

**Before the
FEDERAL TRADE COMMISSION
Washington, DC 20554**

**Advance Notice of Proposed Rulemaking
Unfair or Deceptive Fees Trade Regulation Rulemaking
16 CFR Part 464, Federal Register No. 2022-24326**

Prepared By:

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Dear Commissioners:

These comments are submitted by the undersigned 42 national and state consumer advocates. We appreciate the opportunity to comment on the Federal Trade Commission's (FTC) Advance Notice of Proposed Rulemaking (ANPR) addressing unfair and deceptive practices relating to fees. We welcome this proposal and encourage the FTC to approach these practices in a manner that benefits all marketplace participants by facilitating competition, honest business practices, and consumer choice.

1. Background and Introduction

The problem of junk fees is prolific. Millions of consumers have expressed outrage at the imposition of service fees for live event tickets, "amenity" or "resort" fees charged by hotels, endless surprise rental car fees, hidden internet and cell phone charges, junk fees in the financial sector, and more. The federal government has taken a holistic approach to this problem, including the White House Competition Council, the Consumer Financial Protection Bureau (CFPB), the Department of Transportation (DOT) and now the FTC. This coordinated, broad reaching approach is necessary to address the pervasive impact of these fees in the numerous sectors of the U.S. economy where they occur.

Consumer Reports' well-known "What The Fee" campaign and study showed that 85% of the consumers surveyed experienced some type of unexpected fee in the prior two years, including in telecommunications, live entertainment or sporting events, gas and electric bills, personal banking, credit cards, car buying, hotels, air travel, car rental, and investment services, and nearly all consumers took issue with these fees.¹ A statewide survey of consumers in Washington revealed that unexpected fees also occurred in online retail purchases, meal delivery services, health and cosmetic products, gym memberships, political donations and others.² These fees are not only annoying, they are also costly and harmful. While many fees are a one-time transaction, some are imposed at monthly intervals over several years or come in the form of an add-on tacked onto a financing agreement, forcing a consumer to pay interest on that additional cost over the life of the contract. These increased costs have the potential to push consumers into delinquent status, inevitably causing additional late fees and penalties, ultimately driving them into a debt spiral that is increasingly difficult to escape.

Businesses profit tremendously by "nickel and diming" consumers and draining money from their pockets through junk fee practices. From 2017 to 2019, New York consumers paid an average of \$5 million annually to a single travel agency in deceptive cancellation fees.³ In 2021,

¹ Wang, Penelope "Protect Yourself from Hidden Fees," Consumer Reports (May 29, 2019) *available at* <https://www.consumerreports.org/fees-billing/protect-yourself-from-hidden-fees-a1096754265/>

² "Consumer Feedback Regarding Recurring Charges & Hidden Fees," Washington State Office of the Attorney General, online survey conducted June-July 2022, *available at* <https://agportal-s3bucket.s3.amazonaws.com/Hardwick%20Research%20Report%20Hidden%20Fees%207-30-22.pdf> (hereinafter "Washington AG Survey").

³ Investigation by Letitia James, Attorney General of the State of New York, of Fareportal, Inc., Assurance of Discontinuance (March 16, 2022), ¶ 5, *available at* https://ag.ny.gov/sites/default/files/2022.03.16_nyag-fareportal_aod_fully_executed.pdf (hereinafter "Fareportal AOD").

consumers paid airlines nearly \$6 billion in baggage and change fees.⁴ Consumers routinely pay billions in hotel resort fees to hotels annually. In a recent case brought by the CFPB, the Bureau alleges that in 2020 alone, consumers paid over \$200 million in vehicle add-on fees to a subprime auto lender.⁵ It is critical to review these numbers in terms of the individual people who pay for them, not just the revenue or profits in terms of dollar volume earned by businesses as a result.

Junk fee practices also harm honest businesses that desire to compete. Competition is a critical way to ensure that consumers are being provided with better products at a fair price. Indeed, multiple industry participants have expressed support for a rule that puts them on an even playing field and requires all participants to play by the same rules, including auto dealers, telecommunications providers, and ticket sellers.⁶ A rule that achieves these goals will help the success of honest businesses and give consumers choices about where to spend their money.

It would be impossible to name every type of fee that businesses charge, or to identify every industry where junk fee practices are commonplace. Without effective safeguards in place to ensure that consumers are not deceived, businesses are free to charge consumers for whatever fee they can create. To participate in nearly every part of the economy, consumers are compelled to pay these fees even when they do not understand them, when they cannot opt out of paying them, and when they do not know they are paying them.

Despite the endless iterations of fees and the ways in which dishonest businesses hide them, they share common themes making them susceptible to effective safeguards in the form of an FTC trade regulation rule. First, junk fees are often hidden by pernicious practices like drip pricing, aggressive sales tactics, misrepresentations and other deceptive conduct throughout the transaction or the ongoing relationship between the business and the consumer. Second, junk fees are often pure “junk.” They do not add value for the consumer, the price is disproportionate to their true cost, and consumers reasonably believe they should have been included in the advertised price. Instead of incentivizing honest and transparent pricing, businesses are incentivized to bait consumers with low prices and hide fees until later in the transaction, or impose mandatory yet worthless fees to generate additional revenue.

2. The FTC Can and Should Regulate Junk Fee Practices.

The FTC’s mission is to protect the public from deceptive or unfair business practices and from unfair methods of competition through law enforcement, advocacy, research, and education. In connection with this consumer-focused mission, the FTC is provided with authority to address specific unfair and deceptive practices through a trade regulation rule. *See* 15 U.S.C.

⁴ “Baggage Fees by Airline 2021,” Bureau of Transportation Statistics (May 2, 2022) *available at* <https://www.bts.gov/newsroom/baggage-fees-airline-2021>; “Reservation Cancellation/Change Fees by Airline 2021,” Bureau of Transportation Statistics (May 2, 2022) *available at* <https://www.bts.gov/newsroom/reservation-cancellationchange-fees-airline-2021>

⁵ Complaint, Consumer Financial Protection Bureau, et al. v. Credit Acceptance Corporation, Case No. 1:23-cv-00038 (S.D.N.Y.) Jan. 4, 2023, ¶ 117 *available at* https://files.consumerfinance.gov/f/documents/cfpb_credit-acceptance-corporation_complaint_2023-01.pdf

⁶ *See* Section 4.A(a), *infra.*, and Comment of National Association of Ticket Brokers to Petition for Rulemaking by the Institute for Policy Integrity, R207006, *available at* <https://www.regulations.gov/comment/FTC-2021-0074-0024>

§ 57a(a)(1)(B) and 16 C.F.R. § 1.8. However, its authority to effectively pursue violations of Section 13(b) of the FTC Act in cases alleging unfair and deceptive conduct in the absence of such a rule has been severely restricted, and it should use all of the tools at its disposal to assist consumers, deter these practices and ensure that healthy marketplace competition is no longer affected.

A. The *AMG Capital* ruling prevents the FTC from carrying out its mission.

The ANPR lists enforcement actions by the FTC that crack down on junk fees and hidden fee practices through its Section 13(b) authority, but this is only the tip of the iceberg for junk fees in the U.S. economy. This enforcement authority was also significantly undermined by the U.S. Supreme Court's 2021 decision in *AMG Capital Management v. FTC*. Ironically, this case involved a payday lender's hidden and inflated finance fees charged to borrowers.⁷ The Supreme Court held that the FTC does not have the authority to seek refunds (equitable relief) for victims of consumer fraud and deception under Section 13(b). The Commission acknowledges that a rulemaking addressing certain unfair and deceptive practices involving junk fees would enable it to pursue consumer redress and other damages for these illegal practices under Section 19(b) of the FTC Act, 15 U.S.C. 57b(b). We strongly endorse the FTC's effort to pursue this rulemaking as a path to obtain consumer redress and ensure that the perpetrators of junk fee practices cannot retain their illegally obtained gains.

This rulemaking is entirely consistent with the FTC's decades-long fight against unfair, deceptive, and fraudulent practices in the marketplace. The FTC has historically prioritized consumer redress, primarily through the use of its Section 13(b) authority. The FTC has secured billions of dollars in consumer relief, including a substantial number of cases which provided restitution to consumers for deceptive and fraudulent fees and charges.⁸ The *AMG* decision wiped out a major FTC enforcement tool, leaving dozens of pending cases with billions of dollars in potential consumer refunds at stake.⁹

Members of Congress previously introduced legislation in the U.S. House and Senate¹⁰ to clarify that the FTC can obtain the full range of equitable remedies for consumer protection violations under Section 13(b). However, neither bill passed both chambers in the last congressional session, and the FTC has continued to use its authority under Section 19(b) of the FTC Act.

The use of Section 19 to adopt a rule aimed at well-established junk fee practices is admittedly not as efficient as Section 13(b), but it presents a realistic means to an end of stopping this conduct. Section 19 provides injunctive relief and redress for consumers for rule violations,¹¹ but

⁷ *AMG Capital Management LLC v. Federal Trade Commission*, 141 S.Ct. 1341, 1345 (2021), noting that "Between 2008 and 2012, Tucker's businesses made more than 5 million payday loans, amounting to more than \$1.3 billion in deceptive charges."

⁸ *FTC Refunds to Consumers*, last updated Jan. 13, 2023,

https://public.tableau.com/app/profile/federal.trade.commission/viz/Refunds_15797958402020/RefundsbyDate.

⁹ See, "Post-AMG Scorecard (Updated): FTC Claims for Monetary Relief in 13(b) Actions Dwindle," JD Supra (Aug. 9, 2021) available at <https://www.jdsupra.com/legalnews/post-amg-scorecard-updated-ftc-claims-6956073/>.

