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

Concurring Statement of Commissioner Rebecca Kelly Slaughter

Regarding the Final Trade Regulation Rule on Unfair or Deceptive Fees

Commission File No. R207011

December 17, 2024

The Commission has voted to finalize a rule codifying the law’s prohibition on hidden and deceptive fees¹ for live-events ticketing and short-term lodging. This final rule’s ambit will be far narrower than the rule that the Commission had proposed,² which would have banned hidden fees and fee deception in all industries under the Commission’s jurisdiction, including housing, restaurants, car rentals, loans, healthcare, and other retail. Consistent with my willingness to support bipartisan compromise, I voted to finalize this rule, which earned the support of one of my Republican colleagues. I believe that finalizing this narrow rule is well supported by the law and the rulemaking record—and better than having no rule at all. But, to be clear, I believe that the Commission could have done more to protect all Americans.

It is clear that the law protects consumers, across the economy, from the unfair and deceptive practices of hidden and deceptive fees. It is also clear that the extensive rulemaking record before the Commission amply supported finding, including in industries other than ticketing and short-term lodging, both that such practices are prevalent and that they plainly violate section 5 of the FTC Act. Perhaps naively, I had anticipated that the more than 60,000 public comments in response to the Commission’s notice of proposed rulemaking would focus on the junk fees tacked on by ticket sellers and hotels, which are the subject of so much consumer angst. To be sure, many comments, especially from mass mailings, do address those two industries’ fee practices. But what is striking about the rulemaking record is the extent to which these practices have spread and now pervade other industries, especially rental housing.

Consider this comment³ from a mother in Kentucky:

My daughter is a low wage employee and we live in Kentucky. Six months ago she rented an apartment that she thought she could afford based on rent and projected utilities. Turns out she owes fees (most undisclosed in the lease) that add up to nearly 20% of the rent. That’s a heck of a jump. As of December there will be no way to pay the rent that doesn’t involve a transaction fee. Not one method.

¹ Section 5 of the FTC Act, 15 U.S.C. § 45, prohibits unfair or deceptive acts or practices throughout most of the economy, but codifying specific prohibitions in rules issued under section 18 allows the Commission to seek redress and civil penalties for violations of those rules and provides clearer guidance for regulated entities.

² See Fed. Trade Comm’n, Notice of Proposed Rulemaking on Unfair or Deceptive Fees (“NPRM”), 88 Fed. Reg. 77420 (Nov. 9, 2023). See also Fed. Trade Comm’n, Advance Notice of Proposed Rulemaking on Unfair or Deceptive Fees (“ANPR”), 87 Fed. Reg. 67413 (Nov. 8, 2022).

³ Cmt. of Ruth Spencer on NPRM (Nov. 19, 2023), <https://www.regulations.gov/comment/FTC-2023-0064-0958>.

Housing advocates' comments persuasively demonstrated that junk fees are increasingly prevalent in rental housing, cataloguing a panoply of creative fees that landlords impose, and that they can be terribly harmful to tenants, including by leading to eviction when unpaid parking or laundry fees are categorized as unpaid rent.⁴ The question of whether the proposed rule should cover rental housing was well joined: 151 of the 3,303 unique comments that were posted on Regulations.gov mention housing.⁵ Unsurprisingly, landlords urged the Commission not to protect renters.⁶

The same story goes for rental cars, restaurants, carpet cleaning, consumer lending, and so many other industries: Whereas advertised prices were once what a consumer could expect to pay (plus tax), now bait-and-switch pricing increasingly prevails. The Commission has found

⁴ See, e.g., Cmt. of National Housing Law Project and 38 other housing organizations on NPRM (Feb. 7, 2024), <https://www.regulations.gov/comment/FTC-2023-0064-3235>; Cmt. of National Consumer Law Center on NPRM (Feb. 7, 2024), <https://www.regulations.gov/comment/FTC-2023-0064-3218>; Cmt. of University of Connecticut School of Law Housing and Eviction Defense Clinic on NPRM (Feb. 7, 2024), <https://www.regulations.gov/comment/FTC-2023-0064-3268>; Cmt. of McPherson Housing Coalition on NPRM (Dec. 4, 2023), <https://www.regulations.gov/comment/FTC-2023-0064-1431>; Cmt. of Housing Action Illinois on NPRM (Jan. 4, 2024), <https://www.regulations.gov/comment/FTC-2023-0064-2851>; Cmt. of Corporation for Supportive Housing on NPRM (Feb. 5, 2024), <https://www.regulations.gov/comment/FTC-2023-0064-3102>.

