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

Re: Food Delivery Fees ANPRM, Project No. P267101

To the Federal Trade Commission:

The Consumer Technology Association® (“CTA”) urges the Federal Trade Commission (“FTC” or “Commission”) to use its existing authority to address any isolated unfair or deceptive online food delivery fees instead of issuing burdensome new rules that would negatively impact consumers and small businesses. CTA submits these comments in response to the Advance Notice of Proposed Rulemaking on unfair or deceptive fees in online delivery (“ANPRM”) issued by the FTC.¹

CTA is North America’s largest technology trade association. Our members are the world’s leading innovators – from startups to global brands – helping support more than 17 million American jobs. CTA owns and produces CES®, the world’s most powerful tech event. Many CTA members offer platforms that provide convenience to consumers by enabling online delivery of food and grocery items. Members comply with existing laws and guidance that govern unfair or deceptive practices related to online food delivery fees. CTA urges the FTC to act with caution when considering new rules related to online food delivery fees. Instead of imposing new burdens on small businesses and potentially hurting consumers, CTA urges the Commission to continue using its existing authority under Section 5 of the FTC Act (“Section 5”)²

¹ *Rule on Unfair or Deceptive Fees In Online Food Delivery*, Advance Notice of Proposed Rulemaking, 91 Fed. Reg. 20381 (Apr. 16, 2026), <https://www.federalregister.gov/documents/2026/04/16/2026-07473/rule-on-unfair-or-deceptive-fees-in-online-food-delivery-services>.

² 15 U.S.C. § 45.

and the Restore Online Shoppers' Confidence Act ("ROSCA")³ to address any isolated unfair or deceptive practices related to online food delivery fees.

I. Standard Online Food Delivery Fee Practices Are Neither Deceptive Nor Unfair.

No evidence exists of widespread deceptive or unfair practices related to online food delivery fees that justifies new rules.

First, consumers are not deceived by online food delivery fees. Industry practice is to clearly disclose fees to consumers *before* they choose to place an online delivery order. These fees are generally displayed to consumers at multiple points in the transaction process, including on merchant store pages, in the cart, and at checkout prior to completing the transaction. They are clearly labeled and distinguished, and mandatory fees are separated from optional charges such as tips. In many cases, consumers are also presented with multiple fulfillment or delivery options, such as expedited delivery, scheduled delivery, or pickup, with pricing disclosed at the point of selection. These consumer-selected service options differ fundamentally from mandatory fees that are unavoidable and disclosed only late in a transaction. This layered disclosure approach ensures that consumers understand the cost structure for online orders before making a final purchase decision.⁴

After receiving these clear disclosures, consumers affirmatively agree to the total price by choosing to move forward with their purchase after reviewing a clear presentation of the total price to be charged. The consumer must actively choose whether to proceed with the purchase, and no payment is processed unless and until the consumer consents to that final, fully disclosed amount. This eliminates the possibility of consumers paying surprise charges or hidden costs. If a consumer believes that the fees they would be charged for online food delivery services are too high, they could easily pursue another option for online delivery given the robust competition in this space and low friction of switching between service providers or alternative options.

Moreover, real-world consumer behavior undermines any notion that a new rule is warranted to address widespread unfair or deceptive practices related to online food delivery fees. Most consumers are repeat customers who use delivery platforms frequently—often on a weekly basis—and have done so for years. Indeed, as the FTC notes in the ANPRM, the number of households that order meals delivered from restaurants more than doubled from 2019 to 2024, and about one third of American adults (and more than half of those under 45) now say they

³ 15 U.S.C. §§ 8401-8405.

⁴ The approach that online delivery platforms take to disclosing fees is in stark contrast to companies that impose "junk fees" on consumers. The term "junk fees" typically refers to charges that are hidden, added after a purchase decision is made, or not meaningfully disclosed. The fees at issue here do not have those characteristics.

order delivery from restaurants at least once a week.⁵ In addition, over 138 million Americans (more than half of American adults) bought groceries online in 2024, with average sales over \$9 billion each month, most of which is spent on delivery orders.⁶ This repeated use indicates familiarity with and acceptance of how pricing works on online food delivery platforms. Consumers continue to use these services because they value convenience, with full awareness of fees. Any argument that a new rule is needed to address online food delivery fees assumes that these experienced users are still being misled, which is inconsistent with continued use.

