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

Office of the Director

October 3, 2024

Bellingham City Council (ccmail@cob.org)
Attn: Councilmember Jace Cotton (jacotton@cob.org)

Dear Members of the Bellingham City Council:

I understand that the Bellingham City Council will be considering two ordinances to address junk fees. As the City Council considers these ordinances, I welcome the opportunity to provide information about the Federal Trade Commission's ("FTC") concurrent efforts to address junk fees. The views in this letter are my own and do not necessarily reflect the views of the FTC or any individual Commissioner.

American consumers, workers, and small businesses today are swamped with junk fees that frustrate consumers, erode trust, impair comparison shopping, and facilitate inflation. Junk fees refer to unfair or deceptive fees that are charged for goods or services that consumers would reasonably assume to be included within the overall advertised price. Some junk fees are also "hidden," meaning they are disclosed only at a later stage in the consumer's purchasing process or not at all. Junk fees manifest in markets ranging from auto financing to international calling cards and payday loans—they are not only are widespread but are also growing. Such fees impose substantial economic harms on consumers and impede the dissemination of important market information.

Enforcement Efforts

Consumers have long expressed concern to the FTC about the prevalence of junk fees across a range of industries, and the FTC has employed a variety of tools to understand and address them. The FTC has engaged in a number of enforcement actions against companies that the FTC alleged charged unfair or deceptive junk fees in violation of Section 5 of the FTC Act, 15 U.S.C. § 45(a),[1] and other statutes that the FTC has the authority to enforce.[2] For example, the

[1] Section 5 of the FTC Act prohibits unfair or deceptive acts or practices in or affecting commerce, including any representation, omission, or practice that is likely to mislead a consumer acting reasonably under the circumstances, to the consumer's detriment.

[2] *See, e.g.*, Stipulated Order at 2, *FTC v. Hold Billing Servs., Ltd.*, No. 98-cv-00629 (W.D. Tex. May 4, 2016); Compl. at 3, FTC v. T-Mobile USA, Inc., No. 14-cv-967 (W.D. Wash. filed July 1, 2014); Compl. at 3, *FTC v. AT&T Mobility, LLC*, No. 14-cv-3227 (N.D. Ga. filed Oct. 8, 2014).; *FTC v. Inc21.com Corp.*, 745 F. Supp. 2d 975, 982 (N.D. Cal. 2010); Stipulated Order at 8, *FTC v. Websource Media, LLC*, No. H-06-1980 (S.D. Tex. July 17, 2007); Compl. at 8, *FTC v. Nationwide Connections, Inc.*, No. 06-80180 (S.D. Fla. filed Feb. 27, 2006); Stipulated Judgment and Order, *FTC v. Mercury Mktg. of Del., Inc.*, No. 00-cv-3281, 2004 WL 2677177, *1 (E.D. Pa. Nov. 22, 2004); Compl. at 2, *FTC v. Millennium Telecard, Inc.*, No. 2:11-cv-02479 (D.N.J. filed May 2, 2011); Compl. at 6, FTC v. NetSpend Corp., No. 1:16-cv-04203 (N.D. Ga. filed Apr. 11, 2017); Compl. at 13, *FTC v. Lead Express, Inc.*, No. 2:20-cv-00840 (D. Nev. filed May 11, 2020); First Am. Compl. at 3, *FTC v. LendingClub Corp.*, No. 3:18-

Commission recently took action against Invitation Homes, the nation's largest single-family home landlord, for advertising monthly rental rates that failed to disclose junk fees that could total more than $1.700 per year.[3] In addition, the Commission took action against Vonage, an internet phone service provider, requiring the company to pay $100 million in refunds to consumers that were allegedly trapped into subscriptions and hit with surprise early termination fees.[4] The Commission also took action against Passport Automotive Group and its top executives for allegedly tacking hundreds to thousands of dollars in illegal junk fees onto car prices and discriminating against Black and Latino consumers with higher financing costs.[5] In the summer of 2022, the FTC took action against healthcare company Benefytt Technologies for allegedly selling sham insurance and charging people with exorbitant junk fees for unwanted add-ons without their permission.[6] The company was required to pay $100 million in refunds.[7]

Research and Outreach

Prior to and alongside its enforcement efforts, the FTC sought comments about and analyzed junk fees through workshops and reports. In 2012, the FTC hosted a workshop on drip pricing, a pricing technique in which firms advertise only part of a product's price and reveal other charges later as the customer goes through the buying process.[8] In 2017, the FTC published a report analyzing the costs and benefits of disclosing resort fees, which are per-room, per-night, mandatory fees charged by some hotels.[9] The report concluded that "separating mandatory resort fees from posted room rates without first disclosing the total price is likely to harm consumers by increasing the search costs and cognitive costs of finding and choosing hotel accommodations" and that it was "unlikely to result in benefits that offset the likely harm to consumers."[10]

In 2019, the FTC hosted a workshop that featured a panel on pricing and fee issues in the market for live-event tickets and issued a corresponding staff report.[11] The workshop revealed that market participants believed they could not correct course without regulatory intervention. For

