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BY ELECTRONIC SUBMISSION

Joel Christie, Acting Secretary
Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue NW
Mail Stop H-144 (Annex F)
Washington, DC 20580

Comment Letter regarding Food Delivery Fees ANPRM (Project No. P267101)

Dear Acting Secretary Christie:

We, the undersigned attorneys general of New York, Tennessee, Arizona, Connecticut, Delaware, the District of Columbia, Illinois, Maryland, Minnesota, New Jersey, New Mexico, North Carolina, Oregon, Vermont, Virginia, and Washington (collectively, “the State AGs”) submit these comments in response to the Federal Trade Commission’s Advanced Notice of Proposed Rulemaking on Unfair or Deceptive Fees in Online Food Delivery Services (“ANPRM”).¹ The State AGs, as enforcers of their respective states’ consumer protection laws, appreciate the FTC’s efforts to address unfair and deceptive pricing practices across the economy and welcome the opportunity to comment on ways in which the FTC can strengthen those efforts through additional rulemaking. Many of the undersigned have submitted comments supporting previous efforts by the FTC to address unfair or deceptive pricing practices in other industries.²

¹ Advanced Notice of Proposed Rulemaking on Unfair or Deceptive Fees in Online Food Delivery Services, 91 Fed. Reg. 20,381 (April 16, 2026).

² See Comments of 27 State Attorneys General in Response to the Federal Trade Commission’s Advanced Notice of Proposed Rulemaking on Unfair or Deceptive Rental Housing Fee Practices, available at <https://ag.ny.gov/sites/default/files/letters/multistate-letter-to-federal-trade-commission-on-anpr-letters-2026.pdf>; Comments of 19 State Attorneys General in Response to the Federal Trade Commission’s proposed Trade Regulation Rule on Unfair or Deceptive Fees, available at <https://www.attorneygeneral.gov/wp->

The State AGs encourage the FTC to continue those efforts with rules covering pricing for food delivery services.

Online food delivery platforms have experienced explosive growth over the past several years.³ These platforms have evolved from providing convenient services for occasional use to becoming an essential feature of many consumers' daily lives. Elderly consumers and those with mobility issues, for instance, may have few alternatives to using food delivery platforms to meet their basic needs.⁴ Yet these platforms rely on innovative technology that has allowed them to take on a novel role as intermediaries among restaurants, grocery stores, and consumers. As a result, existing law, though nonetheless applicable, may struggle to fully capture the unique harms to consumers flowing from this technology.⁵ This comment addresses certain unfair and deceptive practices in the online food delivery industry that the FTC identified in its ANPRM and recommends rules the FTC can promulgate to protect consumers from those practices. That said, the State AGs view these rulemaking proposals as a floor, not a ceiling. For instance, many states are considering legislation that would substantively restrict some of these practices in ways the FTC may not be considering. Any rules the FTC does promulgate should therefore preserve the abilities of states to enact protections that extend beyond those rules.

I. Unfair or Deceptive Fees and Other Charges

As the FTC recognized in its 2025 Trade Regulation Rule on Unfair or Deceptive Fees, “widespread and growing unfair and deceptive fee practices” are making it more difficult for consumers to understand the true total price of any given product or service.⁶ But while the variety of these fees abound, the practice of tacking on extra fees and charges at the end of a transaction without adequately disclosing them upfront – often referred to as “drip pricing” – is nothing more than a bait-and-switch tactic, which the FTC has a long history of combatting.⁷

Online food delivery platforms have become some of the worst offenders of drip pricing. Consumers using these platforms now confront a growing laundry list of fees for delivery and in-store pickup orders. Many of these fees are not clearly presented to the consumer until they have spent valuable time selecting items and are ready to check out. And even at that point, the purpose and method of calculating those fees are rarely disclosed. For instance, some platforms charge “service fees” in addition to the standard “delivery fee,” calling into question precisely what “service” the platform is providing beyond the delivery itself.⁸ These service fees frequently vary from order to order and consumer to consumer, without clear explanation, such that many

content/uploads/2024/02/2024.2.7-Comment-of-19-State-AGs-Unfair-or-Deceptive-Fees-Trade-Regulation-RuleFinal.pdf.

³ Josephine Campbell, *Food delivery service industry*, EBSCO (2025), available at

<https://www.ebsco.com/research-starters/business-and-management/food-delivery-service-industry>.

