

*The Voice of America's Towing Industry*

**TOWING AND RECOVERY ASSOCIATION OF AMERICA, INC.®**

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Janice Kopec and Stacy Cammarano  
Division of Advertising Practices, Bureau of Consumer Protection  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

Dear Ms. Kopec and Ms. Cammarano:

The Towing & Recovery Association of America, Inc. (TRAA) is contacting you today regarding the recent comment filed by the Federal Motor Carrier Safety Association (FMCSA) to the Federal Trade Commission's (FTC) Notice of Proposed Rulemaking creating 16 CFR Part 464: Unfair or Deceptive Fees Trade Regulation (88 FR 77420). Specifically, pursuant to 15 U.S.C. 57a(c), TRAA is requesting the opportunity to make an oral submission at an informal hearing regarding the rule. While we recognize that the comment period has closed for this rule, TRAA believes that the towing industry should have the opportunity to refute some of the assertions made by FMCSA in their comment, which was submitted on the last day of the comment period. For your context, TRAA has been the voice of America's towing industry since 1979 and remains the only national towing association recognized by FMCSA, the Federal Highway Administration (FHWA), the Government Accountability Office (GAO), Transportation Research Board (TRB), and the National Transportation Safety Board (NTSB).

Towing is an essential contributor to the smooth functioning of our economy, providing valuable assistance to motorists in need and keeping traffic flowing on our roads and highways. Towing offers timely aid to motorists during unforeseen circumstances such as an incident or breakdown, often at great personal risk. A tow is killed every six days on average on American roads, highlighting not only the crucial role that towers fill, but also the great personal danger associated with the profession.

The heart of TRAA's concerns with the FTC's proposed rule, and FMCSA's comment implicating the towing industry under the provisions of the proposed rule, stem from a fundamental misunderstanding of how the towing industry works, how pricing is conducted, and the feasibility of providing 100% accurate price quotes when responding to a complicated traffic incident. The towing industry has become more complex in recent years, both in terms of services provided and equipment required. Through the Traffic Incident Management (TIM) initiative, FHWA-HRT-05-002, pressure has been placed on tow companies to get highways cleared quickly, which creates additional costs, for instance staffing additional personnel and equipment 24/7/365. The TIM initiative was instituted to save lives and money, since forty percent of law enforcement fatalities are on the highway and twenty percent of all incidents are secondary to the original event. However, it has inevitably had knock-on effects on our industry regarding cost structures.

We are aware that FMCSA has received some complaints from truck operators and trucking companies, as well as their industry associations, regarding towing fees that have resulted from inflation as well as the costs associated with the ability to respond 24/7/365. We assume these anecdotal reports motivated FMCSA's comment to the FTC. We do understand that no industry is without bad actors, however, we

can assure you the vast majority of towing and recovery operations and companies are not bad actors. Most are small, family-run businesses working around the clock to keep motorists safe and commerce flowing.

Fundamental to FMCSA's comments is the suggestion that, as a mandatory ancillary fee, the FTC prohibit any towing fees not disclosed upfront or under a per mile fee. We would like to address some of the specific points, which we believe are pertinent to the FTC's decision-making process as it finalizes a rule regarding unfair or deceptive "junk" fees.

First, regarding the claim that, "there are two contexts in which predatory towing of CMVs may take place: consensual or nonconsensual<sup>1</sup>": While FMCSA is tasked with overseeing consent towing, Congress has made states and localities the regulators of nonconsensual tows, including price. This expansion of states' rights to oversee towing was solidified in federal statute through P.L. 103-305, P.L. 104-88, and P.L. 113-159. We believe this is important to clarify as FMCSA's comment submitted to FTC focuses on how the FTC should regulate all aspects of "predatory towing," but neglects to address existing federal law that ensures states have the authority to regulate nonconsensual tows. This conflation is reflected again in FMCSA's comment, "this problem is prevalent throughout towing but especially acute in the nonconsensual towing context where CMV owners and operators are captive customers with no ability to shop for alternative towing service, negotiate prices, or decline the service."<sup>2</sup> The current system allows states and local governmental authorities to regulate all aspects as to response; this system bodes well for quick clearance, which is a major federal and state priority.