⁵ See Regulations.gov, <https://www.regulations.gov/docket/FTC-2023-0064/comments?filter=housing>.

⁶ See, e.g., Cmt. of National Association of Residential Property Managers on NPRM (Feb. 6, 2024), <https://www.regulations.gov/comment/FTC-2023-0064-3115>; Cmt. of National Multifamily Housing Council and National Apartment Association on NPRM (Feb. 6, 2024), <https://www.regulations.gov/comment/FTC-2023-0064-3133>; Cmt. of National Multifamily Housing Council and ten other landlord associations on NPRM (Feb. 7, 2024), <https://www.regulations.gov/comment/FTC-2023-0064-3152>; Cmt. of Manufactured Housing Institute on NPRM (Feb. 6, 2024), <https://www.regulations.gov/comment/FTC-2023-0064-3116>; Cmt. of Apartment and Office Building Association of Metropolitan Washington on NPRM (Jan. 25, 2024), <https://www.regulations.gov/comment/FTC-2023-0064-2981>; Cmt. of New Jersey Apartment Association on NPRM (Feb. 7, 2024), <https://www.regulations.gov/comment/FTC-2023-0064-3172>; Cmt. of Nevada State Apartment Association on NPRM (Jan. 29, 2024), <https://www.regulations.gov/comment/FTC-2023-0064-3042>; Cmt. of Chicagoland Apartment Association on NPRM (Jan. 29, 2024), <https://www.regulations.gov/comment/FTC-2023-0064-3045>; Cmt. of Bay Area Apartment Association on NPRM (Feb. 7, 2024), <https://www.regulations.gov/comment/FTC-2023-0064-3296>; Cmt. of Apartment Association of Northeast Wisconsin and Fox Valley Apartment Association on NPRM (Feb. 5, 2024), <https://www.regulations.gov/comment/FTC-2023-0064-3089>; Cmt. of Tulsa Apartment Association on NPRM (Jan. 30, 2024), <https://www.regulations.gov/comment/FTC-2023-0064-3312>; Cmt. of San Angelo Apartment Association on NPRM (Jan. 29, 2024), <https://www.regulations.gov/comment/FTC-2023-0064-3044>; Cmt. of Julie Smith on NPRM (Jan. 24, 2024) (mass mailing exemplar), <https://www.regulations.gov/comment/FTC-2023-0064-2971>.

that hidden fees⁷ and deceptive fees⁸ are prevalent throughout the economy, not just in live-event ticketing and short-term lodging. It should all be stopped.

Following the instructions of section 18 of the FTC Act and codifying the broader rule as proposed would not only protect all consumers bombarded by rampant hidden fees; it would also protect competition on the merits in all industries. The practice of hiding fees impairs the ability of honest businesses to gain a competitive edge by providing the best value, and indeed it competitively penalizes those businesses that choose to be transparent about their pricing: A company that advertises an honest price will tend to lose market share to one that advertises a lower price but then piles on mandatory fees at check-out. Consider this disclosure⁹ from a seller of contact lenses that feels compelled to advertise a low price but then tack on a “processing fee” that sometimes doubles the cost just to remain competitive:

What is a processing fee? Recently, we’ve noticed that our competitors have introduced and implemented this tool, used as a means of allowing their upfront display prices on various online advertising channels to appear more competitive.

