⁰ NOI, Dissenting Statement of Commissioner Brendan Carr.

²¹ See *2024 Title II Order* ¶¶ 541-42; *Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5601, 5668 ¶ 153 (2015).

²² Sixth Circuit *Title II Order* Stay.

²³ NOI, Dissenting Statement of Commissioner Brendan Carr.

Beyond this threshold issue, the NOI, in a single paragraph, lists no fewer than 16 different statutory provisions and asks if any provide “legal authority to promulgate rules in this area.”²⁴ The Supreme Court’s decision in *Loper Bright* reenforces that agency assertions of authority must be rooted firmly in authority granted by Congress.²⁵ The NOI, however, engages in no analysis and offers no rationale for why any of the provisions offer legal support to regulate usage-based data plans. Indeed, Congress has granted no such authority here.

In particular, the NOI identifies as possible sources of authority Section 257 of the Communications Act of 1934, as amended, and Section 706 of the Telecommunications Act of 1996 (“1996 Act”).²⁶ Whether or not and to whatever extent these provisions provide authority to adopt rules regulating conduct, any such claim of authority is inapposite here and the NOI makes no attempt to show otherwise. Regulatory action to restrict wireless providers’ ability to tailor plans to attract customers is *contrary* to statutory provisions to remove market entry barriers or encourage deployment.²⁷

The NOI next identifies Title III licensing authority.²⁸ The NOI offers no analysis of how these provisions authorize regulating broadband rates. Further, singling out wireless does not make sense—and indeed would be arbitrary and capricious—given the highly competitive wireless marketplace and the unique spectrum-driven capacity constraints on wireless service.

The NOI also offers a host of irrelevant authority addressed to topics such as broadcast television and audio, multichannel video programming service, and specific obligations of

²⁴ NOI ¶ 45.

²⁵ See *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244, 2265-66 (2024).

²⁶ NOI ¶ 45 (citing 47 U.S.C. §§ 163, 257, 1302).

²⁷ 47 U.S.C. §§ 257(a), 1302(a).

²⁸ NOI ¶ 45.

certain telecommunications carriers under the 1996 Act.²⁹ None of these provisions apply to broadband or relate to usage-based pricing. Thus, they are not permissible sources of authority to regulate broadband provider data plans.³⁰

Accessibility of communications technology for people with disabilities is vitally important. However, the specific accessibility authority the Commission cites³¹ does not apply to broadband: broadband is not a telecommunications service or a telecommunications relay service that could be within the scope of Sections 225 or 255, nor is it a form of “advanced communications service” (such as email or Voice over Internet Protocol) subject to Section 617.³² Thus, the Commission’s accessibility authority is inapposite here. It also bears noting that limiting plan choice would harm individuals with disabilities, just as it would harm all wireless broadband consumers.

Finally, none of the provisions of the Infrastructure Investment and Jobs Act (“IIJA”) cited by the NOI support any Commission assertion of authority over usage-based plans.³³ Congress directed what it wanted at length in the IIJA, and it did not direct the Commission to second-guess wireless providers’ service plans. Moreover, none of the specific IIJA provisions cited would provide relevant legal authority:

²⁹ *Id.* (citing, among other things, 47 U.S.C. §§ 251, 303(f)-(h), 628).

³⁰ In addition, neither these provisions nor any others could support reliance on ancillary authority here. *But see id.* ¶ 47.

³¹ *Id.* ¶ 45 & n.95.

³² 47 U.S.C. §§ 225, 255, 617.

³³ NOI ¶ 46 (citing 47 U.S.C. § 1752(b)(1) (establishing the Affordable Connectivity Program); 47 U.S.C. § 1753(a) (directing the Commission to promulgate regulations to require the display of broadband consumer labels); 47 U.S.C. § 1754(b) (directing the Commission to adopt rules to facilitate equal access to broadband and prevent digital discrimination of access)).

- Regrettably, the Affordable Connectivity Program has ended, but even if it continued, authority to implement a funding program does not provide authority beyond the scope of that program.
- Authority to require disclosure of information about plans in broadband labels does not provide authority over how providers structure and price their plans.
- CTIA and others have explained that the digital discrimination provision of the IIJA does not provide authority over pricing or create far-reaching disparate impact authority.³⁴

IV. CONCLUSION.

Americans are embracing a wide variety of wireless broadband plans. There is no policy reason or legal basis for the Commission to second-guess wireless providers' usage-based plan offerings. Rather than continue down the road started by the NOI, the Commission should take steps to help wireless providers continue to expand their service and the options available for all Americans.

Respectfully Submitted,

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³⁴ See, e.g., Comments of CTIA, GN Docket No. 22-69 (Feb. 21, 2023).