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PROTECTING CONSUMERS FROM JUNK FEES

HEARING

BEFORE THE

SUBCOMMITTEE ON CONSUMER PROTECTION,
PRODUCT SAFETY, AND DATA SECURITY

OF THE

COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE

ONE HUNDRED EIGHTEENTH CONGRESS

FIRST SESSION

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED EIGHTEENTH CONGRESS

FIRST SESSION

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CONTENTS

PROTECTING CONSUMERS FROM JUNK FEES

THURSDAY, JUNE 8, 2023

U.S. SENATE,
SUBCOMMITTEE ON CONSUMER PROTECTION, PRODUCT SAFETY, AND DATA SECURITY,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10:05 a.m., in room SR–253, Russell Senate Office Building, Hon. John Hickenlooper, Chairman of the Subcommittee, presiding.

Present: Senators Cantwell, Hickenlooper [presiding], Klobuchar, Markey, Luján, Welch, Blackburn, Fischer, Sullivan, and Young.

OPENING STATEMENT OF HON. JOHN HICKENLOOPER, U.S. SENATOR FROM COLORADO

Senator HICKENLOOPER. I call this hearing to order. Welcome. This is our first hearing this Congress of the Subcommittee on Consumer Protection, Product Safety, and Data Security. Delighted to be here doing this work and for the opportunity to work closely with Ranking Member Blackburn. I would like to wish her a happy birthday week.

It was a couple of days ago, but we celebrate, in our family, the whole week as your birthday week. I look forward to working with Senator Blackburn and make sure that this is a bipartisan effort to make progress on issues that are within the jurisdiction of this subcommittee, ranging from strong privacy protections for all Americans, strengthening our data security of connected devices that we depend on every day, identifying safe guardrails for emerging uses of artificial intelligence.

I think that will get a lot of attention. And obviously so much more. With every step we take, we are always going to try to keep hardworking Americans doing their—living their lives, make sure that as consumers, they are first in our mind.

Today, we are going to discuss increasing price transparency for consumers within the marketplace, broadly—all the marketplaces. We all know that junk fees can be frustrating for consumers when they shop for products and for services. They raise costs and in many cases they create confusion.

But what does a junk fee look like? How does it feel? Simply put, these are fees that are disclosed to a consumer midway, through, or at the end of a transaction, or they are fees that serve no tangible purpose for a consumer like, you know, a processing fee, and that they are mandatory or unavoidable.

The Council of Economic Advisors, the CEA, has found that junk fees limit the ability of consumers to comparison shop between service providers and reduce competition between merchants. Companies need to give consumers the transparency they deserve when they shop for goods or services. Price transparency allows for consumers to see the total price for a product or service from the get-go, so they don't feel deceived.

Allows for the consumer to see additional service charges that add to the overall price upfront, so they are not midway or at the end of a transaction when they find out about it. Behind me we have a common example of purchasing a ticket for an event. On the first row, the ticket price displayed is $140 plus fees.

No way to see or understand what the fees are until you go through the checkout process. Oh, I ripped the wrong paper. Anyway, here we see almost their transparency of—or example of how upfront and all-in transparency looks. All the fees are listed below the actual ticket price, compared with the first example.

Imagine trying to buy tickets for a family of six and the total cost ends up being almost $200 more than advertised. Here is an example—it is not really ripping—of total upfront pricing where you will pay at checkout, whereas displayed before you even select the ticket. This way consumers are informed with the crystal clear price that they will pay for the product or service at checkout and not a penny more.

Last month, we had the pleasure of discussing methods to increase price transparency for consumers with the Director of the National Economic Council, Dr. Lael Brainard. Today, we are going to continue that conversation by hearing from our witnesses panel, and I hope and believe this will continue that effort. By working together, we can fairly promote the upfront, all-in pricing across all sectors.

Already, bipartisan legislation has been introduced to increase price transparency for consumers in certain sectors. Surely more legislation is on the horizon. Senators are going to have the chance to discuss those efforts today. As a former small business owner, I experienced firsthand the many obstacles one encounters in opening a new brewpub, a new restaurant, or literally any small business.

Small businesses up and down Main Street live and breathe unfair competition in order to keep the lights on and in order to serve their customers, deliver what their customers desire. Today, large companies use their market advantage to force customers into paying fees that were not expected or simply unavoidable.

Consumers' pockets and small businesses suffer as a result. Businesses need to play by the same rules to create a level playing field that gives everyone an equal chance to compete fairly. I think consumers will always be the major beneficiaries of such a system. As our economy continues to recover from the pandemic, we need do—we need to ensure American consumers have the information to make every dollar count.

Let's be clear about what this hearing is not about. It is not about setting price caps for products or services. It is not about telling private companies how they should operate their business.

I would like to operate, or I would like to operate—I would like to welcome each of our witnesses who are joining us today, Sally Greenberg, the CEO for the National Consumers League, Todd Zywicki, Professor of Law, George Mason University, Antonin Scalia Law School, and on Zoom, Vicki Morwitz, Professor of Business, Columbia Business School.

I now recognize Ranking Member Blackburn for her opening remarks.

STATEMENT OF HON. MARSHA BLACKBURN, U.S. SENATOR FROM TENNESSEE

Senator BLACKBURN. Thank you, Mr. Chairman. And I am so pleased that we are having our first hearing, and I really do look forward to working with you on issues where we have so much agreement, Kids Online Safety Act, data privacy, data security, artificial intelligence, and preventing the sale of dangerous and counterfeit products online.

As we had discussed previously, I was really a bit surprised by the Administration and now this committee's focus on so-called junk fees. When I am in Tennessee, the economy is what is at the top of the list that things that people are talking about. They aren't talking about junk fees.

What they are talking about is the price at the gas pump, the grocery store, how high these electric bills are going, and they are concerned about skyrocketing inflation on the basket of goods that they purchase and use every single day. And they are worried about the out-of-control spending.

The debt deal was very unpopular in Tennessee because it doesn't rein in what this Government and this Administration is spending. And American families, Tennessee families want answers to those problems, and they really don't want to hear bureaucrats in Washington or legislators discussing resort fees and food delivery fees for DoorDash or Uber Eats.

So, this is another—the way I look at this issue, and the way many Tennesseans look at it, is this is another way for the FTC, the CFPB, DOT, and all these regulators to clamp down on businesses and try to micromanage businesses. Now, are these fees annoying? Absolutely, they are. Should companies be more transparent in how they bring the fees forward? And absolutely, they should do that.

And consumers themselves should be more willing to walk away and use only businesses that are operating on the up and up, that are going to disclose these fees. But we have to remember this, these are not monopolies. These are hotels and airlines and banks and online retailers, and competition matters to these companies.

And we see that competition making an impact on the marketplace every single day. So, thank you to our witnesses. I am looking forward to a good, frank discussion today. Appreciate your getting your testimony in, in a timely manner. Thank you, Mr. Chairman.

Senator HICKENLOOPER. Great. Thank you, Senator Blackburn. Now, we can look forward to—we will let each of our witnesses do their introductory remarks.

Why don't we start with Vicky Morwitz, who is Professor of Business at Columbia Business School. You are on.

STATEMENT OF VICKI G. MORWITZ, BRUCE GREENWALD PROFESSOR OF BUSINESS AND PROFESSOR OF MARKETING, COLUMBIA BUSINESS SCHOOL, COLUMBIA UNIVERSITY

Ms. MORWITZ. Thank you very much. Good morning. My name is Vicki Morwitz. I am the Bruce Greenwald, Professor of Business and Professor of Marketing at Columbia Business School at Columbia University.

Thank you for inviting me to testify on the issue of protecting consumers from junk fees. I am a consumer psychologist with expertise in how consumers process additional fees and surcharges, a topic I have studied for over 25 years.

I have discussed this research in my classes, and I have given research seminars on this topic at universities around the world. In my testimony, I will discuss two pricing practices that I have studied in depth that are central to the discussions taking place today, partition pricing and drip pricing.

The academic research on both partition and drip pricing makes clear that consumers make better informed decisions when firms use all-inclusive pricing. My co-authors and I define partition pricing as a strategy where firms decide to divide a product's price into two or more mandatory parts, a base price for the main product, and one or more mandatory surcharges, rather than charging a single, all-inclusive price.

For example, many hotels have a mandatory fee on top of the daily room rate. These are sometimes called resort fees or facility fees or destination fees and can range from $20 to over $50 a night. And many rental car agencies assess several mandatory fees on top of the daily rental rate, such as concession recovery fees, customer facility fees, energy recovery fees, and vehicle licensing fees.

In general, what research on partition pricing has shown is that when firms separate out mandatory surcharges, consumers tend to underestimate the total price they will have to pay, and they are often more likely to complete the purchase.

While these effects happen, even when the surcharges are fully disclosed, the detrimental effects are even larger when the surcharges are hidden in the small print and when they are made more difficult for consumers to process, such as when they are framed as a percent of the base price versus as a flat dollar amount.

My coauthors and I have also studied a related pricing strategy called drip pricing. With drip pricing, firms advertise only part of a product's price upfront and reveal other charges later when shoppers go through the buying process.

Drip fees can be mandatory or can be for optional items, but for today's testimony, I will focus on the dripping of mandatory surcharges. Drip pricing is commonly used in industries like the cable TV and the ticketing industries. When a consumer shops for a TV Internet bundle from a cable television provider, they may first see an attractive base price offer for the bundle, but later learn there are also broadcast TV fees, set top box fees, regional sports fees, and TV connection fees that raise the price considerably.

And a consumer shopping for a ticket for a live event like a concert, a play, or a baseball game typically first sees the price for different seats in the venue. After selecting a seat, as the consumer clicks through more web pages, they may come to learn there is also a mandatory booking fee, ticketing fee, venue fee, and delivery fee, even when the tickets are delivered electronically.

Eventually they see a total price that may be much higher than the first price they saw, and they may be under time pressure to complete the purchase, as there might be a countdown clock that indicates they have to complete their purchase in just a few minutes, or they may be told there is only two seats left at that price.

But research has shown is that when surcharges are dripped, consumers end up being more likely to buy a product that appears cheaper upfront based only on the base price, but that is more expensive in total given the drip fees. Consumers also tend to buy more expensive products than they otherwise would—with drip, such as a seat closer to the stage for a live event.

Notably, these effects happen even when consumers are provided with a total price at the final stage of the transaction before they complete their purchase. While in theory, they can cancel the purchase when they see that the total is more expensive than they first thought, they often don't because they tend to overestimate the cost of restarting search and underestimate the benefits of doing so.

Because of this, it is not enough to show the total price to avoid the detrimental effects of drip pricing. Research has also shown that these effects don't go away with purchase experience. For example, repeat ticket buyers are still affected by drip pricing, similar to first time buyers. That is not because consumers are stupid or even careless that they are affected by the separation and dripping of mandatory surcharges.

In general, consumers try to make good decisions for themselves and their families. But pricing practices like drip and partition pricing take advantage of the fact that we consumers have a lot going on in our lives. We are busy and can be distracted.

And because of that, we may not notice or appropriately consider all information important to that purchase decision, especially when that information is hidden in the small print, is presented in obscure language, or is dripped late in the shopping process.

Academic research has shown that partitioned and drip pricing leads consumers to spend more money than they intended to or needed to make choices that don't reflect their true desires or preferences. What the research on these pricing practices also makes clear is that consumers benefit when all inclusive, upfront pricing is used, rather than when fees are dripped later in the shopping process or disclosed in multiple parts.

As a scholar who has studied these pricing practices for decades and who knows well how their use can be detrimental to consumers and to honest businesses, I strongly advocate that policy be promoted that addresses the partitioning and dripping of surcharges like we commonly see in so many industries.

These policies will benefit consumers if they require that upfront stated prices must be all inclusive. In other words, that all mandatory fees must be included in the total price and that the total price should be seen upfront.

This is what academic research suggests will be most beneficial to consumers. Thank you for the opportunity to appear today at this hearing. I am happy to answer any questions that you might have.

[The prepared statement of Ms. Morwitz follows:]

PREPARED STATEMENT OF VICKI G. MORWITZ, BRUCE GREENWALD PROFESSOR OF BUSINESS AND PROFESSOR OF MARKETING, COLUMBIA BUSINESS SCHOOL, COLUMBIA UNIVERSITY

Good morning. My name is Vicki Morwitz. I'm the Bruce Greenwald Professor of Business and Professor of Marketing at Columbia Business School at Columbia University.

Thank you for inviting me to testify today on the issue of "Protecting Consumers from Junk Fees." I am a consumer psychologist with expertise in how consumers process additional fees and surcharges, a topic I have studied for over 25 years. I have discussed this research in my classes, and I have given research seminars on this topic at universities around the world.

In my testimony today, I will discuss two pricing practices that I have studied in depth that are central to the discussions taking place in the Senate Commerce committee regarding junk fees: partitioned pricing and drip pricing. The academic research on both partitioned and drip pricing makes clear that consumers make better informed decisions when firms use all-inclusive pricing.

My co-authors and I coined the phrase and defined partitioned pricing as a strategy where firms decide to divide a product's price into two or more mandatory parts, a base price for the main product and one or more mandatory surcharges, rather than deciding to charge a single, all-inclusive price.[1] For example, many hotels these days assess a mandatory fee on top of the daily room rate—these are sometimes called resort fees or facility fees or destination fees and range from $20 to over $50 a night on top of the daily room rate. And many rental car agencies assess several mandatory fees on top of the daily rental rate such as concession recovery fees, customer facility fees, energy recovery fees, and vehicle licensing fees. And many ticketing agencies assess a variety of mandatory fees on top of the base ticket price—for example processing fees, booking fees, ticketing fees, venue fees, and delivery fees, even with the tickets will be delivered electronically.

In general, what research on partitioned pricing has shown is that when firms separate out mandatory surcharges versus assessing one all-inclusive price, consumers tend to underestimate the total price they will have to pay, and are often more likely to complete the purchase.[2] While these effects happen even when the surcharges are fully disclosed, the detrimental effects are even larger when the surcharges are hidden in the small print[3] and when they are made more difficult for consumers to process such as when they are framed as a percent of the base price versus as a flat dollar amount[4].

My co-authors and I have also studied a related pricing strategy called drip pricing[5]. Drip pricing is a pricing technique in which firms advertise only part of a product's price up front and reveal other charges later as shoppers go through the

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[1] Morwitz, Vicki G., Eric Greenleaf, and Eric Johnson (1998), "Divide and Prosper: Consumers' Reactions to Partitioned Prices," *Journal of Marketing Research,* 35 (4), 453–463.

[2] Greenleaf, Eric A., Eric J. Johnson, Vicki G. Morwitz, and Edith Shalev (2016), "The Price does not Include Additional Taxes, Fees, and Surcharges: A Review of Research on Partitioned Pricing," *Journal of Consumer Psychology,* 26 (1), 105–124; Kim, Hyeong Min (2006),"The Effect of Salience on Mental Accounting: How Segregation Versus Integration Of Payment Influences Purchase Decisions," *Journal of Behavioral Decision Making,* 19(4), 381–391; Lee, Yih Hwi and Cheng Yuen Han (2002), "Partitioned Pricing in Advertising: Effects on Brand And Retailer Attitudes," *Marketing Letters,* 13(1), 27–40; Morwitz, Vicki G., Eric Greenleaf, and Eric Johnson (1998), "Divide and Prosper: Consumers' Reactions to Partitioned Prices," *Journal of Marketing Research,* 35 (4), 453–463.

[3] Sheng, Shibin, Yeqing Bao, and Yue Pan (2007) "Partitioning or Bundling? Perceived Fairness of the Surcharge makes a Difference," *Psychology & Marketing,* 24 (12), 1025–1041; Xia, Lan, Kent B. Monroe, and Jennifer L. Cox (2004), "The Price is Unfair! A Conceptual Framework of Price Fairness Perceptions," *Journal of Marketing,* 68(4), 1–15.

[4] Kim, Hyeong Min (2006),"The Effect of Salience on Mental Accounting: How Segregation Versus Integration Of Payment Influences Purchase Decisions," *Journal of Behavioral Decision Making,* 19(4), 381–391; Morwitz, Vicki G., Eric Greenleaf, and Eric Johnson (1998), "Divide and Prosper: Consumers' Reactions to Partitioned Prices," *Journal of Marketing Research,* 35 (4), 453–463; Xia, Lan, Kent B. Monroe, and Jennifer L. Cox (2004), "The Price is Unfair! A Conceptual Framework of Price Fairness Perceptions," *Journal of Marketing,* 68(4), 1–15.

[5] Santana, Shelle, Steven Dallas, and Vicki G. Morwitz (2020), "Consumers' Reactions to Drip Pricing," *Marketing Science,* 39 (1), 188–210.

buying process.[6] Dripped fees can be mandatory or can be for optional items, but for today's testimony, I will focus on the dripping of mandatory surcharges.

Drip pricing is commonly used in industries like the ticketing industry. A consumer shopping for a ticket for a live event like a concert, a play, or a baseball game, typically first sees the price for different seats in the venue. After selecting a seat, as the consumer clicks through more web pages, they may come to learn about all the additional fees that I mentioned earlier. Eventually they see a total price that may be 30 or even 50 percent higher than the first price they saw—and when they see that total price, there may be under time pressure to complete the purchase as they may be shown a countdown clock that indicates they have to complete their purchase in just a few minutes, or they may be told there are only two seats left at that price. Other industries like the telecommunications industry, might first show the monthly plan rate, but then drip other mandatory fees such as universal connectivity charges, administrative service fees, access recovery fees, franchise fees, and more.[7] And when a consumer shops for a TV/internet bundle from a cable television provider, they may first see an attractive base price offer for the bundle, but later learn there are also broadcast TV fees, set top box fees, regional sports fees, and TV connection fees that raise the price considerably.[8]

What research has shown is that when surcharges are dripped, consumers end up being more likely to buy a product that appears cheaper up front based only on the base price, but that is more expensive in total given the dripped mandatory fees. This happens because drip pricing makes the search process more difficult for consumers. Consumers also tend to buy more expensive products than they otherwise would have, such as a seat closer to the stage for a live event, when surcharges are dripped.[9]

Notably, these effects happen even when consumers are provided with a total price at the final stage of the transaction, before they complete their purchase. While in theory, they can cancel the purchase when they see that the total that is more expensive than they first thought, they often do not, because they tend to overestimate the costs of restarting search and underestimate the benefits of doing so, for example because they assume that the other providers also assess these same fees.[10] Because of this, it is not enough to show the total price to avoid the detrimental effects of drip pricing. Research has also shown that these effects do not go away with purchase experience—for example, repeat ticket buyers are still affected by drip pricing, similar to first time buyers.[11]

It is not because consumers are stupid or even careless that they are affected by the separation and dripping of mandatory surcharges. In general, consumers try their best to make good decisions for themselves and their families. But pricing practices like drip and partitioned pricing take advantage of the fact that we consumers have a lot going on in our lives—we are busy and can be distracted, and because of that we may not notice or appropriately consider all information important to that purchase decision, especially when that information is hidden in the small print, is presented in obscure language, or dripped late in the shopping process, and when we are put under time pressure with countdown clocks or receive scarcity cues such as that there are only a few items left at that price.

