

United States Senate

WASHINGTON, DC 20510

August 11, 2017

The Honorable Maureen Ohlhausen
Acting Chairman
Federal Trade Commission
600 Pennsylvania Ave., NW
Washington, DC 20580

Dear Acting Chairman Ohlhausen:

Last November, the Federal Trade Commission (“the Commission”) issued a Notice of Proposed Rulemaking (NPRM) proposing amendments to the Contact Lens Rule (“the Rule”) aimed at promoting competition and consumer choice in the marketplace for prescription contact lenses. We support those amendments and urge the NPRM be finalized promptly.

A decade and a half ago, Congress enacted the Fairness to Contact Lens Consumers Act (FCLCA) to foster consumer choice and spur competition among contact lens sellers by guaranteeing every contact lens wearer the right to a copy of his or her prescription upon completion of a fitting, and by establishing a process by which prescriptions may be verified when the consumer chooses to purchase lenses from someone other than the prescriber. The law recognizes, and was made necessary by, the unique nature of the contact lens marketplace. Federal law correctly bars contact lens consumers from obtaining their lenses without a prescription. Yet, at the same time, eye care providers that issue prescriptions can also dispense the contact lenses they prescribe, creating an inherent conflict of interest.

As you know, the FCLCA is intended to protect consumers from this conflict of interest by requiring prescribers to automatically release prescriptions so consumers could comparison shop and more easily purchase lenses from the seller of their choice. Through this simple requirement, the FCLCA has predictably spurred competition, provided contact lens wearers with more choices, and encouraged investment into new technologies. Unfortunately, eye care providers may be flouting these requirements.

As the Commission noted in its recent review of the Rule—an exercise involving examination of over 660 comments; consideration of numerous studies, surveys and medical evidence; and many substantive meetings with interested parties, “[t]he Commission believes that the overall weight of evidence in the rulemaking record—including the surveys, the high number of verifications, the ongoing pattern of consumer complaints and anecdotal reports, and the industry’s long history of failing to provide prescriptions to patients even when obligated by state law—indicates that compliance with the automatic prescription release provision could be substantially improved.”¹

¹https://www.ftc.gov/system/files/documents/federal_register_notices/2016/12/contact_lens_rule_published_frn12716.pdf

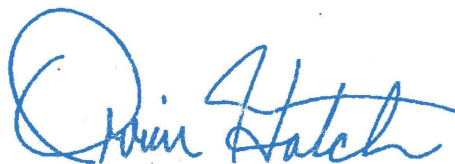
Accordingly, we applaud the FTC for proposing pro-consumer and pro-market reforms to the Rule that will ensure robust competition in the contact lens marketplace, and help improve eye care providers' compliance with automatic prescription release. Specifically, we strongly support the provision calling for simple signed acknowledgements that consumers have received their prescriptions and the clarification that consumers may substitute the same lens made by the same manufacturer.

In enacting the FCLCA, Congress recognized that Americans benefit from a competitive and vibrant contact lens marketplace that rewards innovation and provides choice. We commend the FTC for acting to preserve the integrity of this Act, and urge prompt finalization of the proposed updates to the Contact Lens Rule.

Sincerely,

A handwritten signature in blue ink, appearing to read "Richard Blumenthal".

Senator Richard Blumenthal

A handwritten signature in blue ink, appearing to read "Orrin Hatch".

Senator Orrin G. Hatch