

**Before the
FEDERAL TRADE COMMISSION
600 Pennsylvania Avenue NW
Washington, D.C. 20580**

Petition for Rulemaking of Andrew Gonzalez
Re: Disclosure of Artificial Intelligence
Systems for Commercial Profiling and
Price Manipulation

Docket No. FTC-2026-0034

COMMENTS OF

Center for Democracy & Technology
Center for Digital Democracy
Consumer Federation of America
Demand Progress Education Fund
Electronic Privacy Information Center
National Association of Consumer Advocates
National Consumers League
National Consumer Law Center
New America's Open Technology Institute
TruthInAdvertising.org
Consumer Advocacy Society, Stetson University, College of Law
Consumer Advocacy & Protection Society, UC Berkeley Law
Consumer Law Advocates, Fordham University School of Law
Consumer Law Advocates, Scholars & Students Network, New York University School of Law
Consumer Law Association, The George Washington University Law School

Seth E. Mermin
David S. Nahmias
CENTER FOR CONSUMER LAW AND
ECONOMIC JUSTICE
UC BERKELEY LAW
308 Law Building
Berkeley, CA 94720-7200
dnahmias@law.berkeley.edu

Nam Lam '27
Carly Choppin '28
Adele Krabak '28
CONSUMER LAW ASSOCIATION
THE GEORGE WASHINGTON
UNIVERSITY LAW SCHOOL
Washington, D.C. 20052

Counsel for Commenting Organizations

Via electronic filing
February 23, 2026

INTERESTS OF THE FILERS

The signatories to this comment share a strong interest in promoting clarity, truthfulness, and transparency in the online consumer marketplace. Some signatories are national organizations that represent the public interest and are committed to honest markets, consumers' data privacy, and fair business practices. Others are groups affiliated with the nationwide Consumer Law Advocates, Scholars & Students (CLASS) Network, a community of law student organizations dedicated to educating the next generation of consumer advocates.¹ All undersigned organizations, on behalf of the communities they represent, have a strong and abiding interest in protecting Americans from manipulative tactics—including deceptive uses of personalized algorithmic pricing—as well as in the Federal Trade Commission (FTC) using its authority under Sections 5 and 18 of the FTC Act to regulate the use of targeted individualized pricing technologies. Accordingly, we support the petition filed by Andrew Gonzalez, and we urge the Commission to swiftly grant the petition and promulgate a trade regulation rule that requires companies to disclose to consumers the use of personalized algorithmic pricing. In the alternative, pursuant to 16 C.F.R. § 1.31 we request that the FTC construe these comments as a petition for rulemaking to mandate disclosures of the use of personalized algorithmic pricing and adopt the proposed language described below.

INTRODUCTION

A growing potential practice among corporations is the use of artificial intelligence (AI) and data harvesting tools to target individuals with personalized algorithmic pricing. As Commission staff identified in their initial findings last year, personalized pricing schemes can benefit corporate profits to the detriment of consumers, who often end up paying more of their hard-earned money for products that might be less costly for other consumers.² With the costs of essential goods and services—from grocery stores to transportation to housing—growing ever more unaffordable, personalized algorithmic pricing can exacerbate these problems for the hundreds of thousands of people charged with higher prices based on data collected about them.

Consumers and businesses alike have an urgent need for clear federal guidelines on the use of personalized algorithmic pricing. Clarity around the use of personalized algorithmic pricing promotes fair competition by establishing a more level playing field for businesses that do not use these technologies to target consumers. Because these pricing models affect consumers of all backgrounds and markets in every state, a national rule is warranted.

¹ The CLASS Network is a partnership of the Center for Consumer Law and Economic Justice at UC Berkeley Law and the National Association of Consumer Advocates.

² 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-pricing-study-indicates-wide-range-personal-data-used-set-individualized-consumer> [hereinafter *FTC Surveillance Pricing Study*].

