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Comment from American Hotel and Lodging Association

Posted by the **Federal Trade Commission** on Feb 13, 2024

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Attachments 1



AHLA Comment - FTC NPRM on Unfair or Deceptive Fees

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Give Feedback

February 5, 2024

Ms. April Tabor

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

Re: Unfair or Deceptive Fees NPRM, 16 CFR Part 464, Matter No. R207011

Dear Secretary Tabor:

The American Hotel and Lodging Association (“AHLA”) appreciates the opportunity to submit this comment in response to the above-referenced Notice of Proposed Rulemaking (“NPRM”) published by the Federal Trade Commission (“FTC”) to address certain deceptive or unfair practices relating to fees under Section 18 of the FTC Act.¹

AHLA is a national association representing all segments of the U.S. lodging industry, including hotel owners, real estate investment trusts, chains, franchisees, management companies, independent properties, bed & breakfasts, state hotel associations, and industry suppliers. The industry is comprised of more than 62,000 properties, 33,000 of which are small businesses, and more than 5.6 million hotel rooms across the country. The American lodging industry services more than 1.4 billion rooms per year, supports more than 7 million jobs, and generates more than \$52 billion in state and local tax revenue.²

AHLA and its members support consistent disclosure of lodging rates, fees, and taxes by all industry participants. The industry broadly is moving to implement the clear publishing of the total price (including all mandatory, non-government fees) for lodging, so that consumers can more easily navigate the myriad of choices they have when it comes to places to stay. AHLA and its members also support federal legislation (S. 2498 and H.R. 6543) that would codify a total price display requirement for the lodging sector.³

Against this backdrop, AHLA urges the FTC to ensure that any final rule it promulgates will apply equally across the short-term lodging industry. As such, a final rule must apply broadly to all industry participants, including online travel agencies (“OTAs”), short-term rental platforms, and metasearch sites (e.g., Google, KAYAK, or Trivago). Consumers may search for accommodations on metasearch sites. Metasearch sites aggregate information and may advertise or display lodging rates, but a consumer must go to a separate booking source to

¹ Federal Trade Commission, *Unfair or Deceptive Fees Trade Regulation Rule*, Notice of Proposed Rulemaking, 16 C.F.R. (Nov. 9, 2023), available at <https://www.federalregister.gov/documents/2023/11/09/2023-24234/trade-regulation-rule-on-unfair-or-deceptive-fees> [hereinafter “Unfair or Deceptive Fees NPRM”].

² For more information about AHLA and its members, please visit <https://www.ahla.com>.

³ See Hotel Fees Transparency Act of 2023, S. 2498, 118th Cong. (2023); No Hidden FEES Act of 2023, H.R. 6543, 118th Cong. (2023).

complete a reservation. Equal application of a final rule will prevent inconsistencies in the rule's implementation, confusion to consumers, and unfair competitive advantage for those not subject to the rule. For example, if a metasearch site does not include mandatory fees, when consumers go to complete the booking on the hotel website, they will see a higher rate (inclusive of mandatory fees) and perceive this as a bait and switch.

Additionally, AHLA urges the FTC to consider the necessity of the proposed rule's ban on misleading fees. The FTC already has the authority to prohibit misleading fees that it considers unfair and deceptive pursuant to Section 5 of the FTC Act.⁴ Thus, any final rule prohibiting misleading fees is redundant and unnecessary. Furthermore, due to the vague and ambiguous language, this proposed ban will likely confuse consumers and lead to additional implementation burdens. Far from yielding a more efficient and transparent outcome, unnecessarily requiring additional disclosures will bog down the process of lodging selection and harm competition.

Finally, the FTC should reexamine its assessment of the compliance costs of its proposed rule. The current compliance estimates do not adequately capture the burden on businesses to implement the proposed rule.

I. A Final Rule Prohibiting Hidden Fees Must Apply Uniformly Across the Lodging Industry

AHLA and its members support clear, consistent disclosure of lodging rates, fees, and taxes by all industry participants and providers through which consumers purchase short-term lodging. Several AHLA members have implemented a total price display model. These members include Marriott International, Hilton, Choice Hotels International, Omni Hotels & Resorts, and Hyatt, among others.

Consumers research and book lodging via many different channels, including OTAs, short-term rental platforms, and metasearch sites. Almost one of every five hotel bookings occurs on an OTA, with many more coming through metasearch sites and other third-parties.⁵ Any final rule mandating the disclosure of rates, fees, and taxes must apply broadly to all industry participants. AHLA urges the FTC to consider that uniform and consistent application is critical—especially application to metasearch sites, where customers frequently begin searching for short-term lodging—to ensure that consumers can readily and accurately compare lodging prices across all platforms. If all platforms are not required to display fees in a consistent manner, consumers will be confronted with varying price displays for the same accommodations on different websites, which would frustrate and undermine the purpose of this rulemaking. Accordingly, for purposes of proposed Section 464.2(b), the FTC should adopt a broad definition of “Businesses” with respect to the short-term lodging industry that

⁴ 15 U.S.C. § 45.