⁴ Hwang S, Johnson CM, Charles J, Biediger-Friedman L., *Food Delivery Apps and Their Potential to Address Food Insecurity in Older Adults: A Review*. Int J Environ Res Public Health (Sept. 10, 2024).

⁵ Lee, Angela, *The Costs of Convenience: A Case for Regulating Online Food Marketplaces in the Public Interest*. Journal of Food Law & Policy (May 2024).

⁶ See, e.g., Background, Rule on Unfair or Deceptive Fees, 16 CFR Part 464.

⁷ See, e.g., Past Commission Actions, Advanced Notice of Proposed Rulemaking, Rule on Unfair or Deceptive Fees in Online Food Delivery Services, 91 FR 20381 (April 14, 2026).

⁸ See Justine Fisher, *Food Delivery Fees Are Rising, and Everyone's Feeling the Pinch*, CNBC (July 27, 2024), <https://www.cnbc.com/2024/07/27/food-delivery-fees-are-rising.html>.

consumers cannot anticipate what the total order price will be even when the existence of the fee itself is disclosed. And wide variation among platforms in the allocation of these fees to restaurants and drivers makes it difficult for consumers to know whether and how much to tip restaurant staff and delivery personnel.⁹

Other online food delivery platforms charge fees that many consumers would not expect, such as “small order fees.” Like service fees, even when the existence of these small order fees is disclosed, the mechanism by which they are calculated is often withheld from the consumer.¹⁰ As a result, consumers often do not know how much they have to order to avoid the small order fee, or what the exact fee will be if they do not reach the requisite order size. Moreover, when the amount of the small order fee is only revealed to the consumer at check-out, the fees impose undue pressure on the consumer to make additional purchases that they would not otherwise have made.

Finally, in jurisdictions that have enacted certain minimum pay standards for food delivery workers, some platform operators have begun charging separate fees with the stated intent of offsetting the increased operating costs of complying with these standards.¹¹ These additional fees – sometimes called “regulatory response fees” – are separate from both the delivery fee and the service fee, further complicating consumer efforts to understand what the fees actually cover and what portion, if any, is shared with delivery workers or the restaurant.

As in other industries, consumers are harmed by these bait-and-switch pricing practices in many ways, including through the increased difficulty of comparison shopping. When companies use drip pricing, consumers must navigate to the end of each order process to discover what the total price of their order will be—and must start over on another platform if they want to compare.¹² Even then, the plethora of fees and the opacity about how they are computed further obstructs comparison across platforms. The result is that consumers cannot make meaningful assessments about the best platform to fit their needs and financial resources, driving the costs of food delivery services across the economy ever higher. Extreme consolidation in delivery and exclusive partnerships with restaurant chains exacerbate these problems, since consumers may have few alternatives when searching for delivery for their meal.¹³

⁹ The Washington Post, *We ordered over \$100 of delivery. Here's how much the restaurants, drivers and apps made* (May 31, 2023), <https://www.washingtonpost.com/technology/interactive/2023/delivery-app-door-dash-grubhub-ubereats/>; Toast, Caroline Price, *How Much Should You Tip Delivery Drivers? A Complete Guide* (June 30, 2025), <https://pos.toasttab.com/blog/on-the-line/how-much-should-you-tip-delivery-drivers>.

¹⁰ See, e.g., McDonald's: *What's a small order fee?* (Nov. 9, 2022) (describing its small order fee as only a “fee on orders with a subtotal below a certain amount”), <https://www.mcdonalds.com/us/en-us/faq/whats-a-small-order-fee.html>.

¹¹ Bonny Chu, *Instacart slaps NYC shoppers with surprise 'regulatory response fee' after new city law kicks in*, Fox Business (Jan. 28, 2026), available at <https://www.foxbusiness.com/lifestyle/instacart-slaps-nyc-shoppers-surprise-regulatory-response-fee-new-city-law-kicks>.

¹² See Pamela Vachon, *We Did the Math: How Much More Expensive Is Grocery Shopping With Instacart, Really?*, CNET (Jan. 30, 2025), <https://www.cnet.com/home/kitchen-and-household/we-did-the-math-how-much-more-expensive-is-grocery-shopping-with-instacart-really/>.

¹³ See Bloomberg Second Measure, Michal Kaczmarek, *Which company is winning the restaurant food delivery war?*, Apr. 15, 2024, <https://secondmeasure.com/datapoints/food-delivery-services-grubhub-uber-eats-door-dash-postmates/> (showing shares of meal delivery sales of 67% to DoorDash, 23% to Uber Eats, and 8% to GrubHub, and discussing exclusive partnerships).