Second, online food delivery fees are not unfair. Under 15 U.S.C. § 45(n), a practice is “unfair” only if it causes substantial consumer injury that consumers cannot reasonably avoid. The practices at issue do not meet either requirement. Any alleged harm from online food delivery fees is limited to the possibility that a consumer spends time reviewing pricing and decides not to complete a purchase. In these situations, no money is paid, no product is delivered, and no irreversible commitment is made. At most, a consumer is inconvenienced by spending time reviewing pricing and deciding not to complete a purchase. This is no more than a minor inconvenience, not a substantial injury. In addition, any potential harm to consumers is easily avoidable and fully within the consumer’s control. Consumers can decline to complete the purchase, switch platforms (including by ordering directly from the restaurant or store), choose pickup, or decide not to purchase at all. Because consumers see the full price before being charged, they can avoid any unwanted transaction.

II. Existing Laws Effectively Address Any Isolated Unfair or Deceptive Practices Involving Online Food Delivery Fees.

While industry practice is to clearly disclose online food delivery fees, even if companies were engaged in isolated unfair or deceptive practices involving online food delivery fees, the FTC already has robust authority under Section 5, and in some cases ROSCA, to address any such practices. The FTC effectively uses its existing authority to identify, investigate and remedy unfair and deceptive conduct related to online delivery fees. This allows the FTC to obtain relief to prevent future misconduct and get money back to consumers.

Consumers are further protected by laws and rules at the state and local level. As noted in the ANPRM, states and localities have implemented laws and rules that govern how food delivery platforms advertise and disclose fees and pricing information. For example, several states recently enacted laws and rules requiring advertised prices to represent the total price of a good or service, inclusive of mandatory fees and other seller-imposed charges.⁷ Some states have even included specific provisions in their laws that apply to food and grocery delivery platforms,

⁵ 91 Fed. Reg. 20381 (citing Ellen Cushman, *The Innovation That’s Killing Restaurant Culture*, The Atlantic (Oct. 27, 2025), <https://www.theatlantic.com/culture/2025/10/fooddelivery-america/684700/>; Priya Krishna, *Freedom With a Side of Guilt: How Food Delivery Is Reshaping Mealtime*, N.Y. Times (Jan. 30, 2026), <https://www.nytimes.com/2026/01/30/dining/fooddelivery-apps-door-dash-uber.html>).

⁶ 91 Fed. Reg. 20381 (citing CapitalOne Shopping, *Online Grocery Shopping Statistics* (Dec. 11, 2025), <https://capitaloneshopping.com/research/online-groceryshopping-statistics/>).

⁷ See, e.g., 940 Mass. Code Regs. 38.03 (2025).

including requirements that such platforms clearly and conspicuously disclose upfront any mandatory fees or charges the consumer must pay as part of the transaction.⁸

Existing laws at the federal and state levels are more than sufficient to protect consumers from isolated misconduct related to online food delivery fees. The FTC should continue to use its authority under Section 5 and ROSCA to address these practices.

In addition to the Commission's own enforcement actions, existing case law already provides clear guidance to food delivery platforms and retailers on what and how to disclose. Recent matters involving companies such as Chick-Fil-A have established practical standards that the industry relies upon.⁹ These cases, combined with the Commission's Section 5 authority, provide a well-developed framework that renders additional rulemaking unnecessary.

III. Prescriptive Disclosure Rules Would Not Serve Small Businesses or Consumers.

The FTC already has broad, flexible authority to address unfair or deceptive online food delivery fees, and new rules that impose rigid disclosure rules would only serve to harm small businesses and reduce clarity for consumers. CTA understands the FTC's intent is to further protect consumers by exploring new rules, but the rule the FTC is considering could unintentionally have the opposite effect. For example, mandating a single "all-in" price at the earliest stages of a transaction can mislead consumers when key inputs remain unknown or when multiple fulfillment or delivery options are available. Consumers are often better served by transparent presentation of clearly priced service options at the point where they make fulfillment selections. Flexible disclosure allows accurate information at the most relevant decision point, typically when the consumer has chosen the full array of food and grocery items they want to purchase and can evaluate the total cost of acquisition as well as the delivery and related fees as a proportion of that cost.