¹⁰ H.R.2668 - Consumer Protection and Recovery Act (117th Cong., passed the House, July 20, 2021) and S.4145 - Consumer Protection Remedies Act of 2022 (117th Cong., introduced May 4, 2022).

¹¹ 15 U.S. Code § 57b.

it is more limited than Section 13(b) in facilitating refunds on behalf of harmed consumers. Unlike Section 13(b), Section 19 requires violation of a regulation and it also requires the FTC to act on a violation within a 3-year limitations period. Although Section 19 requires the FTC to overcome a number of obstacles to provide consumer restitution, a promulgated rule addressing unfair fees is the necessary avenue to obtain this relief given the unavailability of redress under 13(b).

We fully support the FTC's efforts to use all of its available tools to continue its mission to protect consumers and small businesses from unfair and deceptive junk fee practices, particularly while the *AMG Capital* ruling is binding precedent.

B. Consumer relief is limited by forced arbitration clauses in consumer contracts.

The FTC's rulemaking will aid its enforcement efforts to hold wrongdoers accountable, and the FTC is uniquely suited to address many harms that consumers are unable to resolve on their own. The unfortunate reality is that, as the FTC has acknowledged in other contexts, government agencies have limited resources and cannot monitor and safeguard the vast marketplace on their own. Regulators simply cannot provide remedies to harmed consumers on every occasion that such redress is deserved. Moreover, although there is a clear need for the complementary arm of private enforcement with a federal agency's public enforcement, it is important to note that consumers are also limited in pursuing remedies on their own.

In nearly all of the industries identified in the ANPR and this comment letter, consumers are bound by non-negotiable, adhesion contracts. Overwhelmingly, written terms and conditions for products and services include provisions that bar cheated or ripped off consumers from bringing legal complaints before a judge or jury, and instead, require them to bring their claims in private arbitration proceedings. These forced arbitration clauses also often require consumers to pursue their claims individually, prohibiting them from banding together with others similarly affected in mass or collective class actions.

Forced arbitration clauses and class action bans effectively deny consumers the ability to seek recovery for junk fees because they would be forced to bring relatively small-dollar cases on an individual basis.¹² Thousands of consumers must file individual actions to have any meaningful effect on the defendant. Further, it is a virtually impossible and cost-prohibitive task for most consumers to challenge junk fees on an individual basis.

The prevalence of forced arbitration and class action bans means that to effectively disincentivize unfair and deceptive junk fee conduct, enforcement agencies who are not bound by these one-sided contracts¹³ must step in. Regardless of how unfair or deceptive the conduct is, individual arbitrations will not have the impact that is necessary to deter misconduct and change practices, and consumers will not be able to seek appropriate remedies.

¹² See, National Association of Consumer Advocates, Comments in Response to the Consumer Financial Protection Bureau's Request for Information on Consumer Fees, Docket ID-CFPB 2022-003, (April 11, 2022) available at https://www.consumeradvocates.org/wp-content/uploads/2022/04/NACA_CFPB_junkfees042022.pdf.

¹³ *Equal Employment Opportunity Commission v. Waffle House, Inc.* 122 S.Ct. 754 (2002), holding that a non-signatory government agency was not bound by the employee's individual employment agreement which included an arbitration clause.

These ongoing and difficult circumstances admittedly require additional policy action. However, this only underscores the unique ability of the FTC to alleviate some of the harm through a trade regulation rule that addresses junk fee practices, and it should be empowered with the ability to do so particularly where consumers are restricted from doing so on their own.

C. Junk fee practices harm competition.

As highlighted in the Biden administration's announcement of its junk fees initiative in October 2022, "These fees can also create an uneven playing field for businesses, making firms that price in a fair and transparent manner seem more expensive than their rivals." The Obama administration's National Economic Council likewise identified several threats to competition that junk fees pose. These include:

1. Systematic transfers of wealth from low information consumers to more educated ones;
2. Consumers' increased willingness to pay junk fees that flows from a perception that abandoning a purchase after spending one's time in the purchasing process would result in some sort of loss;
3. Consumer confusion around advertised prices that makes it harder for competitors with genuinely lower prices to compete with those who shroud their prices with hidden junk fees; and
4. Tacit collusion in the form of parallel decisions to make certain junk fees a standard part of the purchasing process.

In essence, junk fees harm competition by distorting markets and by preventing the direct price comparisons on which market competition relies. Normally, a consumer will compare two products and, all else equal, choose the cheaper product. But when that consumer is comparing a \$110 product from an honest seller with the \$100 product that carries a hidden \$20 service fee, the customer's business will often end up with the deceptive seller.¹⁴ The harm to competition occurs at two levels: first, the consumer pays more than they otherwise would in a truly transparent marketplace; second, the consumer's patronage is unfairly directed away from businesses with the best price, quality, convenience, and honest practices to the business with pricing that is higher, less transparent, and more deceptive.

Markets work to the benefit of buyers, sellers, consumers, and workers only if all participants are playing by a set of fair rules. If deceptive junk fee practices are permitted, there is a market-wide incentive for "exploitative innovation," rewarding companies and sellers who put their entrepreneurial energies into finding clever ways to add unlisted fees, "optional" services, and other add-on costs to the final price of what they are selling. Honest businesspeople who make investments and innovations to grow their companies, provide consumers with better and

¹⁴ Alexander Rasch, Miriam Thöne, and Tobias Wenzel, "Drip pricing and its regulation: Experimental evidence," *Journal of Economic Behavior & Organization*, Vol. 176 (2020), pages 353-370, available at <https://www.sciencedirect.com/science/article/pii/S0167268120301189>; Steffen Huck & Brian Wallace, "The impact of price frames on consumer decision making: Experimental evidence," (Oct. 15, 2015), available at <https://www.ucl.ac.uk/~uctpbwa/papers/price-framing.pdf>

cheaper services, and expand their workforce should be permitted to benefit from a fair marketplace.

3. Consumers Are Harmed By Junk Fee Practices

Consumers suffer harm at the hands of unscrupulous business practices that employ the junk fee practices described in this letter and in the ANPR. It is critical to acknowledge that these practices disproportionately harm low-income consumers, consumers of color, and those with limited English proficiency.

A. Junk fee practices disproportionately impact vulnerable consumers.

Junk fees harm the financially vulnerable, especially low income, Black, and Latino consumers. Exploitative junk fees drain money and resources from households reeling from the financial impact of the COVID-19 pandemic and struggling to recover from the previous financial crises,¹⁵ and these consumers pay a disproportionate share of many types of junk these fees.¹⁶

For low-income consumers, these fees represent a disproportionately high cost, quickly destabilizing household budgets and creating an unmanageable financial burden for consumers living paycheck to paycheck. This destabilization can ultimately push consumers out of mainstream financial products and into fringe financial services and predatory financial products.¹⁷ Vulnerable consumers are often targeted by and steered to high-cost lenders through the use of sophisticated marketing tools and techniques. High-cost lenders are heavily concentrated in Black and Latino communities, exploiting this need for financial assistance.¹⁸

Black and Latino consumers pay a disproportionate share of many junk fees, including overdraft and other bank fees.¹⁹ Another example of this impact is evident in the context of auto sales,

¹⁵ Nassif, Phillipe, “Communities of Color Hardest Hit, Slowest to Recover from Recession” Center for American Progress, (Jan. 28, 2011), *available at*

<https://www.americanprogress.org/article/communities-of-color-hardest-hit-slowest-to-recover-from-recession/>

¹⁶ “The President’s Initiative on Junk Fees and Related Pricing Practices.” (Oct. 29, 2022), *available at*

<https://www.whitehouse.gov/briefing-room/blog/2022/10/26/the-presidents-initiative-on-junk-fees-and-related-pricing-practices/>.

¹⁷ These companies bait consumers with promises of easy credit, often obscuring the true cost or affordability of the transaction. Payday lenders charge fees that may look manageable for a two-week loan, but trap consumers in exorbitant balloon payment loans with constant rollovers that pile on fees. *See* Carol Evans, Board of Governors of the Federal Reserve System, From Catalog to Clicks, The Fair Lending Implications of Targeted, Internet Marketing, Consumer Compliance Outlook (Second Issue 2017).

¹⁸ Davis, Delvin *et al.*, “Race Matters: The Concentration of Payday Lenders in African American Communities in North Carolina,” Center for Responsible Lending (Mar. 2005), *available at*

https://www.responsiblelending.org/payday-lending/research-analysis/rr006-Race_Matters_Payday_in_NC-0305.pdf ; Assaf Oron, “Easy Prey: Evidence for Race and Military Related Targeting in the Distribution of Payday Loan Branches in Washington State,” Department of Statistics, University of Washington (Mar. 2006).

¹⁹ *See* Bankrate, “Minorities, Millennials Among Those Who Pay the Most Bank Fees (Jan. 15, 2020)” finding that more than three-quarters (78%) of white adults say they pay no bank fees in a typical month compared to 59% of Hispanic consumers, 60% of Black consumers and 73% of other races. *available at*

<https://www.bankrate.com/pdfs/pr/20200115-best-banks-survey.pdf>. *See also*, Pew Charitable Trusts, “Heavy Overdrafters: A Financial Profile,” (fig. 7) (Apr. 2016), noting that Black consumers are 12% of the US population,

where dealers sell add-on products and services. In the ANPRM in reference to an FTC action against several auto dealers in the D.C. area, Chairwoman Khan described some of these add-ons as the “quintessential” junk fee.²⁰ Research from the National Consumer Law Center²¹ and two recent enforcement actions from the FTC have shown a pattern of dealers selling these products to Black and Latino consumers²² more often and charging them higher amounts than white consumers.