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cv-02454 (N.D. Cal. filed Oct. 22, 2018); Compl. at 14–16, *FTC v. FleetCor Techs., Inc.*, No. 1:19-cv-05727 (N.D. Ga. filed Dec. 10, 2019); Compl. at 3, *FTC v. Liberty Chevrolet, Inc.*, No. 20-cv-3945 (S.D.N.Y. filed May 21, 2020); Compl. at 7–8, *FTC v. N. Am. Auto. Servs., Inc.*, No. 1:22-cv-01690 (N.D. Ill. filed Mar. 31, 2022); Compl. at 11–14, *United States v. Funeral & Cremation Grp. of N. Am. LLC*, No. 0:22-cv-60779 (S.D. Fla. filed Apr. 22, 2022); Stipulated Order at 6–8; *United States v. Funeral & Cremation Grp. of N. Am. LLC*, No. 0:22-cv-60779 (S.D. Fla. filed Apr. 6, 2023); Compl. at 12–14, *FTC v. OMICS Grp. Inc.*, No. 2:16-cv-02022 (D. Nev. filed Aug. 25, 2016); Compl. at 12–13, *FTC v. Citigroup Inc.*, No. 010-cv-0606 (N.D. Ga. filed Mar. 6, 2001); Compl. at 11, *FTC v. Stewart Fin. Co. Holdings, Inc.*, No. 1:03-cv-2648 (N.D. Ga. filed Sept. 4, 2003).

[3] Compl. at 6-21, *FTC v. Invitation Homes, Inc.*, No. 1:24-cv-04280-SEG (N.D. Ga. filed Sep. 24, 2024); Stipulated Order, *FTC. v. Invitation Homes, Inc.*, No. 1:24-cv-04280-SEG (N.D. Ga. entered Sep. 27, 2024).

[4] Stipulated Order at 11, *FTC v. Vonage Holdings Corp.*, No. 3:22-cv-6435 (D.N.J. filed Nov. 3, 2022); Compl. at 11–17, *FTC v. Vonage Holdings Corp.*, No. 3:22-cv-6435 (D. N.J. filed Nov. 3, 2022).

[5] Compl. at 8–13, *FTC v. Passport Auto. Grp., Inc.*, No. 8:22-cv-2670 (D. Md. filed Oct. 18, 2022); *see also* Stipulated Order, *FTC v. Passport Auto. Grp., Inc.*, No. 8:22-cv-2670 (D. Md. filed Oct. 21, 2022).

[6] Compl. at 25–38, *FTC v. Benefytt Techs., Inc.*, No. 8:22-cv-1794 (M.D. Fla. filed Aug. 8, 2022).

[7] Stipulated Order at 26, *FTC v. Benefytt Techs., Inc.*, No. 8:22-cv-1794 (M.D. Fla. filed Aug. 11, 2022).

[8] Fed. Trade Comm'n, The Economics of Drip Pricing (May 21, 2012), https://www.ftc.gov/news-events/events/2012/05/economics-drip-pricing.

[9] Mary W. Sullivan, Fed. Trade Comm'n, Economic Analysis of Hotel Resort Fees (2017), http://www.ftc.gov/system/files/documents/reports/economic-analysis-hotel-resort-fees/p115503_hotel_resort_fees_economic_issues_paper.pdf.

[10] *Id.* at 36–37.

[11] Fed. Trade Comm'n, *"That's the Ticket" Workshop: Staff Perspective*, 4 (May 2020).

example, after a market leader took unilateral action to phase out hidden fees, the platform "lost significant market share and abandoned the policy after a year because consumers perceived the platform's advertised prices to be higher than its competitors' displayed prices."[12] Ticket sellers who participated in the workshop that did not provide upfront all-in pricing "favored requiring all-in pricing through federal legislation or rulemaking."[13]

Proposed Rulemaking

In October 2022, the FTC issued an advance notice of proposed rulemaking ("ANPR") seeking public comment on a potential rule to address junk fees proliferating throughout the economy. The ANPR sought public comment on the prevalence of junk fees, the unfair or deceptive tactics companies use to impose them, the harms caused by junk fees, and whether a new rule would better protect consumers. Consumers and industry members demonstrated strong interest in the questions posed by the ANPR: the FTC received 12,046 comments in response, which overwhelmingly expressed frustration with unexplained mandatory fees.

Many ANPR comments raised concerns that sellers fail to disclose the total amount consumers will pay, misrepresent the amount, and only disclose fees after consumers have expended time in the purchasing transaction. Many comments also stated that sellers do not adequately disclose or misrepresent the nature or purpose of fees, using vague names for fees or using fees as a profit generator instead of providing consumers with services. The comments related to a wide range of goods and services, such as ticket sales, hotels, vacation rentals, apartment rentals, tax preparation services, restaurants, delivery services, utilities, telephone, internet, and cable services, and auto sales.

In October 2023, the FTC announced a notice of proposed rulemaking ("NPRM") and sought public comment on a proposed rule. The proposed rule seeks to ban hidden fees by prohibiting businesses from advertising prices that hide or leave out mandatory fees. The proposed rule would also prohibit sellers from misrepresenting fees and require certain disclosures about the nature and purpose of fees. The FTC received more than 60,000 comments on the NPRM, and FTC staff is currently analyzing the comments to determine the appropriate next steps.

Thank you for the opportunity to provide information about the FTC's efforts to address junk fees at the federal level. I hope that the FTC's work provides useful insight as you consider ordinances addressing junk fees in Bellingham. To the extent the Federal Trade Commission can provide assistance with these inquiries, please do not hesitate to contact me.

Very truly yours,

Samuel A. Levine

Samuel Levine
Director, Bureau of Consumer Protection

[12] *Id.*
[13] *Id.*

cc:

Mayor Kim Lund (mayorsoffice@cob.org)
City Attorney Alan Marriner (amarriner@cob.org)