



February 7, 2024

Honorable April Tabor, Secretary  
Federal Trade Commission  
Office of the Secretary  
600 Pennsylvania Avenue, NW  
Suite CC-5610 (Annex B)  
Washington, D.C. 20580

***Re: Unfair or Deceptive Fees NPRM, R207011***

Dear Secretary Tabor:

The Attorneys General of the States of North Carolina and Pennsylvania, along with the Attorneys General of the States or Territories of Arizona, Colorado, Connecticut, Delaware, District of Columbia, Hawaii,<sup>1</sup> Illinois, Maine, Michigan, Minnesota, New Jersey, New York, Oklahoma, Oregon, Vermont, Washington, and Wisconsin (“State Attorneys General”) respectfully submit this comment in response to the Notice of Proposed Rulemaking (“Notice”) concerning the Federal Trade Commission’s (“FTC”) proposed Trade Regulation Rule on Unfair or Deceptive Fees (“Rule”). The State Attorneys General, as the chief law enforcement officers in their respective jurisdictions, commend the FTC for its comprehensive review of the use of unfair or deceptive fees in the consumer marketplace and support the FTC’s stated objective “to deter deceptive and unfair acts or practices involving fees, to promote a level playing field that enables comparison shopping and allows honest businesses to compete, and to expand the available remedies where such practices are uncovered.”<sup>2</sup>

Hidden fees are a prevalent problem in many different types of industries, including, but not limited to, residential leasing, payday lending, internet applications, online shopping, automobile rentals, event ticket sellers, carpet cleaners, dietary supplement sellers, moving companies, gyms, hotels and other short-term lodging providers, travel companies, outlet stores, and online auctions.<sup>3</sup> The State Attorneys General support the FTC in promulgating the proposed

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<sup>1</sup>In addition to the Hawaii Attorney General, the Hawaii Office of Consumer Protection joins in this comment.

<sup>2</sup> Notice at 50.

<sup>3</sup> Notice at 10.

Rule and agree it is a “straightforward”<sup>4</sup> approach to combat prevalent unfair and/or deceptive fee practices in the marketplace, specifically, misrepresenting the total cost by omitting mandatory fees from advertised prices (bait and switch pricing) and misrepresenting the nature and purpose of fees.<sup>5</sup>

## I. Public State Enforcement Efforts

The State Attorneys General agree with the FTC’s finding that the above-mentioned unfair or deceptive fee practices are widespread and are a chronic, prolific problem confronting many consumers across numerous sectors of the economy.<sup>6</sup> In addition to supporting the FTC’s proposed Rule, the State Attorneys General will continue to combat the unfair and deceptive fee practices this proposed Rule addresses, as well as combat the imposition of any other type of junk fee that businesses concoct to harm consumers and stifle honest competition. Listed below are some of the efforts undertaken by the states joining in this comment.

### A. Financial Services Fees

- **Mariner Finance, LLC**<sup>7</sup>: In August 2022, the Pennsylvania Office of Attorney General, along with the Attorneys General from the District of Columbia, New Jersey, Oregon, and Washington State filed a lawsuit in the U.S. District Court for the Eastern District of Pennsylvania against Mariner Finance, LLC (“Mariner”), a Wall Street private equity-owned installment lender. According to the lawsuit, Mariner is alleged to have charged consumers junk fees in the form of hidden add-on products, including costly insurance policies, without the consumer’s knowledge, and in some cases, despite the consumer’s explicit rejection of the add-ons. The lawsuit alleges that, in 2019 alone, Mariner charged consumers \$121.7 million nationwide in premiums and fees for add-on products.

### B. Hotel Fees

- **Marriott International, Inc.**<sup>8</sup>: In July of 2019, the Attorney General’s Office for the District of Columbia filed a lawsuit against Marriott International, Inc. (“Marriott”) for its deceptive advertising of room prices that did not include mandatory resort or destination fees, thus allegedly misleading consumers. The litigation is still ongoing.
- **Marriott International, Inc.**<sup>9</sup>: In November 2021, the Pennsylvania Office of Attorney General filed an Assurance of Voluntary Compliance (“AVC”) against Marriott. According to the AVC, Marriott is alleged to have advertised room prices

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<sup>4</sup> Notice at 52.

<sup>5</sup> Notice at 31-32.

<sup>6</sup> Notice at 32.