We are concerned that junk fee practices will have cascading effects for these vulnerable populations of consumers in other aspects of their lives, including housing. Homeowners of color already face a heightened risk of foreclosure and displacement as COVID-19 relief programs wind down and federal protections against foreclosure expire. Over 9% of Black borrowers are behind on their mortgage, the highest of any racial or ethnic group.²³ Latina and Black women are significantly more likely to fall behind on mortgage payments than white men, even with access to federal support programs.²⁴ This can lead to delinquency related fees, which may present an insurmountable barrier to homeowners seeking affordable loan modifications upon exiting forbearance plans. Moreover, the fees dilute the impact of assistance provided by government relief programs, such as the Homeowner Assistance Fund. Loss of a home is not just devastating for families, but also represents a significant loss of wealth for households of color. Home equity represents 57% of the net worth of Black households and 67% of the net worth of Hispanic households, compared to 41% of net worth of white households.²⁵ A home lost to foreclosure is an asset that is no longer available for surviving family members in multi-generational households, or to build generational wealth.

Another cascading effect is the cost of education. The rising cost of higher education continues to place Black, Indigenous, and people of color (BIPOC) communities in cycles of debt. At

but account for 19% of the heavy overdrafters, *available at* <https://www.pewtrusts.org/~media/assets/2016/04/heavyoverdrafters.pdf>.

See also Financial Health Network’s FinHealth Spend Report 2021 (June 11, 2021). Finding that Black households spent 6% of their annual income on financial services, Latinx households spent 5% and white households spent just 3%, *available at* <https://finhealthnetwork.org/research/finhealth-spend-report-2021>

²⁰ ANPR, Statement of Chair Lina M. Khan.

²¹ John W. Van Alst, Carolyn Carter, Marina Levy, & Yael Shavit, “Auto Add-Ons Add Up, How Dealer Discretion Drives Excessive, Arbitrary, and Discriminatory Pricing” National Consumer Law Center (Oct. 2017), *available at* https://www.nclc.org/wp-content/uploads/2022/09/auto_add_on_rpt.pdf

²² Complaint, Federal Trade Commission v. Passport Automotive Group, et al., Case No. 8:22-cv-02670 (D. Md.), (Oct. 18, 2022), *available at* https://www.ftc.gov/system/files/ftc_gov/pdf/Complaint%20Passport%20Auto%20Group%2C%20Inc.%2C%20et%20al..pdf, and Complaint, Federal Trade Commission and People of the State of Illinois v. Napleton American Automotive Services, et al., Case No. 1:22-cv-01690 (D. Md.), (March 31, 2022), *available at* https://www.ftc.gov/system/files/ftc_gov/pdf/1%20-%20Joint%20Complaint.pdf

²³ Federal Reserve Bank of Philadelphia, “Examining Resolution of Mortgage Forbearances and Delinquencies (Dec. 2021).

²⁴ “Black, Non-Hispanic Women and Latinas Use Advance Child Tax Credit to Cover Necessities and Pay Down Debt in the Last Month of Payments” National Women’s Law Center (Jan. 2022), *available at* <https://nwlc.org/resource/black-non-hispanic-women-and-latinas-use-advance-child-tax-credit-to-cover-necessities-and-pay-down-debt-in-the-last-month-of-payments/>

²⁵ Michael Neal & Alanna McCargo, “How Economic Crisis and Sudden Disasters Increase Racial Disparities in Homeownership,” Urban Institute (June 2020), *available at* <https://www.urban.org/research/publication/how-economic-crises-and-sudden-disasters-increase-racial-disparities-homeownership>

institutions of higher learning, the rate of fees is increasing faster than the cost of tuition and colleges are not transparent about their true prices.²⁶ Non-transparent tuition and fee pricing models place BIPOC communities, who often need to finance their education, at the mercy of loan origination fees, rising fed loan interest rates, and payment of “facilities fees” for services that most students never use.

It has become increasingly expensive to be poor and belong to historically marginalized communities. With record high inflation, these communities feel tremendous pressure as businesses tack on more and more administrative, convenience, processing, and late fees to essential and recurring products, such as utilities, phone bills, rent, and car notes.

Junk fees price low-income consumers out of certain markets and force them to make unimaginable decisions between food for their families, being late on essential bills, additional fees and penalties, and even the choice to enjoy entertainment events. According to author Devin Fergus, in his book *Land of the Fee*, hidden fees and surcharges have been a major contributor to the decline of the American middle class and the alarming rise in income inequality.²⁷ He notes that the number of companies charging these invisible and often fraudulent fees have increased exponentially over the past four decades, disproportionately impacting low-income families and people of color. We are urging the FTC to use its authority to level the playing field for these communities.

B. Hidden fees are particularly challenging for limited English speaking consumers.

Junk fees are often hidden in the fine print, which is particularly problematic for limited or non-English speaking consumers. According to the U.S. Census, nearly 22 percent of the U.S. population over the age of five speak a language other than English at home. Of these, 38.3 percent have limited proficiency in English, meaning that they speak English “less than very well.”²⁸ These consumers are referred to as limited English proficient, or “LEP.”²⁹

Though fine print is problematic for all consumers, it is particularly challenging for LEP consumers. Even when fees are disclosed or when companies describe the circumstances under which those fees may be charged, that information may be lost on LEP consumers due to language (and cultural) barriers. The deceptive conduct described herein is also often nuanced and woven throughout the transaction, further obscuring the nature of the junk fees. It is critical to ensure that LEP consumers are accounted for in this rulemaking.

The FTC proposes the use of disclosures that are “clear and conspicuous,” the definition of which has previously included a requirement that the disclosure “must use diction and syntax understandable to ordinary consumers and must appear in each language in which the

²⁶ Cooper, Preston. “A New Study Investigates Why College Tuition Is so Expensive.” *Forbes*, Forbes Magazine, (Oct. 12, 2022) available at <https://www.forbes.com/sites/prestoncooper2/2020/08/31/a-new-study-investigates-why-college-tuition-is-so-expensive/?sh=30f930e817a0>

²⁷ “Land of the Fee: Hidden Costs and the Decline of the Middle Class” (2018).

²⁸ U.S. Census Bureau, 2019 American Community Survey 5-Year Estimates, Table S1601: Language Spoken at Home (2020), available at <https://data.census.gov/cedsci/table?q=S1601&tid=ACST5Y2020.S1601>.

²⁹ See LEP.gov at <https://www.lep.gov/source-and-methodology>

representation that requires the disclosure appears.”³⁰ The FTC also has issued a policy statement specifically pertaining to advertising practices, clarifying that where the FTC requires certain disclosures contained within advertising materials to be “clear and conspicuous,” the disclosure must be translated into the language of the “target audience.”³¹ Consistent with these commendable language translation provisions, the FTC should ensure that a final rule addressing junk fees requires disclosures to include consistent language translation requirements. The FTC should also develop model fee disclosures in the top languages spoken by LEP people in the United States and encourage companies to use them or provide these models as a safe harbor.³²

The Federal Trade Commission works for consumers to prevent fraudulent, deceptive, and clear unfair business practices and to provide information to help spot, stop, and avoid them. The Commission has authority to prescribe rules to ensure that products and services are effectively disclosed and fairly applied for all populations of consumers.³³

C. Junk Fees also impact consumers with disabilities.

Consumers with disabilities are also affected by junk fee practices. The Department of Justice brought an action against rideshare app Uber related to wait-time fees it imposed on riders.³⁴ Uber’s policy of imposing a wait-time fee if the driver waited for longer than two minutes for the passenger to get to the vehicle had a disproportionate impact on consumers with disabilities. Uber agreed to credit the accounts of the eligible riders for double the amount of wait-time fees they were ever charged, which could total potentially hundreds of thousands or millions of dollars in compensation.³⁵

Another such example arises when consumers have disabilities that affect their ability to review the fee altogether. One such consumer has described her experience in a comment to the ANPR:

I am a visually impaired consumer who also has lifelong cognitive disabilities. I am writing to call attention to paper statement fees that are unaffordable to me and especially unfair given my disabilities.

My bank Santander has imposed a \$3 paper statement fee that I cannot afford to pay. I do not have a computer. I do not have a smart phone. I rely on paper to pay my bills by paper check or I pay over the phone.

³⁰ Federal Trade Comm’n Motor Vehicle Dealers Trade Regulation Rule, Notice of Proposed Rulemaking, 87 Fed. Reg. 42,012 (July 13, 2022), available at <https://www.govinfo.gov/content/pkg/FR-2022-07-13/pdf/2022-14214.pdf> (hereinafter Dealer NPRM).

³¹ 16 C.F.R. § 14.9.

³² The U.S. Census Bureau reports that the five most common non-English languages (in order) are (1) Spanish, (2) Chinese, (3) Tagalog, (4) Vietnamese, and (5) Arabic. 2020 American Community Survey 1-Year Estimates, Table B16001: Language Spoken at Home by Ability to Speak English for the Population 5 Years and Over (2020), available at <https://data.census.gov/cedsci/table?q=Table%20B16001&tid=ACSDT5Y2020.B16001&tp=false>

³³ Federal Trade Commission Business Blog, “Full Disclosure,” (Sept. 23, 2014), available at <https://www.ftc.gov/business-guidance/blog/2014/09/full-disclosure>

³⁴ Complaint, United States of America v. Uber Technologies Inc. (N.D. Cal.) Nov. 10, 2021, available at <https://www.justice.gov/crt/case-document/file/1468361/download>

³⁵ *Id.*

I try so hard to keep up with the online world but online is extremely difficult—often impossible—for me. I want to be able to pay my bills without a struggle. I am not the only person with disabilities who struggles this way. I believe that these fees are discriminatory.

