



Office of the Chair

UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

**Statement of Chair Lina M. Khan
Regarding the Advanced Notice of Proposed Rulemaking
on Unfair or Deceptive “Junk” Fees
Commission File No. R207011**

October 20, 2022

Today we are considering the publication of an Advance Notice of Proposed Rulemaking to address the problem of junk fees.

“Junk fees” are extra charges associated with unnecessary or worthless services. Companies often fail to disclose these fees up front. Earlier this week, the Commission announced a quintessential junk fee case. According to the complaint, Passport Auto advertised a price for cars that were certified, reconditioned, and inspected. But when people went to buy a car, they were hit with charges for certification, reconditioning, and inspection.

These types of extra or redundant fees can mislead consumers, or prevent them from knowing the true cost of a purchase until they’ve already invested substantial time and energy. At that point, they may feel like it’s too late to walk away. Junk fees also prevent consumers from making accurate price comparisons, which means they end up spending more than they expected or wanted to.

These fees don’t only harm consumers—they can also force honest businesses to compete on an unfair playing field. A company selling a widget for 25 dollars might lose sales to a company selling a comparable widget for 20 dollars, plus a six-dollar widget-certification fee tacked on at the end.

Junk fees have come to feel like an inevitable fact of life. Consumer Reports found that eighty-two percent of those surveyed had spent money on hidden fees in the previous year. In reality, there’s nothing inevitable about this.¹ These fees are a surprisingly recent phenomenon. So-called “resort fees” at hotels, for example, first emerged in the late 1990s. By 2015, they accounted for one-sixth of total hotel revenue. That’s \$2 billion per year.² In higher education and hospitality, fees are increasing faster than tuition or posted room rates.³

¹ See CONSUMER REPORTS, *WTFEE SURVEY: 2018 NATIONALLY REPRESENTATIVE MULTI-MODE SURVEY 7* (2019), <https://advocacy.consumerreports.org/wp-content/uploads/2019/09/2018-WTFee-Survey-Report--Public-Report-1.pdf>.

² NAT’L ECON. COUNCIL, *THE COMPETITION INITIATIVE AND HIDDEN FEES* 7-15 (2016), https://obamawhitehouse.archives.gov/sites/whitehouse.gov/files/documents/hiddenfeesreport_12282016.pdf.

³ See Christopher Elliott, *There May Be an End in Sight for Controversial—And Often Invisible—Resort Fees*, WASH. POST (June 16, 2016), https://www.washingtonpost.com/lifestyle/travel/there-may-be-an-end-in-sight-for-controversial--and-often-invisible--resort-fees/2016/06/16/101f6074-317e-11e6-8758-d58e76e11b12_story.html;

The Commission has a long track record of taking action against junk fees, and that deep experience would inform any potential rulemaking we undertake here. The FTC has regulated junk fees in sector-specific contexts, including telemarketing and funeral homes. It has also brought many enforcement cases, including against junk fees on prepaid phone cards, loan servicing, insurance-related products, and more. Merchants are free to set prices for services rendered. But when they add arbitrary, opaque fees that seem calibrated to squeeze more money out of customers—sometimes without their knowledge, or once it feels too late to back out—consumer protection laws can kick in.

Unfortunately, in areas where there is no specific rule or sector-specific law, the Commission lacks authority to seek penalties against violators or readily get financial compensation for victims. A forward-looking rule classifying certain junk fees as unfair or deceptive could give us that authority, allowing us to make wronged consumers whole and to seek penalties from lawbreakers. That, in turn, would help create a powerful deterrent against imposing junk fees. If we move forward with considering a rulemaking, we will carefully review public comments when deciding whether and how to craft a rule that would protect consumers from these potentially unfair or deceptive practices.

In fact, the public has already played a key role. Last fall, the Commission voted to make it easier for the public to submit petitions to the FTC.⁴ One petition that came in concerned “drip pricing,” a business practice that companies can use to try and hide junk fees. That petition helped spur the action we’re announcing today. The goal of our procedural change was to make the rulemaking process more open and democratic, and I’m glad that we have been able to follow through.

I also want to extend my gratitude to staff for their hard work on this effort. I strongly support moving forward with this ANPR and beginning this process.

Farran Powell & Emma Kerr, *11 Surprising College Fees You May Have to Pay*, U.S. NEWS & WORLD REPORT (Feb. 12, 2020), <https://www.usnews.com/education/best-colleges/paying-for-college/slideshows/10-surprising-college-fees-you-may-have-to-pay>.

⁴ Press Release, Fed. Trade Comm’n, *FTC Opens Rulemaking Petition Process, Promoting Public Participation and Accountability* (Sept. 15, 2021), <https://www.ftc.gov/news-events/news/press-releases/2021/09/ftc-opens-rulemaking-petition-process-promoting-public-participation-accountability>.