<sup>7</sup> <https://www.attorneygeneral.gov/taking-action/ag-shapiro-takes-action-to-defend-pennsylvanians-from-predatory-personal-lending-company/>

<sup>8</sup> <https://oag.dc.gov/release/ag-racine-sues-marriott-charging-deceptive-resort>

<sup>9</sup> <https://www.attorneygeneral.gov/taking-action/ag-shapiros-action-requires-marriott-to-disclose-resort-fees/>

that did not include mandatory fees, thus misleading consumers. In addition to other injunctive relief, Marriott agreed to clearly and conspicuously disclose all mandatory fees and display the total price most prominently in advertising.

- **Choice Hotels International, Inc.**<sup>10</sup>: In September 2023, the Pennsylvania Office of Attorney General, along with the Attorneys General of Oregon and Colorado, filed AVCs<sup>11</sup> against Choice Hotels International, Inc. (“Choice”). According to the filings, Choice is alleged to have advertised room prices that did not include mandatory fees, such as “resort fees,” which would only be disclosed later (a practice known as “drip pricing”), thus misleading consumers. In addition to other injunctive relief, Choice agreed to clearly and conspicuously disclose all mandatory fees and display the total price most prominently in advertising.
- **Omni Hotels Management Corp.**<sup>12</sup>: In November 2023, the Pennsylvania Office of Attorney General filed an AVC and the Colorado Office of Attorney General filed an AOD against Omni Hotels Management Corporation (“Omni”). According to the filings, Omni is alleged to have advertised room prices that did not include mandatory fees, thus misleading consumers. In addition to other injunctive relief, Omni agreed to clearly and conspicuously disclose all mandatory fees and display the total price most prominently in advertising.

### C. **Live-Event Ticket Fees**

- **Event Ticket Sales, LLC**<sup>13</sup>: In November 2020, the Pennsylvania Office of Attorney General filed an AVC against Event Ticket Sales, LLC (“Event Ticket Sales”), a Nebraska business selling live-event tickets online. According to the AVC, Event Ticket Sales is alleged to have advertised ticket prices that did not include service fees and is further alleged to have failed to clearly disclose an itemization of the total cost of tickets even after the consumer submitted a payment method. In addition to agreeing to clearly and conspicuously disclose the final price of tickets, including an itemization of all charges, prior to the consumer entering payment information, Event Ticket Sales paid \$1,420.50 in restitution to affected consumers.

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<sup>10</sup> <https://www.attorneygeneral.gov/taking-action/settlement-with-choice-hotels-is-ag-henrys-latest-action-to-quash-hidden-resort-fees-and-drip-pricing-for-travelers/>; <https://www.doj.state.or.us/media-home/news-media-releases/ag-rosenblum-announces-multi-state-settlement-with-choice-hotels-over-hidden-fees/>; <https://coag.gov/press-releases/9-21-23/>

<sup>11</sup> Colorado filed an Assurance of Discontinuance (“AOD”).

<sup>12</sup> <https://www.attorneygeneral.gov/taking-action/settlement-with-omni-hotels-management-corporation-is-ag-henrys-latest-action-to-quash-hidden-resort-fees-and-drip-pricing-for-travelers/>; <https://coag.gov/press-releases/omni-hotels-hidden-agreement-colorado-attorney-general-11-9-2023/>

<sup>13</sup> <https://www.attorneygeneral.gov/taking-action/ag-shapiro-settles-with-online-ticket-platform-over-hidden-fees-canceled-events-refund-policy/>

- **RYADD, Inc.**<sup>14</sup>: In September 2022, the Pennsylvania Office of Attorney General filed an AVC against RYADD, Inc. (“RYADD”), a Florida business selling live-event tickets online. According to the AVC, RYADD is alleged to have advertised ticket prices that did not include service fees and is further alleged to have failed to clearly disclose an itemization of the total cost of tickets until after the consumer submitted a payment method. In addition to agreeing to clearly and conspicuously disclose the final price of tickets, including an itemization of all charges, prior to the consumer entering payment information, RYADD paid \$1,300 in restitution to affected consumers.