I recently asked the Santander branch manager to waive their paper statement fee. She said she put in a request to waive it and changed my account to a \$10/month fee account that I “should be able” to avoid if I make one transaction per month.³⁶

While enforcement of the ADA may not be within the FTC’s jurisdiction, it is critical to acknowledge the impact of these practices on varying types of consumers.

4. Junk Fees are Pervasive, Unfair and Deceptive.

The fees and fee practices identified by the FTC and complained about by so many consumers share common themes of unfairness and deception through the manner in which the fee is disclosed, the impact of those fees on certain populations of people, and the type of fees that are imposed. The ANPR targets this unfair and deceptive conduct and proposes a list of eight prohibited practices. These practices primarily prohibit misrepresentations or the failure to clearly and conspicuously disclose certain information in a consumer transaction. The FTC also proposes an overarching requirement of express informed consent prior to billing for any fee, and a total ban on billing or charging fees that have little or no added value to the consumer, or that consumers would reasonably assume to be included.

We support the FTC’s efforts to address these junk fee practices. The Commission should place special emphasis on the prohibition of true junk fees as a method to weed out the most egregious practices. Disclosures are important, and in some instances may be helpful. But any final rule should have the effect of ending the imposition of true junk fees – those that add little or no value to the consumer, or which the consumer reasonably believes would be included in the price. Disclosure is worthless if fees are imposed under circumstances that a consumer would not expect even if, with hindsight, the fees were disclosed.

A. The conduct described in the FTC’s proposed list is pervasive.

The Commission asks how widespread each of the listed practices is and how consumers are harmed when they occur. It would be impossible to identify every junk fee and practice over which the FTC would have jurisdiction to enforce a rule here. The comments below provide examples pertaining to each of the listed proposals to demonstrate the pervasiveness of these practices and how consumers suffer harm as a result.

- (a) **“Misrepresenting or failing to disclose clearly and conspicuously, on any advertisement or in any marketing, the total cost of any good or service for sale”**

³⁶ Comment ID No. FTC-2022-0069-4958 (Jan. 12, 2023).

This proposal would address the problem of drip pricing, a strategy that baits consumers with a deceptively low advertised price, then tacks on mandatory fees as the consumer proceeds through the transaction, bringing the total cost higher than what was advertised. The FTC’s history of interest in drip pricing over the past decade is well-established. The Center for Policy Integrity’s Petition and the comments in support set forth the problems that drip pricing presents, the consumer harms as a result, and the need for an omnibus rule to address this pervasive problem.³⁷ Notably, some of the most egregious perpetrators of these misrepresentations (hotels imposing resort fees, ticket sellers imposing various fees) continue their practices, despite FTC letters and warnings, negative media attention, enforcement actions, and public outcry. A trade regulation rule which ensures that consumers are provided with the total cost of the good or service at the outset, including in advertising and marketing, would ensure that consumers can comparison shop and would permit honest businesses to compete.

Industry participants have agreed that more up-front pricing is appropriate. In comments to the Drip Pricing Petition, ticket brokers expressed support for more uniform up-front pricing rules, but **only if** all sellers were bound by the same rule.³⁸ Consumers prefer the clarity of all-in pricing, but dishonest brokers are incentivized to advertise a lower price – the most critical piece of information for the consumer – before truthfully disclosing the full cost. In response to the FTC’s recent Motor Vehicle Dealer Trade Regulation NPRM, some auto dealers also expressed support for the concept of a consistent vehicle “offering price” to be used in advertisements, noting that advertised prices often do not include numerous mandatory fees.³⁹ In the telecommunications sector, new entrants to the broadband market are embracing all-in pricing as a way to compete against junk fee-friendly incumbents like AT&T and Comcast. For example, Starlink, a new satellite-based internet provider, markets its services with all-in pricing and has advocated for FCC rules that would make all-in pricing disclosure mandatory for every internet service provider.⁴⁰ Additionally, small internet service providers are more likely to eliminate ancillary fees and embrace simpler, transparent pricing.⁴¹ This industry support suggests that an all-in pricing rule can be good for competition and new entrants, particularly in anticompetitive markets where incumbent junk fees are commonplace.

³⁷ Petition for Rulemaking by the Institute for Policy Integrity, R207006, available at <https://www.regulations.gov/document/FTC-2021-0074-0002>

³⁸ See note 6, *supra*.

³⁹ Dealer NPRM, Comment Submitted by Auto Brasil, Comment ID No. FTC-2022-0046-0576 (posted July 22, 2022), available at <https://www.regulations.gov/comment/FTC-2022-0046-0576>; Comment Submitted by Tomlinson Motor Company, Comment ID No. FTC 2022-0046-0003 (posted July 14, 2022), available at <https://www.regulations.gov/comment/FTC-2022-0046-0003>; Comment Submitted by Sean Wooters, Comment ID No. FTC-2022-0046-1910 (posted Aug. 18, 2022), available at <https://www.regulations.gov/comment/FTC-2022-0046-1910>.

⁴⁰ Comments of David Goldman, SpaceX, Federal Communications Commission, CG Docket No. 22-2 (Nov. 8, 2022), available at <https://www.fcc.gov/ecfs/document/1108007906176/1>.

⁴¹ Emma Gautier, “Shopping for Broadband: Failed Federal Policy Creates Murky Marketplace,” Institute for Local Self-Reliance (Jan. 2022), available at <https://ilsr.org/wp-content/uploads/2021/11/report-broadband-network-transparency.pdf>. See also Comments of New America’s Open Technology Institute, Federal Communications Commission, CG Docket No. 22-2 (March 9, 2022), available at https://newamericadotorg.s3.amazonaws.com/documents/Broadband_Label_Comments_3.9.22.pdf.

As set forth more fully below, and consistent with this proposal, we support an all-in pricing rule that requires disclosure of all fees that are unavoidable or mandatory or that consumers would reasonably expect to be included in the price of the good or service.

(b) Misrepresenting or failing to disclose clearly and conspicuously, on any advertisement or in any marketing, the existence of any fees, interest, charges, or other costs that are not reasonably avoidable for any good or service.

In the District of Columbia’s enforcement case against GrubHub, it alleged that the company disclosed a delivery fee at the beginning of the purchase process, but hid additional fees until the end of the ordering process at the checkout phase.⁴² Even during the checkout, GrubHub allegedly further obscured these additional fees by grouping them together in a line item called “other fees,” or “taxes and fees,” making it nearly impossible for a consumer to calculate the true cost of the product.⁴³ The hidden “service fee” was not reasonably avoidable by consumers because they could not find it, and even when they did, it was not clear that it was optional.⁴⁴ An additional “small order fee” was also hidden, even when it was applicable to the transaction.

Dishonest auto dealers have an established history of failing to clearly disclose mandatory fees in their advertised prices. Numerous state attorneys general have taken notice of this conduct, bringing enforcement actions using their authority to prohibit unfair, deceptive, and abusive business practices.⁴⁵ This conduct is particularly troublesome in the purchase of a vehicle, because when a dealer deceptively advertises vehicles at a certain price without disclosing that there are additional mandatory fees, often the consumer is forced to spend hours at the dealership to learn the actual price of the vehicle. Often the undisclosed fee is a standard industry “doc fee.” In 2020 and 2021, the Georgia Attorney General brought actions against 23 dealerships for

⁴² Complaint, District of Columbia v. Grubhub Holdings, Inc., et al. (D.C. Super. Ct.) (March 21, 2022), ¶¶ 43-55, available at <https://oag.dc.gov/sites/default/files/2022-03/2022-03-21-Grubhub-Complaint-pdf> (hereinafter “DC v. Grubhub Complaint”).

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ State of Rhode Island v. MAG Ventures, LLC, Case No. PC-2022-01301, Complaint (March 4, 2022), available at <https://riag.ri.gov/press-releases/attorney-general-files-lawsuits-against-auto-dealerships-alleging-unfair-consumer>; Press Release: [Arizona] AG Brnovich Obtains Over \$400,000 in Restitution from Arizona Nissan Dealers, (March 29, 2022), available at <https://www.azag.gov/press-release/ag-brnovich-obtains-over-400000-restitution-arizona-nissan-dealers>; Press Release: [NJ] Acting AG Platkin: Division of Consumer Affairs Reaches Settlements Totaling Nearly \$400,000 with Three Car Dealerships over Alleged Consumer Protection Violations, (May 20, 2022) available at <https://www.njoag.gov/acting-ag-platkin-division-of-consumer-affairs-reaches-settlements-totaling-nearly-400000-with-three-car-dealerships-over-alleged-consumer-protection-violations/>; Press Release: [Oregon] Attorney General Rosenblum Cracks-Down on Deceptive Car Dealership Promotions, April 7, 2021, available at <https://www.doj.state.or.us/media-home/news-media-releases/cracks-down-on-deceptive-car-dealership-promotions/#:~:text=Oregon%20Attorney%20General%20Ellen%20Rosenblum.they%20had%20won%20a%20prize>

[Maryland] In re: Koons of Reisterstown Road, Inc., Assurance of Discontinuance, (April 19, 2022) available at <https://www.marylandattorneygeneral.gov/press/2022/041922.pdf>

[California] The People of the State of California v. Paul Blanco’s Good Car Company Auto Group, et al., Superior Court of the State of California, County of Alameda, Case No. RG-19036081, Complaint (September 23, 2019) available at <https://oag.ca.gov/system/files/attachments/press-docs/Paul%20Blanco%20Filing.pdf>

failing to disclose the doc fee in their advertisements.⁴⁶ This increased the cost of the vehicles by several hundred dollars.