II. Markups and Price Differentials

Compounding the difficulty that consumers face in comparing prices across platforms and stores is the fact that prices on food delivery platforms often vary from those offered in-store or on the store's website. For instance, restaurants may use "markups"¹⁴ to increase the price of menu items to offset the fee that the platform charges to the restaurant, which can be a significant percentage of the order total.¹⁵ Platforms, however, have little incentive to disclose to consumers when prices on the platform are higher than those offered directly from the restaurant, since this would divert business from the platform. But this variance, when undisclosed, prevents consumers from understanding the actual cost of the delivery service, even when separate fees are disclosed.

Moreover, unlike in-store shopping, the prices of individual items online and in apps can vary among consumers for reasons unknown to the consumers. Platforms are known to engage in "price experiments" that vary the price of goods from one consumer to the next, with the result that some consumers do not pay the same price as they would in the brick-and-mortar store or on the store's website.¹⁶ And while some platforms disclose such differences in price, others don't.¹⁷ But even when platforms do disclose these price differences among consumers, they may not disclose how the differences are determined, whether the store or the platform is responsible for the price, or what other factors cause the price listed on the platform to differ from the in-store price.

These markups and price differentials have become even more difficult for consumers to parse with the rise of dynamic pricing.¹⁸ This practice – which involves companies varying the price of a good in real time based on any number of factors, including demand and competitor pricing – will continue to make prices on those platforms ephemeral, rendering comparison shopping even more difficult.

¹⁴ Joe Guskowski, *DoorDash, restaurants at odds over price markups*, Restaurant Business (May 10, 2023), available at <https://www.restaurantbusinessonline.com/technology/doordash-restaurants-odds-over-price-markups>.

¹⁵ For example, DoorDash's minimum offering in its "Basic" plan charges the restaurant 15% of the order subtotal – before service and delivery fees charged to the consumer—while it charges up to 30% for its "Premier" tier that brings in more customers with "lower customer delivery fees" and better access to "DashPass members who order twice as often and spend 2.5x more." DoorDash, Merchant Pricing for Marketplace and Commerce Platform, <https://merchants.doordash.com/en-us/pricing> (accessed Apr. 22, 2026).

¹⁶ Derek Kravitz, *Instacart's AI-Enabled Pricing Experiments May Be Inflating Your Grocery Bill, CR and Groundwork Collaborative Investigation Finds*, Consumer Reps. (Dec. 22, 2025), <https://www.consumerreports.org/money/questionable-business-practices/instacart-ai-pricing-experiment-inflating-grocery-bills-a1142182490/>; Ending Item Price Tests on Instacart, Instacart (Dec. 22, 2025), <https://www.instacart.com/company/updates/ending-item-price-tests-on-instacart>.

¹⁷ For instance, enforcement actions from state attorneys general have improved markup disclosures among some companies by, for instance, requiring a notice on both the menu and the check-out page that prices on the platform may be higher than in the restaurant. Press Release, Off. of the D.C. Att'y Gen., *AG Racine Secures \$3.5 Million from Grubhub for Illegally Charging Hidden Fees, Using Deceptive Marketing Tactics to Boost Profits at Expense of Customers* (Dec. 30, 2022), <https://oag.dc.gov/release/ag-racine-secures-35-million-grubhub-illegally>.

¹⁸ Svartbäck, Dennis and Ekholm, Anders G., *Dynamic Pricing of Restaurant Food Delivery: An Explorative Market Efficiency Study* (March 22, 2021).

III. Personalized Pricing

Increasingly, consumers shopping for goods and services online must now contend with the use of “personalized pricing.” The practice – sometimes called “surveillance pricing” – refers to companies’ use of consumers’ personal data to make individualized pricing decisions. Once largely theoretical, personalized pricing has grown in sophistication with rapid advances in artificial intelligence capabilities and the accumulation of consumer data available to commercial entities.¹⁹ Left unchecked, the practice threatens to create even more obstacles to consumers seeking transparency when shopping online, while simultaneously pushing consumers to spend more than they otherwise might.

The risks posed to consumers from personalized pricing on food delivery platforms are manifold. For instance, food delivery platforms acting as intermediaries for multiple stores and restaurants may gain an unfair competitive advantage over those stores and restaurants because they have access to a wider array of consumer data. While each restaurant has limited insight into individual consumers, platforms can gather detailed transaction, location, and behavioral data to build sophisticated pricing models. Just as platforms use consumer data to recommend different restaurants to different consumers,²⁰ platforms could also use that data to personalize prices in a way that favors one restaurant over another.²¹ While this raises competition concerns, the practice can also harm consumers, who may pay higher prices at the stores or restaurants they most often visit. Consumers also typically cannot rely on existing privacy policies to learn what exact data is being used to set prices for them or how that data influences the prices they see.