#### **D. Rental Housing Fees**

- **Continental Real Estate Management, Inc.**<sup>15</sup>: In April 2019, the Pennsylvania Office of Attorney General filed an AVC against Continental Real Estate Management, Inc. (“Continental”), a Pennsylvania business leasing and managing residential real estate. According to the AVC, Continental is alleged to have imposed a 15% administrative fee on all of the charges (e.g., damages, cleaning) already assessed against departing tenants’ security deposits. Continental agreed to stop this practice and paid \$30,000 in restitution to affected consumers.
- **Legacy Realty & Property Management, LLC**<sup>16</sup>: In July 2019, the Pennsylvania Office of Attorney General filed a lawsuit against Legacy Realty & Property Management, LLC (“Legacy”), a Pennsylvania business, alleging it imposed a 10 to 30% administrative fee on all of the charges already assessed against departing tenants’ security deposits. In a Consent Petition filed in September 2023, Legacy agreed to close its business and pay \$17,500 in restitution to affected consumers.
- **Solomon Management, LLC**<sup>17</sup>: In July 2020, the Pennsylvania Office of Attorney General filed an AVC against Solomon Management, LLC (“Solomon”), a New Jersey business leasing residential real estate in Pennsylvania. According to the AVC, Solomon is alleged to have deducted “inspection” fees from tenants’ security deposits without clearly and conspicuously disclosing such fees in its leases. Among other injunctive relief terms, Solomon agreed to clearly and conspicuously disclose all charges and fees in its leases, as well as pay \$70,000 in restitution to affected consumers.

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<sup>14</sup> <https://www.attorneygeneral.gov/taking-action/ag-shapiro-secures-settlement-with-online-ticket-resellers-full-refunds-for-eligible-pennsylvanians/>

<sup>15</sup> <https://www.attorneygeneral.gov/taking-action/ag-josh-shapiro-announces-settlement-with-state-college-property-manager-over-security-deposit-practices/>

<sup>16</sup> <https://www.attorneygeneral.gov/taking-action/settlement-reached-with-state-college-landlord-relating-to-security-deposit-issues/>

<sup>17</sup> *Commonwealth of Pennsylvania v. Solomon Management, LLC*, Lancaster County Docket No. CI-20-04774, July 16, 2020.

- **McKinney Properties, Inc.**<sup>18</sup>: In February 2022, the Pennsylvania Office of Attorney General filed an AVC against McKinney Properties, Inc. (“McKinney”) a Florida business leasing residential real estate in Pennsylvania. According to the AVC, McKinney is alleged to have imposed a 15% administrative fee on all of the charges already assessed against departing tenants’ security deposits. McKinney agreed to stop this practice and paid \$25,000 in restitution to affected consumers.

**E. Auto Rental Fees**

- **Dennis N. Saban**<sup>19</sup>: In 2014, the Arizona Attorney General’s Office filed a lawsuit against Dennis N. Saban, and his Arizona car rental companies, Phoenix Car Rental and Saban’s Rent-A-Car (“Saban’s”), alleging the companies charged undisclosed fees to consumers during car rental transactions from 2009 through 2016. After an 8-week bench trial in 2017, the Court enjoined Saban’s from omitting mandatory charges from rental car advertising and further ordered Saban’s to pay \$1.8 million in civil penalties and restitution.

**F. Television/Cable/Telecommunication Fees**

- **CenturyLink**<sup>20</sup>: In July 2017, the Minnesota Attorney General filed suit against CenturyLink for violations of the consumer protection statutes based upon findings that CenturyLink misrepresented the price of its internet and television services it sold to Minnesota consumers by offering one price but charging a higher price instead. The suit further alleged that CenturyLink used a series of complex pricing rules to deceive consumers, and that the company routinely refused to honor the actual offers it made to consumers. As part of a settlement of the litigation, 12,000 Minnesota consumers received \$844,655 in refunds and 8,000 additional consumers are completing a process to receive up to \$8 million in refunds.
- **Comcast Corporation**<sup>21</sup>: In December 2018, the Minnesota Attorney General filed suit against Comcast for violation of the consumer protection statutes, alleging that the company (1) misrepresented the prices consumers would pay for its services, (2) added services or equipment that consumers did not request to their account, and (3) promised Visa gift cards that it did not deliver. As part of a settlement of the litigation, 15,600 Minnesotans received \$1.14 million in refunds and an additional 16,000 Minnesotans received debt relief worth millions of dollars.

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<sup>18</sup> <https://www.attorneygeneral.gov/taking-action/attorney-general-shapiro-announces-settlement-with-state-college-landlord/>

<sup>19</sup> <https://www.azag.gov/press-release/185-million-verdict-against-car-rental-company-defrauding-az-consumers>

<sup>20</sup> [https://www.ag.state.mn.us/Office/Communications/2020/01/08\\_CenturyLinkSettlement.asp](https://www.ag.state.mn.us/Office/Communications/2020/01/08_CenturyLinkSettlement.asp)

<sup>21</sup> [https://www.ag.state.mn.us/Office/Communications/2020/01/15\\_ComcastXfinity.asp](https://www.ag.state.mn.us/Office/Communications/2020/01/15_ComcastXfinity.asp)