Ticket sellers also hide mandatory fees through drip pricing. These fees, imposed in every transaction, include “service fees,” “convenience fees,” and “order processing fees.” This practice has come under heightened scrutiny with the recent sale of popular concert tickets, but few states regulate this practice. New York recently passed a ban on hidden fees in live event ticketing, requiring all-in pricing that clearly and conspicuously discloses the price and the portion of the price that is attributable to a fee.⁴⁷

In addition to typical drip pricing practices, ticket sellers engage in other deceptive conduct to hide fees. The Texas Attorney General’s enforcement action against Guided Tourists, LLC, also prohibited the company from failing to disclose mandatory ticket sale fees, requiring the company to refund any undisclosed mandatory fees,⁴⁸ and the New York Attorney General’s settlement with ticket agent Fareportal alleged that the company failed to adequately disclose a 24-hour cancellation fee.⁴⁹ It employed an “atypical practice” of imposing a fee for cancellations within 24 hours of booking, but it used language and website design to mislead consumers about this policy. It promoted the words “24 hour cancellation” with a green check mark, to appear as a benefit and protection for consumers when the opposite was true.⁵⁰

Even when fees are not explicitly mandatory, they may still not be reasonably avoidable by the consumer, such as when they are included in a pre-printed sales agreement, or when a box is “pre-checked.” In the Washington Attorney General’s Hidden Fee Survey, many consumers indicated that they were automatically enrolled in a recurring purchase agreement through the use of a pre-checked box in the original purchase.⁵¹

(c) Misrepresenting or failing to disclose clearly and conspicuously whether fees, interest, charges, products, or services are optional or required;

Dishonest businesses engage in broad deception to not only withhold the disclosure of the existence of a fee, but also to conceal the fact that a certain fee is optional because it is an extraordinarily powerful tool to force payment. This deceptive conduct comes in many forms, such as using a name for the fee to make it look like a mandatory government-imposed tax. Consumer Reports’ review of internet bills showed providers using terminology such as “network enhancement fee,” “internet infrastructure fee,” “deregulated administration fee,” and

⁴⁶ See Office of the Georgia Att’y Gen., Consumer Prot. Div., Accomplishments of the Division, *available at* <https://consumer.georgia.gov/organization/about-us/accomplishments-division-0> (listing achievements in 2020 and 2021).

⁴⁷N.Y. Arts & Cult. Aff. Law General Laws § 25.07.

⁴⁸Agreed Final Judgment and Permanent Injunction, State of Texas v. Guided Tourist, LLC (March 26, 2019), *available at* https://www.texasattorneygeneral.gov/sites/default/files/images/admin/2019/Press/02_Agreed%20Final%20Judgment%20%20Perm%20Inj_3.26.19.pdf

⁴⁹ Fareportal AOD ¶¶ 32-35.

⁵⁰ *Id.*

⁵¹ Washington AG Survey at 9-10.

“technology service fee,” making the fees look like a government-imposed (and therefore mandatory) fee.⁵²

In the D.C. Attorney General’s case against grocery delivery service company Instacart, the complaint alleges that Instacart did not adequately explain to consumers that its service fee could be waived in full.⁵³ A default service fee was added to the order which consumers could only change by clicking on a separate, obscure pop-up link. Even when consumers clicked on this link, the service fee was not identified as “optional,” despite that a separate fee was clearly marked “optional” directly below.⁵⁴

The multistate attorney general action against Mariner Finance, a subprime installment lender, provides a comprehensive example of unfairness and deception throughout a company’s advertising and sales process that is intended to obscure the true cost of the product it sells.⁵⁵ Its business model is centered on packing the sale of a loan with expensive insurance products and other add-ons that provide little or no value to the consumer while producing extraordinary profits to the company and its investors. The attorneys general allege that Mariner Finance went to great lengths to deceive consumers into believing that the insurance add-on products were mandatory when they were not. Employees pre-loaded loan paperwork with the add-ons without discussing them with consumers, they “offered” the add-ons through high pressure tactics in every sale, and sometimes completely lied to consumers about whether the product was required.⁵⁶ All of this combined to mislead numerous consumers about the existence of the add-on altogether, and also whether the add-ons were mandatory.

It is vital to address these common deceptive tactics in this rulemaking to ensure that there is no “gray area” or employment of dark patterns to hide the fact that a fee is optional.

(d) Misrepresenting or failing to disclose clearly and conspicuously any material restriction, limitation, or condition concerning any good or service that may result in a mandatory charge in addition to the cost of the good or service or that may diminish the consumer's use of the good or service, including the amount the consumer receives.

This proposal addresses a practice that works in the other direction: a business sells a product without disclosing that the consumer will need to pay a fee in order to use it without material restrictions or limitations. Auto manufacturers, for example, are increasingly equipping vehicles equipped with certain features like heated seats or remote-key starts, but requiring consumers to

⁵² Schwantes, Jonathan “Broadband Pricing: What Consumer Reports Learned from 22,000 Internet Bills.” Consumer Reports, (Nov. 17, 2022), *available at* <https://advocacy.consumerreports.org/wp-content/uploads/2022/11/FINAL.report-broadband.november-17-2022-2.pdf>.

⁵³ Complaint, District of Columbia v. Mapbear, Inc. d/b/a Instacart (August 2020) ¶ 55, available at <https://oag.dc.gov/sites/default/files/2020-08/Instacart-Complaint.pdf> (hereinafter DC v. Instacart Complaint).

⁵⁴ *Id.* at ¶¶ 56-57.

⁵⁵ Complaint, Commonwealth of Pennsylvania, by Attorney General Josh Shapiro, et al. v. Mariner Finance, LLC, Case No. 2:22-cv-3253 (E.D. Pa.) August 16, 2022, available at <https://www.attorneygeneral.gov/wp-content/uploads/2022/08/2022-08-16-PA-NI-WA-OR-UT-DC-v.-Mariner-Finance-Filed-Complaint.pdf> (hereinafter “Mariner Finance Complaint”)

⁵⁶ *Id.* at ¶¶ 122 – 130.

pay for a subscription to access them.⁵⁷ Manufacturers hope to generate significant revenue as a result, but this would be a sea change for consumers who have come to expect that such features are standard and not subject to an additional ongoing fee.

(e) Misrepresenting that a consumer owes payments for any product or service the consumer did not agree to purchase.

In the Washington Attorney General’s Hidden Fee survey, 36% of participants responded that they were charged a fee after they purchased the product.⁵⁸ Similarly, 59% of these consumers reported being enrolled in a subscription service without their consent.

In many industries where the purchase of add-on products is pervasive, consumers typically finance their purchases. In financed auto sales where an add-on is included in the purchase, for instance, consumers are paying for that product or service over the life of the loan. In the case of Mariner Finance, the lender packed the insurance products into the loan agreement, ensuring that consumers paid interest on unwanted and rejected expensive add-on products for several years. Each time these consumers make a payment on a loan with one of these unwanted fees they did not agree to purchase, they are paying amounts they did not agree to.

This would also prohibit the ongoing billing of junk fees where the consumer is billed on an ongoing basis for fees they did not agree to. The Minnesota Attorney General filed suit against Comcast, alleging that it included numerous fees on consumers’ monthly bills without their consent, and sometimes when they expressly rejected them.⁵⁹

(f) Billing or charging consumers for fees, interest, goods, services, or programs without express and informed consent⁶⁰

This provision would ensure that consumers are provided with the opportunity to review and reject, if they desire, any type of fee, subject to compliance with the provisions of an express and informed consent process. We support this approach.

⁵⁷ Levin, Tim “Car companies want to make billions by charging monthly fees for features like heated seats, but buyers won’t pay up,” Business Insider (Nov. 21, 2022), available at <https://www.businessinsider.com/car-feature-subscriptions-add-ons-bmw-ford-toyota-gm-2022-2>

⁵⁸ Washington AG Survey at 16.

⁵⁹ Complaint, State of Minnesota by its Attorney General, Lori Swanson v. Comcast Corporation d/b/a Xfinity, (Jan. 2019), Para. 40-42, available at <https://cdn.arstechnica.net/wp-content/uploads/2019/01/minnesota-vs-comcast-complaint.pdf>. (hereinafter Minnesota v. Comcast Complaint).

⁶⁰ Although not defined in this ANPR, the FTC has previously defined “express informed consent” as “an affirmative act communicating unambiguous assent to be charged, made after receiving and in close proximity to a Clear and Conspicuous disclosure, in writing, and also orally for in-person transactions, of the following: (1) What the charge is for; and (2) The amount of the charge, including, if the charge is for a product or service, all fees and costs to be charged to the consumer over the period of repayment with and without the product or service. The following are examples of what does not constitute Express, Informed Consent: (i) A signed or initialed document, by itself; (ii) Prechecked boxes; or (iii) An agreement obtained through any practice designed or manipulated with the substantial effect of subverting or impairing user autonomy, decision-making, or choice.”

Many industries rely on “dark patterns” to trap consumers into purchasing add-ons or paying a fee without express informed consent. The Washington Attorney General’s Hidden Fee survey reports that 59% of the respondents reported being enrolled in a subscription program without their knowledge.⁶¹ The District of Columbia’s enforcement case against GrubHub highlighted the company’s pernicious bait and switch tactic of using the disclosure of one fee (the delivery fee) to help obscure other fees until the checkout phase.⁶²

Some industries simply tack products onto the purchase without telling the consumer at all. Consumers interviewed in the Mariner Finance case described how the company included add-on products in their loan without ever mentioning them prior to the closing, and that they would have declined had they been offered.⁶³ In some instances, consumers specifically declined add-ons, but the company included them anyway and subsequently refused to cancel them.⁶⁴ The FTC performed a qualitative study of the consumer car buying experience where it sent consumers to several dealerships to negotiate the sale of a vehicle and interviewed them about the process. In the staff report sharing the results of the study, it reported that consumers did not learn about add-on products and services until the financing process, after they had already spent several hours at the dealership negotiating the price.⁶⁵ Like in Mariner Finance, some consumers did not know that they had purchased add-ons with the sale of the vehicle at all. And finally, in the Minnesota Attorney General’s action against Comcast, it highlights numerous consumer reports of finding fees on their internet bills for products or services that they did not consent to or specifically declined.⁶⁶

Rental car companies have engaged in problematic junk fee conduct and frustratingly impose many fees that are not always clearly disclosed up front, much less through “express informed consent.” Numerous consumer protection websites provide consumer guidance about rental car fees, warning consumers about the potential for airport concession fees, additional insurance, added driver fees, fuel purchase options, and tire disposal fees.⁶⁷ Some of these fees may not be optional and may not be clearly disclosed prior to the time the consumer takes the vehicle. The Florida Attorney General’s office filed suit against rental car company Dollar Thrifty Automotive Group, alleging that the company did not adequately disclose that consumers would pay additional fees for driving on toll roads and using the vehicle’s toll transponder.⁶⁸ The New

⁶¹ Washington AG Survey at 6.