Given the potential for this practice to become widespread unless action is taken to curb it, as the Commission’s initial findings suggest, we urge the Commission to open a rulemaking that mandates marketers to disclose the use of personalized algorithmic pricing. A rule that calls for clear disclosure when using these models would materially help preserve consumers’ ability to make informed decisions. Additionally, we encourage the Commission to prioritize completing its 6(b) study—as Chairman Ferguson called for last year³—to provide the policymakers and the public with a more complete understanding of the prevalence of personalized algorithmic pricing.

DISCUSSION

I. THE USE OF PERSONALIZED ALGORITHMIC PRICING POSES WIDESPREAD HARMS TO CONSUMERS.

With the development of new technologies like AI, retailers are collecting large amounts of consumer data, which can be used to determine individualized prices—a process known as personalized algorithmic pricing.⁴ This practice enables retailers to charge different consumers different prices for the same good or service—despite a single underlying wholesale cost—based on personal data⁵ such as browsing history, behavioral patterns, or “real-time market information.”⁶ Personalized pricing technology may often use information such as where a consumer lives or how much they make to predict what a specific consumer would be willing to pay, minimizing consumer surplus on an individual-by-individual basis.⁷ In a more immediate sense, personalized algorithmic pricing can unfairly make consumers pay more for products that they are deemed to have a strong desire for.⁸ For example, retailers might charge higher prices

³ Public Statement, Andrew N. Ferguson, Chairman, FTC, Dissenting Statement of Commissioner Andrew N. Ferguson Joined by Commissioner Melissa Holyoak Regarding the Surveillance Pricing 6(b) Staff Research Summaries Matter Number P246202 (Jan. 17, 2025), https://www.ftc.gov/system/files/ftc_gov/pdf/surveillance-pricing-6b-research-summaries-ferguson-dissent-final.pdf.

⁴ Anisha Sircar, *How New York’s First-In-Nation AI Pricing Law Affects Your Wallet*, Forbes (Dec. 3, 2025), <https://www.forbes.com/sites/anishasircar/2025/12/03/new-yorks-algorithmic-pricing-law-what-it-does-and-why-it-matters/> (“[T]his is the tactic in which retailers use artificial intelligence and a customer’s personal data — like their browsing history, device type and past purchases — to set an individual price, potentially charging different amounts for the same item.”).

⁵ Pamela N. Danziger, *Algorithmic and Surveillance Pricing Pushes Retail Into Legal Minefield*, Forbes (Feb. 3, 2026), <https://www.forbes.com/sites/pamdanziger/2026/02/03/algorithmic-and-surveillance-pricing-pushes-retail-into-legal-minefield/>.

⁶ Sircar, *supra* note 4; Christopher R. Leslie, *Predatory Pricing Algorithms*, 98 N.Y.U. L. Rev. 49, 64 (2023).

⁷ Nia Law, *Nickel-and-Dimed by Design: How Corporations Rig the Rules of Pricing*, Groundwork Collaborative (Nov. 14, 2025), <https://groundworkcollaborative.org/news/the-art-of-the-hidden-fee-groundwork-collaborative-unpacks-how-corporations-rig-prices-to-squeeze-consumers/>.

⁸ Alan Mislove et al., *Issue Spotlight: The Rise of Surveillance Pricing*, 12 (2025), https://www.ftc.gov/system/files?file=ftc_gov/pdf/sp6b-issue-spotlight.pdf.

based on a consumer's past purchases or location.⁹ Many consumers do not even know that their information is being collected, or that the information can be used to raise prices.¹⁰ This lack of transparency surrounding when and how information is being collected from consumers means that consumers might be subject to personalized algorithmic pricing when shopping for anything.¹¹ Personalized algorithmic pricing now appears across numerous industries, including airline ticketing, insurance products, and hotel booking.¹² The practice, especially when it is used without the consumers' knowledge, also can put honest businesses that do not use this technology at a competitive disadvantage. Businesses' increasing technological capacity to gather consumer data requires attention to prevent this data from being used in unlawful and deceptive ways.¹³