⁷ See, e.g., Compl. ¶¶ 4–5, 106–14, *FTC v. Invitation Homes, Inc.*, No. 24-cv-04280 (N.D. Ga. filed Sept. 24, 2024) (rental housing); Compl. ¶¶ 39–46, *FTC v. Vonage Holdings Corp.*, No. 3:22-cv-6435 (D.N.J. filed Nov. 3, 2022) (internet phone service); Compl. ¶¶ 42–44, 50, *United States v. Funeral Cremation Grp. of N. Am., LLC*, No. 0:22-cv-60779 (S.D. Fla. filed Apr. 22, 2022) (funeral services); Compl. ¶ 9, *FTC v. Liberty Chevrolet, Inc.*, No. 1:20-cv-03945 (S.D.N.Y. May 21, 2020) (car sales); Compl. ¶ 13, *FTC v. NetSpend Corp.*, No. 1:16-cv-04203 (N.D. Ga. filed Apr. 11, 2017) (prepaid debit cards); Compl. ¶¶ 24–25, 29, 40–42, *FTC v. AT&T Mobility LLC*, No. 3:14-cv-04785 (N.D. Cal. filed Oct. 28, 2014) (telephone data); Compl. ¶¶ 1, 26, 39–40, *FTC v. Millennium Telecard, Inc.*, No. 2:11-cv-02479 (D.N.J. May 2, 2011) (prepaid calling cards); Compl. ¶ 15, *FTC v. CompuCredit Corp.*, No. 1:08-cv-01976 (N.D. Ga. filed June 10, 2008) (credit cards).

⁸ See, e.g., Compl. ¶¶ 4–5, 106–14, 118–23, *FTC v. Invitation Homes, Inc.*, (rental housing); Compl. ¶¶ 39–46, *FTC v. Vonage Holdings Corp.* (internet phone service); Compl. ¶¶ 61–63, *FTC v. Benefytt Techs., Inc.*, No. 8:22-cv-1794 (M.D. Fla. filed Aug. 8, 2022) (health insurance plans); Compl. ¶¶ 17–20, *FTC v. Passport Auto Grp., Inc.*, No. 8:22-cv-02670 (D. Md. filed Oct. 18, 2022) (car sales); Compl. ¶¶ 3, 33, 41, *FTC v. N. Am. Auto. Serv., Inc.*, No. 1:22-cv-01690 (E.D. Ill. filed Mar. 31, 2022) (car sales); Compl. ¶¶ 50–51, *In re Amazon.com, Inc.*, No. C-4746 (F.T.C. June 9, 2021) (delivery drivers); Compl. ¶¶ 37–39, *FTC v. Lead Express, Inc.*, No. 2:20-cv-00840 (D. Nev. filed May 11, 2020) (consumer lending); Compl. ¶¶ 9–10, *FTC v. FleetCor Techs, Inc.*, No. 1:19-cv-05727, (N.D. Ga. filed Dec. 20, 2019) (pre-paid fuel cards); Compl. ¶¶ 4, 30–32, 36–37, *FTC v. BCO Consulting Servs., Inc.*, No. 8:23-cv-00699 (C.D. Cal. filed Apr. 24, 2023) (student loan–debt relief); Compl. ¶¶ 31–36, *FTC v. OMICS Grp. Inc.*, No. 2:16-cv-02022 (D. Nev. filed Aug. 25, 2016) (academic publishing); Compl. ¶¶ 12, 23–25, *FTC v. Lending Club Corp.*, No. 3:18-cv-02454 (N.D. Cal. filed Apr. 25, 2018) (consumer lending); Compl. ¶ 37, *FTC v. T-Mobile USA, Inc.*, No. 2:14-cv-00967 (W.D. Wash. filed July 1, 2014) (mobile phones); Am. Compl. ¶¶ 21–22, *FTC v. Websource Media, LLC*, No. 4:06-cv-01980 (S.D. Tex. filed June 21, 2006) (telephones); *FTC v. Mercury Mktg. of Del., Inc.*, No. 00-cv-3281, 2004 WL 2677177, *1 (E.D. Pa. Nov. 22, 2004) (internet services); Compl. ¶¶ 25–27, *FTC v. Stewart Fin. Co.*, No. 1:03-cv-02648 (N.D. Ga. filed Sept. 4, 2003) (consumer loans); Compl. ¶¶ 19–21, 24, *FTC v. Hold Billing Serv., Ltd.*, No. SA-98-CA-0629-FB (W.D. Tex. filed July 16, 1998) (telephones); Compl. ¶¶ 18, 33, 56–58, *FTC v. Lake*, No. 8:15-cv-00585-CJC-JPR (C.D. Cal. filed Apr. 14, 2015) (consumer loans); *FTC v. Hope for Car Owners, LLC*, No. 2:12-CV-778-GEB-EFB, 2013 WL 322895, at *3–4 (E.D. Cal. Jan. 24, 2013) (vehicle loans); Am. Compl. ¶¶ 38–39, 58–60, *FTC v. U.S. Mortg. Funding, Inc.*, No. 9:11-cv-80155-JIC (S.D. Fla. filed July 26, 2011) (mortgage loans); *FTC v. Nat’l Bus. Consultants, Inc.*, 781 F. Supp. 1136, 1143 (E.D. La. 1991) (franchising).