⁶² DC v. Grubhub Complaint, ¶¶ 43-55.

⁶³ Mariner Finance Complaint, ¶ 297-299.

⁶⁴ *Id.*

⁶⁵ Carole L. Reynolds & Stephanie E. Cox, Buckle Up: Navigating Auto Sales & Financing: Staff Report of the Bureau of Consumer Protection, Federal Trade Commission 9 (July 2020), available at https://www.ftc.gov/system/files/documents/reports/buckle-navigating-auto-sales-financing/bcpstaffreportautofinancing_0.pdf

⁶⁶ Minnesota v. Comcast Complaint, ¶ 41.

⁶⁷ See, e.g., Elliott, Christopher, “How to Rent a Car, the ultimate guide,” Elliott Report, (Jan. 23, 2023), available at <https://www.elliott.org/answers/ultimate-guide-how-rent-car/>; Picchi, Aimee “How to Avoid Sneaky Car-Rental Fees,” May 19, 2019), available at <https://www.consumerreports.org/fees-billing/how-to-avoid-sneaky-car-rental-fees/>.

⁶⁸ Settlement Agreement, Office Of The Attorney General, State Of Florida, Department Of Legal Affairs v. Dollar Thrifty Automotive Group, Inc., Case No. 16-2018-cv-005938, (Jan. 17, 2019), available at [https://myfloridalegal.com/webfiles.nsf/WF/TDGT-B8NT5W/\\$file/Final+Signed+DTAG+Settlement+Agreement+1+11+19.pdf](https://myfloridalegal.com/webfiles.nsf/WF/TDGT-B8NT5W/$file/Final+Signed+DTAG+Settlement+Agreement+1+11+19.pdf)

Jersey Attorney General’s resolution of an enforcement matter against rental car company Drivo requires the company to disclose “all of the charges that a Consumer will be required to pay if a rental vehicle is damaged.”⁶⁹

Bringing express informed consent would be an improvement, but banning these junk fees altogether when they provide no benefit to the consumer would be more effective.

(g) Billing or charging consumers for fees, interest, goods, services, or programs that have little or no added value to the consumer or that consumers would reasonably assume to be included within the overall advertised price

This welcome proposal would ban the imposition of true junk fees, including many identified in this comment and in the FTC’s ANPR, including hotel resort fees, live event ticket fees, service and other fees imposed by grocery and meal delivery services, auto dealer fees, fees for services that have become standard in the industry, and others. We support this ban and would encourage the FTC to ensure that this proposal is retained in any final rule.

This is a frequent issue with the sale of add-ons in the context of a vehicle sale. The FTC has proposed a rule which would address similar practices by auto dealers, proposing to prohibit the sale of add-on products that add no benefit to the consumer.⁷⁰ The Commission provides the examples of nitrogen-filled tires that have no more nitrogen than what is normally in the air and GAP products that do not have value for that consumer, but there are other add-ons that similarly provide little to no value.⁷¹ We support this proposal’s step further to also prohibit the sale of add-ons that have little added value for the consumer.

The rise in subscription-based vehicle features would also be affected by this proposal because consumers reasonably believe that such features are standard with the sale of a car. As discussed above, converting from an industry wide practice of **not** requiring subscription-based ongoing payments for features like heated seats to a model where a vehicle comes equipped with the feature but simply cannot use it will be a difficult pill to swallow. Surely, there is no recurring cost to the manufacturer when a consumer uses a heated steering wheel in their vehicle. These egregious subscription fees serve no purpose other than to generate revenue for auto dealers and manufacturers.

The Center for Responsible Lending published a report analyzing supervised installment loans in Colorado, highlighting the prevalence of selling add-on products to boost lender profits.⁷² This report showed that two large lenders, OneMain and Lendmark included credit insurance and

⁶⁹ Consent Order, In the Matter of Drivo LLC, , State of New Jersey Department of Law & Public Safety, Division of Consumer Affairs, ¶ 3.2, available at <https://www.nj.gov/oag/newsreleases20/Drivo-Consent-Order.pdf>

⁷⁰ Dealer NPRM at 42046.

⁷¹ For a comprehensive description of add-ons and the host of issues they present, please see the comments filed by consumer advocates to the Dealer NPRM, available at <https://www.regulations.gov/comment/FTC-2022-0046-7607>

⁷² Rios, Charla; Harnick, Ellen et al., “Upsold and Weighed Down: An Analysis of a Subset of Supervised Installment Lending in Colorado” Center for Responsible Lending (Dec. 2022), available at <https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-upsold-weighted-down-colorado-dec2022.pdf> “(hereinafter CRL Loan Study).

“automobile club memberships” in 60% of the loan agreements studied.⁷³ Credit insurance pays the lender, not the borrower, in the event of a covered loss, such as death or disability.⁷⁴ Its benefits to consumers are questionable at best, as it increases the debt burden significantly while profiting the lender both through the premium payment and the increased interest as a result of financing their purchase.⁷⁵ In one instance, Lendmark included \$5,000 in multiple add-on products on a \$10,000 loan.⁷⁶

The Mariner Finance case also highlights these problematic add-ons products. The attorneys general allege that the credit insurance add-on products sold to consumers were expensive and provided little value to them, particularly because many consumers simply did not need it.⁷⁷ The vast majority of consumers interviewed in that matter stated that they would have declined the product if they knew about it, because it would have been duplicative and unnecessary given their other existing coverage.⁷⁸

The proposal would also prohibit fees which the consumer would reasonably believe to be included within the overall price. The Colorado Attorney General’s Office brought actions against television companies Dish Network and DirecTV for imposing such junk fees on consumers’ monthly bills.⁷⁹ The providers billed consumers for “HD” television fees long after the high-definition service became standard for consumers, and the complaints alleged that this service was already being provided at no extra cost to the consumer.

These are only a few examples of this pervasive practice. A rule is necessary and we applaud the FTC for taking the step to propose a ban on the imposition of true junk fees altogether.

(h) Misrepresenting or failing to disclose clearly and conspicuously on an advertisement or in marketing the nature or purpose of any fees, interest, charges, or other costs

Business may engage in conduct that obscures the nature of the fee itself, making consumers more likely to pay it based on their misconception. This has frequently occurred where consumers believe that the fee is a government-imposed tax of some sort. When auto dealers impose their mandatory “doc fee,” they may confuse consumers about the true nature of the fee by itemizing it in a location on the sales contract that is directly near other legitimate government-imposed taxes. The Georgia Attorney General’s office filed suit against an auto dealer that used phrases like “state fees,” “tag agency fees,” and “tag & title fees” to make these

⁷³The study highlights the potential for these add-ons to undercut the disclosed APR (capped at 36% by the state legislature), as these add-ons are not included as a finance charge.

⁷⁴ Consumer Financial Protection Bureau, “What is credit insurance for an auto loan?” (June 2017), available at <https://www.consumerfinance.gov/ask-cfpb/what-is-credit-insurance-for-an-auto-loan-en-799/>

⁷⁵ CRL Loan Study at 10-11.

⁷⁶ *Id.* at 12.

⁷⁷ Mariner Finance Complaint ¶ 30.

⁷⁸ Mariner Finance Complaint ¶ 34.

⁷⁹ State of Colorado, Office of the Attorney General, Assurance of Discontinuance In the Matter of DIRECTV, LLC (June 2021), available at <https://coag.gov/app/uploads/2021/06/DIRECTV-assurance-of-discontinuance.pdf> ; and State of Colorado, Office of the Attorney General, Assurance of Discontinuance In the Matter of DISH Network (March 22, 2022), available at <https://coag.gov/app/uploads/2022/03/DISH-Network-HD-fee-Assurance-2022.03.22.pdf>

fees appear as though they were imposed by or paid to a government entity and were instead paid to the dealer.⁸⁰

When Marriott hid its hotel resort fee in a larger total of charges called “Taxes and Fees,” the District of Columbia Attorney General filed suit, claiming that this conduct deceived consumers into believing that the fee was a government-imposed tax.⁸¹ The New York Attorney General’s suit against FarePortal alleges that the company hid its “service fees” in a link titled “Taxes and Fees” which included several government-imposed taxes along with Fareportal’s service fees.⁸² This particular brand of conduct is designed to trick consumers into thinking that a material aspect of the transaction – the cost – is not being paid to the business, but is instead a government tax. In reality, these particular fees are largely profit to the business.

The District of Columbia Attorney General’s enforcement action against Instacart is an example of how a business can make express and implied misrepresentations and omissions throughout the purchase process to obscure the purpose of a fee and the conditions under which it is charged.⁸³ The Attorney General alleged that Instacart engaged in a four-year pattern of manipulative conduct on its website to collect a “service fee” from consumers.⁸⁴ Instacart designed the fee to look like a tip being paid to the employee shoppers by initially structuring it as a percentage of the total purchase that could be changed by the consumer, burying explanatory information about the fee in unrelated website links, and claiming that “100% of the fee is used to pay all shoppers,” like a tip-pooling mechanism.⁸⁵ This fee was not specifically set aside or earmarked to be paid to its employee shoppers, and was instead used to pay for its operating expenses.