A recent study completed by the Groundwork Collaborative, an independent advocacy group, described different strategies whereby companies manipulate prices based on personal data to unfairly charge more for goods and services.¹⁴ Its findings demonstrate the need for better disclosure of this practice.¹⁵ For example, hotel booking sites have been found to charge San Franciscans more for the same hotel stay than travelers coming from Phoenix or Kansas City.¹⁶ Also, according to Groundwork Collaborative, some companies also engage in "algorithmic price-fixing," that is, colluding on prices using software.¹⁷ For example, the DOJ and FTC have asserted in a 2024 lawsuit that several Atlantic City hotel-casinos used an algorithm on the Rainmaker platform to collude on hotel room prices.¹⁸

Additionally, the FTC's own research over the past two years elucidates that algorithmic price personalization and profiling relies on extensive personal data to tailor individualized

⁹ See *New Report on "Surveillance Pricing" Exposes Harm to Workers and Consumers, Urges Public Enforcers and State Policymakers to Act*, Am. Econ. Liberties Project (Feb. 20, 2025), <https://www.economicliberties.us/press-release/new-report-on-surveillance-pricing-exposes-harm-to-workers-and-consumers-urges-public-enforcers-and-state-policymakers-to-act/>.

¹⁰ See *Behind the FTC's Inquiry into Surveillance Pricing Practices*, FTC (July 23, 2024), <https://www.ftc.gov/policy/advocacy-research/tech-at-ftc/2024/07/behind-ftcs-inquiry-surveillance-pricing-practices> [hereinafter *Behind the FTC's Inquiry*].

¹¹ *Id.*

¹² Leslie, *supra* note 6, at 64.

¹³ See *Behind the FTC's Inquiry*, *supra* note 10.

¹⁴ Law, *supra* note 7.

¹⁵ *Id.* ("Supercharged by the development of cloud computing, artificial intelligence, and surveillance targeting, companies collect or buy data—typically without your explicit consent.")

¹⁶ Keith A. Spencer, *Hotel Booking Sites Show Higher Prices to Travelers From Bay Area*, SFGATE, (Feb. 3, 2025), <https://www.sfgate.com/travel/article/hotel-booking-sites-overcharge-bay-area-travelers-20025145.php>.

¹⁷ Law, *supra* note 7.

¹⁸ *FTC and DOJ File Statement of Interest in Hotel Room Algorithmic Price-Fixing Case*, FTC (Mar. 28, 2024), https://www.ftc.gov/news-events/news/press-releases/2024/03/ftc-doj-file-statement-interest-hotel-room-algorithmic-price-fixing-case?utm_source=govdelivery.

prices. Those findings underscore the importance of guardrails—like disclosures—so consumers understand when automated systems influence the prices they see. In 2024, the Commission issued 6(b) orders to personalized pricing intermediaries, seeking to better understand the practice. As then-Commissioner Ferguson aptly stated in his concurrence, “[e]ven if this practice does not violate any existing law, consumers may well see personalized pricing as unfair or even manipulative, and it may undermine their trust in the digital marketplace.”¹⁹ Last year, the Commission’s initial staff findings illustrated the need for clearer oversight of these practices.²⁰ The report highlighted the risks to consumers’ privacy posed by personalized algorithmic pricing and the lack of transparency surrounding how personal information shapes pricing decisions.²¹ The FTC examined documents obtained from eight “third-party intermediaries” that use advanced algorithms to “categorize individuals” based on personal behavior and characteristics, which can be used to adjust prices accordingly.²² These systems may rely on cookies or mobile tracking tools.²³ A sports betting website could use cursor movement data to trigger a pop up ad with incentives to stay on the site.²⁴ Or companies may track “micro-interactions” with online stores to test how receptive customers may be to promotional campaigns.²⁵ A retailer selling survivalist gear may track that a customer watched a video on its website homepage to infer that the customer may purchase its products after a promotional text message.²⁶ In sum, today seemingly every aspect of consumers’ lives can be tracked, unbeknownst to them, and used in new ways to promote and price products and services.