When firms use drip and partitioned pricing, it leads consumers to make decisions that differ from what they intended and that are against their own interest. Academic research has shown that partitioned and drip pricing leads consumers to spend more money than they intended to or needed to, and to make choices that do not reflect their true desires or preferences. These practices also put well-intentioned competitors who use all-in pricing at a competitive disadvantage as it makes their prices look more expensive than their competitors who use these pricing techniques, even when their prices are actually cheaper in total.[12] What the research

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[6] *https://www.ftc.gov/news-events/events/2012/05/economics-drip-pricing*

[7] *https://www.nojitter.com/monitoring-management-and-security/managing-telecom-expenses-dont-forget-fees,* accessed on June 5, 2023.

[8] *https://www.techhive.com/article/579177/cable-bill-transparency-laws-havent-killed-sneaky-fees.html*

[9] Blake, Tom, Sarah Moshary, Kane Sweeney, and Steve Tadelis (2021) "Price Salience and Product Choice," *Marketing Science,* 40 (4), 619–636; Santana, Shelle, Steven Dallas, and Vicki G. Morwitz (2020), "Consumers' Reactions to Drip Pricing," *Marketing Science,* 39 (1), 188–210.

[10] Santana, Shelle, Steven Dallas, and Vicki G. Morwitz (2020), "Consumers' Reactions to Drip Pricing," *Marketing Science,* 39 (1), 188–210.

[11] Blake, Tom, Sarah Moshary, Kane Sweeney, and Steve Tadelis (2021) "Price Salience and Product Choice," *Marketing Science,* 40 (4), 619–636.

[12] Santana, Shelle, Steven Dallas, and Vicki G. Morwitz (2020), "Consumers' Reactions to Drip Pricing," *Marketing Science,* 39 (1), 188–210.

on these pricing practices also makes clear is that consumers and well-intentioned firms benefit when all-inclusive upfront pricing is used, rather than when fees are dripped later in the shopping process or disclosed in multiple parts.

As a scholar who has studied these pricing strategies for decades and who knows well how their use can be detrimental to consumers and to honest organizations, I strongly advocate that policy be promoted that addresses the partitioning and dripping of surcharges, like we commonly see in the ticketing, the telecommunication, the cable, the hotel, and the rental car industries, among others. These policies will benefit consumers if they require that upfront stated prices must be all inclusive—in other words that all mandatory fees must be included in the total price and that the total price should be seen upfront. This is what academic research suggests will be most beneficial to consumers.

Thank you for the opportunity to appear today at this hearing. I am happy to answer any questions that you may have.

Senator HICKENLOOPER. Thank you, Ms. Morwitz. I appreciate you taking the time to be with us. Next, let's turn to Todd Zywicki. He is a Professor of Law at George Mason University Law School.

STATEMENT OF PROFESSOR TODD ZYWICKI, GEORGE MASON UNIVERSITY FOUNDATION PROFESSOR OF LAW, ANTONIN SCALIA LAW SCHOOL, RESEARCH FELLOW, LAW & ECONOMICS CENTER

Mr. ZYWICKI. Mr. Chairman, Ranking Member Blackburn, it is a pleasure to be here with you today. I have run into junk fees myself. I know what the instinct is. I got tricked into one of these on vacation in Florida a little while back, and so I understand exactly what is going on here.

But I think the most important thing here is to keep in mind the situations under which this can be a problem and situations where it is not. And I want to just briefly make three points, which is the first thing is to talk about the situations in which this can occur and be a market failure.

Second, talk about the more important, more generalizable situation in which multi-part pricing is efficient and prevents cross consumer subsidies and inefficiencies in pricing. And third, I want to talk about situations in which regulation itself is the cause of a proliferation of fees, and can end up harming consumers, is some examples that are going on.

So, let's talk first about when there can be a market value, when this can happen. We just heard from Professor Morwitz of these problems of drip pricing and the like, but this primarily happens in particular context, which is where we have non-repeat consumers who don't learn over time, and situations where they don't really have an alternative to.

An obvious example is mandatory fees, like the mandatory resort fees we heard about. That is what happened to me, which is I booked online, I showed up at the hotel. At the last page, at some point among the list of cost was a $30 resort fee. I had to whip up my credit card when I got there and I thought I had prepaid, right.

If there is a mandatory fee, it should be at least strongly presumptively part of the overall price, not something that is broken out. Ticket fees, I agree completely. Mr. Chairman, those sorts of things where you have to click—where, even though you know there is going to be a fee on the back end, you have got to click through six, eight screens in order to find out what the heck the fee is going to be. I don't see if it is going to be mandatory.

I think presumptively it should be part of the overall price. But on the other hand, we see situations where it is also predatory. So, take this growing practice of credit card surcharging which has been allowed. Merchants can give cash discounts. Cash discounts, the option of getting cash discounts is pro-consumer.

The option of a merchant imposing a credit card surcharge at the end of a transaction is one of most anti-consumer policies I have ever seen. And the reason is they impose it in situations where you really don't have an alternative to using a credit card, whether it is online, whether it is in a vacation area. Basically, the same places like resort fees.

And so, we used to have credit card surcharging was outlawed, cash discounting has always been allowed. And I think that is really something that should be explored, and I think it is very disappointing that a lot of consumer activist groups actually are lobbying in favor and support this idea of credit card surcharging, which is a really pernicious practice.

Those are the situations where this can happen. In general, though, fees, multi-part pricing prevents cross consumer subsidies and pays—requires consumers to pay for things they get. Additional toppings on pizza, for example. I don't think anybody has objection to that. Paying for first class and the like. Paying late fees—at least traditionally, people understood that paying late fees for people who pay late on credit cards would be an appropriate way of pricing risk, although apparently that is in question now.

It is often the case that we can have efficient combinations of prices. So, in the airline market, for example, everybody knows bags fly free on Southwest. Everybody knows bags don't fly free on the legacy airlines. Everybody knows there is going to be a fee for bags on the other airlines and the like.

Maybe there is ways you can disclose it, but nobody is fooled at this point. And so, that is obviously pricing for certain services. So, I talk about it in my testimony. There are aspects of that that are driven by the way taxes are assessed and that sort of thing. But most of what we see in markets is an alignment of prices with what—with the cost the consumers impose.

Well, I think it is particularly problematic is the third category, which is where we get on bundling as a result of regulation. The Durbin amendment to Dodd-Frank is a good example of this. By imposing price controls on interchange fees, we took away free checking. We took away free, simple free checking bank accounts for millions of Americans, particularly low income Americans.

Now we get multi-part pricing with high monthly fees, an elimination of annual fees, and other prices that are adjusted as a result of that. The Credit Card Act did the same thing by controlling the ability to price risk, risk got repriced. The RESPA rule that I talk about in my testimony that forces on bundling and the like and ends up driving up cost. And so, a lot of the proposals on the table right now, such as the CFPB's late fees rule, would be harmful to consumers by interfering with this risk based pricing.

The proposal to extend the Durbin amendment to credit card would be disastrous for consumers and take away free credit cards from consumers. I see I am over my time. I look forward to taking any questions you have. Thank you.

[The prepared statement of Mr. Zywicki follows:]

PREPARED STATEMENT OF PROFESSOR TODD ZYWICKI, GEORGE MASON UNIVERSITY FOUNDATION PROFESSOR OF LAW, ANTONIN SCALIA LAW SCHOOL, RESEARCH FELLOW, LAW & ECONOMICS CENTER

Chairman Hickenlooper, Ranking Member Blackburn, and Members of the Committee:

I am Todd Zywicki and it is a pleasure to appear before you today to testify on the topic of "Protecting Consumers from Junk Fees." I am George Mason University Foundation Professor at Antonin Scalia Law School and Research Fellow of the Law & Economics Center. From 2020–2021 I served as the Chair of the CFPB's Taskforce on Consumer Financial Law and from 2003–2004 I served as the Director of the Office of Policy Planning at the Federal Trade Commission. I am also co-author of *Consumer Credit and the American Economy* (Oxford 2014) and have written and spoken extensively on issues of consumer protection generally and consumer financial protection specifically. I appear voluntarily today in my personal capacity and do not speak on behalf or represent any other party.

I share the frustration that many consumers hold today regarding the proliferation of seemingly ubiquitous add-on fees that we experience constantly, from surcharges for using our credit cards at a merchant, to hotel "resort fees," and others. And earlier this year I experienced exactly this frustration when I checked into a hotel on vacation and was assessed a mandatory $30 a day "resort fee" that was only disclosed in fine print on the last screen of a multi-page checkout process at an Internet hotel booking website. Buying a ticket to concert *has* in fact become a tedious process of searching for a concert or sports ticket and then having to spend 10 minutes clicking through multiple pages before you can discover the real price and decide whether to go to the show.

So I also say, "Enough."

But it is also important to stress that not all of these fees are "junk" fees. Many of these multi-part pricing schemes are economically efficient, in that they better match consumers with the product terms and attributes they value. Others are appropriate as means to protect some consumers from being forced to subsidize others' choices or the higher costs that some consumers impose relative to others. For example, requiring upper-income jet-setters to pay foreign currency transaction fees hardly seems unfair to those who don't travel abroad and presumably nobody has an issue with requiring payment of "add on" fees for additional toppings on a pizza. Requiring every vacation resort to be all-inclusive would force those who don't drink alcohol to subsidize those who do. While some use of multi-part pricing today is likely welfare-reducing, multi-part pricing has become more frequent is because paying for the services you actually use over the long run can be more fair and efficient for other consumers, even if foreign travelers, partiers, and those who pay late on their credit cards might disagree.

As Howard Beales and I wrote recently:

> The term "junk fees" defies easy definition. But it is imperative to distinguish 'junk fees' that are designed to extract rents and consumer surplus from consumers from efficient behavior-based fees. Welfare-reducing "junk" fees are most likely to emerge only under a relatively narrow set of market conditions—particularly those markets with few repeat customers where consumers are less likely to learn of the hidden fees, where consumers are effectively locked-in and unable to avoid paying the fee when it is imposed, or where such fees may be atypical and thus consumers are not alert to them.[1]

"Junk Fees" are Theoretically Possible But Likely Arise in Only Limited Contexts

One example of what might be classified as a "junk fee" is the growing practice of merchants imposing credit card "surcharge" fees on consumer retail transactions.[2] Rarely, if ever, are consumers informed up-front of the presence of a surcharge—I was recently on business travel at an out-of-town conference and after lunch was presented with the bill—which I happened to notice that a surcharge would be ap-

[1] Howard Beales and Todd Zywicki, *Junkyard Dogs: The Law and Economics of "Junk" Fees,* COMPETITION POLICY INTERNATIONAL (Apr. 28, 2023), available in *https://www.competitionpolicyinternational.com/junkyard-dogs-the-law-and-economics-of-junk-fees/*.

[2] *See* Todd J. Zywicki, Geoffrey A. Manne, and Kristian Stout, *Behavioral Economics Goes to Court: The Fundamental Flaws in the Behavioral Law & Economics Arguments Against No-Surcharge Laws,* 82 Missouri L. Rev. 769 (2017).

plied if I chose to pay with a credit card. Notably, businesses are guaranteed the right under Federal law to offer cash discounts to consumers, but this one chose to impose a surcharge that I did not discover until after the meal. Such situations—non-repeat customers visiting a tourist area, not carrying a large amount of cash, and eating a moderately expensive sit-down restaurant—present prime opportunities for the potential for exploitative "junk fees." [3] Hotel "resort fees," which are typically imposed by hotels in similar contexts—namely, tourist areas with minimal repeat business—provide a similar example.

Fees such as credit card surcharges or hotel "resort fees," in which the various elements of the price are not revealed until later in the transaction but which the consumer cannot reasonably avoid (such as a mandatory surcharge when paying with a credit card), are often referred to as "drip pricing." Concert and sports tickets provide a variation on the theme. While most consumers today are aware that transaction and ticketing fees will be assessed on a ticket purchase, typically it is difficult or impossible to discover the size of those fees until one has invested a substantial degree of time picking seats and clicking through multiple screens to finally discover the "real" price. Moreover, these fees typically are mandatory and effectively unavoidable. A strong case can be made that fees of this sort should be disclosed as part of the price of the ticket, much like airlines are required to disclose all applicable taxes and fees as part of their quoted up-front price.

Although mandatory "resort fees" illustrate the theoretical potential for market failure, this example remains the exception to the general rule that markets tend to deliver consumers the collection of services and prices they desire. Only approximately 6–7 percent of U.S. hotels charge such fees and those that do are mainly limited to resort hotels in certain markets, such as Orlando or Las Vegas, just as the theory predicts.[4] Moreover, those hotels that do charge "resort fees" often do claim to offer more amenities than those that do not and of those hotels that charge resort fees, those with more amenities appear to charge higher fees than those with more Spartan offerings.[5] Thus, even in a case such as resort fees, although a case might be made for requiring better pricing disclosure of these fees up-front to facilitate consumer shopping, it is questionable whether they should be entirely dismissed as nothing more than "junk fees."

In Most Instances Market Competition Delivers the Collection of Prices and Services that Consumers Desire

In contrast to these rare contexts in which market failure is possible, in most situations competitive markets tend to produce pricing terms that better align the incidence of payment for certain services with the cost of providing those services, such as charging more for additional pizza toppings or for first-class airline seats. Regulatory interference with prices in this context can lead to less efficient pricing, higher overall costs for consumers, and unfair and regressive subsidization and redistribution of costs among consumers.

For example, consider the CFPB's recent proposal to impose an effective $8 price control on credit card late fees.[6] Prior economic research has demonstrated that size of late fees is correlated with consumer risk and that when late fees are regulated, consumers overall are forced to pay higher interest rates to compensate for chargeoffs.[7] A recent study has also demonstrated that when the size of late fees is reduced, the frequency of late payment increases.[8] Moreover, these findings are generalizable—limits on the pricing of behavior-based and risk-based pricing fees have been demonstrated to lead to offsetting adjustments in other costs, such as

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[3] Ironically, the CFPB and self-identified consumer advocates not only have never criticized abusive credit card surcharging practices by merchants, they have actually *supported* the right of merchants to impose such fees.

[4] *See* John O'Neill and Donna Quadri-Felitti, *Resort Fees and Service Fees in the U.S. Hotel Industry: Context and Concepts Related to Partitioned Pricing,* 2 ICHRIE RESEARCH REPORTS (2017). A more recent survey estimates the figure at about 6 percent of hotels, predominantly in tourist destinations. *See* Sally French and Sam Kemmis, *How to Avoid Hotel Resort Fees (and Which Brands are the Worst),* NERDWALLET.COM (Mar. 1, 2023), available in *https://www.nerdwallet.com/article/travel/hotel-resort-fees#:~:text=According%20to%20the%20American%20Hotel,you%20can%20find%20some%20gems.*

[5] *See* French and Kemmis, *supra.*

[6] *See* Todd Zywicki, *A Close Look at the Consumer Financial Protection Bureau's Credit Card Late Fees Proposal,* CONSUMER FINANCE MONITOR PODCAST (Mar. 9, 2023), available in *https://www.ballardspahr.com/insights/blogs/2023/03/podcast-the-consumer-financial-protection-bureaus-credit-card-late-fees-proposal-guest-todd-zywicki.*

[7] Nadia Massoud, Anthony Saunders, and Barry Scholnick, *the Cost of Being Late? The Case of Credit Card Penalty Fees,* 7 J. OF FIN. STABILITY 49 (2011).

[8] Daniel Grodzicki, *et al., Consumer Demand for Credit Card Services,* 63(3) J. OF FIN. SERVS. RES. 273 (June 2023).

higher interest rates and higher prices for other fees (such as cash advance fees and penalty interest rates). In addition, limiting the ability to price risk efficiently leads to a reduction in credit accessibility and the size of credit lines, particularly for lower income and higher risk borrowers.[9] It is not clear why forcing those who pay their credit card bills on time, especially lower-income Americans, to subsidize those who pay late is considered to be a "pro-consumer" policy.

Inefficient regulation of bank overdraft protection services also raise the danger of curtailing access to this service and forcing those who do not overdraft to pay for those who do.[10] To date, the CFPB has been relatively restrained in its regulation of overdraft pricing and access. And several banks have adopted changes to their overdraft services. But economic analysis has shown that when access to overdraft protection is curtailed by regulation or the permissible among of overdraft fees is regulated, consumers are more likely to bounce checks (and incur NSF fees) and have attempted payments declined. A study by Dlugosz, Melzer, and Morgan found that when price controls on the permissible size of overdraft fees were relaxed following preemption, the minimum balance necessary to be eligible for interest checking declined by 28 percent-40 percent (approximately $376-$538), and checking account ownership by low-income households rose by 4 percentage points (which corresponds to a 10 percent increase in the probability that a low-income household would have a bank account).[11] Low-income households were also more likely to persist in account ownership and less likely to have their accounts closed. By contrast, they found that lifting these restrictions had no affect on bank account ownership by higher-income consumers, implying that the price controls adversely affected primarily lower-income households. It has also been suggested the restrictions on access to overdraft protection led to a reduction in access to free checking. Moreover, because overdraft protection and payday loans are viewed as relatively close substitute products by consumers, reducing access to overdraft protection can be expected to lead to an increase in the use of payday lending by consumers.

Experience with the Durbin Amendment to Dodd-Frank, which imposed price controls on debit card interchange fees has similarly had the effect of leading to higher required monthly minimum balances to be eligible for free checking, reduced access to free checking (especially among lower-income consumers who were unable to meet the steep increases in minimum balance requirements that followed in the wake of the Durbin Amendment's imposition), higher monthly maintenance and other fees for those no longer eligible for free checking, and elimination of rewards on debit cards.[12] According to one estimate, some 1 million low-income consumers might have lost access to bank accounts as a result of the cost increases that resulted from imposition of the Durbin Amendment as part of Dodd-Frank. Even more ironic in light of the topic of today's hearing, the imposition of the Durbin Amendment actually *produced* a change in the majority of bank accounts from a simple free-checking model to a new model with multiple price points and greater pricing complexity. It would be difficult to conjure a more telling example of the incoherence associated with some prior efforts to regulate the pricing of consumer services.