B. The conduct described in the FTC’s list is unfair and deceptive.

The FTC’s ANPR defines hidden fees, junk fees, and the practices in its proposed list as both unfair and deceptive.⁸⁶ This pervasive conduct of hiding fees and withholding the true cost through drip pricing or other dishonest methods causes substantial injury to consumers by robbing their ability to comparison shop and ascertain whether a better price or product is available. The time expense and aggravation is significant. Consumers are required to fill out forms, provide personal information, click through unrelated and difficult to understand links, and sometimes spend several hours at a dealership or loan store to obtain sufficient information to enable comparison shopping. These practices targeted by the FTC are often an intentional (and

⁸⁰ Office of the Georgia Att’y Gen., Consumer Prot. Div., Accomplishments of the Division, *available at* <https://consumer.georgia.gov/organization/about-us/accomplishments-division-0> (listing achievements in 2020 and 2021).

⁸¹ *District of Columbia v. Marriott International, Inc.*, Complaint (July 9, 2019), ¶¶ 24-25, *available at* <https://oag.dc.gov/sites/default/files/2019-07/Marriott-Complaint.pdf>

⁸² Fareportal AOD, ¶¶ 28-31.

⁸³ DC v. Instacart Complaint.

⁸⁴ *Id.* at ¶¶ 15-23.

⁸⁵ *Id.* at ¶ 22.

⁸⁶ A practice is unfair when it causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition. A practice is deceptive when it involves material representations and omissions that are likely to mislead consumers acting reasonably under the circumstances.

effective) design by the seller, meant to lure consumers and trap them, rendering consumers incapable of avoiding these practices. Finally, set forth elsewhere in this comment, these practices threaten competition instead of providing any countervailing benefits.

Imposing junk fees which have little or no value to consumers is also an unfair practice. Consumers are harmed when they pay for products that do not provide value, or which they reasonably believe should be included in the advertised price. This harm is particularly problematic when the fee is financed over time and subject to additional interest and penalties, when it is imposed on an ongoing basis, and when it is paired with conduct designed to hide its existence or nature. Businesses often manipulate website design, use particular names, lie to consumers about the benefits and nature of the products, and use all manner of tactics to trick consumers into paying additional fees. These practices are intentionally designed to mislead consumers about some aspect of the fee so that they are more likely to pay for it or purchase the additional product, and consumers act reasonably under these circumstances when these designs are successful. Finally, vulnerable populations of consumers disproportionately suffer harm as a result of these fees and practices, and are at a higher risk of cascading financial consequences.

5. The Federal Government’s Response to Junk Fees

The Commission has noted that other federal agencies are addressing junk fee practices, each of which is briefly described below.

A. The Consumer Financial Protection Bureau

The CFPB has a long history of fighting exploitative and harmful fee practices in the financial marketplace, and it launched a new initiative in early 2022 “to save Americans billions of dollars in junk fees.”⁸⁷ The initiative began with a Request for Information (RFI), seeking public comment about how junk fees affect people’s lives.⁸⁸

In response to this RFI, many of the advocates signing onto this comment, led by Consumer Federation of America, National Consumer Law Center, Center for Responsible Lending, and Americans for Financial Reform Education Fund, submitted extensive comments identifying the pervasive and harmful nature of junk fees in the financial sector.⁸⁹ This RFI garnered over 50,000 comments, reflecting broad engagement with the public about this problematic conduct.

In addition to the RFI, the CFPB has addressed junk fees throughout its agency, including by:

⁸⁷ CFPB Press Release dated Jan. 26, 2022, available at <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-launches-initiative-to-save-americans-billions-in-junk-fees/>

⁸⁸ Request for Information Regarding Fees Imposed by Providers of Consumer Financial Products or Services, 87 F.R. 5801, Docket No. 2022-20271 (Feb. 2, 2022).

⁸⁹ These comments are available at <https://consumerfed.org/wp-content/uploads/2022/05/Groups-Submit-Comments-in-Response-to-CFPBs-Request-for-Information-Regarding-Fees-Imposed-by-Providers-of-Consumer-Financial-Products-or-Services-5.2.22.pdf>

- Publishing a notice of proposed rulemaking to rein in excessive credit card fees,⁹⁰
- Issuing an advisory opinion clarifying that pay-to-pay fees or “convenience fees” charged by debt collectors are illegal,⁹¹
- Advising through a compliance bulletin that surprise depositor fees are likely unfair,⁹²
- Publishing research about the extent to which banks rely on overdraft and nonsufficient funds fees for revenue,⁹³
- Highlighting that 668,000 college students paid almost \$15.5 million for bank accounts in 2021, including numerous banking junk fees (monthly service fees, out-of-network ATM fees, and overdraft fees),⁹⁴
- Bringing enforcement actions against Regions Bank⁹⁵ and ACTIVE Network⁹⁶ for deceptively hiding and charging various junk fees, and
- Noting in its Supervisory Highlights that it required mortgage servicers to reimburse costly pay-to-pay fees.⁹⁷

The CFPB continues to demonstrate a commitment to uncovering and addressing junk fees, including in its 2023 rulemaking agenda where it notes that it is considering rules on overdraft fees, non-sufficient funds fees, and credit card penalty fees.⁹⁸

B. The Department of Transportation

Airlines are perhaps the epitome of industries that impose fees as a routine part of their business model. The most troubling aspect of these fees is the use of drip pricing to bait consumers with a low advertised fare, then tack on additional fees for basic services as the consumer spends time completing the transaction. The DOT has the authority to protect the flying public from unfair and deceptive practices, including the manner in which fees are disclosed to air travel consumers. DOT models its authority over air carriers and ticket agents after the FTC’s Section 5 power to prevent unfair and deceptive practices, and it has utilized this consumer protection mandate to

⁹⁰ Credit Card Penalty Fees (Regulation Z), Docket No. CFPB-2023-0010, available at

https://files.consumerfinance.gov/f/documents/cfpb_credit-card-penalty-fees-nprm_2023-01.pdf

⁹¹ See Advisory Opinion “Debt Collection Practices (Regulation F), Pay-to-Pay Fees” July 5, 2022, 87 FR 39733.

⁹² See Compliance Bulletin 2022-06, Unfair Returned Deposited Item Fee Assessment Practices, Nov. 7, 2022, 87 FR 66940,

⁹³ Data Point No. 2021-12: Overdraft/NSF Fee Reliance Since 2015 – Evidence from Bank Call Reports, December 2021, available at https://files.consumerfinance.gov/f/documents/cfpb_overdraft-call_report_2021-12.pdf; and Data Point No. 2021-11: Checking Account Overdraft at Financial Institutions Served by Core Processors, December 2021, available at

https://files.consumerfinance.gov/f/documents/cfpb_overdraft-core-processors_report_2021-12.pdf

⁹⁴ This annual report “College Banking and Credit Card Agreements” is required by the Credit Card Accountability, Responsibility and Disclosure Act (“CARD Act”), and is available at

https://files.consumerfinance.gov/f/documents/cfpb_college-banking-report_2022.pdf

⁹⁵ In the Matter of Regions Bank, Consent Order (Administrative Proceeding, File No. 2022-CFPB-0008, Sep. 28, 2022, available at https://files.consumerfinance.gov/f/documents/cfpb_Regions_Bank-Consent-Order_2022-09.pdf

⁹⁶ *Consumer Financial Protection Bureau v. Active Network, LLC* (Case No. 4:22-cv-00898), Amended Complaint, Oct. 18, 2022.

⁹⁷ Fall 2022, Supervisory Highlights Report, § 2.7.1, available at

https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-28_2022-11.pdf

⁹⁸ [CFPB Agenda on Overdraft, Nonsufficient Funds Fees, Credit Card Late Fees](#)

require “full fare pricing” in air travel. This means that advertised air fares must include the entire price to be paid by the customer, including mandatory taxes and fees.⁹⁹

Notably, this full fare pricing model does not apply to certain “ancillary” fees, such as baggage fees, cancellation and change fees, and seat selection fees. As these services are technically optional, they bypass full fare pricing requirements. Moreover, ticket sellers do not always disclose the cost of these services at the beginning of the purchasing process. DOT now seeks to bring clarity to this purchase process through a notice of proposed rulemaking to enhance the transparency of these ancillary service fees that air carriers commonly charge to consumers.¹⁰⁰ The rule would not prohibit the imposition of any particular fee (unlike the FTC ANPR), but it would instead require ticket sellers to ensure that these ancillary fees are disclosed when the ticket fare is advertised.

DOT’s proposed rule seeks to protect consumers by considering it an unfair and deceptive practice to omit the cost of critical ancillary services¹⁰¹ when travelers search for air fares. While this proposal is industry-specific, with DOT selecting the costs of only a few critical services to be disclosed, it still serves as an example of how to utilize agency authority to combat unfair and deceptive practices regarding fees.