Several major companies have already reportedly integrated algorithmic pricing into their businesses—meaning that this technology poses a real, immediate threat to consumers nationwide. One of the most prominent reported users of personalized pricing is Instacart, the grocery delivery and pickup service now used by 25 million people a year across the United States and Canada.²⁷ Instacart has been using personalized pricing across the platform at several

¹⁹ Public Statement, Andrew N. Ferguson, Commissioner, FTC, Concurring Statement of Commissioner Andrew N. Ferguson (July 23, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/surveillance-pricing-6b-ferguson-concurrence.pdf.

²⁰ *FTC Surveillance Pricing Study*, *supra* note 2.

²¹ FTC, *FTC Surveillance Pricing 6(b) Study: Research Summaries: A Staff Perspective 5* (2025) [hereinafter *FTC 6(b) Study*].

²² *FTC Issues Orders to Eight Companies Seeking Information on Surveillance Pricing*, (July 23, 2024), <https://www.ftc.gov/news-events/news/press-releases/2024/07/ftc-issues-orders-eight-companies-seeking-information-surveillance-pricing>.

²³ *FTC 6(b) Study*, *supra* note 21, at 5.

²⁴ *Id.* at 6.

²⁵ *Id.* at 8.

²⁶ *Id.*

²⁷ *New Economic Impact Report Quantifies Instacart’s Role as Grocery Industry Growth Engine and Job Creator*, Instacart (Nov. 13, 2025), <https://www.instacart.com/company/pressreleases/new-economic-impact-report-quantifies-instacarts-role-as-grocery-industry-growth-engine-and-job-creator>.

major grocery retailers, including Albertsons, Costco, Kroger, Safeway, Sprouts Farmers Market, and Target.²⁸ An investigation published in December 2025 by Consumer Reports, Groundwork Collaborative, and More Perfect Union found that up to three-quarters of surveyed items on Instacart varied by up to 23% from user to user.²⁹ This report estimated that such price variations could potentially add approximately \$1,200 per year in extra costs for a typical household shopping on the platform.³⁰ The investigation also found that Instacart repeatedly gave varying “original” prices for the same discounted item.³¹ At the end of last year, the FTC sent Instacart a civil investigative demand regarding its Eversight pricing tool.³² That tool assists retailers in testing consumer reactions to different prices using AI and is advertised as being able to help retailers increase their revenues by 1% to 3%.³³ The Attorney General of New York³⁴ and the Attorney General of California³⁵ have launched investigations into companies such as Instacart for engaging in personalized algorithmic pricing. Under the threat of public enforcement and widespread condemnation of the practice, Instacart recently announced it would abandon its pricing technology, acknowledging that “customers should never have to second-guess the prices they’re seeing.”³⁶

²⁸ 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-al142182490/>. Instacart has admitted to using this technology but has characterized it as “price testing.” *Ending Item Price Tests on Instacart*, Instacart (Dec. 22, 2025), <https://www.instacart.com/company/updates/ending-item-price-tests-on-instacart>.

²⁹ Kravitz, *supra* note 28 (“Some products were offered at as many as five different prices, and price variations for the same product ranged from as little as 7 cents to \$2.56 per item.”).

³⁰ *Id.*

³¹ *Id.* (explaining how different customers at Safeway were shown original prices for crackers of “\$5.93, \$5.99, or \$6.69, while the final sale price was the same for everyone—\$3.99.”).

³² Jody Godoy, *Exclusive: FTC Probes Instacart’s AI Pricing Tool, Source Says; Shares Drop*, Reuters (Dec. 17, 2025), <https://www.reuters.com/legal/litigation/ftc-investigating-instacarts-ai-pricing-tool-source-says-2025-12-17/>.

³³ Aaron McDade, *Instacart’s AI-Driven Pricing is Being Investigated by the FTC—Here’s What You Need to Know*, Investopedia (Dec. 18, 2025), <https://www.investopedia.com/instacart-ai-driven-pricing-is-being-investigated-by-the-ftc-here-is-what-you-need-to-know-cart-update-11871910>.