In Some Instances, Multi-Part Pricing is the Result of Government Regulations that Interfere with the Ability of Sellers to Offer Simpler Prices Even if Desired by Consumers

In still other situations, the presence of multi-part pricing might reflect government regulations that mandate or encourage the fragmentation of costs into multiple parts even where doing so reduces consumer welfare. For example, the endless list of fees you face when you buy a home (such as appraisal, credit risk, flood insurance, and other fees) results from interpretations of RESPA that effectively prohibits lenders or other third-parties from offering a bundled suite of those services for one guaranteed price.[13] The Federal Trade Commission's Motor Vehicle Dealers

[9] *See* CONSUMER FINANCIAL PROTECTION BUREAU, 1 TASKFORCE ON CONSUMER FINANCIAL PROTECTION LAW REPORT 596–604 (2021) (summarizing studies); *See* Thomas A. Durkin, Gregory Elliehausen, & Todd J. Zywicki, *An Assessment of Behavioral Law and Economics Contentions and What We Know Empirically About Credit Card Use by Consumers,* 22 Sup. Ct. Econ. Rev. 1 (2014) (same).

[10] *See* Testimony of Todd Zywicki, "The End of Overdraft Fees? Examining the Movement to Eliminate the Fees Costing Consumers Billions," Testimony Presented to The House of Representatives Committee on Financial Services Subcommittee on Consumer Protection and Financial Institutions (Mar. 31, 2022).

[11] Jennifer L. Dlugosz, Brian T. Melzer, and Donald P. Morgan, *Who Pays the Price? Overdraft Fee Ceilings and the Unbanked,* working paper (Apr. 15, 2021).

[12] *See* 1 CFPB TASKFORCE REPORT at 585–596 (summarizing studies).

[13] *See* Howard Beales and Todd Zywicki, *Junk Fees or Junk Policy?,* THEHILL.COM (Mar. 21, 2022), available in *https://thehill.com/blogs/congress-blog/politics/599085-junk-fees-or-junk-*

NPRM seems to follow the RESPA approach of imposing a convoluted multi-stage price revelation structure for consumer auto transactions and new limits on the sale of add-on products that is likely to simply make the process of buying a car more complicated and time-consuming with no demonstrable benefit to consumers.[14]

Another example of regulation-induced multi-part pricing is the use of a variety of fees by airlines, such as baggage fees, ticket change fees, paying for food and snacks, etc. One explanation for the growing propensity and size of these fees is that airline tickets are subject to a hefty 7.5 percent excise tax on each ticket (in addition to other ticketing and travel taxes and fees), whereas these partitioned fees are not.[15] Moreover, because bundling the cost of these services into the overall cost of the trip will increase ticket costs, this will also increase the amount of taxes consumers have to pay, which can be avoided by purchasing untaxed services instead.[16]

As noted above, the elimination of simple free checking for bank accounts and the spread of a variety of new fees, especially for lower-income consumers, in the past decade is primarily the result of the operation of the Durbin Amendment, Dodd-Frank generally, and restrictions imposed by the Federal Reserve on the operation of bank overdraft programs.

The Efficient Pricing Scheme for Consumers will Vary By Market and Will Change Over Time And Regulators Should be Cautious About Arresting this Evolution

But more to the point, is there anyone who ever travels on a plane today who is unaware that most airlines today charge for baggage or doesn't know that "Bags Fly Free" on Southwest Airlines? Or that unlike other airlines, there are no change or other "junk" fees on Southwest? According to one report, when Southwest chose not to follow the other airlines and impose new fees, the company opted to forego approximately $500 million per year in new revenues. But that was offset by the fact that Southwest increased its market share by two percentage points, increased passenger loads by 10 percent, and brought in an additional *$2 billion* per year in incremental revenues.[17] On the other hand, Southwest fares are also slightly higher *ceteris paribus* than those that charge for baggage and other fees.[18]

As the airline industry example illustrates, it is also quite common to see a blend of different strategies in certain markets. For example, some hotels offer all-inclusive experiences and others engage in partitioned pricing. A family of six going to Disney for a week is obviously going to prefer a different set of fees and services than a business person flying to New York for an overnight business meeting. High-end hotels often charge for services such as parking and breakfast that many budget hotels include in their price. It is hard to argue that the reason why the Ritz-Carlton or Four Seasons charges for services that Motel 6 does not is because those who stay at luxury hotels are less sophisticated or attentive than consumers who opt for budget hotels that offer free parking and breakfast.

Moreover, the optimal pricing scheme for any product or service tends to evolve over time. For example, cable television traditionally offered a large package of dozens of channels of programming in a limited number of "package" offerings and prices. Over time consumers balked at being asked to pay for a large number of channels they did not watch, notably expensive sports programming. So in response to consumer demand, program offerings have become unbundled, as a variety of specialty streaming channels have emerged that offers a smaller and more targeted set of viewing options at a lower price than the traditional multi-channel cable package. Others have continued to stick with the cable companies' bundled channel offerings.

Other markets have evolved in the opposite direction. For example, when cell phones were first introduced, pricing was very complex, with separate prices for incoming calls, outgoing calls, text messages, different data plans, and the like. "Competitive pressure to attract consumers who found such plans confusing, along with changes in technology, led to the much simpler pricing plans that prevail today."[19]

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policy/; see also CONSUMER FINANCIAL PROTECTION BUREAU, 2 TASKFORCE ON CONSUMER FINANCIAL PROTECTION LAW REPORT 16–17 (2021).

[14] Federal Trade Commission, Notice of Proposed Rulemaking, *Motor Vehicle Dealers Trade Regulation Rule,* 87 F.R. 42012, 16 CFR 463 (July 13, 2022).

[15] *See* Davide Scotti and Martin Dresner, *The Impact of Baggage Fees on Passenger Demand on U.S. Air Routes,* 41 TRANSPORT POL'Y 4 (2015).

[16] *Id.*

[17] David Whelan, *All Grown Up,* FORBES (Jun. 29, 2011), available at *http://www.forbes.com/forbes/2011/0718/features-southwest-airlines-gary-kelly-midway-grown-up.html; see also* Manne and Zywicki, *supra* note.

[18] *See* Scotti and Dresner, *supra* note.

[19] Beales and Zywicki, *Junkyard Dogs, supra.*

General-purpose prepaid cards have followed a similar evolutionary trajectory from more complex a la carte pricing and per transaction fees to greater pricing simplicity and convenience in response to consumer demand and without regulatory prompt.[20]

More fundamental, determining whether regulatory intervention might be justified requires making a threshold determination as to whether there is a market failure in any given context and whether there is some feasible government response that can improve the situation once all intended and unintended consequences are considered. Attaching the conclusory, pejorative term "junk fees" to these various different fees not only obscures the analytical differences between these different types of fees but if implemented recklessly will actually harm consumers and the economy. In particular, where these fees do serve the purpose of aligning consumer costs with pricing (such as use, higher costs, or risk-based pricing), interfering with their efficient operation will force those costs to be subsidized by other consumers. Imposing price controls on credit card late fees or other terms and conditions, for example, likely will lead to higher interest rates and reduced credit access for most consumers (as well as an increase in the number of late payments), but particularly lower-income and higher risk consumers who pay their bills on time. It is hard to see how this predictable result is beneficial to consumers overall.

Conclusion

As Beales and I concluded in our recent article:

> The notion of junk fees is a fine piece of rhetoric, but useless as an analytical tool. Both the structure of pricing, and the level of prices, should be determined by competition in the marketplace. As we observe, the result is detailed fee structures for some products and services, and bundled pricing for others. But marketplace competition over pricing structures is far more likely to satisfy consumer preferences than an inevitably overbroad set of regulatory requirements.[21]

As the examples given above indicate, consumer pricing is often a complex, dynamic process that undoubtedly can sometimes suggest a need for regulation. But even then, it is necessary to accurately identify the nature of the market failure and the efficacy of the proposed response.[22]

Thank you for your time and the opportunity to appear before you today and I am happy to take any questions you may have.

Senator HICKENLOOPER. Great. Thank you, Mr. Zywicki. Now we go to Sally Greenberg, is with us, as the CEO of National Consumers League.

STATEMENT OF SALLY GREENBERG, CHIEF EXECUTIVE OFFICER, NATIONAL CONSUMERS LEAGUE

Ms. GREENBERG. Good morning, Chairman Hickenlooper, and Ranking Member Blackburn, and members of the Subcommittee. My name is Sally Greenberg, and I am the CEO of the National Consumers League.

We were founded in 1899. We are America's pioneering consumer and worker advocacy organization, and my organization has worked for many years to try to raise awareness about the impact of hidden fees and junk fees and promote transparency in the marketplace. American companies are, in a word, addicted to junk fees.

Junk fees come in many forms, encompassing a wide range of unfair or deceptive charges. They are, by definition, often unneces-

[20] *See* Todd J. Zywicki, *The Economics and Regulation of Network Branded Prepaid Cards,* 65 FLA. L. REV. 1477 (2013).

[21] Beales and Zywicki, *Junkyard Dogs, supra.*

[22] For example, Beales and I note that the FTC's example of fees for automotive add-ons for arguably worthless products such as nitrogen-filled tires provides an example. But in that example the problem is in the claim that filling one's tires with nitrogen does something useful for consumers rather than the fact that the additional fee is charged separately rather than it being included in a higher up-front cost for all consumers. *See* Beales and Zywicki, *Junkyard Dogs, supra.*

sary, unavoidable, or surprising charges that inflate costs, while adding little or no value to a product or service.

They include fees that a reasonable consumer assumes are included in the overall advertised price. Mandatory hotel resort fees that Professor Zywicki just mentioned, are one such fee that comes to mind. Americans, be they Republican or Democrat, hate junk fees.

A 2019 survey by *Consumer Reports* found that at least 85 percent of Americans have encountered an unexpected or hidden fee for a service they used in the past 2 years. And a recent Morning Council poll found that 80 percent of Democrats, 71 percent of Independents, and 73 percent of Republicans support Congressional action to rein in abuse of junk fees in industries like live ticketing and cellphone, cable TV, and Internet services.

So, if consumers hate junk fees so much, why do companies, large and small, increasingly impose them? The answer is unsurprisingly, because they are a substantial profit center. The marketplace is inundated with junk fees, from hotels to car rentals, to utilities to apartments, to investments to auto and home lending. The list of industries that impose junk fees is virtually endless.

The *Wall Street Journal* recently found one hotel in Las Vegas that even charged a $3.50 cent fee for so-called craft ice. That said, a few industries stand out as serial abusers. Let's start with banks. Late payment fees charged by banks and credit cards cost American families an estimated $12 billion annually.

These fees, which can be as much as $41 for each late fee payment, far exceed the cost to the issuer for processing and do little to deter future delinquent payments. Airlines are also poster children for junk fees.

Globally, revenue from junk fees, ancillary fees in airline speak, brought in $102.8 billion in 2022. To put this in perspective, junk fees last year made up 15 percent of global airline revenues, compared to 6 percent only 10 years ago. And anyone who buys tickets to a concert or sporting event is well acquainted with the myriad fees that are added at the end of the ticket buying process.

We had the example that you showed Senator Hickenlooper. Primary and secondary market ticketing companies charge service fees, order processing fees, delivery fees, and other charges that increase ticket prices on average 27 percent for the primary market and 31 percent for the secondary market.

Junk fees cause significant economic harm, and in particular they cause harm to those of modest means. Renters, for example, tend to have lower incomes than those who own their homes. These consumers are also some of the most preyed upon by abusive junk fees. A 2022 survey conducted by consumer and housing advocates found that 89 percent of landlords impose rental application fees.

Nearly as many renters paid excessive late fees. And they also get hit with utility, administrative, convenience, insurance, and notice fees. Competition has not and will not make junk fees go away. This is because junk fees themselves are anti-competitive. They make comparing prices more difficult, distorting well-functioning marketplaces.

Honest entrepreneurs who invest in their businesses innovate and strive to create better value for their customers, lose business.

Action to address the consumer and competitive harm created by junk fees is urgently needed.

First, we would urge you to support S. 916 it is the Junk Fee Prevention Act, which would require some of the worst abusers of junk fees to display the full price of services upfront, and it would bar excessive fees and ensure transparency. Second, we ask that Congress restore the FTC's ability to obtain strong financial penalties from wrongdoers.

The Supreme Court in 2021 overturned the *AMG Capital Management v. FTC,* wiping out a critical enforcement tool for the Commission S. 4145, which is the Consumer Protection Remedies Act, would restore that ability to impose monetary relief to the Commission.

And finally, Congress must not allow businesses to trap consumers with unfair and deceptive fees to escape accountability through fine print in their contracts. To that end, we are proud to support S. 1376, the Forced Arbitration Injustice Repeal Act, which would prohibit pre-dispute arbitration agreements from being enforceable if they require arbitration in employment, consumer antitrust, or civil rights disputes.

Chairman Hickenlooper and Ranking Member Blackburn, Senator Cantwell, Senator Luján. Senator, Senator Welch, thank you so much for inviting the National Consumers League and the consumer perspective into this discussion. We appreciate your holding the hearing, and we look forward to answering your questions.

[The prepared statement of Ms. Greenberg follows:]

PREPARED STATEMENT OF SALLY GREENBERG, CHIEF EXECUTIVE OFFICER, NATIONAL CONSUMERS LEAGUE

Executive Summary

American companies are addicted to junk fees. These unfair and deceptive charges add little or no value for consumers who reasonably assume that such costs will already be included within the advertised price of a good or service. Junk fees cause significant economic harm, in particular, to historically marginalized and economically vulnerable populations. Additionally, the proliferation of junk fees harms honest businesses and precludes the ability of market competition to correct anticompetitive behavior.

At least 85 percent of Americans have encountered an unexpected or hidden fee in the past two years. Two-thirds of consumers say they were paying more in surprise charges than they did in the previous five years ago. Unsurprisingly, nearly all the respondents—96 percent—were angry and frustrated about these surprise charges.

To address the harms of junk fees on the American economy, the National Consumers League urges Congress to act. Specifically, Congress should pass the Junk Fee Prevention Act, restore the Federal Trade Commission's ability to seek monetary relief under its Section 13(b) authority, and protect consumers' ability to hold abusive companies accountable by passing the Forced Arbitration Injustice Repeal Act (FAIR Act).

Introduction

The National Consumers League appreciates the opportunity to provide the subcommittee with our views on how junk fees harm consumers and competition and how the Senate can take action to rein in this abusive and widespread practice.

Founded in 1899, the National Consumers League ("NCL") is America's pioneering consumer and worker advocacy organization. Our non-profit mission is to advocate on behalf of consumers and workers in the United States and abroad.[1] NCL has long partnered with consumers, industry, and policymakers to raise awareness about the impact of hidden fees and promote policies that allow consumers to

[1] For more information, visit www.nclnet.org.

know the total price of products and services at the beginning of a buying decision. For example, NCL recently worked with pro-consumer legislators in New York State to enact first-in-the-nation legislation to ban hidden fees and require all-in pricing of tickets for concerts, sports events, and theater performances.[2]

I. Junk Fees are a Growing Threat to Consumers' Pocketbooks

American companies are addicted to junk fees, and it is no wonder. Just like mosquitoes that plague our summer barbecues, junk fees are often small and seemingly harmless charges, but they can and do irritate and harm consumers. Mosquitoes are known for their ability to extract blood and cause discomfort, but they can also be lethal. Similarly, junk fees may appear as minor expenses, but they can accumulate and have a devastating and negative effect on consumers' financial well-being.

Junk fees are often difficult to detect and swat away due to their small size and stealthy nature. They can be hidden within complex pricing structures, buried in the fine print of contracts, and are often presented as mandatory charges. Consumers may not notice them until they receive their bills or experience unexpected deductions from their accounts.

The term "junk fee" as defined by the Federal Trade Commission ("FTC") encompasses a wide range of unfair or deceptive fees that add little or no value to the consumers. They include fees that a reasonable consumer would assume to be included in the overall advertised price for a good or service, such as mandatory hotel resort fees. The term also includes "hidden fees," which are fees that are only disclosed at a later stage in a consumer's purchasing process, if at all.[3] Service fees added on to concert tickets as the consumer gets close to buying the ticket are an example of hidden fees.

Americans hate junk fees. A 2019 report by Consumer Reports found that at least 85 percent of Americans have encountered an unexpected or hidden fee for a service they had used in the past two year. Two-thirds of respondents said they were paying more in surprise charges than they did in the previous five years ago. Unsurprisingly, nearly all the respondents—96 percent—were angry and frustrated about these surprise charges.[4]

So, if consumers hate junk fees so much, why do companies large and small increasingly use them? The answer, unsurprisingly, is because they are a substantial profit center for the companies that charge them.

Banks are serial abusers of junk fees. Late payment fees on credit cards cost American families an estimated $12 billion annually. These fees, which can be as much as $41 for each late payment, far exceed the cost to the card issuer for processing and may do little to deter future delinquent payments. The Consumer Financial Protection Bureau ("CFPB") estimates that the income generated by the largest credit card issuers from late fees is approximately five times greater than the collection costs that the companies incur for past due payment violations.[5]

Airlines are the poster children for junk fee abuse. Just eight U.S. air carriers (Alaska, Allegiant, American, Delta, Frontier, JetBlue, Spirit, and United) generated an estimated $4.2 billion in seat reservation fees on the domestic networks in 2022.[6] In 2022, baggage fees netted airlines a record $6.8 billion in revenue, double the $3.4 billion the airlines collected just 10 years ago.[7] And while many airlines did away with change fees during the pandemic, they continued to net a $1 billion annually for the industry last year.[8]

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[2] Eggertsen, Chris. "Hidden Concert Ticket Fees Officially Banned in New York," Billboard. (June 30, 2022) Online: *https://www.billboard.com/pro/concert-tickets-hidden-fees-banned-new-york/*

[3] Federal Trade Commission. "Unfair or Deceptive Fees Trade Regulation Rule Commission Matter No. R207011." (November 8, 2022) Online: *https://www.regulations.gov/document/FTC-2022-0069-0001*

[4] Wang, Penelope. "Protect Yourself From Hidden Fees." Consumer Reports. (May 29, 2019) Online: *https://www.consumerreports.org/money/fees-billing/protect-yourself-from-hidden-fees-a1096754265/*

[5] Consumer Financial Protection Bureau. "CFPB Proposes Rule to Rein in Excessive Credit Card Late Fees." Press Release. (February 1, 2023) Online: *https://www.consumerfinance.gov/about-us/newsroom/cfpb-proposes-rule-to-rein-in-excessive-credit-card-late-fees/*

[6] IdeaWorksCompany. "Assigned Seating Fees Are Big Business with Estimated Revenue of $4.2 Billion for 8 U.S. Airlines." Press Release. (May 23, 2023) Online: *https://ideaworkscompany.com/wp-content/uploads/2023/05/Press-Release-175-Assigned-Seating-Revenue.pdf*

[7] Bureau of Transportation Statistics, Schedule P–1.2. Online: *https://www.bts.gov/baggage-fees*

[8] Bureau of Transportation Statistics. "2022 Annual and 4th Quarter U.S. Airline Financial Data." (May 1, 2023) Online: *https://www.bts.gov/newsroom/2022-annual-and-4th-quarter-us-airline-financial-data*

Globally, revenue from junk fees ("ancillary fees" in airline-speak) brought in $102.8 billion in 2022. To put this in perspective, junk fees last year made up 15.0 percent of global airline revenues in 2022, compared to 6.0 percent ten years ago.[9] It is clear the airlines' addiction to junk fees is getting worse, not better, from consumers' point of view.

