



**Testimony of
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on

“Protecting Consumers from Junk Fees”

**Before the
United States Senate
Committee on Commerce, Science, & Transportation
Subcommittee on Consumer Protection, Product Safety,
and Data Security**

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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

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

with consumers, industry, and policymakers to raise awareness about the impact of hidden fees and promote policies that allow consumers to 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

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/>

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

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 US Airlines." Press Release. (May 23, 2023) Online: <https://ideaworkscompany.com/wp-content/uploads/2023/05/Press-Release-175-Assigned-Seating-Revenue.pdf>

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

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

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>

⁹ IdeaWorksCompany. “Airline Ancillary Revenue Nears Pre-Pandemic Level with a 56% 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.

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%) of respondents reported that landlords impose rental application fees. Nearly as many (87%) stated that landlords charge excessive late fees. Well over half of respondents observed utility-related fees (73%), processing or

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>

administrative fees (68%), convenience fees (60%), insurance fees (59%), and notice fees (56%).¹⁶

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

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>

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>

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

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

“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 practices 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.

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/>

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>

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

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/>

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, Lujan, 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 arbitration 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.

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>

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>