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February 7, 2024

Chairwoman Jessica Rosenworcel  
Federal Communications Commission  
45 L Street NE  
Washington, DC 20554

**RE: Comments to Notice of Proposed Rulemaking, “Trade Regulation Rule on Unfair or Deceptive Fees” 16 CFR Part 464, Docket No. 2023-24234**

Dear Chairwoman Rosenworcel:

Public Citizen is a nonprofit consumer advocacy organization with more than 500,000 members and supporters that champions the public interest in the halls of power. We defend democracy, resist corporate power, and fight to ensure that government works for the people – not big corporations. On behalf of our members and supporters, we submit the following comment in response to the Federal Trade Commission’s (FTC or Commission) Notice of Proposed Rulemaking (NPRM), “Trade Regulation Rule on Unfair or Deceptive Fees,” following its Advanced Notice of Proposed Rulemaking (ANPRM) in October 2022.

The Commission’s proposed rulemaking to reduce junk fee practices across the economy is welcome, evidenced by the wide breadth of support it has received.<sup>1</sup> This NPRM is an important step toward providing consumers with long-needed reprieve from the widespread use of the deceptive practice of charging undisclosed fees by major industries within the FTC’s purview, including communication carriers, air carriers, ticket sales, auto dealers, credit card companies, cable giants, and property owners.<sup>2</sup> We encourage the Commission to enact a clear, bright-line rule, providing consumers with protections against unfair and deceptive fees, and that it leaves room to develop additional rulemakings and agency guidance, to ensure that existing loopholes are closed.

Undisclosed junk fees impact consumers across the board and have an especially damaging impact on people living paycheck to paycheck. Junk fees paid by cash-poor families total more

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<sup>1</sup> Lew Blank, *Voters Support Initiatives to Lower Drug Costs, Ban Junk Fees, and Strengthen Supply Chains*, dataforprogress.org (Dec. 2023), <https://www.dataforprogress.org/blog/2023/12/12/voters-support-initiatives-to-lower-drug-costs-ban-junk-fees-and-strengthen-supply-chains>.

<sup>2</sup> See, Federal Trade Commission, *What the FTC Does*, ftc.gov, <https://www.ftc.gov/news-events/media-resources/what-ftc-does>; and see, Tony Romm, *From Airlines to Ticket Sellers, Companies Fight U.S. to Keep Junk Fees*, washingtonpost.com (Nov. 19. 2023), <https://www.washingtonpost.com/business/2023/11/19/companies-lobbyists-fight-junk-fees/>.

than \$25 billion<sup>3</sup> per year. By White House estimates, all junk fees may cost Americans at least \$65 billion annually.<sup>4</sup>

Junk fees come in a variety of forms. One of the most obvious is the add-on fee. Many enterprises advertise one price and then add mandatory fees at the back end of the sales process. For example, a theatre patron might purchase a ticket online, seeing a price of \$15, then select a seat, and then, while consummating the transaction, notice that a \$10 “convenience” fee is added, escalating the price more than 66 percent. Researchers call this “drip pricing,” the business practice of decomposing a price into multiple components that are presented sequentially to buyers. Studies find that consumers may shop based on the base price by comparing one offer to another, but few subsequently search for better deals based on the full price.<sup>5</sup> The practice of hiding the full price of a good or service until the end of a transaction can lead consumers to pay more than they would otherwise because it makes it hard for consumers to comparison shop.

Overall, Americans spend billions on these junk fees. Cable companies took in some \$28 billion in hidden fees in 2019, according to one report.<sup>6</sup> Airlines charged nearly \$6 billion in baggage and change fees in 2021, according to the Department of Transportation.<sup>7</sup> Hotels are making about \$3 billion through junk fees and ancillary fees annually.<sup>8</sup> Inescapable junk fees have garnered a notorious reputation for inflating prices where a sector is concentrated, such as with major event productions like sporting events and concerts.<sup>9</sup>

We applaud the FTC’s move to eliminate junk fee practices across the economy, including for event ticketing, hotels, funeral homes, and any other industry that uses undisclosed mandatory fees. This action is part of a broader whole-of-government approach to address the issue of junk fees. For example, the FTC recently finalized a rule to reduce bait-and-switch and junk fees by car dealers.<sup>10</sup> The Department of Transportation is moving to ensure airlines describe the full price of a ticket before purchase. This includes additional fees for children to sit next to their parents. The Federal Communications Commission is requiring internet companies to display full monthly prices.