FMCSA's comment also claims that "the charges often prove to be for services that have no value, cost nothing extra to provide, or should have been included as an integral part of the tow price. For example, towing companies often charge 'equipment prices' for using equipment that they already own and would be expected [to] use routinely to provide the towing service."<sup>3</sup> One example is the fee charged for equipment damaged as a result of the unique tow. In such cases, there is legitimacy to fees for reusable equipment when the damage occurs performing a recovery, as this damage would not be known until the recovery is completed.

Regarding the claim that, "there is no clear reason why [towing fees] must be assessed as separate charges rather than being included as part of the upfront pricing structure,"<sup>4</sup> given roadside safety concerns and the nature of emergency towing, impound services, and unattended vehicle towing, it is not practical to present a detailed invoice prior to service. There are many unknowns when an incident is received (i.e. if the wrecked vehicle is emitting fluids (as the Environmental Protection Agency defines this as an illicit discharge); if the trailer is compromised; if the trailer is loaded or unloaded; if there is waiting time for the Board of Health, coroner, or the utility company to be on scene before removal of the wreck can even begin). Some of the fees that may appear after the tow include add-on items such as crash wrap to protect the passenger compartment when there is broken glass, services to drain fluids leaking from the wreck to prohibit contaminating the environment or disconnecting battery cables to prevent fires. The above are some examples that have been categorized as improper fees by some, but not only are they completely

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<sup>1</sup> FMCSA comment in response to NPRM FTC-2023-0064-0001, page 1.

<sup>2</sup> FMCSA comment in response to NPRM FTC-2023-0064-0001, page 3.

<sup>3</sup> FMCSA comment in response to NPRM FTC-2023-0064-0001, page 2.

<sup>4</sup> FMCSA comment in response to NPRM FTC-2023-0064-0001, page 2.

legitimate services that a tow operator might need to provide, but they are also unknowns at the time a tower responds to an incident.

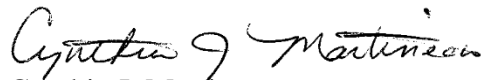
Additionally, the lack of federal regulation to address complications involved in CMV towing has created complexities for the service. Take for example the issue of “weights and measures,” where a patchwork of state and local laws prohibits heavy duty tow trucks from providing towing assistance to CMVs without the proper permits. The administrative and permit cost in many cases is not known at the time of a quote. Permits are not always available 24/7, which prohibits the tow company from towing a tractor/trailer as a unit in many cases and necessitates sending two trucks as the unit needs to be split. Towing and recovery policies, procedures, and pricing are not as simple as the issue of one or two bags included with a ticket price, as with other motor carriers.

Unfortunately, rather than discuss their concerns with the towing industry, FMCSA, the agency tasked with federal (consensual) oversight and regulation of the towing and recovery industry –filed comments in response to the NPRN. These comments were filed on the last day that comments were accepted by the FTC, leaving the towing and recovery industry without the opportunity to submit an official response. These comments also asked the FTC to incorporate an entire industry in its rule in a way that would require restructure so extreme that it will cost many consumers significantly more for an average tow, put small businesses out of business, and significantly halt commerce when CMVs are unable to receive quick towing and recovery assistance. These are three out of the many consequences that will result should the FTC follow FMCSA’s suggestions.

Our industry is complex, and as such, we believe the agency responsible for the federal oversight of towing and recovery companies, FMCSA, should determine if predatory towing practices exist, and if so, to what extent they exist and how they can best be addressed. Neither the industry nor the issues are one-size-fits-all, and we believe FMCSA has both statutory authority and capacity to address the situation accordingly. We do not believe that the FTC’s current proposal is appropriate to be applied to the dynamic context of towing response.

On behalf of the towing industry, and our thirty-four (34) Affiliate State Association Members, we request the opportunity to present our arguments before the FTC in an informal hearing. I can be reached at: [contact@traaonline.com](mailto:contact@traaonline.com).

Sincerely,



Cynthia J. Martineau

Executive Director

Towing and Recovery Association of America, Inc. (TRAA)