C. The Federal Communications Commission

Telecommunications is another sector of the U.S. economy where junk fee practices are commonplace. Internet service providers (ISPs) such as AT&T and Comcast are notorious for saddling consumers with long, complicated bills that are rife with ancillary fees that confuse and mislead consumers. Consumer Reports recently conducted a study of 22,000 internet bills, finding that internet service providers frequently imposed junk fees such as “network enhancement fees” and “deregulated administrative fees,” of \$2.49 – \$9.95 per month.¹⁰² The report concludes that the way fees are presented “frequently creates the false impression that they are imposed by government regulation or taxation,” when they are instead simply another source of revenue for the provider. In a similar study, the Open Technology Institute found that “consumers must navigate a maze of additional fees and hidden costs ... creat[ing] complicated pricing structures that make it difficult for consumers to compare plans and understand the total price they can expect to pay.”¹⁰³

In response to widespread billing confusion in the telecommunications sector, Congress directed the FCC in 2021 to create a standardized disclosure of internet pricing known as a “broadband

⁹⁹ 14 C.F.R. 399.85

¹⁰⁰ Notice of Proposed Rulemaking, Enhancing Transparency of Airline Ancillary Service Fees (Oct. 20, 2022), 87 FR 63718.

¹⁰¹ These ancillary service fees include baggage fees, change and cancellation fees, a statement about whether the carrier charges a fee for canceling a reservation within 24 hours, and family seating fees.

¹⁰² Schwantes, Jonathan “Broadband Pricing: What Consumer Reports Learned from 22,000 Internet Bills.”

Consumer Reports, Nov. 17, 2022, available at

https://advocacy.consumerreports.org/wp-content/uploads/2022/11/FINAL_report-broadband-november-17-2022-2.pdf.

¹⁰³ Becky Chao, Claire Park, and Joshua Stager, “The Cost of Connectivity 2020,” New America’s Open Technology Institute (July 2020), available at <https://www.newamerica.org/oti/reports/cost-connectivity-2020>.

nutrition label.” Modeled after the FDA’s familiar labeling for food products, the FCC label is intended to clarify some of the billing confusion and enable comparison-shopping in the broadband market. The FCC is currently crafting rules for the label’s implementation, which will become mandatory for all internet providers later this year.¹⁰⁴

Although the broadband label is a welcome step forward for consumer transparency, it does not offer the kind of comprehensive consumer protection that the FTC’s junk fees proceeding contemplates. The label has been subject to intensive industry lobbying to water down the implementation rules at the agency, which has been deadlocked 2-2 for two years. For example, internet providers successfully pushed for weak display rules that do not require the label’s display on the monthly bill, where consumers are most likely to need the label to identify junk fees.¹⁰⁵

Importantly, Congress gave the FCC the authority to create the broadband label in the Infrastructure Investment and Jobs Act of 2021, but nothing in the statute foreclosed the FTC’s authority to protect consumers from junk fees in the telecommunications sector. Moreover, the FCC’s abdication of its common-carrier authority over ISPs in 2018 has severely diminished the agency’s authority to protect consumers in the broadband market. Given this context, we would welcome FTC action to protect consumers from telecommunications junk fees.

6. The FTC Should Adopt an All-in Pricing Rule

The FTC has asked whether it should consider requiring an all-in pricing rule, and we would encourage it to do so. The “all in” price is the full amount that is due at the end of the purchasing process, including any mandatory fees. An all-in pricing rule would require sellers to disclose the “all-in” price at the beginning of the shopping experience and in any advertising for the good or service. An example of this model is found in legislation passed by the New York General Assembly last year. That legislation requires ticket sellers to disclose:

the total cost of the ticket, inclusive of all ancillary fees that must be paid in order to purchase the ticket, and disclose in a clear and conspicuous manner the portion of the ticket price stated in dollars that represents a service charge, or any other fee or surcharge to the purchaser. . . . [T]he total cost and fees shall be displayed in the ticket listing prior to the ticket being selected for purchase.

N.Y. Arts & Cult. Aff. Law § 25.07. We support a similar but broader all-in pricing rule by the FTC.

Market-by-market regulations and lengthy offender-by-offender litigation do not address the root cause of the “junk fee” problem—rampant deceptive advertising and impaired competition. Any attempt to narrowly address one specific type of deceptive pricing practice is likely to result in its replacement by another, similarly deceptive practice. For example, ad studies show that consumers underestimate the total price, so partitioned pricing has the same effect of drip

¹⁰⁴ Federal Communications Commission, Report and order and Further Notice of Proposed Rulemaking, CG Docket No. 22-2 Adopted Nov. 14, 2022.

¹⁰⁵ *Id.*

pricing.¹⁰⁶ Thus, allowing advertisers to use generic phrases like “plus fees” to partition the displayed price into the base cost and fees is insufficient. Instead, an all-in pricing rule should require disclosure of all fees that are unavoidable or mandatory or that consumers would reasonably expect to be included in the price of the good or service.¹⁰⁷

Important to the success of an all-pricing rule is a clear definition of the phrase “unavoidable or mandatory fee.” The goal of that definition would be to prevent advertisers from charging junk fees for “add ons” that consumers reasonably expect to be part of the product or service. For example, many additional fees that airlines consider to be optional—like carry-on fees, checked bag fees, seat selection fees for families, and even charges for water—are effectively mandatory expenses for travelers, even though it may be technically possible to purchase and take a flight without them. To avoid confusion in enforcement and to assure effective deterrence, the FTC could employ a definition akin to the reasonable consumer standard that already governs most false advertising claims.¹⁰⁸

We believe an all-in pricing rule would effectively address many of the problems identified by the FTC in the ANPR and in this letter. Consumers also support the concept of clearly disclosing all fees in advertising and prior to the time of purchase.¹⁰⁹ The FTC should ensure that a final rule also identifies and prohibits unfair and deceptive conduct surrounding junk and hidden fees (as proposed by the FTC), as this will eliminate the need to determine whether a practice falls within a broad but not precisely defined notion of deception or unfairness and provide guidance to states that model their UDAP statutes after the FTC Act.¹¹⁰

¹⁰⁶ With partitioned pricing, an advertisement discloses the existence of additional fees but not the final price. For example, an advertisement will promise “\$25 plus fees” or “\$25 (+\$17 service fee).” “Empirically, the effects of deceptive drip pricing and partitioned pricing are the same.” Federal Trade Commission, *Economics at the FTC: Drug and PBM Mergers and Drip Pricing*, at 13 (Dec. 2012), http://www.ftc.gov/sites/default/files/documents/reports/economics-ftc-drug-and-pbm-mergers-and-drip-pricing/shelanskietal_rio2012.pdf.

¹⁰⁷ The all-in pricing rule would not apply to any fees or taxes imposed by and payable to local, state, or federal governments.

¹⁰⁸ See, e.g., *Fanning v. FTC*, 821 F.3d 164, 170-71 (1st Cir. 2016) (Under the reasonable consumer standard, “if [a] [claim] conveys more than one meaning, only one of which is misleading, a seller is liable for the misleading interpretation even if nonmisleading interpretations are possible.”); *Becerra v. Dr Pepper/Seven Up, Inc.*, 945 F.3d 1225, 1228-29 (9th Cir. 2019) (in California, “the reasonable consumer standard requires a probability ‘that a significant portion of the general consuming public or of targeted consumers, acting reasonably in the circumstances, could be misled.’”); *Bell v. Publix Super Mkts., Inc.*, 982 F.3d 468, 475 (7th Cir. 2020) (same).

¹⁰⁹ Washington AG Survey at 19-24.

¹¹⁰ Further, not every state has adopted an all-in pricing rule, and some states provide that violations of the FTC Act or other consumer protection laws are “per se” UDAP violations. See Conn. Agencies Regs. § 42-110b-28(b)(23) (violation of federal or state statute or regulation concerning the sale or lease of motor vehicles is a state UDAP violation); D.C. Code § 28-3905(k)(1); Fla. Stat. § 501.203(3)(c); Idaho Consumer Prot. Regulations, Idaho Admin. Code r. 04.02.01.033; Massachusetts Consumer Prot. Regulations, 940 Mass. Reg. § 3.16; Mo. Code Regs. Ann. tit. 15, § 60-8.090; Nev. Rev. Stat. § 598.0923(1)(c). Some courts have also interpreted that violations of certain FTC rules are “per se” state UDAP violations. See *Morgan v. Air Brook Limousine, Inc.*, 510 A.2d 1197 (N.J. Super. Ct. Law Div. 1986) (violation of FTC Franchise Rule is a per se deceptive and unconscionable practice); *Anderson v. DaimlerChrysler Corp.*, 2005 WL 3891034 (Ohio Ct. Com. Pleas Nov. 23, 2005) (consent order; seller’s failure to include FTC Holder Notice in financing contract is UDAP violation).

7. Conclusion

We appreciate the opportunity to respond to this advance notice and support the FTC's efforts to address this longstanding, widespread problem. We look forward to participating in future efforts to assist the FTC in this endeavor.

Sincerely,

Accountable.US
AKPIRG
American Economic Liberties Project
Americans for Financial Reform Education Fund
CAARMA.org
Center for Economic Integrity
Center for Elder Law & Justice
Center for Responsible Lending
Community Service Society of New York
Consumer Action
Consumer Federation of America
Consumer Federation of California
Consumers for Auto Reliability and Safety
Consumer Reports
Delaware Community Reinvestment Action Council, Inc.
Economic Action Maryland
Fight Corporate Monopolies
Free Press
Indiana Community Action Poverty Institute
Legal Aid Justice Center
Legal Aid Service of Broward County
National Association for Latino Community Asset Builders
National Association of Consumer Advocates
National Community Reinvestment Coalition
National Consumers League
New Economy Project
New Jersey Citizen Action
New York StateWide Senior Action Council
Oregon Consumer Justice
The Pride Through Empowerment Foundation, Inc.
Prosperity Indiana
Public Good Law Center
Revolving Door Project
South Carolina Appleseed Legal Justice Center
Texas Appleseed
Travelers United
U.S. Public Interest Research Group
Virginia Organizing

Voices Organized in Civic Engagement (VOICE)
WESPAC Foundation, Inc.
Westminster Economic Development Initiative (WEDI)
Woodstock Institute