And these are just some of the more egregious cases. Junk fees have infiltrated nearly every facet of the economy. From hotels to car rentals, to utilities, to event tickets, to investments, to auto and home lending, the list of industries that have embraced junk fees is virtually endless. One hotel in Las Vegas is even charging a $3.50 "craft ice" fee![10] These fees are a flimsy excuse to extract more money out of consumers. This is not an issue the market can correct for itself. Unless Congress and Federal consumer protection agencies rein in these abusive fees, consumers will continue to be fleeced by predatory junk fees. The reason is simple: There is just too much money to be made off them.

II. Historically Marginalized and Vulnerable Populations are Particularly Susceptible to Harms from Junk Fees

Hidden fees and surcharges have contributed to economic harm born by the American middle class and the alarming rise in income inequality.[11] Credit card late fees disproportionately burden consumers in low-income and majority-Black neighborhoods. Cardholders in census tracts where a majority identified themselves as Black in 2010 paid more than $25 in total late fees for each account they held with major issuers in 2019.[12] Research by the Financial Health Network found that overdraft fees are incurred by low-to moderate-income households at nearly twice the rate of high-income households. The same survey also found that Black and Latinx household were charged overdraft fees at rates of 1.9 and 1.4 times, respectively, of white households.[13]

Auto-lending is another area where junk fees disproportionately harm communities of color. Car dealers push pricey add-on products such as service contracts, guaranteed asset protection (GAP) insurance, and window etching to increase their profit margins. Latino consumers are charged higher mark-ups for these add-ons than non-Latino consumers.[14]

Renter-occupied households historically have lower household incomes than owner-occupied households and may be more affected by changes in household income and rental prices.[15] Unfortunately, these consumers are also some of the most preyed upon by abusive junk fees. A 2022 survey conducted by the National Consumer Law Center and the National Housing Law Project found that (89 percent) of respondents reported that landlords impose rental application fees. Nearly as many (87 percent) stated that landlords charge excessive late fees. Well over half of respondents observed utility-related fees (73 percent), processing or administrative fees (68 percent), convenience fees (60 percent), insurance fees (59 percent), and notice fees (56 percent).[16]

Junk fees can also disproportionately harm consumers with disabilities. The Department of Justice brought an action against rideshare app Uber related to wait-

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[9] IdeaWorksCompany. "Airline Ancillary Revenue Nears Pre-Pandemic Level with a 56 percent Increase to $102.8 Billion for 2022." Press release. (November 15, 2022) Online: *https://ideaworkscompany.com/wp-content/uploads/2022/11/Press-Release-169-Global-Estimate-2022.pdf*

[10] Gilbertson, Dawn. "Prepare to Be Annoyed by These Wild Travel Fees," *Wall Street Journal.* (May 31, 2023) Online: *https://www.wsj.com/articles/travel-fees-airlines-hotels-rental-cars-e941faaa*

[11] Fergus, Devin. *Land of the Fee: Hidden Costs and the Decline of the American Middle Class.* Oxford University Press, 2018.

[12] Consumer Financial Protection Bureau. *Credit card late fees.* (March 2022) Pg. 10. Online: *https://files.consumerfinance.gov/f/documents/cfpb_credit-card-late-fees_report_2022-03.pdf*

[13] Financial Health Network. "Amid Resurgence of Interest in Overdraft, New Data Reveal How Inequitable It Can Be." (September 3, 2021) Online: *https://finhealthnetwork.org/amid-resurgence-of-interest-in-overdraft-new-data-reveal-how-inequitable-it-can-be/*

[14] Comments of the National Consumer Law Center (on behalf of its low-income clients) *et al* to the Consumer Financial Protection Bureau. (May 2, 2022) Online: *https://www.nclc.org/wp-content/uploads/2022/09/NCLC-comments-on-CFPB-Junk-Fees-RFI-87-FR-5801-pubd-2-2-22-filed-5-2-22.pdf*

[15] Mateyka, Peter and Yoo, Jayne. "Share of Income Needed to Pay Rent Increased the Most for Low-Income Households From 2019 to 2021." U.S. Census Bureau. (March 2, 2023). Online: *https://www.census.gov/library/stories/2023/03/low-income-renters-spent-larger-share-of-income-on-rent.html*

[16] Comments of the National Consumers Law Center (on behalf of its low-income clients) and National Housing Law Project. (February 8, 2023) Online: *https://www.nclc.org/wp-content/uploads/2023/02/Final-NCLC-et-al.-Group-Comments-re-Rental-Housing-Junk-Fees-with-Addenda.pdf*

time fees imposed on riders. Uber's policy of imposing a wait-time fee if the driver waited for longer than two minutes for the passenger to get to the vehicle had a disproportionate impact on consumers with disabilities. Uber agreed to credit the accounts of the eligible riders for double the amount of wait-time fees they were charged, which could total potentially hundreds of thousands or millions of dollars in compensation.[17]

Junk fees weigh heavily on the pocketbooks of the most vulnerable members of our society. For example, incarcerated individuals and their families are charged, on average, 20 percent of the principal in fees for money transfer services, with some states charging fees of as much as 37 percent. Compare this to services like Venmo, CashApp, PayPal, and Zelle, which often provide free automated clearing house ("ACH") transfers from bank accounts and transfers from a credit or debit card either for free or for a typical fee of 3 percent or less.[18]

Phone calls from correctional facilities are another area in which companies take advantage of inmates and their families, with exorbitant fees generating $1.4 billion a year.[19] Thankfully, Congress and President Biden acted earlier this year to rein in this exploitation.[20]

III. Junk Fees Harm Competition and Honest Businesses

The proliferation of predatory junk fees in the economy will not be solved by competition because junk fees themselves make competition less effective. By preventing consumers from making direct price comparison easily, junk fees distort well-functioning marketplaces. Honest entrepreneurs who invest in their businesses, innovate, and strive to create better value for their customers thus become another casualty of the race to embrace junk fees.

To put this in perspective, many hotels currently charge mandatory hotel resort fees that are not disclosed in the room rate. In these situations, a hotel room that advertises a $100 per night room rate, but tacks on a mandatory $25 "resort fee" at the end of the transaction will appear cheaper to the consumer than a similar room priced at $110 per night. A rational consumer would likely choose the "cheaper" $100 per night room, taking the sale from the hotel that is *actually* cheaper.

While the Federal Trade Commission has repeatedly warned hotels that such fees are likely unfair,[21] they continue to proliferate. For example, the Embassy Suites Georgetown, the Grand Hyatt Washington, and the JW Marriott Washington respectively charge mandatory "destination fees" of $28.74,[22] $23.19,[23] and $25 per night.[24] Many state attorneys general have sued and reached settlements with hotel chains over their junk fee usage.[25]

The harm to competition from junk fees happens countless times every day as consumers' patronage is unfairly directed away from businesses with the best price, quality, convenience, and honest practices to the businesses with pricing that is higher, less transparent, and more deceptive. The benefits to buyers, sellers, consumers, and workers only flow if all the participants are playing by a fair set of rules. The proliferation of junk fees, by contrast, rewards businesses that engage in "exploitative innovation;" finding clever ways to add unlisted fees, "optional" services, and other add-on costs to the final price of what they are selling. Such prac-

[17] Complaint, United States of America v. Uber Technologies Inc. (N.D. Cal.) Nov. 10, 2021, available at *https://www.justice.gov/crt/case-document/file/1468361/download*

[18] National Consumer Law Center *et al.,* "Group Comments to FTC Regarding Unfair or Deceptive Fees." (February 8, 2023) Online: *https://www.nclc.org/wp-content/uploads/2023/02/Unfair-or-Deceptive-Fees-ANPR-R207011_NCLC-et-al.pdf*

[19] Insider. "The high cost of phone calls in prisons generates $1.4 billion a year, disproportionately driving women and people of color into debt." (June 30, 2021) Online: *https://www.businessinsider.com/high-cost-prison-communications-driving-debt-racial-wealth-gap-2021-6*

[20] Kim, Juliana. "Biden signs a bill to fight expensive prison phone call costs." National Public Radio. (January 6, 2023) Online: *https://www.npr.org/2023/01/01/1146370950/prison-phone-call-cost-martha-wright-biden*

[21] Federal Trade Commission. Economic Issues: Economic Analysis of Hotel Resort Fees. (January 2017) Online: *https://www.ftc.gov/system/files/documents/reports/ economic-analysis-hotel-resort-fees/p115503_hotel_resort_fees_economic_issues_paper.pdf*

[22] Online: *https://www.resortfeechecker.com/18140-resort_fee_embassy_suites_by_hilton_washington_dc_georgetown.html*

[23] Online: *https://www.resortfeechecker.com/26459-resort_fee_grand_hyatt_washington.html*

[24] Online: *https://www.resortfeechecker.com/1471-resort_fee_jw_marriott_washington_dc.html*

[25] Office of the Attorney General for the District of Columbia. "AG Racine Sues Marriott for Charging Deceptive Resort Fees and Misleading Tens of Thousands of District Consumers." (July 9, 2019) Online: *https://oag.dc.gov/release/ag-racine-sues-marriott-charging-deceptive-resort;* Pennsylvania Attorney General Michelle A. Henry. "AG Shapiro's Action Requires Marriott to Disclose 'Resort Fees.'" (November 17, 2021) Online: *https://www.attorneygeneral.gov/taking-action/ag-shapiros-action-requires-marriott-to-disclose-resort-fees/*

tices put the onus on consumers to dispute the unnecessary charges with the seller, if they even know how to do so.

IV. Action to Rein in Junk Fees is Overdue

Junk fees are an unfair and deceptive practice that harms millions of consumers and businesses. They have been allowed to inundate the marketplace because of lax regulations that too often allow the short-term interests of Wall Street investors to trump the imperatives for a fair marketplace.

The Biden Administration and agencies like the CFPB, Department of Transportation ("DOT") and FTC have begun to take steps to address the scourge of junk fees.[26] Congress can and should do more to support these initiatives.

First, we urge you to support common-sense legislation to rein in the worst offenders when it comes to junk fees. NCL, along with our colleagues at Consumer Federation of America and Consumer Reports have endorsed the Junk Fee Prevention Act, introduced earlier this year by Senators Blumenthal and Whitehouse and Congressman Gallego in the House.[27]

The bill would require the live event ticketing industry, airlines, and cell phone providers to display the full price of services upfront, bar excessive fees and ensure transparency. It would empower the FTC, Federal Communication Commission, and DOT to issue new rules and enforce violations.

Congress should also follow the lead of states that have acted to address the proliferation of junk fees. New York recently enacted pro-consumer legislation to require all-in pricing of live event tickets.[28] In California, the Consumer Legal Remedies Act, reported out of committee in April, and would make it an unlawful business practice to advertise, display, or offer a price for a good or service that does not include all mandatory fees or charges other than taxes or fees imposed by a government.[29]

Second, Congress should restore the FTC's ability to obtain real penalties from wrongdoers. The FTC has historically prioritized consumer redress, mainly through its Section 13(b) authority. The Supreme Court's decision in *AMG Capital Management v. FTC* wiped out this critical enforcement tool, leaving dozens of pending cases with billions of dollars in potential consumer refunds at stake.[30] Ironically, the *AMG* case revolved around junk fees—in the form of inflated finance fees—charged to borrowers by a payday lender. Restoring the Commission's 13(b) authority would allow it to continue its successful record of securing billions of dollars in consumer relief. A substantial number of FTC cases have resulted in rewards for consumers who were the victims of deceptive and fraudulent junk fees.[31] The Consumer Protection Remedies Act, introduced last session by Senators Cantwell, Klobuchar, Luján, and Warnock, would fully restore the FTC's ability to obtain monetary and other relief for consumers under Section 13(b) of the FTC Act by going directly to Federal court.[32] The bill passed out of committee last session. We would urge your support for this critical legislation.

Finally, Congress must not allow businesses that trap consumers with unfair and deceptive junk fees to escape accountability in the courts through fine print contracts. To that end, NCL is proud to support Senator Blumenthal's Forced Arbitration Injustice Repeal Act (FAIR Act). The bill, which currently has 39 co-sponsors in the Senate and 91 for the House companion, would prohibit a pre-dispute arbitra-

[26] White House. "Guide for States: Cracking Down on Junk Fees to Lower Costs for Consumers." (March 2023) Online: *https://www.whitehouse.gov/wp-content/uploads/2023/03/WH-Junk-Fees-Guide-for-States.pdf*

[27] Office of Senator Sheldon Whitehouse." Blumenthal & Whitehouse Introduce Junk Fee Prevention Act to End Unfair Surprise Costs for Consumers." Press release. (March 22, 2023) Online: *https://www.whitehouse.senate.gov/news/release/blumenthal-and-whitehouse-introduce-junk-fee-prevention-act-to-end-unfair-surprise-costs-for-consumers*

[28] Eggertsen, Chris. "Hidden Concert Ticket Fees Officially Banned in New York," Billboard. (June 30, 2022) Online: *https://www.billboard.com/pro/concert-tickets-hidden-fees-banned-new-york/*

[29] Office of California Senator Chris Dodd. "Committee Approves Sen. Dodd's 'Junk Fees' Bill." Press release. (April 26, 2023) Online: *https://sd03.senate.ca.gov/news/20230426-committee-approves-sen-dodd%E2%80%99s-%E2%80%98junk-fees%E2%80%99-bill*

[30] See, "Post-AMG Scorecard (Updated): FTC Claims for Monetary Relief in 13(b) Actions Dwindle," JD Supra (Aug. 9, 2021) available at *https://www.jdsupra.com/legalnews/post-amg-scorecard-updated-ftc-claims-6956073/*

[31] FTC Refunds to Consumers, last updated June 2, 2023, *https://public.tableau.com/app/profile/federal.trade.commission/viz/Refunds_15797958402020/RefundsbyCase*

[32] U.S. Senate Committee on Commerce, Science, & Transportation. "Cantwell-Led Bill Would Restore FTC Authority to Return Billions to Consumers Ripped off by Scams, Fraud, Deception." Press release. (May 5, 2022) Online: *https://www.commerce.senate.gov/2022/5/cantwell-led-bill-would-restore-ftc-authority-to-return-billions-to-consumers-ripped-off-by-scams-fraud-deception*

tion agreement from being valid or enforceable if it requires arbitration of an employment, consumer, antitrust, or civil rights dispute.[33]

V. Conclusion

On behalf of the National Consumers League and consumers nationwide, I appreciate your continuing work to protect consumers from abusive junk fees and for holding this hearing. We welcome the opportunity to answer any questions.

Senator HICKENLOOPER. Thank you, Ms. Greenberg. I appreciate your being here as well. I am going to turn over for the first set of questions to Senator Cantwell, who is the Chair of the Commerce Committee. She has got a busier day than I do.

STATEMENT OF HON. MARIA CANTWELL, U.S. SENATOR FROM WASHINGTON

The CHAIR. Thank you. Thank you, Chair Hickenlooper, I want to thank you and Ranking Member Blackburn for convening this important hearing. Like many of you, I am frustrated by what is happening in the marketplace.

In my home state of Washington, exorbitant hidden fees recently made news when the price of a home ticket to watch the Seattle Kraken play the Dallas Stars in game three of the NHL playoffs costs more than it would to just fly to Dallas. At the time, KIRO 7 reported that the cheapest resale ticket available was $294, or at least that is the price the platform would have you think.

After a $61 ticket processing fee and a $3 order processing fee, the real price of the ticket before tax was $358, an extra 22 percent on top of the advertised price. We have all encountered these junk fees in one form or another, and these are mandatory fees that are not included in the advertising price, providing no recognizable value to the consumers.

And we were hearing obviously from our witnesses about this today. The bottom line is we can't make comparison shopping harder. We can't reduce competition, and we don't want to see things that distort the market.

That is why Senator Cruz, and I introduced the TICKET Act, which has been addressed here by some of our witnesses. The price they say, really should be the price you pay, and that can be added to, but it needs to be disclosed.

So, I wanted to, if I could—I think I know the answer listening to some of the testimony here. But Professor Zywicki, I didn't hear all of your testimony. Do you agree that the principle of all mandatory fees for goods and services should be disclosed in an upfront price?

Mr. ZYWICKI. As I said—first, I succeeded Senator Cruz as the Director of the Office of Policy Planning at the Federal Trade Commission, so it is likely we agree on a lot. And this is one of which I think we agree, which is, as I said, I can't see any reason why that wouldn't be disclosed up front. And so, in general, I think that is the right approach and would generally agree with that.

The CHAIR. So why—Ms. Greenberg, you were—I heard your answer, yes. You can reiterate it if you want. But why do you think

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[33] S.1376—Forced Arbitration Injustice Repeal Act. Online: *https://www.congress.gov/bill/118th-congress/senate-bill/1376?s=1&r=1&q=%7B%22search%22%3A%5B%22Forced+Arbitration+Injustice+Repeal+Act%22%5D%7D*

this is so important, not just with ticket sellers, but the true price overall and including mandatory fees?

Why do you think this is so important? What complexity does that bring to the market when you have this level of distortion?

Ms. GREENBERG. Well, first off, consumers can't comparison shop because they don't know what the end all—all-in price is going to be. So, it distorts the market from that perspective. But as Professor Morwitz described, it is a rabbit hole for consumers. They go, and they click, and they click, and they click on various price options, and they end up spending more money than they would if there were an all-in price.

So there is some psychology involved, I think, in the businesses that impose these prices. But consumers are angry about it, and they feel like they get trapped into paying for goods and services with these add on fees that they had not expected.

But they end up doing it because it is easier for them to just pay rather than balk it or look around for competition.

The CHAIR. Thank you. Mister—Professor Zywicki, Ms. Greenberg mentioned the Supreme Court case that struck down part of the FTC's authority. We had FTC members here, both Democrat and Republican nominees. They all said we needed to replace that. Do you think we need to replace that to give consumers a fair deal?

Mr. ZYWICKI. I would have to—I am not prepared to give an opinion on that today, thanks.

The CHAIR. OK. We can give you a question for the record and you can give us an answer in writing.

Mr. ZYWICKI. Sure. I will think more about that.

The CHAIR. Yes. Thank you so much. Thank you, Mr. Chairman.

Senator HICKENLOOPER. Thank you, Madam Chair. Now, in full faith to alternating between Republicans and Democrats, I will yield my primary position of asking questions to Senator Blackburn.

Senator BLACKBURN. Thank you, Mr. Chairman. Professor Zywicki, I want to come to you. And thank you, all three of you, each of you for your testimony. As I said in my opening, I am not hearing from Tennesseans about junk fees. They are just not talking about it. They are talking about real economic harm.

And I think for some, it has been kind of perplexing that we would focus on this issue. I even had one Tennesseans and say, well, what exactly is a junk fee, and what are the economic harms that come to people for fees for discretionary services?