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<sup>3</sup> John F. Wasik, *How Junk Fees Hammer Those Who can Afford It: 4 Ways You Can Avoid Them*, forbes.com (Oct. 5, 2023), <https://www.forbes.com/sites/johnwasik/2023/10/05/how-junk-fees-hammer-those-who-can-least-afford-it-4-ways-you-can-avoid-them/?sh=3b55ad5725a9>.

<sup>4</sup> Tony Romm, *From Airlines to Ticket Sellers, Companies Fight U.S. to Keep Junk Fees*, washingtonpost.com (Nov. 19, 2023), <https://www.washingtonpost.com/business/2023/11/19/companies-lobbyists-fight-junk-fees/>.

<sup>5</sup> Alexander Rasch et al, *Drip Pricing And Its Regulation: Experimental Evidence*, (August 2020) SCIENCE DIRECT, <https://www.sciencedirect.com/science/article/abs/pii/S0167268120301189>

<sup>6</sup> Jonathan Schwantes, *How Cable Companies Use Hidden Fees to Raise Prices and Disguise the True Cost of Service*, CONSUMER REPORTS, [https://advocacy.consumerreports.org/wp-content/uploads/2019/10/CR\\_WhatTheFeeReport\\_6F\\_sm-1.pdf](https://advocacy.consumerreports.org/wp-content/uploads/2019/10/CR_WhatTheFeeReport_6F_sm-1.pdf)

<sup>7</sup> *Baggage Fees by Airline 2021*, BUREAU OF TRANSPORTATION STATISTICS, (May 2, 2022) <https://www.bts.gov/newsroom/baggage-fees-airline-2021>

<sup>8</sup> Andrea Miller, *How The U.S. Built A Junk Fee Economy*, CNBC (April 25, 2023) <https://www.cnbc.com/2023/04/25/how-the-us-built-a-junk-fee-economy.html>

<sup>9</sup> David Leonhardt, *A Fight Against Sludge*, NEW YORK TIMES, (Feb. 9, 2023) <https://www.nytimes.com/2023/02/09/briefing/biden-junk-fees.html>

Public Citizen has signed on to comments submitted by a coalition of consumer rights organizations, fully supports those suggestions, and echoes the call for the FTC to adopt an Unfair and Deceptive Fees Trade Practices Rule in the form of a bright line rule that eliminates junk fees and protects consumers from deceptive practices. Furthermore, we support the recommendations to improve the NPRM to prevent bad actors from creating and exploiting loopholes in the consumer protections promoted by the rule. Public Citizen especially urges the FTC against granting broad industry exemptions from a final rule. We echo the warnings of partner consumer advocates in advising against the following exceptions:

1. **The Commission should not make an exception for small businesses.** Small businesses will benefit from the rule because it eliminates the deceptive practices that keep consumers from being able to comparison shop. An exception will undermine the ability of consumers to make purchasing decisions based on transparent and honest information.
2. **The Commission should not exempt auto dealers from this rule.** There is no reason that auto dealers should be exempted from this rule. While it is true that the FTC's CAR Rule requires similar price disclosure standards as this rule, that overlap is not solid grounds for exemption. Dealers that abide by the CARS Rule will also be able to abide by this rule.
3. **Any exceptions the Commission may grant to credit, leasing, and savings companies should be limited to those companies covered by the Truth in Lending Act (TILA).** This is consistent with the total cost disclosure principle in the proposed rule. This action is necessary to guarantee that a company cannot claim they are not covered by TILA and are exempt from this rule.

Thank you for your work to end unfair and deceptive junk fees. We appreciate the opportunity to provide this comment. Please contact Candace Milner ([cmilner@citizen.org](mailto:cmilner@citizen.org)) and/or Bartlett Naylor ([bnaylor@citizen.org](mailto:bnaylor@citizen.org)) for more information.

Sincerely,

Public Citizen