⁹ See Contact Lens King, <https://www.contactlensking.com/faq.aspx> (last visited Dec. 13, 2024). See also Cmt. of Anonymous on NPRM (Jan. 1, 2024) (describing large processing fees for contact lenses), <https://www.regulations.gov/comment/FTC-2023-0064-2799>; Cmt. of Anonymous on ANPR (Jan. 14, 2023) (describing “the almost universal practice of junk fees in the online contact lens market”), <https://www.regulations.gov/comment/FTC-2022-0069-5892>.

As we know, when a company advertises a lower price, there is increased traffic to their website. Upon the realization that this strategy was being used, we at Contact Lens King stood firmly against applying such a practice. However, in spite of the fact that we offer the lowest bottom line prices, we experienced a decrease in traffic and total orders. Through re-evaluation, and despite our discomfort, we have made the tough decision to adopt the practice as well. Contact Lens King is firmly committed to offering the lowest bottom line prices online, and we want our customers to rest assured that through us, you will always see significant savings in your pocketbook – even with the fee.

I fear that this race-to-the-bottom dynamic will continue to proliferate across the economy, even if it is curbed in live-event ticketing and short-term lodging. The narrower final rule misses the opportunity to halt unlawful practices in other industries and to protect the consumers in these other industries from the reduced choices and higher prices that result.

Under Chair Khan’s leadership, the Commission has been unafraid to take on powerful industry interests to vindicate the law’s protections for all Americans, whether lowering the price of inhalers, banning noncompetes, challenging grocery mega-mergers, or ending subscription traps. I have strongly and proudly supported these efforts. But I am always mindful of limitations on Commission authority, so I have also supported final rules that are narrower than my personal policy preferences when the law or record so requires.¹⁰ And, as here, I have voted for compromise positions when doing so broadens support for a Commission action.¹¹

In this case, paring back the rule to protect only consumers of two types of services is not in my view required by the governing statute or the rulemaking record before the Commission. Because the narrower rule has garnered the support of one of my Republican colleagues, I voted yes to finalize rulemaking protections for Americans who patronize live sports and concerts and short-term lodging. But I will continue to urge action, whether from the Commission or Congress or state legislatures, to extend these protections, which the original rule proposal would have provided, to Americans who rent homes or cars or want to enjoy a meal at a restaurant—who want prices to be honest no matter what goods or services they seek. At its best, the Commission’s work protects all Americans, including those without disposable incomes or political power. There is more work to be done.

¹⁰ See, e.g., Comm’r Rebecca Kelly Slaughter, Fed. Trade Comm’n, Statement Regarding the Final Trade Regulation Rule Concerning Recurring Subscriptions and Other Negative Option Programs (Oct. 16, 2024) (suggesting that legislators consider a requirement of annual notice for subscriptions that involve no physical delivery, which the Commission had proposed but did not finalize), https://www.ftc.gov/system/files/ftc_gov/pdf/slaughter-statement-negative-option-rule.pdf.

¹¹ See, e.g., Comm’r Alvaro M. Bedoya, Fed. Trade Comm’n, Statement Regarding Amendments to the Hart-Scott-Rodino Rules and Premerger Notification Form and Instructions, Joined by Chair Lina M. Khan & Comm’r Rebecca Kelly Slaughter (Oct. 10, 2024) (regarding unanimous Commission adoption of a final rule narrower than the proposed rule), https://www.ftc.gov/system/files/ftc_gov/pdf/statement-bedoya-khan-slaughter-hsr-rule.pdf.