So why don't you take that question and just say, what is the economic harm that comes? And why would this term of junk fee be applied to fees with—that are for discretionary services?

Mr. ZYWICKI. Thanks. I appreciate the question. Junk fees is obviously a term of rhetoric. There is no—it is a meaningless term. It is just a matter of rhetoric. And we have concepts like Professor Morwitz said of drip pricing, multi-part pricing, partition pricing. Those are actually real concepts, right. Junk fees is just a conclusory label.

Senator BLACKBURN. I think that is why it is perplexing to Tennesseans and to so many people why we would make this a primary point of contention rather than looking at DOT and some of the issues that exist with the airlines or looking at other forms of services. If people pay their credit card late, they expect to pay a late fee.

Mr. ZYWICKI. And that is the important point, is this vaguely defined concept of junk fees sweeps a lot of things into it, things that can be oppressive to consumers like mandatory resort fees. But what it seems to reach is a lot more other things now, the way this is done.

For example, as you mentioned, the credit card late fees. I can't see any reason why people who pay their credit cards on time should have to subsidize people who pay their credit cards late. The evidence is clear on this from the Grodzicki study that if you reduce late fees, more people pay late.

The Mesud study makes clear that if you reduce late fees, everybody ends up paying higher interest rates. And lower income and higher risk borrowers get less access to credit. So, most of what we see in the market is efficient. It prevents cross consumer subsidies, and a lot of these things that are labeled as junk fees are actually just efficient multi-part pricing.

Senator BLACKBURN. In Tennessee, we are a fast growing state. This weekend is CMA Fest in Nashville. We are going to have a lot of people that are visiting there. The Great Smoky Mountains are the most visited National Park in our national park system. So, when you look at people choosing these destinations, and then you look at a mandatory regulation on hotel fees, and some of the resort fees. So, talk a little bit about the risk of Government intervention of mandating certain fees for some of these services and the impact that it will have on tourism?

Mr. ZYWICKI. Yes, that is an important point, which is you are going to—I am always cautious about mandating things, and certainly cautious about mandating new disclosures because people already have too many disclosures, right.

What we do know about resort fees and the like, it is only about 6 to 7 percent of hotels that actually assess resort fees. They are overwhelmingly in places like Las Vegas or Orlando. And they fit this particular, the thing that I am talking about, which is that they are generally not repeat purchasers. And so, consumers don't learn from it and that sort of thing.

And so, they can raise the cost of price comparison. To the extent though that they are mandatory, that everybody has to pay them, then it seems to me that they are largely part of the price. I think one thing we could also think about is incentives to provide discounts rather than surcharging.

And I will go back to the example, which is merchants want to surcharge credit cards now because it is clear they want to extract wealth from consumers, and give them a low upfront price, and then slap them with a credit card on the back end. They charge credit card surcharges in the same context in which hotels charge resort fees.

A cash discount is a totally different story, which is if you charge a higher price and then give somebody a cash discount, if they don't use the service or if they don't use a credit card or something like that, that then allows them comparison pricing, but then also allows consumers to opt-out.

You have to make that obviously easy enough for them to do it. So mandating certain things that can be done in different ways as well.

Senator BLACKBURN. OK. So, in other words, you would say provide more choice and options, rather than mandating everything be rolled into one price?

Mr. ZYWICKI. Yes. And I think that these prices tend to evolve over time. So, for example, cellphones used to have a lot of disparate pricing. And now just because consumers demanded it, it has become all when pricing.

Prepaid cards had the same effect. And so, they tend to vary over time. But there is nothing inconsistent with having United and Southwest both offering different services and different packages. And the empirical evidence indicates Southwest charges a little bit more per ticket than United because they have decided to forego these fees.

I love Southwest. I always fly Southwest, right. But people pay a little bit more for a ticket on Southwest than they do in the United when you unbundle it. And so, allowing that option is generally, I think, is efficient.

Senator BLACKBURN. Thank you. Thank you, Mr. Chairman.

Senator HICKENLOOPER. Thank you. Just following that, Professor Zywicki, so that when you were talking about what appears almost like a surcharge, if someone has to pay more when they use their credit card, isn't what we are really talking about here transparency? In other words, as long as the consumer knows up ahead of time whether they are going to a hotel in Las Vegas or a hotel in Denver, they should have some sense if there are going to be added costs. Is that fair to say?

Mr. ZYWICKI. Yes. If there is going to be—yes, if there will be added costs.

Senator HICKENLOOPER. I mean, transparency, I think is the one connecting thing. I look at it—I think junk fees sometimes is the wrong term because it does sound pejorative. Maybe surprise fees are another way of looking at it, but either way, I think most people find it very objectionable.

Mr. ZYWICKI. That is right. And, you know, the logic here is we want to try to bundle up—we want to have all in pricing, right, rather than here is the price, and now here is the additional price if you use a credit card, right.

And so, to be coherent about this, I think we want to think about sort of when we want to have all-in pricing and when unbundling is appropriate. Transparency is just a means to an end, I think, of consumers finding the right mix of goods, services, and prices that they are looking for.

Senator HICKENLOOPER. Right. And let me ask each of you a question. Just kind of get it on the record that, you know, some services are offered to consumers as an option, additional costs, an optional additional cost.

But obviously certain fees are generally of an administrative sort, are mandatory for consumers in order to purchase a product or service. So, if you can just a simple yes or no, should all mandatory fees be included in the initial advertised price? Start——

Ms. GREENBERG. Yes, certainly.

Mr. ZYWICKI. I think generally, yes.

Senator HICKENLOOPER. Professor Morwitz.

Ms. MORWITZ. I agree. Yes.

Senator HICKENLOOPER. Yes. Yes, because I think that is, again, part of this—the central question here is what—how transparent is the transaction from the beginning? Professor Morwitz, small businesses are the backbone of our country and the backbone of our economy.

They drive that—they prioritize serving their customers and drive economic growth in rural and urban areas alike. If every company displayed all in, upfront pricing to consumers, small and large businesses would have a more level playing field on which to compete. I look at this again as the cost of hidden prices.

It is not only that they mislead consumers, but they also put small businesses at a disadvantage against larger competitors. So, Dr. Morwitz, would you describe how hidden junk fees hurt small businesses when you are in the process of competing for customers?

Ms. MORWITZ. Yes, I would be happy to. When a larger firm, or really any firm, uses hidden fees or surcharges, it doesn't only hurt consumers, but it hurts well-intentioned, honest competitors like many of our country's small businesses that you are talking about.

So when a larger firm makes salient a lower base price and only puts in small print or only reveals at the end of the shopping process that there are additional mandatory fees, their product offerings may appear, at least at first, to be cheaper than those of, say, a small business, an honest competitor who uses all-inclusive prices, whose prices at least at first then will appear more expensive, even if they are actually cheaper in total when the hidden fees of the large firm are added in.

Now, research shows this is going to lead consumers to be more likely to even first consider the products and services of the larger firms who use this hidden surcharge because their products seem cheaper. In other words, their supposedly low prices draw consumers in. But then having first considered their products, consumers will also be more likely to stick with that firm and ultimately purchase their products even when they are more expensive in total with the fees.

So, these hidden fees, they don't only hurt consumers by leading them to make purchases that are against their own self-interest, but it also hurts honest competitors who are using transparent pricing practices. They also make it difficult for a firm maybe who is currently using hidden fees, but realizes it is wrong and wants to stop, to move away from doing so.

Because if they move to all-inclusive pricing but their competitors don't, they will lose market share. So, all of this ultimately hurts honest, small businesses who compete for customers against a larger firm that has kind of perfected and capitalized on the use of hidden fees.

Senator HICKENLOOPER. Great. Thank you very much. And Ms. Greenberg, certain sectors, as we have heard, such as aviation, already display upfront pricing, excludes additional fees like baggage fees, but people are aware of that, and they are informed of that prior to purchase or in the process of purchase.

In other sectors, companies have started displaying all-in upfront pricing and consumers, but companies have adopted this unevenly, let's say. We are, I think, all agree that customers benefit from transparent upfront pricing.

How could Federal legislation encourage upfront pricing to consumers evenly and fairly across all sectors?

Ms. GREENBERG. Well, first of all, we are talking about posting mandatory fees all in pricing on the final cost of the service or product. Second, there are legislative fixes that—the junk fees bill that was introduced would be—would go a long way toward addressing the excessive imposition of junk fees on consumers.

Third, consumers would benefit from the Congress acting on the recent decision by the Supreme Court to overturn the FTC's ability to impose monetary penalties for unfair and deceptive practices.

So those are three steps that you could take. There are other pieces of legislation that we support that are before this committee. We think it would go a long way to righting the wrongs against consumers.

Senator HICKENLOOPER. Great. Thank you. I want to turn now to Senator Klobuchar, our ace eagle on transparency.

STATEMENT OF HON. AMY KLOBUCHAR, U.S. SENATOR FROM MINNESOTA

Senator KLOBUCHAR. [Technical problems]—and especially that description, Senator Hickenlooper. As you are all aware, we held a major hearing in the Judiciary committee, and I am also pleased that the Commerce Committee is obviously, has jurisdiction as well and involved in this. We have seen, as has been pointed out, increased costs on everything from cell phone bills to airplane and concert tickets.

And one area of this high excess of fees is ticketing. We had the hearing earlier this year with the President of Live Nation, Ticketmaster, and other witnesses. And as you are aware, the facts are quite startling. It is being reviewed by the Justice Department, including 90 percent monopoly on ticketing for major NFL, NHL events.

Eighty percent for major arena events, and 70 percent monopoly when it comes to all ticketing. In addition to that, Ticketmaster now owns a number of venues and also locks in the number of other venues that they don't own with their services for in excess of 7 years, which is the subject of a bill that Senator Blumenthal and I have introduced because of this locking in, that makes for even less competition.

And then finally, Live Nation promotes the act. So, it is like a three-cornered monopoly. So, the Justice Department is investigating, and then we go from there when it comes to other consumer bills that are being considered. In 2018, the GAO found that on average, concert ticket fees cost 27 percent of the tickets face value. But there have also been reports recently of fees totaling 75 percent of the face value of tickets.

Ms. Morwitz, in your testimony, you discuss how drip pricing is commonly used in the ticketing industry for live events and concerts. Could you talk about that and how that misrepresents the true cost of buying a ticket?

Ms. MORWITZ. Yes. Thank you for the question. So, when fees are presented at the end of the shopping process, it makes the initial price look cheaper. So, the customer starts, they see a seat for—they see the price for a particular seat they would like for the event, the play, the baseball game, and it appears cheaper than it really is.

As they click through the pages, they learn that there is a series of fees that they have to pay, and at the end the price is much more expensive, as you mentioned. 20 percent, 50 percent, maybe 75 percent.

They see the total, and in theory, they could back out at that point. But it becomes very difficult for consumers to do so. The tendency is to stick with the price, even though it is more expensive than they thought it was initially. And there is a variety of reasons why that happens. Often they overestimate how much time it would take to start over.

They underestimate how much money they could save by starting over. They have to notice the fees in the first place. They might not even notice the fees. And also, we don't like to feel bad as consumers, so we might sort of have a self-motivated component where we want to feel like we made a good decision.

So, for all these reasons, consumers tend not to start over again. Also, the ticketing—the firms, they also put pressure on the consumer to complete the deal. So, there might be a countdown clock, and if we are under time pressure, we feel like we need to make the decision quickly.

Senator KLOBUCHAR. Right. Good point.

Ms. MORWITZ. There might be messages of scarcity, that there are two tickets left at that price and we feel like if I restart, I might lose these two seats.

Senator KLOBUCHAR. OK. Thank you. Very good. Ms. Greenberg, could you talk about how increased transparency of showing fans the full ticket price upfront could help create a more functional market? I know Mr. Zywicki agrees that it is important to show the fees upfront. Could you talk about that?

Ms. GREENBERG. Yes, it is important. And we saw this coming when the merger of Live Nation and Ticketmaster happened on the Justice Department——

Senator KLOBUCHAR. Yes, you did.

Ms. GREENBERG. We were, this is going to create an impossible monopolistic situation and it is exactly what has happened for consumers. All-in pricing is so important because when you look for a ticket online, you can't tell until you get to the very end of the transaction how much that ticket is going to cost you.

And different, you know, different secondary markets, primary markets have different charges. You can't compare and contrast. And as Professor Morwitz said, you know, most consumers are going to go, well, I spent 20 minutes getting this ticket, I am just going to finish up, what is $5, what is $10.

So, all-in pricing is critical so that you can compare and contrast. I also want to mention that this is not just about middle class—junk fees, not just about middle class consumers, poor people, people of very modest means, are facing punishing fees in so many areas. Renters, for example, have six, seven different fees that are imposed on the—they have to pay a fee to even get a rental application in.

They can least afford it. And I know Senator Blackburn was saying, consumers are concerned about this, they are concerned about basic goods and services. Well, that affects people of low income harder than any of the rest of us.

So, I think it is important that we recognize that we are talking about middle class consumers, consumers of more modest means. These fees are hitting all of us across the board, and they are out of control right now.

Senator KLOBUCHAR. Very good. Thank you. And I will ask on the record some of the App Store issues of you, Ms. Morwitz, because I am out of time. Another legislation, piece of legislation that Senator Blackburn and Blumenthal and I have.

And there is a lot of work to be done, and I am very glad this is a priority of this committee. And I thank Senator Hickenlooper for his leadership. Thank you.

Senator HICKENLOOPER. Thank you, Senator Klobuchar. Now turn to Senator Markey.

STATEMENT OF HON. EDWARD MARKEY, U.S. SENATOR FROM MASSACHUSETTS

Senator MARKEY. Thank you, Mr. Chairman. Our Denver Nugget——

[Laughter.]

Senator HICKENLOOPER. The glorious night it was last night.

Senator MARKEY. The game last night. Airline fees are out of control and some of them are simply unconscionable. It is absolutely infuriating that many airlines force consumers to pay extra just to sit with their young children.

We have got to put a stop to this outrageous practice. I was thrilled to hear President Biden call on Congress to ban family seating fees during his State of the Union address because I have been calling for that policy for years.

Ms. Greenberg, do you agree that airlines should never force parents to pay to sit with their children?

Ms. GREENBERG. Absolutely. We are fully supportive of the Fair Fees Act, which covers that practice. And no, of course, families shouldn't be required to be separated from their loved ones or pay extra fees.

But your bill does address many of the problems with transparency in the airline industry, and we are very supportive of that legislation.

Senator MARKEY. Thank you so much. And I obviously agree with that. That is why yesterday Senator Vance, and I sent a letter to Chair Cantwell and Ranking Member Cruz with proposed language to be included in the FAA reauthorization bill to ban family seating fees.

A parent's right to sit next to their child is not a partisan issue. And would you support that language, Ms. Greenberg, being included in the FAA legislation?

Ms. GREENBERG. Yes, certainly we would.

Senator MARKEY. Thank you. Family seating fees may be the poster child for outrageous junk fees, but the airlines, nickel and dime consumers in so many other ways, baggage fees, boarding fees, seat selection fees, the list goes on and on. If it used to be a basic service on an airline, it probably costs money today. Ms. Greenberg, should Congress protect consumers from these never ending fees?

Ms. GREENBERG. We think Congress has an important role to play. Competition has not worked to diminish the fees. We did see the airlines back away from cancellation fees and we are grateful for that.

That was during COVID. And of course, the COVID crisis really pushed that decision forward. And so, though we appreciate that there are so many fees related to flying, I want to make the point that, you know, yes, you know that you are—you have a baggage fee, but there are many people who are older, who have disabilities, who may have children with them.

They may not be carrying their bags onto the airplane. So, they are forced to eat the cost of a $35 fee, something that used to be free before, and it has jammed our airplanes full of luggage up top, creating hazards for flight attendants as well.

Senator MARKEY. And that is why we need to pass the Fair Fees Act, which would prohibit airlines from charging fees that are not reasonable and proportional to the cost of the services provided.

And I want to turn to one other topic related to aviation. Consumer protection, airport service workers, The Good Jobs for Good Airports Act, which I have introduced with Senator Blumenthal and Senator Schumer, would increase the wages and benefits for airport service workers like baggage handlers and wheelchair attendants.

And we are fighting for this bill because it won't only repay the sacrifices that these workers made during the pandemic. It will also help consumers. Higher wages and benefits for airport service workers means lower turnover and better airport security and higher service quality.

Ms. Greenberg, do you agree that the Good Jobs for Good Airports Act is ultimately a good pro-consumer bill?

Ms. GREENBERG. Yes, we certainly support the Good Jobs for Good Airports Act. And I think many consumers had no idea that a lot of these workers were not making minimum wage were relying on tips. And many people who use the wheelchairs and baggage—use the baggage, the curbside baggage services did not know the people were living on tip wages, and many people don't tip as we—as some of us who have been tipped workers know, tipping is very up and down and certainly not a reliable source of income. So, yes, we very much appreciate that legislation and it is long overdue.

Senator MARKEY. And again, that would come as all new information to most people who fly, that these people are actually supposed to be tipped for all the services that they are providing.

No one actually knows that, which is why we have to ensure legally that they get paid what they deserve. And that is why we are going to continue to fight to include that legislation in the FAA reauthorization. Thank you, Ms. Greenberg. Thank you, Mr. Chairman.

Senator HICKENLOOPER. Thank you, Senator. I will turn it over to Senator Welch.

STATEMENT OF HON. PETER WELCH, U.S. SENATOR FROM VERMONT

Senator WELCH. Thank you very much, Mr. Chairman. You know, the computer has been mastered by, in this case, the airlines, but a lot of people selling things, to be able with their algorithms to put a lot of pressure on people who are making a decision, let's say, to fly. That is a big deal for a family. Let's say there is a funeral, or there is a wedding.

They want to fly, or they are making a decision about whether to go to a place or even take a vacation, and they start to look at what the price is. And the question really is if you get the upfront price, that that family can make a decision based on their budget before they get totally emotionally committed to doing it. And a lot of people will say, oh, I can afford this, and then we will get into it.

And then as the fees pile up, they suddenly find themselves in a different place with a lot of anxiety. You know, there is a question here not just about transparency, but the time of transparency. When does the person be told very concretely and specifically what the total cost will be?

Which is really kind of a policy question, but on my sense from talking to consumers is they would like to know that sooner rather than later. I will ask both of you to comment on that. That—and I am thinking about that time-frame where people have that clock ticking and they have got to push "buy" or the whole thing goes away.

Is there anything that we should be doing about that element of this? Ms. Greenberg, I will ask you, and then Professor Zywicki.

Ms. GREENBERG. Yes, I think right upfront information, including you are going to have to pay for baggage, you are going to have to pay to sit together if you are family. If you want to sit closer to the front, maybe have disability issues, or you have a stroller, or you have—a baby is with you, you should know——

Senator WELCH. There are two different areas too. Then there is a question of knowing upfront and then there is a question of what is reasonable and what is not. It is not reasonable, in my view, to make people pay to have a family sit together.