- **CenturyLink, Inc.**<sup>22</sup>: In December, 2019, the Attorney General of the State of Oregon filed an AVC against CenturyLink, Inc. (CenturyLink). According to the AVC, CenturyLink charged customers undisclosed fees like an “Internet Cost Recovery Fee” some consumers only learned about upon receiving their first bill. In addition to other injunctive relief, CenturyLink agreed to clearly disclose all mandatory fees and charges in future advertisements, to conspicuously disclose any and all material terms or conditions of its offers at the time of the sale, and to stop charging certain fees if they are not disclosed at the time of the sale.
- **Cox Communications, Inc.**<sup>23</sup>: In January 2024, the Arizona Attorney General’s Office obtained a consent judgment against Cox Communications, Inc. (“Cox”), a national telecommunications company, for failing to adequately disclose additional fees to customers who purchased television services through long-term contracts based on promises of “price lock guarantee” and other fixed-pricing offers between January 2017 and March 2021. As part of the consent judgment, Cox must accurately and clearly disclose any and all material terms to consumers at the time of sale, and refrain from imposing any unilateral pricing increases on its residential customers in Term Agreements if Cox advertised that those customers would have “locked,” “set,” “guaranteed,” or other fixed monthly pricing. Cox also agreed to pay \$13 million in restitution and civil penalties.

## II. FTC’s Proposed Rule and State Attorneys General Comments

### A. § 464.2 Hidden Fees Prohibited

According to the Notice,<sup>24</sup> Section 464.2 of the proposed Rule is set forth as follows,

(a) It is an unfair and deceptive practice and a violation of this part for any Business to offer, display, or advertise an amount a consumer may pay without Clearly and Conspicuously disclosing the Total Price.

(b) In any offer, display, or advertisement that contains an amount a consumer may pay, a Business must display the Total Price more prominently than any other Pricing Information.

If a business wants a consumer to part with their hard-earned money and purchase a good or service, that business should be forthright about how much the good or service costs, in total, from the very beginning, and in clear terms. Consumers should not be baited with an attractive, artificially low price, only to find out later in the transaction that fees and charges have substantially increased the total price. The State Attorneys General concur with the FTC’s position that “[w]hen sellers advertise prices that are artificially low because they do not include mandatory

<sup>22</sup> <https://www.doj.state.or.us/media-home/news-media-releases/ag-rosenblum-announces-4-million-settlement-with-centurylink/>

<sup>23</sup> <https://www.azag.gov/press-release/attorney-general-mayes-announces-13-million-settlement-cox-communications-disguising>

<sup>24</sup> Notice at 157.

fees that are disclosed only later in the purchasing transaction, consumers end up transacting with those sellers under false pretenses.”<sup>25</sup>

Such deceptive conduct, apparently driven by profit motives,<sup>26</sup> hurts consumers, who are often hamstrung<sup>27</sup> into paying higher prices for goods or services that they might not have purchased had they been clearly told the truth up front. Such deceptive conduct also frustrates consumers’ efforts in comparison shopping, especially online, where, presumably, many consumers do most of their research. Hard-working consumers should not have to waste their valuable, leisure time researching prices by being forced to navigate through multiple webpages of multiple websites, including hyperlinks to exhausting terms and conditions containing verbose legalese in miniscule and sometimes obscured fonts, then entering all of their payment and other personal information to reach the check-out page, so that they can hopefully, finally learn the true and final cost of the good or service.

The State Attorneys General support the FTC in promulgating this provision to combat deceptive bait and switch pricing schemes. It is a straightforward regulation that is grounded in common sense, and should not result in a significant burden to businesses, who will merely be required to be honest and upfront about how much money the consumer is required to pay to purchase the good or service. Furthermore, the adoption of this provision, as well as the adoption of the Rule in general, will help provide a level playing field for all businesses competing in their respective marketplaces. Businesses that have been truthful and straightforward about the total cost of their goods or services will not be put at a competitive disadvantage next to businesses who deceptively market their goods or services as being cheaper than they actually are.

#### **B. § 464.3 Misleading Fees Prohibited**

According to the Notice,<sup>28</sup> Section 464.3 of the proposed Rule is set forth as follows,

(a) It is an unfair and deceptive practice and a violation of this part for any Business to misrepresent the nature and purpose of any amount a consumer may pay, including the refundability of such fees and the identity of any good or service for which fees are charged.

(b) A Business must disclose Clearly and Conspicuously before the consumer consents to pay the nature and purpose of any amount a consumer may pay that is

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<sup>25</sup> Notice at 35.