In addition, some consumers – such as those living in food deserts²² – are more dependent on food delivery platforms to meet their basic needs. Platforms could use that knowledge – which they might gain from third-party sources, including data brokers – to charge those consumers higher prices or fees for goods they know the consumers rely on more heavily.²³ Similarly, platforms may adjust prices or fees for a consumer when that consumer is known to have more liquidity, such as on payday.²⁴

¹⁹ See FTC Surveillance Pricing Study Indicates Wide Range of Personal Data Used to Set Individualized Consumer Prices, FTC (Jan. 17, 2025), <https://www.ftc.gov/news-events/news/press-releases/2025/01/ftc-surveillance-pricingstudy-indicates-wide-range-personal-data-used-set-individualized-consumer>.

²⁰ *Careers at DoorDash Blog: Beyond the Click: Elevating DoorDash’s personalized notification experience with GNN recommendation* (June 25, 2024), available at <https://careersatdoordash.com/blog/doordash-customize-notifications-how-gnn-work/#:~:text=GNN%20recommendation%20%2D%20DoorDash-,Beyond%20the%20Click:%20Elevating%20DoorDash's%20personalized%20notification%20experience%20with%20GNN,as%20shown%20in%20Figure%201>.

²¹ Platforms may also charge restaurants for this service, allowing them to monetize consumer data without actually selling it. But this monetization often isn’t disclosed in privacy policies, which typically only disclose whether the company “sells” the consumer’s data.

²² Caroline George, Adie Tomer, *Delivering to deserts: New data reveals the geography of digital access to food in the U.S.*, Brookings Institution (May 11, 2022), available at <https://www.brookings.edu/articles/delivering-to-deserts-new-data-reveals-the-geography-of-digital-access-to-food-in-the-us/>.

²³ Jennifer Valentino-DeVries, Jeremy Singer-Vine, Ashkan Soltani, *Websites Vary Prices, Deals Based on Users’ Information*, Wall Street Journal (Dec. 24, 2012) (describing 2012 investigation finding that Staples charged higher prices online to consumers it believed lived in an area with few competitors).

²⁴ Plexure and McDonald’s: Revolutionizing Personalized Experiences., Tepia, <https://tepia.co/plexure-and-mcdonaldsrevolutionizing-personalized-experiences/> (last visited XXX).

The State AGs have concerns that some companies, to avoid consumer backlash, obfuscate their use of personalized pricing through personalized discounts and promotions.²⁵ That is, instead of simply varying the base price of a product, companies offer different discounts and promotions to different consumers based on their personal data. But the result is the same: consumers pay different prices for the same good based on a company's use of their personal data, with the goal of extracting more revenue from those consumers. These practices are difficult to detect. Without knowing that it occurs, consumers cannot opt out and choose to shop from a vendor or marketplace that instead offers clear and consistent public pricing. And when combined with the aforementioned issues of undisclosed fees and variable pricing, comparison-shopping becomes a near impossibility.

Consumers cannot meaningfully avoid personalized pricing that they don't know about. Moreover, the data that companies use to offer personalized prices, from what source companies acquire that data, and how that data influences prices, are all material conditions that consumers must understand to make informed purchasing decisions.²⁶

States have adopted various approaches for dealing with the growing problem of personalized pricing. Last year, New York enacted legislation requiring companies to disclose their use of the practice.²⁷ More recently, the Maryland legislature passed a bill that would, among other things, restrict certain food retailers and third-party delivery service providers from setting a personalized price based on a consumer's personal data.²⁸ Over a dozen other States are considering legislation that ranges from additional disclosures to prohibiting the practice outright. Some States have also opted to investigate companies whose practices have raised concerns about possible personalized pricing, including those in the online food delivery industry. These efforts demonstrate how central the issue has become as consumers face an affordability crisis that shows few signs of abating.