I totally agree with Senator Markey. The baggage fee is different. I hate it. But if that is upfront, you can calculate that into the cost. Professor Zywicki, any suggestions on how Congress should approach this?

Mr. ZYWICKI. Yes, I will say two things, which is first I will amplify that point—whenever possible I fly Southwest simply because it is easier, right. I know I can worry about my bags later. If my plans change, I can change my plan.

So, there is some competition there. And as I said, I think people understand what is going on with bags. And there could be people who are affected more or less. One thing I will say, I have not looked at the cost of this so I am speaking a little bit out of order, but the idea of having 24 hours to cancel an airline ticket after you book it, I think that might be something that is worth exploring in this context.

Which is, that if you have a transaction that has a back-end fee, you have 24 hours to cancel without penalty, for example. Because sometimes it won't be until I get the confirmation e-mail, for example, that I will see something I missed when I was booking it, or if I feel like I was rushed into something, if there is some way in which people could have, say 24 hours, like you can with an airplane ticket, to be able to cancel the transaction, I don't know what the cost of that would be.

I don't know how feasible that is. But that strikes me as one way of maybe getting it done.

Senator WELCH. Thank you. Do we know when somebody is booking an airline and you are trying to get to the pricing, it says two left at this price. Is that true?

Mr. ZYWICKI. Well, what I can say is I have booked and then decided—there are situations where I have booked and then had to rebook like, oh, because like, I had a credit in my account, right. And what I found is after I booked the last ticket at that price, when I went back in, to try to book it again, was a higher price. So, I don't know whether it is true or not, but at least sometimes it seems to be true.

Senator WELCH. So, should there be an obligation on the part of the seller, an airline, to make certain that that is in fact true?

Ms. GREENBERG. I would certainly agree. From a consumer perspective, you want to know if that is true, if that statement is based on fact. You see a lot of those in the ancillary services, you know, the Expedias, the Travelocitys will do it. You have got only two tickets remaining at this price. I certainly wouldn't trust it as based in fact, and I think it is false advertising, and should——

Mr. ZYWICKI. That seems like an unfair trade practice to me instinctively.

Senator WELCH. Thank you. I yield back.

Senator HICKENLOOPER. Thank you, Senator. Senator Sullivan.

STATEMENT OF HON. DAN SULLIVAN, U.S. SENATOR FROM ALASKA

Senator SULLIVAN. Thank you, Mr. Chairman. I appreciate the witnesses being here. It is an important topic. Thank you for sharing this. I guess, for both of the witnesses at the table here. One of the issues that I think—that we are all struggling, not struggling with, but trying to nail down better is how you define junk fees.

And it is not easily definable. So, Professor Zywicki, is that right? Can you take a crack at that? What I want to make sure is that the ones that are junk fees, we go after. The ones that are fees, I think the key on other kind of fees is transparency.

But maybe the two of you can help us with regarding junk fees and then the definition. And then I have kind of a follow up on what you think economically their impact is, which I think is also an important issue. You want to take a crack at that, professor?

Mr. ZYWICKI. Sure. Junk fees is a meaningless term, but it is worse than meaningless, it is actually pernicious, which is that by sort of using this blanket conclusory label, it obscures the complexity of this, the difference between drip pricing, risk-based pricing, multi-part pricing, partition pricing, and that sort of thing.

And it kind of sweeps into one bucket. Things that are legitimate, things that are aren't, things that might be partially legitimate. And now it has even got more confusing because you look at the FTC rule, for example, on auto dealers, they take things like nitrogen filled tires, did they charge more money for a claim that is a junk fee?

The problem with that is not that it is a separate price for nitrogen filled tires. The problem, if there is a problem, is that nitrogen filled tires are garbage, right. There is nothing there. It doesn't matter whether it is disclosed separately or bundled in the price, if it is a worthless product.

And so, when we talk about junk fees, we can end up confusing ourselves, lumping in things because we want to just apply this label to it. Whereas I think it would be much better to understand risk-based pricing.

What are things where either you are pricing for something that you get no value from? What are the things where they are pricing things simply to extract well from consumers and the like?

Senator SULLIVAN. So, would you like to try to—how would you define something that falls into each of those different categories with different labels?

Mr. ZYWICKI. Me?

Senator SULLIVAN. Yes.

Mr. ZYWICKI. Well, what I am trying to say is that when we look at the context in which these arise—so, for example, mandatory fees. And mandatory fees should be presumptively, strongly, presumptively disclosed upfront. There may be scenarios of that I can't think of, or that may be the case.

That is the only reason I am hedging. Things that are near mandatory may be like that, right. Like a credit card surcharging might be an example. So, I would start with that. I would also think about what exactly is the market failure, which is, you know, if, is it the problem that is disclosed too late in the process?

Is the problem that this fee is for a worthless service, right. Or is it something that seems to be doing some work in terms of allocating the cost of using a product or service to the person that is actually using it, like a late fee does, for example, on credit cards.

Senator SULLIVAN. Ms. Greenberg, do you have a view on that, the question that I asked?

Ms. GREENBERG. Yes. Sure, Senator Sullivan. I think and we think that a good working definition of junk fees is unnecessary, unavoidable, or surprising charges.

Senator SULLIVAN. So, to Mister—Professor Zywicki's point, mandatory, do you think that is a good one? I mean——

Ms. GREENBERG. The example that—I used in my testimony as a mandatory resort fee that you are presented with when you check out of a hotel. It is often a daily fee. It could be $35. I have seen them as high as $75 for services that you didn't use or Internet service. In some cases, the swimming pool, the fitness center. They are required.

And I am one of those consumers who always asks the hotel to take it off my bill, but they consider them mandatory, and you have no choice. So, no, they are not disclosed upfront, and so you can't comparison shop when you are looking for a hotel room.

Senator SULLIVAN. OK, good. Let me ask, you know, the White House has been talking about this. We want to make sure we get it right as well. They often tout the junk fee issue as—in the context of fighting inflation.

Look, my view is they have a whole host of other areas where they can really fight inflation, right. Like, maybe not driving up energy costs on American families. And the Federal Reserve blew the inflation issue a long time ago.

But they do add certain costs, like the example you just gave. Is this really like more of a transparency issue, or do you think that kind of trying to bring this into fighting inflation is a stretch that seems, you know, like a little bit of junk fee, false advertising from the White House, maybe. What—I would like both of your views on that as well. Professor.

Mr. ZYWICKI. Well, this obviously has nothing to do with inflation. It has nothing to do with inflation. The cost is the cost, right. Colloquially, I even said it earlier, we say bags fly free on Southwest.

Bags don't fly free on Southwest, right. There is a cost for bags. The bags—the bag fee is either separated out and paid by people who use the bags, or the cost is bundled into the ticket. There is empirical evidence that shows, as I said earlier, that the price of a ticket on Southwest is higher because you are paying for your free bags and your free cancellations and everything else.

So, the cost is the cost, whatever the cost is. It has nothing to do with inflation. And so, what it has to do with is, what is the right level of transparency, and really what is the scheme of pricing that will help consumers in the end find the products they want at the lowest prices?

And sometimes that means unbundling the prices, sometimes that means bundling the prices, sometimes that means you get bundled prices, like in Southwest together with unbundled prices with United, and you get different consumers using different things and that sort of thing.

And so that is really what this is about. The bottom line is, what we should care about is, are consumers getting the lowest price for what they are actually using. And that is—and everything, in my view, should be allocated toward that end. Transparency is not an end in itself. This has nothing to do with inflation.

Senator SULLIVAN. Professor Greenberg, does this have anything to do with inflation?

Ms. GREENBERG. I think certainly it does, because when consumers are asked to pay additional prices for mandatory fees, let's say in a hotel, but this also hits lower income consumers. The junk fees on consumers—we will go with that term because I think it is very descriptive. Very punishing.

And what it means is if you have to—if you are renting a property or you are applying to rent properties, you are paying a cost on each one of those rental applications. That is money that doesn't go for groceries, that doesn't go for childcare, it doesn't go for utility bills or gas.

So, this does have an inflationary effect in our view. And you asked about the effect on the economy. Well, $12 billion in credit card junk fees is what the credit card companies and banks are making off late payments by families. And the airline industry collects—collected $102.8 billion in ancillary fees—they call them ancillary fees—in 2022. So, it has a big effect on the economy.

Senator SULLIVAN. Thank you. Thank you, Mr. Chairman. Appreciate it.

Senator HICKENLOOPER. Yes. Thank you, Senator. I have got a couple more questions. So, I will maybe call a second round. Somebody walks in, we will ask more. Ms. Greenberg, I don't know if you have polling or—I mean, how widespread do you feel is this aggravation people feel from surprise fees, junk fees, or however you want to call them?

Ms. GREENBERG. Well, you know, I quoted from a *Consumer Reports* article. They said 89 percent of consumers who were polled said that they have encountered junk fees. They are pervasive.

They are across industries. We talk, you know, about banks and airlines, and to some extent rental car companies, although I will say with rental car companies, they have begun an all-in pricing model. Which, we used to sit with them and complain. You know, I don't know what I am getting charged for.

What are all these convenience fees and delivery fees. And now they have gone in, and you can actually price compare when you rent a car, and I very much appreciate that. But the scope of these fees are massive and growing, and it is a huge profit center for industries.

And they have not lost—that has not been lost on so many of the industries. And so, we are seeing them proliferate.

Senator HICKENLOOPER. Yes, certainly the oftentimes many industries, in anticipation of legislation, move to be in compliance before the legislation is passed. It doesn't mean you don't need still need that legislation because then they will backslide.

You know, I was in the restaurant business for almost 20 years and there used to be a restaurant called Soapy Smith's, which was named after an early settler of Denver, Colorado, who would sell soap.

And these little packages of soap, which were half, again, more expensive than other soap. But in a crowd as he was selling the soap, someone would open, one of his friends would open a container of soap and there would be a dollar bill in there. And you go, oh my gosh, look at me, I have—this soap is amazing. And all of a sudden there would be a run. That is the opposite of a surprise fee.

So, surprise, delight. And I think in many ways, you know, as a small businessperson, we were always trying to figure out how to create, and not with surprise fees, but create more delight or some—more positive experience, some level of joy so that we could charge more money and the people would feel good in the transaction.

And I think that is part of what you guys have all been talking about, is the businesses providing these services and products will do better in the long run with more transparency. And sometimes one does have to legislate.

You know, things like seatbelts don't naturally come—those kinds of change aren't always embraced at the very beginning, but in the end they increase more sales. Dr. Morwitz, I wanted to ask you a little bit on—you talked somewhat about the way consumers perceive that sudden increase in price, and that they think if they go back through the whole process again, they don't recognize—I think you said they don't recognize how much savings they would actually have and that they wouldn't—they feel that they would end up—somehow come out on the short end of the stick.

Can you go into that a little more and talk about some of the other issues around consumers in there. Just as Ms. Greenberg said earlier, in the business of their lives, how they get short-changed in having to deal with these late stage price increases.

Ms. GREENBERG. Sure. Absolutely. And I also just wanted to comment on a previous question. I do think inflation plays a role here because I think the firms are under pressure to raise their prices.

Consumers don't want to see the prices rise, so they use hidden fees as an implicit price increase to deal with inflation. But to your question, my research has identified several reasons why consumers in this kind of situation complete the purchase instead of restarting. First, sometimes the fees are obscured in such a way that consumers don't even notice them or realize they have been assessed.

So, this might happen if they are in the small print or not presented at all and just show up maybe later in a bill or it is embedded in a total in your credit card statement and maybe you don't even notice.

Second, even when consumers do notice these fees and they see that the total is more than they initially thought, once hidden fees are revealed and thinking about whether to restart search, the consumers think about the costs and benefits of restarting. And my research has shown that consumers think the cost, the time of starting search all over again is longer than it really is.

They also think that the benefits, how much money they could save, is less than it really is. And one of the reasons they think there is few benefits to restarting search is because they often believe that if the current firm uses hidden fees, well, then most likely all the other competitors do too.

But that is not always the case. And even when the competitors to assess similar hidden fees, the fees may be different, they may go by different names, they may be different amounts, and all this makes search difficult and confusing for consumers. There are other reasons, too.

Sometimes the fees are presented in a way that makes them look like a tax. Sometimes they are even grouped together with taxes, giving the impression there is no way to avoid them. For many websites, consumers actually can click on an arrow to open up an option labeled something like taxes and fees to see the details. And then even when they open them, the label may sound like a tax.

For example, your cell phone bill may include a Federal or State universal service charge, which sounds like a tax, but really represents the cost the cell phone company must pay to support universal access. But then they pass it on to customers, in a way, making it sound like a tax.

Or a rental car company may group with taxes an airport concession recovery fee, which represents their cost to operate out of an airport, but they pass it on to customers, making it sound like a tax customers have to pay to rent a car from an airport. And then finally, as I mentioned before, consumers are sometimes put under pressure by the firm that uses hidden fees to complete the purchase with these countdown clocks and the scarcity cues that we talked about before.

So, consumers might then be reluctant to restart search, believing that those tickets may be gone if they decide to look a little more and then they might be gone at the end if they say they still want them. So those are some of the many reasons why consumers often stick with an offering, even after it can feel fees in a more expensive total are later revealed.

Senator HICKENLOOPER. You know, the thing I would add to that, that we have had from—heard from roundtables, especially with older consumers when they are working online, there is a level of frustration where they get to a certain point and they are faced with higher prices and they really are reticent to going back through the whole process because they find it so frustrating and many times consuming.

We heard that from a number of people. My last question, Professor Zywicki, and I welcome you to come be a visiting professor at the University of Colorado, right. So, make sure we get that out on the record. Yes, go buffs.

Mr. ZYWICKI. Professor Prime, you can call me.

[Laughter.]

Senator HICKENLOOPER. The new football coach is Coach Prime, Deion Sanders. Just want to make sure everyone is aware—the allusion. Professor Zywicki, what are the examples of sectors where the upfront pricing of products and services is most effective in terms of informing customer choice?

Mr. ZYWICKI. Where it is most effective?

Senator HICKENLOOPER. Yes. Where the upfront pricing of products is, yes, most effective, most successful.

Mr. ZYWICKI. Yes, I will just take a brief second to elaborate on something Professor Morwitz said, which I think it may dovetail with Senator Klobuchar's concern about markets and market power, which is that she talked about people don't restart searches.

And I think that—I would be surprised if that was especially a problem in markets, say, like Ticketmaster, right, where you essentially have market power. What is the point of restarting the search if there are no other firms really out there competing?

And there is some evidence that this can be a bigger problem in more concentrated markets, and so—so, I think there is a dovetailing there. And I think she also mentioned on the inflation point, just to clarify, I think she is right that inflation does create pressure to do this, and part of that has to do with taxes, for example, which is, as I mentioned, my testimony, there is 7.5 percent excise tax on an airplane ticket, but there is no tax on a bag fee.

So, if ticket prices rise simply because of inflation, tickets rise an additional 7.5 percent for every dollar on an airplane ticket, which puts more pressure to try to adjust untaxed things. And that is a whole sort of separate question.

With respect to your question, my general observation is, is that industries and firms tend to give consumers what they want. I mean, the classic example is Amazon Prime, right. If you want a classic example of essentially all in pricing, $129 for prime and you get all this stuff, whether you use it or not, right. But things vary over time. It used to be you got a whole bunch of cable packages and people got tired of paying for cable channels they don't want, so now we are seeing unbundling.

My guess is we will probably see bundling. It is a process that goes back and forth because bundling is convenient for people. Upfront pricing is convenient for people. But sometimes people say, well, I don't pay—I don't really use that. I don't pay for that.

So, then you start getting these tendencies toward unbundling. So generalizing is something I am very squeamish about doing in these markets as opposed to looking at the combination of prices in terms and trying to figure out whether they make sense in particular context.

Senator HICKENLOOPER. Absolutely. Well, I appreciate all of your time and all of your work. You have each been working on this for years and years and years, and it is funny how there are cycles, whether it is bundling and unbundling or just people paying attention to these surprise fees, or just accepting them blindly.

But I think we are coming to that point where we are going to go into a new period where I think we will get to pretty much everything being transparent and that the customers will have a better—feel more confident that they are getting a fair opportunity to get what they want at the price of what they expect. Any final statements that anybody—have I overruled somebody's thoughts as it was coming up?

Mr. ZYWICKI. I might just have one last thought, which is I do think the Internet has made this more of a problem, which is this desire of Internet merchants to make their costs look cheap upfront, right, on the Google search or whatever, and then hit you with fees on the back. And I think that does create a particular dynamic here.

And I think it is particularly a problem for small businesses because that is, I think, a process that the larger businesses probably can figure out how to game a little bit better. So, I think that is an issue.

Senator HICKENLOOPER. Well, and you are not even talking about the context of AI, and it is—that is going to be a separate hearing, but that is coming. Anybody else on that last statement?

Ms. GREENBERG. I would just say that all in pricing is good for competition, and helps consumers, and helps honest businesses who are trying to provide the kinds of services you were talking about, Senator. And that is why it is so important that the legislation that we have talked about here get close to passage.

As you said, sometimes those pressures inspire changes among industry players. But thank you for holding a hearing on something that is increasingly a problem for consumers. And I look forward to questions on the record.

Senator HICKENLOOPER. You bet. Dr. Morwitz, last comment?

Ms. MORWITZ. Yes, I agree. I think all in pricing is something that benefits consumers no matter their party. It benefits honest businesses, no matter their leanings. It helps competition, it helps small businesses. I think this is a very straightforward issue.

Senator HICKENLOOPER. Great. Thank you very much. I thank all of you. Appreciate you spending the time. This is going to conclude our hearing for today. I want to thank my colleagues, both who were here and were online. Obviously our witnesses, I will thank you again and again and again.

The hearing record will remain open for questions for two weeks until June 22, 2023. Any Senator who would like to submit questions for the record may do so until then. We ask the witnesses to submit their responses to those questions by July 6, 2023. With that, the Committee is adjourned.

[Whereupon, at 11:26 a.m., the hearing was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF HON. TED CRUZ, U.S. SENATOR FROM TEXAS

In October 2022, President Biden stood on a stage flanked by the heads of the Federal Trade Commission and the Consumer Financial Protection Bureau announcing that his Administration would target companies and financial institutions charging consumers so-called "junk fees" to help fight inflation.

Imagine that! After trillions of dollars of reckless government spending by Democrats that sent inflation soaring, the President's solution is to target "junk fees." That's like offering a Band-Aid for a broken arm. It's missing the larger problem.

Unfortunately, this is not simply an inability to diagnose our economic problems, but a clear effort by President Biden to avoid accountability and avoid admitting that we are on a reckless financial trajectory.

No one here should be fooled by the White House's argument that targeting "junk fees" is the solution to fighting the sky-high Biden inflation that is harming ordinary Americans every day from the grocery store to the gas pump.