<sup>26</sup> Notice at 36-37 (recognizing a study done by StubHub that found that consumers purchased more tickets and upgraded to more expensive seats when the total price was not displayed at the beginning of the transaction; also recognizing that resort and service fees generated billions for the hotel and live ticket industries, respectively).

<sup>27</sup> See Notice at 12, FN 38 (“They wait until a buyer has waited in queues for long, stressful delays and spring substantial...fees on them last minute knowing they are more likely to pay them than if they had been upfront with the cost of the purchase to begin with.”)

<sup>28</sup> Notice at 157-158.

excluded from the Total Price, including the refundability of such fees and the identity of any good or service for which fees are charged.

During the comment period for the previous Advanced Notice of Proposed Rulemaking, the FTC reported that it received numerous comments from consumers who reported that sellers misrepresent or do not adequately disclose the nature or purpose of fees being charged, with consumers left wondering what they are paying for, or believing that fees are arbitrary.<sup>29</sup> Consumers explained that sellers used vague names like “convenience fees, economic impact fees, or improvement fees that do not adequately disclose to consumers what they are paying for.”<sup>30</sup> Some consumers complained that businesses led them to believe a charge was a mandatory tax on consumers imposed by the government, when the fee was actually a charge the business chose to impose.<sup>31</sup> Furthermore, consumers shared that the stated reason for fees provided little or no value, had no relationship to the goods or services they received, or appeared to be merely revenue sources for sellers.<sup>32</sup>

The State Attorneys General support the FTC in promulgating this provision, as we agree with the FTC that charges that misrepresent their nature and purpose are unfair and deceptive because they mislead consumers and make it more difficult for truthful businesses to compete on price.<sup>33</sup> We further agree that in order to prevent these misrepresentations, “it is necessary for businesses to clearly and conspicuously disclose the nature and purpose of any amount a consumer may pay that is excluded from the total price.”<sup>34</sup> Furthermore, we agree that “[w]here charges are excluded from the total price, disclosures of the nature and purpose of such charges are necessary to determine whether such fees are truly optional and properly excluded from the total price, and for the consumer to decide whether to accept the optional charge.”<sup>35</sup> Like proposed Section 464.2, this provision is another straightforward, commonsense approach that should not significantly burden businesses.

### **C. § 464.4 Relation to State Laws**

According to the Notice,<sup>36</sup> Section 464.4 of the proposed Rule is set forth as follows,

(a) *In General.* This part will not be construed as superseding, altering, or affecting any State statute, regulation, order, or interpretation relating to unfair or deceptive fees or charges, except to the extent that such statute, regulation, order, or interpretation is inconsistent with the provisions of this part, and then only to the extent of the inconsistency.

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<sup>29</sup> Notice at 4, 6-7, 40.

<sup>30</sup> Notice at 7, 40.

<sup>31</sup> Notice at 40.

<sup>32</sup> Notice at 7.

<sup>33</sup> Notice at 41-42.

<sup>34</sup> Notice at 42.

<sup>35</sup> Notice at 42.

<sup>36</sup> Notice at 158.



(b) *Greater protection under State law.* For purposes of this Section, a State statute, regulation, order, or interpretation is not inconsistent with the provisions of this part if the protection such statute, regulation, order, or interpretation affords any consumer is greater than the protection provided under this part.

The State Attorneys General support the FTC in promulgating this provision. This section properly recognizes and preserves the interest that individual states have in combatting unfair or deceptive acts or practices committed in our respective jurisdictions. It also expressly preserves the states' ability to enact greater protections than those afforded by the proposed Rule. As technology and consumer-facing business practices continue to evolve, it is essential that the states retain the ability and flexibility to address unfair or deceptive fee practices. As noted by the FTC, some states have also taken legislative or regulatory action concerning such practices.<sup>37</sup>

### III. Conclusion

The undersigned State Attorneys General thank the FTC for the opportunity to be heard in this important matter. We support the promulgation of the proposed rule, as set forth in the Notice, and look forward to continuing our work combatting unfair or deceptive fee practices, in whatever form they may take, and wherever they may arise.

BY THE UNDERSIGNED STATE ATTORNEYS GENERAL:



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<sup>37</sup> Notice at 48; *see, e.g.*, H.B. 636 (2023-2024)(Pa. 2023) (proposed amendments to the definition section of the Pennsylvania *Unfair Trade Practices and Consumer Protection Law* defining certain enumerated fee practices as unfair methods of competition and unfair or deceptive acts or practices).



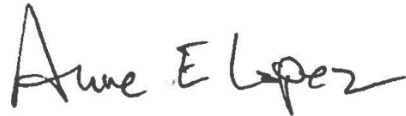
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