⁵ See Cindy E. Green, et al., *Demystifying the Digital Market & Guide to Commercial Strategy* (Kalibri Labs), at 6-12, available at https://kalibrilabs.com/certification.com/website-dl?__hstc=90351429.1e1c5ac06bd905d1d7db51bdb12412.1704590584895.1704590584895.1170459058489.1&__hssc=90351429.5.1704590584895&__hsfp=1135167407.

encompasses the short-term rental market, in addition to metasearch sites and OTAs, along with any other entity that is offering or displaying lodging rates.⁶

The FTC should also consider how its proposed rule interacts with state laws to ensure a consistent legal framework. Any final rule should expressly preempt state law to prevent patchwork implementation and resulting confusion as to the rule’s applicability and enforcement. Without preempting the state laws, additional federal regulation will only frustrate the FTC’s goal of implementing a uniform price disclosure standard.

In promulgating a final rule, the FTC should avoid highly subjective evaluations of the value of non-mandatory fees. AHLA disagrees with any characterization that its members charge fees that are of little or no value to customers, as doing so would be an unsustainable practice in an industry that depends on customer experience and goodwill. The proposed rule should not explicitly categorize any fees as ones that “provide little or no value to the consumer in exchange for the charge.”⁷ AHLA members embrace a competitive business model that is driven by transparency and customer satisfaction. With respect to hotel fees cited in the NPRM, such fees enable properties to provide value to guests, including through services and amenities such as beach or pool access, fitness centers, parking, food and beverage credits, concierge services, and other property-specific amenities. The value added to the consumer is demonstrated by the fact that individual hotel franchisees assess fees based on the amenities provided at a property and the specific consumer experience. Additionally, it is unnecessary for the Commission to make this determination with respect to mandatory hotel fees. The vast majority of hotels do not charge mandatory fees. According to a December 2022 analysis, only 6% of nationwide hotels charge mandatory fees—averaging \$26 per night.⁸

II. Prohibiting Misleading Fees is Unnecessary and Will Lead to Confusion

The FTC’s proposed Section 464.3(a) prohibiting misleading fees is unnecessary in light of the FTC’s existing authority under Section 5 of the FTC Act.⁹ Section 5 already provides the FTC with the authority to police misleading fees as an unfair or deceptive trade practice.¹⁰ For this reason, a final rule prohibiting misleading fees is redundant and unnecessary.

AHLA urges the FTC to consider how the proposed rule banning misleading fees would confuse consumers and industry stakeholders. The language of the proposed rule is vague, overbroad, and not sufficiently specific to provide notice of what types of fees businesses are required to display. For instance, Section 464.3(a) of the proposed rule states, “[i]t 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

⁶ Unfair or Deceptive Fees NPRM (request for comment 14(a)(ii)). AHLA supports the following definition of “short-term lodging”: “a hotel, motel, inn, short-term rental, or other place of lodging that advertises at a price that is a nightly, hourly, or weekly rate.” *See* Hotel Fees Transparency Act, S. 2498, 118th Cong. § 2(c)(3) (2023).

⁷ Unfair or Deceptive Fees NPRM (request for comment 24).

⁸ *See* <https://www.ahla.com/news/ahla-statement-support-hotel-fees-transparency-act>.

⁹ *See* 15 U.S.C. § 45.

¹⁰ *Id.*

the identity of any good or service for which fees are charged.”¹¹ Businesses could reasonably differ in their approaches to disclosing the “nature and purpose” or “identity” of such fees. This could lead to inconsistent descriptions of similar fees across industries and reduced clarity for consumers.

Additionally, Section 464.3(b) of the proposed rule requires businesses to disclose “optional fees” to consumers.¹² Within the hotel and lodging industry, optional fees exist for a variety of services and products that guests elect to use, such as later checkout times, parking, mini-bar items or in-room movies.¹³ These optional fees vary widely between properties and may depend on a number of factors and thus should be displayed at the time the services are selected. The proposed rule’s required disclosure of all “optional fees” would lead to excessive disclosures resulting in a poor user experience that may also slow down the lodging selection and booking process for consumers. Moreover, such a required disclosure may lead consumers to wrongfully believe that such fees are mandatory. Including Section 464.3(a) and (b) in a final rule will also unnecessarily and significantly burden businesses—both small and large—with additional implementation costs.

III. A Final Rule Will Burden Businesses Across the Travel Industry

The FTC’s estimated compliance costs for implementation in the short-term lodging industry do not accurately reflect the actual implementation costs that would be associated with a final rule. The complexity of implementing this rule varies widely across the industry but uniformly will require significantly more development, testing, and troubleshooting than is reflected in the FTC’s estimate. Many smaller hotels outsource their booking engine technology to firms with whom they will need to coordinate, and large hotel chains require extensive development and testing for even small changes to their websites which transact billions of dollars a year.

* * *

AHLA urges the FTC to consider a comprehensive approach to defining the short-term lodging industry and the broader implications of this proposed rulemaking as it addresses the issue of pricing transparency. AHLA thanks the FTC for the opportunity to provide feedback to the FTC on this important issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Chirag Shah".

Chirag Shah
Executive Vice President, Federal and Political Affairs & Counsel

¹¹ Unfair or Deceptive Fees NPRM.

¹² *Id.*

¹³ See https://www.ahla.com/sites/default/files/Resort_Fees_FAQs.pdf.