Setting that context, let's turn now to today's conversation about "junk fees." No American, myself included, likes paying hidden or extra fees for any product or service. It's frustrating and confusing.

But I think we need to first take a step back and distinguish how this White House's regulatory approach is flawed. Rather than gathering evidence and ensuring consumers are equipped with clear information, the Administration is instead engaging in one-size-fits all regulation that would harm Americans through what I can only define as rate regulation or price controls rather than accounting for how our markets actually work.

Not all fees are "junk fees." Some fees actually serve an economic purpose. For example, most Americans understand that paying "add on" fees for additional toppings on a pizza makes sense. If you want more product, you pay a little extra. And we know that credit card late fees or overdraft charges are meant to deter certain behavior that, if not kept in check, could cause some Americans to subsidize the behavior of others. These are not "junk fees" but serve a larger function within our markets and pricing schemes.

Competitive markets, in fact, do produce lower prices for goods and services. In those markets where consumers are confused by pricing or prices are misrepresented, I would argue that rather than resorting to government price controls, which will create higher costs for Americans, we should instead consider price transparency and disclosure. Transparency and disclosure provide consumers the information they need to make informed decisions in the marketplace, which instills more market competition.

The market for event tickets, like sports games and concerts, is one example where Americans would benefit from additional transparency and disclosure. Every sports fan and concertgoer—myself included—can recall a time buying a ticket online expecting to pay an advertised price only to learn at checkout that the total cost was substantially higher because of additional fees that were not disclosed upfront.

A 2018 GAO report found that ticket fees, which are often not disclosed to Americans early in the ticket buying process, averaged 27 percent of the ticket's costs with some fees totaling 58 percent of the total ticket cost. Tacking on fees at the end of a transaction is frustrating and confusing for consumers who expect that the price listed for a ticket is the actual price they will pay.

That's why Chairwoman Cantwell and I have introduced the TICKET Act (S. 1303). Similar to how airlines have to advertise the full ticket price upfront, the TICKET Act works the same way for tickets to concerts, sports, and large gatherings. The TICKET Act's transparency requirements would promote competition for the benefit of all American ticket buyers.

Rather than resorting to one-size-fits-all government price regulations, I believe the TICKET Act is a reasonable, bipartisan response that identifies a known problem and provides a targeted solution that would benefit all Americans. I am pleased to report that multiple stakeholders in the event ticket industry have expressed their support for the TICKET Act, including StubHub.

I look forward to moving this bipartisan legislation through the Committee and Congress soon.

ABPN ASSET BUILDING POLICY NETWORK

June 8, 2023

The Honorable John Hickenlooper
Chairman
U.S. Subcommittee on Consumer Protection,
Product Safety and Data Security
254 Russell Senate Building
Washington, DC 20510

The Honorable Marsha Blackburn
Ranking Member
U.S. Subcommittee on Consumer Protection,
Product Safety and Data Security
254 Russell Senate Building
Washington, DC 20515

Dear Chairman Hickenlooper and Ranking Member Blackburn,

In light of the upcoming Senate hearing, "Protecting Consumers from Junk Fees," the Asset Building Policy Network (ABPN) write in support of the Consumer Financial Protection Bureau (CFPB). We strongly urge Congress to support the efforts of CFPB in securing a fair marketplace for all consumers and oppose legislation that would undermine the Bureau and its ability to accomplish its important mission.

When the CFPB was established following the financial crisis, millions of people had lost their homes. People of color were disproportionately impacted: Latino households lost 66% and Black households lost 53% of their wealth from 2005 to 2009, while White households lost 16% of their wealth.[1] Asian Americans were similarly impacted: foreclosure rates for Filipinos, Koreans and Cambodians were on par with Black and Latino households, and between 2008 and 2010, Native Hawaiian homeowners experienced a 687% increase in home foreclosures, which amounted to $15 billion in home equity losses.[2] Congress established the CFPB to coordinate and create consumer protections so that everyone—including working class and people of color—can participate fully in our nation's economic life.

As this suggests, the CFPB is responsible for enforcing laws that address discrimination and unfair treatment related to financial products, including the Equal Credit Opportunity Act. Through its rulemaking, supervision, and enforcement authorities, the CFPB works to stop harmful financial practices that contribute to the racial wealth divide, including bringing more than 300 enforcement actions resulting in $3.7 billion in penalties for fair lending law violations alone.

The CFPB also addresses discrimination in the banking, credit and housing marketplaces and protected consumers from being denied services or charged higher rates because of their race, sexuality, gender identity, or national origin. It issues measures to make the credit reporting, debt collection, mortgage servicing, credit card and banking industries more transparent, equitable and accountable to the public.

Discrimination and economic exploitation continue to pose a significant risk to the economic and social well-being of consumers, making the Bureau's core mission as relevant today as ever. People of color pay disproportionately high costs and fees when they use ordinary financial products such as deposit accounts and credit cards.[3] An increasing number of entrepreneurs of color, in particular Asian American and Native Hawaiian and Pacific Islanders, who seek loans for their small businesses online face predatory lending practices.[4]

People of color are also disproportionately excluded from the financial system. For example, Latino and Black people are more likely than whites to be denied a loan—even after controlling for credit score,

ABPN ASSET BUILDING POLICY NETWORK

incomes, and loan size. [5] Immigrants and those who speak English as a second language face additional barriers, as many financial institutions fail to accept Individual Taxpayer Identification Numbers (ITINs), alternative forms of identification, or provide language access services.

The Bureau also implements Section 1071 of the Dodd-Frank Act, which sets standards for small business lending data and is important to communities we represent. Additionally, the CFPB is a key player in ensuring that those with family abroad can access and safely send funds abroad through remittances.

As organizations dedicated to financial inclusion and the prosperity of communities of color, we firmly believe that the CFPB must continue to play its critical role in assuring the fairness of our financial products marketplace, which in turn supports the well-being of low-income families and communities of color and the vitality and stability of our shared national economy. For these reasons, the CFPB must remain well-supported with a stable funding mechanism.

We also urge strong opposition to the Ta**king Account of Bureaucrats' Spending Act** (TABS Act) and other legislation that would diminish the stability of the funding or regulatory authorities of the Bureau.[6] And we strongly encourage lawmakers to support the CFPB and the critical work it does to protect consumers and support the financial security of communities, include Black, Latino, and Asian American, and Native Hawaiian and Pacific Islander people of color and other economically vulnerable communities.

Sincerely,

The Asset Building Policy Network

NALCAB
National CAPACD- National Coalition for Asian Pacific American Community Development
National Urban League
Prosperity Now
The Leadership Conference on Civil and Human Rights
UnidosUS

ABPN ASSET BUILDING POLICY NETWORK

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[1] "The Great Recession: Implications for Minority and Immigrant Communities," Russell Sage Foundation and the Stanford Center on Poverty and Inequality, https://web.stanford.edu/group/recessiontrends-dev/cgi-bin/web/resources/research-project/great-recession-implications-minority-and-immigrant-communities.

[2] "Crisis to Impact: Reflecting on a Decade of Housing Counseling Services in Asian American and Pacific Islander Communities," National CAPACD, UCLA Asian American Studies Center and Center for Neighborhood Knowledge, December 2020, https://www.aasc.ucla.edu/resources/policyreports/NationalCAPACD_HousingCounselingReport.pdf; "Asian American and Pacific Islander Anti-Displacement Strategies," National CAPACD and Council for Native Hawaiian Advancement (CHNA), May 2016, https://www.nationalcapacd.org/wp-content/uploads/2017/08/anti_displacement_strategies_report.pdf.

[3] "Amid Resurgence of Interest in Overdraft, New Data Reveal How Inequitable It Can Be," Financial Health Network, September 2021, https://finhealthnetwork.org/amid-resurgence-of-interest-in-overdraft-new-data-reveal-how-inequitable-it-can-be/; "Latinos Banking and Credit Survey: Arizona, California, Texas," UnidosUS and Oportun, June 2022, unidosus_oportun_latinosandcreditservicessurvey_azcatx_crosstabs.pdf; "Who Is Paying All These Fees? An Empirical Analysis of Bank Account and Credit Card Fees," Federal Reserve of Boston, August 2022, https://www.bostonfed.org/publications/research-department-working-paper/2022/who-is-paying-all-these-fees-an-empirical-analysis-of-bank-account-and-credit-card-fees; "Economic Well-Being of U.S. Households in 2022," Federal Reserve, May 2023, https://www.federalreserve.gov/publications/files/2022-report-economic-well-being-us-households-202305.pdf.

[4] "Small Business, Big Dreams," National CAPACD, March 2019, https://www.nationalcapacd.org/data-research/small-business-big-dreams/

[5] "Did Minority Applicants Experience Worse Lending Outcomes in the Mortgage Market? A Study Using 2020 Expanded HMDA Data," Federal Deposit Insurance Corporation and Center for Financial Research, June 2022, https://www.fdic.gov/analysis/cfr/working-papers/2022/cfr-wp2022-05.pdf?source=govdelivery&utm_medium=email&utm_source=govdelivery.

[6] "Letter in Opposition to the TABS Act," Consumer Federation of America and Coalition Partners, March 2023, https://consumerfed.org/wp-content/uploads/2023/03/Oppose-TABS-Act_March-2023.pdf.

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June 8, 2023

The Honorable John Hickenlooper Chairman Subcommittee on Consumer Protection, Product Safety, and Data Security 254 Russell Senate Office Building Washington, DC 20510	The Honorable Marsha Blackburn Ranking Member Subcommittee on Consumer Protection, Product Safety, and Data Security 357 Dirksen Senate Office Building Washington, DC 20510

Dear Chair Hickenlooper and Ranking Member Blackburn,

On behalf of the members of the American Gaming Association ("AGA"), I appreciate your subcommittee holding a hearing on "Protecting Consumers from Junk Fees" and examining this important issue. It is our understanding that the Subcommittee will be evaluating "junk fees" that obscure the full price of a product or service or provide little or no value to a consumer. We appreciate the opportunity to provide our industry's perspective that resort fees charged by our members are neither hidden, nor without value, and therefore should be excluded from future FTC rulemaking or legislative action on junk fees.

AGA Background

The AGA is the premier national trade group representing the $261 billion U.S. casino industry, which supports 1.8 million jobs in 44 states. Our membership spans across the country and consists of 73 commercial and tribal casino operators, U.S.-licensed gaming suppliers, financial institutions, destination marketing organizations, and other key stakeholders in the gaming industry.

Our members provide world-class entertainment and hospitality to their customers. Many of our members' casino properties are large integrated resorts with an array of amenities. They invest heavily in their properties and staff to keep pace with the level of service and facilities our customers expect. These operators go through rigorous licensing requirements and are tightly regulated by federal, state and tribal regulators.

Resort Fees Provide Value

The Administration has taken to defining a "junk fee" as a fee that is charged for "goods or services that have little or no added value to the customer."[1] In contrast, resort fees at our members' properties are charged for services that provide substantial value to customers, enhance the quality of their stay, and distinguish resorts from standard lodging offerings. While resort fees cover a range of different amenities depending on the property and area in which it is located, below is a sampling of services that are paid for by resort fees:

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[1] https://www.govinfo.gov/content/pkg/FR-2022-11-08/pdf/2022-24326.pdf

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- property-wide wireless internet;
- printing, notary and other executive services;
- parking;
- electric vehicle charging stations;
- fitness center access;
- shuttle services;
- newspapers (both print and digital);
- pool/hot tub access;
- pool towels;
- expedited entry into nightclubs;
- concierge services;
- in-room entertainment; and
- complimentary water and coffee in guest rooms.

These amenities and others enable an enhanced and valued guest experience beyond what is usually provided with a simple guest room. Resort fees signal to our customers that they can expect more than just a well-appointed room during their stay. Because these fees are directly tied to extra amenities and services that come at a cost to the resort, they are inherently valuable and therefore should not be considered "junk."

Resort Fees are Openly Disclosed

In addition to providing valued services and amenities to our customers, resort fees are also displayed transparently. Casino resort industry practice is to present resort fees early in the online payment process, typically no more than one screen following the base room rate, and at least one web page before consumers commit to the room and before any payment is required or made. The disclosure often appears multiple times throughout the search and purchasing process, in addition to a list of amenities covered by the fee. Thus, consumers are shown the full price of a hotel stay, including known taxes and resort fees, before booking and payment. Appendix A provides examples of the types of disclosures that are standard for casino resorts, which show that they are clear and conspicuous and not at all "hidden."

Resort Fees Already Regulated

While Congress is considering regulating a broad array of "junk fees," our industry already adheres to guidance pertaining to resort fees issued by the FTC in 2012. The guidance made it clear that gaming hotel properties must disclose resort fees clearly and prominently before a consumer books a room. As explained above and evidenced in Appendix A, the gaming industry follows this guidance by making clear and conspicuous disclosures of any resort fees.

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Unintended Consequences of Additional Regulation

The standing FTC Advertising Guidance has been industry practice for over a decade. Consumers are well acquainted with itemized pricing that displays resort fees, applicable local and state taxes, and the total price. This detailed pricing empowers customers to review amenities and services offered as well as related costs and compare and contrast competitors. With this information, customers can make the decision that would provide the best experience for them and better distinguish one property from another.

Changing to all-inclusive pricing would lead to fewer amenity disclosures and could result in consumers making assumptions about what services and amenities are available. Consequently, they may end up choosing a hotel or resort that does not suit their needs, wants or budget. Consumers could also end up paying more than the resort fee by having to pay for services or amenities a la carte. This is especially true for families or large groups that travel together as resort fees are charged per room, not per person. The true cost of a stay would be more obscure and potentially higher if resort fees were rolled into base room rates.

In the last two decades, we have seen a recent increase in resorts on tribal land and locations not historically known as resort destinations. Without resort fees to distinguish their offerings from other local lodging options, these properties will be competing at a disadvantage for consumers without visibility of the services and amenities available. It would act as a deterrent to upgrade offerings and therefor impede the growth of travel and tourism in new markets.

Conclusion

The AGA appreciates Congress's efforts to bolster consumer protections around hidden fees. However, resort fees should not be considered as "junk" or "hidden" fees. Resort fees as implemented by AGA members and described above pay for services that distinctly enhance the value of a hotel stay and are disclosed in a clear and conspicuous manner by casino resorts. Thank you again for your continued attention to these matters and willingness to engage with the gaming industry.

Sincerely,

William C. Miller, Jr.

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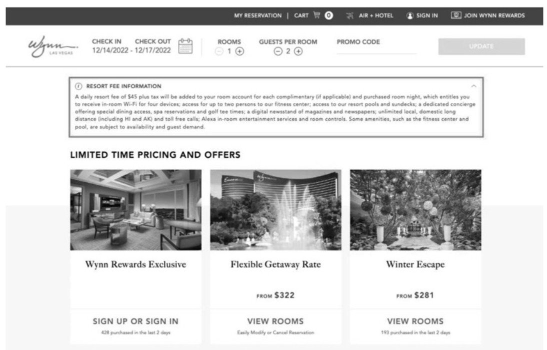
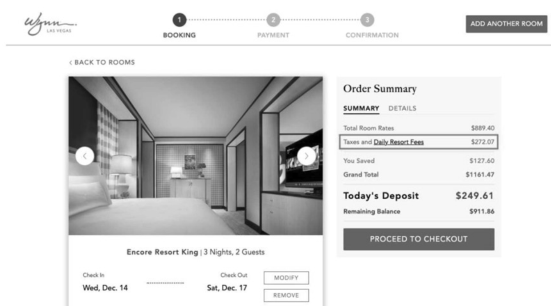
Appendix: Resort Fee Disclosure Examples

Exhibit A: Wynn Resort in Las Vegas, Nevada

When searching room availability, Wynn's booking page discloses the daily resort fee cost and inclusions at the top of the page before any promotions or room rates.



After selecting a room, the resort fee is detailed in the order summary before any payment method is entered.



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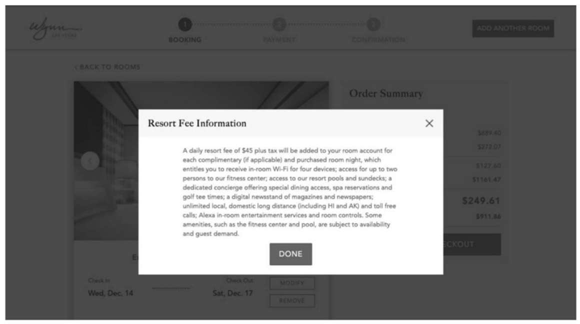
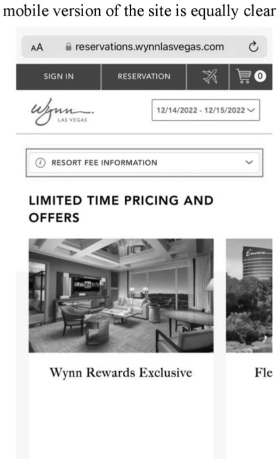
Upon clicking “Daily Resort Fees”, a pop-up appears listing the cost and inclusions.



The mobile version of the site is equally clear and transparent.



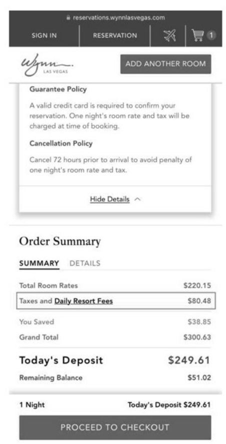


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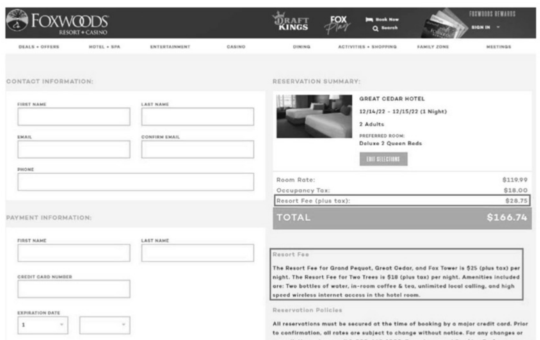
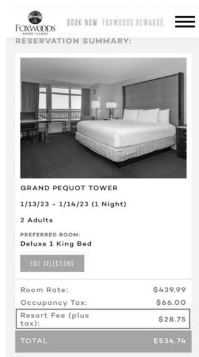
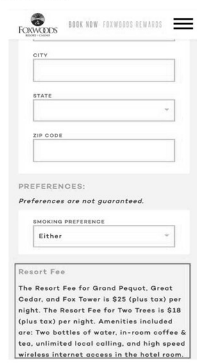
Exhibit B: Foxwoods Resort & Casino in Mashantucket, Connecticut

After selecting a room, the resort fee is detailed in the order summary before any payment method is entered.



The mobile version of the site is equally clear and transparent.