The Commission should also consider that disclosing all applicable fees — or the factors that determine contingent or variable fees — everywhere a customer sees a price is unworkable. There is not enough space in every price display to surface all of this information; it would be repetitive and tiresome for the customer; and platforms would likely have to omit other key information to accommodate it. Over time, consumers would begin ignoring the disclosures entirely, undermining the Commission's transparency goals. Moreover, this approach would require significant design changes and technical development, imposing disproportionate burdens on small businesses. This is also not how consumers are accustomed to shopping, especially for low-price, everyday items. A consumer may want to see the total final price for a single airline ticket, but not for each individual banana or carton of milk added to a basket.

⁸ See, e.g., Minn. Stat. 325D.44 Subd. 1a(c)(1)–(2) (2025); Va. Code Ann. 59.1–587(B)(1)–(2) (2025); Colo. Rev. Stat. 6–1–737(2)(c) (2026).

⁹ See, e.g., Chick-fil-A delivery fees \$4.4M class action settlement (Dec. 6, 2023), <https://topclassactions.com/lawsuit-settlements/closed-settlements/chick-fil-a-delivery-fees-4-4m-class-action-settlement/>.

A better consumer experience — and one more likely to achieve the Commission’s goals — would be a one-time disclosure of the types of fees charged to customers, along with easy access to a page where customers can learn more about pricing, fees, and other terms and conditions. This approach balances transparency with usability and mirrors the brick-and-mortar shopping experience, where total taxes, bag fees, and applicable promotions are not known until checkout.

Also, certain requirements the FTC is considering imposing would harm small businesses and likely create consumer confusion. For example, the FTC is considering prohibiting “misrepresenting or failing to clearly and conspicuously disclose whether the prices of items ordered through online food delivery platforms, exclusive of fees and charges imposed by the platform, are the same as, or different from, the prices for the same items offered in the store or restaurant or the prices for the same items offered to other consumers on the platform.”¹⁰ However, merchants often set their own prices on platforms, and platforms already encourage transparent pricing. Consumers today can also compare item prices across a wide range of providers more easily than ever before — far more readily than in the traditional in-store context — giving them greater visibility into pricing and competitive alternatives. While a general disclosure that prices may differ between in-store and online may be reasonable, item-by-item comparisons would be highly burdensome for platforms and small businesses to implement. This would require constant updates from hundreds of thousands of small businesses and likely increase administrative costs and create confusion. Instead of placing this onus on small businesses, it is reasonable to expect consumers who believe pricing on online food delivery platforms is too high to explore other options, including by reviewing the restaurant’s menu online to compare pricing and make an informed decision regarding whether the convenience of online food delivery is worth any increase in price.

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CTA shares the FTC’s commitment to protecting consumers from unfair or deceptive practices related to online food delivery fees. However, that goal does not require burdening legitimate platforms (and small businesses listed on these platforms) that consumers value for their convenience, flexibility, and choice. Industry practice is to clearly disclose fees to consumers before they place an online order, and consumer behavior shows that consumers understand and accept how pricing works on online delivery platforms.

The Commission should also recognize that online delivery services operate through a variety of business models, fulfillment structures, and pricing mechanisms. Any regulatory approach must preserve flexibility for platforms to present consumers with different fulfillment and delivery options, provided material pricing information is clearly and conspicuously disclosed before purchase.

If some companies are engaged in isolated unlawful conduct, the FTC already has the authority and enforcement tools it needs to police unfair or deceptive practices, and it is using them

¹⁰ 91 Fed. Reg. at 20387.

effectively. Implementing new rules risks undermining services that work well for consumers today.

Sincerely,

/s/ Rachel Nemeth

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