IV. Proposals for Rulemaking

The FTC's Rule on Unfair and Deceptive Fees has so far proven successful at deterring many of the practices identified above in the live-event ticketing and short-term lodging industries. And while the kinds of fees that food delivery service platforms charge may differ, the mechanism by which they can deceive and harm consumers are the same. As a result, the State AGs encourage the FTC to amend the Rule on Unfair and Deceptive Fees to make it applicable to

²⁵ Gabriela Antonie, J.P. Bruno, Mariella Gonzales, Esperanza Johnson, *Personalized Pricing: Antitrust and Policy Considerations in the Age of Personalization*, Cornerstone Research (July 2025), available at <https://www.cornerstone.com/wp-content/uploads/2025/07/Personalized-Pricing-Antitrust-and-Policy-Considerations-in-the-Age-of-Personalization.pdf>.

²⁶ Increasingly, third-party data brokers are becoming key engines of personalized pricing by allowing companies to enrich data on their consumers beyond data the consumers provide to the company directly. But these data brokers rarely interact with consumers directly, so consumers cannot use normal opt-out requests or rely on the food delivery platform's privacy policy to restrict what data the platform has access to. *See* FTC Surveillance Pricing Study Indicates Wide Range of Personal Data Used to Set Individualized Consumer Prices, FTC (Jan. 17, 2025), <https://www.ftc.gov/news-events/news/press-releases/2025/01/ftc-surveillance-pricingstudy-indicates-wide-range-personal-data-used-set-individualized-consumer>.

²⁷ N.Y. Gen. Bus. Law § 349-a.

²⁸ Maryland General Assembly, HB0895, *text and status available at* <https://mgaleg.maryland.gov/mgaweb/Legislation/Details/hb0895/?ys=2026rs>.

online food delivery platforms. This could be accomplished efficiently by including “online food delivery service” – using a definition similar to the one offered in footnote 1 of the ANPRM – as a third “covered good or service” in § 464.1.

That said, some unique aspects of food delivery platforms justify additional rules for disclosing pricing, fees, and charges:

- At each stage of the item-selection process (*e.g.*, after selecting one item but before adding another item), the total price for the order, inclusive of all fees and charges, should be clearly and conspicuously displayed;
- Food delivery platforms should be required to accurately describe the purpose of each fee and how the fee is calculated, including whether the revenue generated from the fees go to the platform, the restaurant, or the delivery worker;
- Food delivery platforms should be required to disclose any markup or variation from in-store pricing for individual menu items, and to separately itemize the total markup or variation as part of the total order;

The existing Rule on Unfair and Deceptive Fees, however, may not be appropriate for addressing the problems posed by personalized pricing among online food delivery platforms, since it does not fall into the category of drip pricing that the Rule is best-positioned to regulate. Therefore, the State AGs suggest that the FTC issue a new rule that is tailored to these practices in the online food delivery industry specifically. But, as with the Rule on Unfair and Deceptive Fees, this new rule should consider ways in which it might apply to other industries in which personalized pricing occurs.

Many states are currently considering legislation that goes beyond mandated disclosures by imposing substantive restrictions on the practice of personalized pricing. Thus, any rule the FTC does promulgate should act as a floor, not a ceiling. At a minimum, the FTC should consider a requirement that food delivery service platforms clearly and conspicuously disclose essential information about personalized pricing including the following:

- (1) Any use of pricing technology that the company uses to set personalized prices based on individual consumer data.
- (2) Any specific price that the company has set using personalized pricing technology.
- (3) Any variation in price between the price offered to the consumer and any fixed reference price, such as the price offered in-store or to the general public.

The rule should also define “personalized pricing” to include personalized promotions and discounts offered to consumers based on the use of those consumers’ personal data. In other words, the rule should make clear that discounts and promotions are not exceptions to personalized pricing generally. Online food delivery platforms should also disclose when personalized pricing, including personalized discounts and offers, is a feature of a company’s rewards or loyalty program.

The rule should also require that online food delivery platforms utilizing personalized pricing disclose what specific consumer data they use to set prices. Likewise, when platforms charge prices that are different from the prices offered in-store or to the general public on the store's website, the rule should require that those platforms disclose that fact and what factors result in these price differentials, to the extent possible.

Finally, as noted previously, any rule that the FTC adopts should preserve the states' abilities to enact greater protections than those afforded by the rule. As companies continue to experiment with and implement new pricing practices, it is paramount that states maintain the flexibility needed to respond to ways in which those practices harm consumers.

* * *

The undersigned State AGs applaud the Commission's effort to establish common-sense, nationwide protections against unfair and deceptive practices in the online food delivery industry through this ANPRM. We look forward to continuing to work together with the Commission in our shared mission to protect consumers.

Respectfully submitted,



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