June 8, 2023

Senator John Hickenlooper, Chair
Subcommittee on Consumer Protection, Product Safety and Data Security
U.S. Senate Committee on Commerce, Science and Transportation
Russell Senate Office Building 254
Washington, DC 20510

Senator Marsha Blackburn, Ranking Member
Subcommittee on Consumer Protection, Product Safety and Data Security
U.S. Senate Committee on Commerce, Science and Transportation
Dirksen Senate Office Building 512
Washington, DC 20510

Dear Chairman Hickenlooper and Ranking Member Blackburn,

On behalf of Consumer Reports (CR)[1], we applaud the subcommittee for holding today's hearing entitled "Protecting Consumers from Junk Fees." CR works side-by-side with consumers to create a fairer, more competitive marketplace, and we are highly concerned about the proliferation of junk fees that are often added unexpectedly and deceptively to the retail price of goods or services in major economic sectors such as travel (airlines, hotels, car rentals, etc.), telecommunications and utilities, financial services, automotive sales, and live entertainment and sporting events, just to name a few.

Junk fees are often hidden or obscured, and added through so-called "drip pricing" and through deceptive descriptions that imply the fees are paying for essential or mandated services. These added fees inflate and distort costs, inhibit effective price comparisons, undermine household budgeting decisions, and often provide little or no added value to the consumer.

[1] Consumer Reports (CR) is an independent, nonprofit membership organization that works side by side with consumers to create a fairer, safer, and healthier world. Since 1936, CR has provided evidence-based product testing and ratings, rigorous research, hard-hitting investigative journalism, public education, and steadfast policy action on behalf of consumers' interests. Unconstrained by advertising, CR has exposed landmark public health and safety issues and strives to be a catalyst for pro-consumer changes in the marketplace. From championing responsible auto safety standards, to winning food and water protections, to enhancing healthcare quality, to fighting back against predatory lenders in the financial markets, Consumer Reports has always been on the front lines, raising the voices of consumers.

Both CR's survey research and comments we have collected from consumers confirm that consumers are very disappointed both by the increasing frequency and range of fees charged. They are also frustrated by the high cost of outsized and excessive fees that undermine the affordability, accessibility and usability of products and services. Junk fees are not just a nuisance, they are also costly and hit low, moderate-income and working-class consumers especially hard.

In April 2023, Consumer Reports conducted a nationally representative survey of 2,121 U.S. adults to learn more about their experiences with hidden fees across a range of products and services in the last two years.[2] CR found that 49 percent had encountered hidden fees for telecommunications services; 45 percent for live entertainment or sporting events; 37 percent for gas and electric utilities; 37 percent for hotel stays; 35 percent for air travel; 27 percent for credit cards; 26 percent for auto loans and purchases; and 23 percent for personal banking services. Fifty-one percent of respondents said that hidden fees caused them to exceed their budget for their cable, internet, or phone service, and two out of three Americans (68 percent) say they are paying more in hidden fees now than they did five years ago.

For a typical American family, junk fees can pose a financial strain, adding up to thousands of dollars a year in extra costs. On a national level, data from a few industries alone show that the add-on charges are siphoning billions of dollars from consumers' wallets every year.

➢ In the case of airlines, the two main travel charges—baggage fees and reservation fees—accounted for nearly $6 billion of revenue in 2021, according to the Bureau of Transportation Statistics.[3]

➢ For banks, overdraft fees are a growing source of revenue, with the largest banks pulling in an additional $15 billion in 2019 from these fees, according to the Consumer Financial Protection Bureau. In addition, major credit card companies charged over $14 billion in late fees in 2019.[4]

➢ The hotel industry raked in a record $2.9 billion in resort fees and other fees and surcharges in 2018, according to Bjorn Hanson, Ph.D., a hotel consultant and clinical

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[2] *Electric-Only Vehicles, Car Maintenance, Hidden Fees, Pet Food and Plant-Based Milk, American Experiences Survey: A Nationally Representative Multi-Mode Survey*, prepared by the Consumer Reports Survey Research Department (April, 2023), p.15-20, available at: https://article.images.consumerreports.org/image/upload/v1682544745/prod/content/dam/surveys/April_2023_AES_Toplines.pdf.

[3] Bureau of Transportation Statistics, *2021 Annual and 4th Quarter Airline Financial Data*, (May 2, 2002), available at: https://www.bts.gov/newsroom/2021-annual-and-4th-quarter-us-airline-financial-data.

[4] Rohit Chopra, Consumer Financial Protection Bureau, *Prepared Remarks of CFPB Director Rohit Chopra on the Junk Fees RFI Press Call*, (January 26, 2022), available at: https://www.consumerfinance.gov/about-us/newsroom/prepared-remarks-of-cfpb-director-rohit-chopra-on-the-junk-fees-rfi-press-call/.

adjunct professor at the Jonathan M. Tisch Center for Hospitality at New York University.[5]

- ➢ Perhaps the worst offender for charging hidden junk fees is the cable television industry. According to a 2019 report by Consumer Reports, cable company-imposed fees add what amounts to a 24% surcharge on top of the advertised price. On average, the cable industry generates close to $450 per year per customer from company-imposed fees. CR estimates that cable companies are making an estimated $28 billion a year from charging company-imposed fees.[6]
- ➢ Though CR's 2019 cable bill report focused on excessive junk fees charged for pay-TV services, it also warned of the "disturbing new trend" of company-imposed fees being attached to internet service. Unfortunately, our prediction of junk fees riddling ISPs bills has been realized with several providers tacking on mandatory junk fees to broadband internet service. We identified numerous such fees as part of our study of 22,000 broadband bills voluntarily submitted to CR for research.[7]

While consumers can theoretically take fees into account when making purchasing decisions, it is often highly difficult to fully research and anticipate the wide range of fees that might be charged in the course of using a particular product or service. As long as fees are disclosed somewhere in the shopping process, consumers can, presumably, calculate their true costs. But in reality, add-on fees can be difficult to spot, requiring consumers to click through multiple web pages or scour fine print to get the information—a gradual reveal strategy that is exactly the sort of drip pricing mentioned above.

Even when consumers use sophisticated online comparison tools to compare airline, hotel or car rental prices, their search efforts are frequently frustrated or doomed to failure by such drip pricing techniques through which companies add fees in the back end of the transaction prior to checkout. In addition, companies present some fees as mandatory fees required or imposed by the government, when they are nothing of the kind.[8]

* * *

Consumer Reports thanks the Subcommittee for its efforts to investigate ways to protect consumers against excessive, unexpected and hidden fees, and to promote greater transparency

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[5] Penelope Wang, "Protect Yourself from Hidden Fees", Consumer Reports, (May 29, 2019), available at: https://www.consumerreports.org/fees-billing/protect-yourself-from-hidden-fees-a1096754265/.
[6] Jonathan Schwantes, *What the Fee? How Cable Companies Use Hidden Fees to Raise Prices and Disguise the True Cost of Service*, Consumer Reports, (October, 2019) (hereafter CR Cable Bill Report), p.3, available at: https://advocacy.consumerreports.org/wp-content/uploads/2019/10/CR_WhatTheFeeReport_6F_sm-1.pdf
[7] Jonathan Schwantes, *Broadband Pricing: What Consumer Reports Learned from 22,000 Bills*, Consumer Reports (November 17, 2022) p.23-24, available at: https://advocacy.consumerreports.org/wp-content/uploads/2022/11/FINAL.report-broadband.november-17-2022-2.pdf.
[8] CR Cable Bill Report at p.11.

and accountability to help customers compare their product and service choices. From the perspective of consumers, any junk fees (especially mandatory fees) that add little or no value to a product offering—or that should be reasonably thought to be included in the base price for a product or service—should be banned, because of their highly negative impacts on consumer choice and competition.

For any truly optional fees for discretionary or add-on services, fees should be clearly disclosed in plain and understandable language, in a standardized format that consumers can obtain and review before deciding to purchase that product or service. In general, optional fees should also bear a reasonable and proportionate relationship to the underlying costs of providing the particular service for which they are charged, and not be excessively priced as a backdoor way of raising prices and undermining competition.

Congress should also consider granting the Federal Trade Commission broad authority to require upfront price transparency and prevent hidden junk fees in all areas of the economy, which could help level the playing field for ethical and honest sellers, and prevent deceptive pricing. Consumers are truly fed up with being hit with costly junk fees from companies in virtually every economic sector, and the public would welcome strong and comprehensive action by Congress at this time to ensure fair and transparent pricing for all goods and services. CR looks forward to working with you to protect consumers from abusive and expensive junk fees.

Sincerely,

Charles W. Bell

Chuck Bell
Programs Director

Jonathan Schwantes
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RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. AMY KLOBUCHAR TO VICKI G. MORWITZ

App Store Purchase Fees

My bipartisan bill with Senator Grassley, the American Innovation and Choice Online Act, addresses abuses of gatekeeper power by dominant tech companies, including those operating app stores for mobile devices. App stores charge fees of typically 30 percent to app developers, which are often passed on to consumers making in-app purchases or buying subscriptions. This practice hurts small companies and independent creators that develop apps by holding back their ability to scale their businesses, and hurts consumers who have to pay a higher price.

Question. How do App Store fee policies limit competition and ultimately raise prices for consumers?

Answer. Consumers are often unaware that when they purchase a subscription or make an in-app purchase through an app store they may be paying a higher price than if they made the purchase directly from the small business (if possible), and this is because the small companies that develop the apps pass on the fees they are charged by the large tech companies who host the platforms to consumers. This practice also hurts small businesses and competition. Because the large tech companies who host these platforms have significant market power, they are able to assess these significant fees onto small businesses and require them to offer purchase/subscription options through the app, where the fees will be assessed versus allowing them to offer these in some other way to avoid the app and be able to offer lower prices to customers. While the large tech companies do offer small businesses a platform where small businesses can distribute their apps, they are abusing their market power, and hurting competition and consumers, by collecting extremely high fees.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BEN RAY LUJÁN TO VICKI G. MORWITZ

Question 1. What effect do early termination and cancellation fees, particularly in the telecom industry, have on consumer behavior?

Answer. These fees are often not made salient to consumers when they are shopping for telecom plans and thus they tend not to be able to easily consider them when making their initial decisions. In contrast, if customers sign a contract for long time service, what is salient is the substantial discounts customers are offered. Thus these deal appear more appealing to customers than they really are if the early termination and cancellation fees were made salient enough to take into consideration. In general, firms create many obstacles that make it difficult for their customers to defect from services, for example having to call to cancel a plan versus being able to do so on the website using customer portals or on apps. When customers finally do reach a stage where they can cancel, they may be presented with these fees, which prevent a further obstacle. Thus, it leads to stickiness in markets where customers tend to stick with their current providers, even when they are not fully satisfied.

Question 2. Do companies use tactics such as drip pricing because they know it confuses and misleads customers?

Answer. I suspect so, but have not been privy to internal firm discussions when these tactics are put in place. What I can say is that their presence does make shopping more confusing and difficult for customers in a way that benefits firms that use these tactics. It also leads to consumer perceptions (*e.g.,* that a total price is lower than it actually is) and behavior (*e.g.,* an increased likelihood to buy) that benefit firms.

So, while I cannot say for certain that this is why firms use these tactics, use of these tactics certainly benefits firms at the expense of consumers.

Question 3. Will a confused, misled, or frustrated customer likely spend more money than they originally intended?

Answer. Yes, my research and research of other scholars studying drip pricing has shown that it leads consumers to spend more money than they needed to and more money than they would spend if upfront pricing was instead used.

Question 4. How do hidden fees make air travel less accessible for both low-income and inexperienced travelers?

Answer. I'm not sure I can answer that. What I can say is that they lead consumers to be more likely to purchase a ticket that they thought was cheaper than it really was and to pay more than they expected. While it has not been directly studied, there is good reason to believe that these adverse effects are larger for more disadvantaged consumers.

Question 5. How do these fees hurt economies that depend upon tourism such as New Mexico?

Answer. These fees hurt economies because they stifle competition. Well intentioned firms who want to honestly and fairly present their prices to consumers lose market share to firms who use these deceptive pricing tactics. When firms compete on pricing tricks rather than on product quality, businesses, consumers, and industries, like the New Mexico tourism industry, suffer.

Question 6. What is your response to those who argue that these fees actually benefit the consumer? Aren't cost-conscious and savvy consumers able to save money by opting out of these add-ons?

Answer. People who make those arguments are conflating two things. There is nothing wrong with add-on pricing models where consumers chose the options they want and save money by not paying for options they do not want. For example, some consumers prefer a cheaper, plain cheese pizza, while others prefer a pizza loaded with many toppings, that is more expensive. But these are options, not mandatory fees. What is important in cases that involve fees for optional add ons, like toppings for pizzas, or a a travel plan for a cell phone service, is that the prices for the add-ons be fully disclosed upfront so that consumer can make fully informed decisions.

In contrast, imagine if a pizzeria charged $10 for the pizza and an additional $2 for cooking the pizza, and only let consumers know about the $2 fee late in the decision making process. That type of pricing would be misleading just as is separating out mandatory resort fees with hotels. If a fee must be paid no matter what, then the total price is the same to the consumer if the firm decides to partition the price or if they decide to use all inclusive pricing. There is no benefit to the consumer of partitioned pricing, but there is harm—this tactic leads consumers to underestimate total costs.

Now some firms may claim that they use partitioned pricing to transparently communicate different aspects of their pricing model. For example, a ticketing agency might want to communicate how much of what consumers pay for tickets goes to the venue, how much to the artist, and how much to the ticketing agency. That is fine, but there is no reason a ticketing agency cannot first give the total price, and then explain how that price breaks down.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARIA CANTWELL TO PROFESSOR TODD ZYWICKI

My answers are below. Please note that these responses are tentative and answers depend greatly on the details of various proposals.

Section 13(b). In *AMG Capital Management, LLC v. Federal Trade Commission,* the Supreme Court ruled that the Federal Trade Commission ("FTC") lacks statutory authority to seek monetary relief when the FTC brings an action under Section 13(b) of the Federal Trade Commission Act ("Section 13(b)").

Question 1. Do you believe that the FTC, when bringing a case under Section 13(b), should have the authority to ask the Court to award monetary relief for consumers who have been harmed by unfair or deceptive business practices? Why or why not?

Answer. Under certain circumstances, subject to due process protections, and calibrated appropriately, the authority of the FTC to seek and courts to award monetary remedies on an emergency basis to prevention dissipation of assets. However, such authority must be used in appropriate cases, with proper due process protections, and appropriate in amount.

Question 2. How does the FTC's inability to seek consumer redress and disgorgement under Section 13(b) impact consumers and honest businesses?

Answer. I am not aware of any evidence as to how the FTC's inability to seek consumer redress and disgorgement under Section 13(b) impacts consumers and business. As the FTC's use of Section 13(b) evolved over time, however, its use expanded beyond the narrow situation for which it was originally designed to aid in remediation of consumer fraud and to be used in other cases such as antitrust cases and more traditional consumer protection cases.

Question 3. Do you support legislation that would authorize the FTC to seek, under Section 13(b), monetary relief for consumers who have been harmed by unfair or deceptive business practices? Why or why not?

Answer. It would depend on the details of the legislation, including the circumstances, types of cases under which such relief might be made available, method of calculation of monetary relief, and due process protections.

Question 4. Do you support legislation that would authorize the FTC to seek disgorgement of unlawful gains under Section 13(b)? Why or why not?

Answer. It depends on the factors previously stated.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BEN RAY LUJÁN TO SALLY GREENBERG

Question 1. How do Junk fees harm the most vulnerable and price-sensitive consumers, such as families on a fixed income?

Answer. Data from the Board of Governors of the Federal Reserve System found that in 2022, 18 percent of U.S. adults indicated the largest emergency expense they could cover was less than $100.[1] Another 14 percent said the largest expense they could cover was between $100 and $499. With one-third of Americans unable to cover an unexpected expense of more than $500, junk fees can quickly eat into vulnerable consumers' savings as they are unable to accurately budget for such charges.

Credit card late fees disproportionately burden consumers in low-income and majority-Black neighborhoods. Cardholders in census tracts where a majority identified themselves as Black in 2010 paid more than $25 in total late fees for each account they held with major issuers in 2019.[2]

Lastly, Research by the Financial Health Network found that overdraft fees are incurred by low-to moderate-income households at nearly twice the rate of high-income households. The same survey also found that Black and Latinx household were charged overdraft fees at rates of 1.9 and 1.4 times, respectively, of white households.[3]

Question 2. Would true pricing transparency encourage competition and improve customer access when it comes to telecom services such as high-speed broadband?

Answer. Yes, pricing transparency is the foundation for marketplace competition. For telecommunication services such as high-speed broadband, the Federal Communications Commission's ("FCC") broadband consumer labels[4] will transform the industry by implementing industry-wide pricing transparency.

Research conducted by Consumer Reports found that information displays and industry practices regarding Internet bills make it extremely difficult to accurately comparison shop for a better Internet service provider.[5] Internet service providers frequently use junk fees, alongside bundled packages, introductory discounts, data cap charges, and speed limitations, to obscure the true value of their product.

The FCC's broadband consumer label addresses this problem directly by standardizing pricing disclosures. To facilitate comparison shopping, the FCC will require broadband providers to break out their monthly price, itemized fees, discounts and bundles, and information regarding connection speeds within one label.

While the FCC's broadband consumer label is a critical step toward eliminating anticompetitive behavior in the telecommunications industry, other barriers to universal access remain. Additional and continued funding for the Affordable Connectivity Program[6] as well as ensuring that all regions are serviced by at least two[7] Internet service providers are necessary to removing these barriers and achieving consumer-friendly universal broadband adoption.

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[1] Board of Governors of the Federal Reserve System. "Economic Well-Being of U.S. Households in 2022." (May 2023). Online: *https://www.federalreserve.gov/publications/files/2022-report-economic-well-being-us-households-202305.pdf*

[2] Consumer Financial Protection Bureau. "Credit card late fees." (March 2022) Pg. 10. Online: *https://files.consumerfinance.gov/f/documents/cfpb_credit-card-late-fees_report_2022-03.pdf*

[3] Financial Health Network. "Amid Resurgence of Interest in Overdraft, New Data Reveal How Inequitable It Can Be." (September 3, 2021) Online: *https://finhealthnetwork.org/amid-resurgence-of-interest-in-overdraft-new-data-reveal-how-inequitable-it-can-be/*

[4] Federal Communications Commission. "Broadband Consumer Labels." Online: *https://www.fcc.gov/broadbandlabels*

[5] Schwantes, Jonathan. "Broadband Pricing: What Consumer Reports Learned From 22,000 Internet Bills." Consumer Reports. (November 17, 2022). Online: *https://advocacy.consumerreports.org/wp-content/uploads/2022/11/FINAL.report-broadband.november-17-2022-2.pdf*

[6] The Leadership Conference. "The Leadership Conference's Letter in Support of the Affordable Connectivity Program." (May 10, 2023). Online: *https://civilrights.org/resource/the-leadership-conferences-letter-in-support-of-the-affordable-connectivity-program/*. NCL is one of the signatories to the letter, alongside more than 160 organizations.