³⁴ *Attorney General James Demands Answers From Instacart About Algorithmic Pricing*, Office of the New York State Attorney General (Jan. 8, 2026), <https://ag.ny.gov/press-release/2026/attorney-general-james-demands-answers-instacart-about-algorithmic-pricing> (“New Yorkers deserve fair prices and clear disclosures about how companies are using their personal information. Instacart’s pricing experiments raise serious concerns about its use of algorithmic pricing.”).

³⁵ *On Data Privacy Day, Attorney General Bonta Focuses on Surveillance Pricing, Compliance with California Consumer Privacy Act*, Cal. Dep’t of Justice (Jan. 27, 2026), <https://oag.ca.gov/news/press-releases/data-privacy-day-attorney-general-bonta-focuses-surveillance-pricing-compliance> (“Consumers have the right to understand how their personal information is being used, including whether companies are using their data to set the prices that Californians pay, whether that be for groceries, travel, or household goods. We need to know whether businesses are charging people different prices for the same good or service.”).

³⁶ Instacart, *supra* note 28.

Instacart is by no means the only company that has been engaged in algorithmic pricing. In July 2025, Delta Air Lines announced that approximately 3% of its domestic fare pricing would be determined using AI.³⁷ Delta had planned to increase this figure to 20% by the end of 2025.³⁸ The airline implemented this pricing model in partnership with Fetcherr, an AI technology company that provides consumers with a “truly personalized offer” based on “customer lifetime value, past purchase behaviors, and ‘the real-time context of each booking inquiry.’”³⁹ In addition to Delta, Kroger, and Walmart have leveraged AI to optimize operations. Kroger uses AI to identify “what [consumers] buy and what they will pay” based on the retailer’s sales data. Walmart similarly has used real-time consumer shopping data to improve the “efficiency” of its meat aisle section by over 90%, leading to a 30% increase in sales.⁴⁰

These real-life examples demonstrate the potential and likelihood for personalized algorithmic pricing to become widespread in our economy, making everyday purchases unfairly costly for consumers. In the past year alone, several states—from Pennsylvania to Texas—have enacted legislation addressing these practices, reflecting growing bipartisan concern and reinforcing the need for clear, nationwide standards. Some states have enacted or proposed statutes requiring disclosures for the use of this technology.⁴¹ Other states have banned algorithmic price-fixing as an anticompetitive practice, either broadly⁴² or in specific markets like rental housing—one that the Commission has recently called out for engaging in deceptive practices.⁴³ Alongside the states, a bipartisan group of U.S. Senators have expressed interest in

³⁷ Andrew Dorn, *Airfare by Algorithm: Delta Leans Into AI Pricing — but is it a Good Thing?*, The Hill (July 18, 2025), <https://thehill.com/regulation/transportation/5407485-delta-air-lines-artificial-intelligence-pricing/>.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Bryan Pearson, *Personalizing Price With AI: How Walmart, Kroger Do It*, Forbes (Sep. 7, 2021), <https://www.forbes.com/sites/bryanpearson/2021/09/07/personalizing-price-with-ai-how-walmart-kroger-do-it/>.

⁴¹ See, e.g., H.B. 1779, 2025–2026 Gen. Assemb., Reg. Sess. (Pa. 2025) (“A person or entity that knowingly advertises, promotes, labels or publishes a statement, display, image, offer or announcement of personalized algorithmic pricing using consumer data specific to a particular individual shall include with the statement, display, image, offer or announcement a clear and conspicuous disclosure that states: ‘THIS PRICE WAS SET BY AN ALGORITHM USING YOUR PERSONAL DATA.’”); S.B. 2567, 89th Legislature, Reg. Sess. (Tex. 2025) (“An act relating to the deceptive trade practice of failure to disclose information regarding the use of artificial intelligence system or algorithmic pricing systems for setting of price.”); H.B. 28, 57th Legislature, 2d Sess. (N.M. 2026) (“[A] deployer shall provide notice directly to the consumer that the [artificial intelligence] system will be used to make or generate a substantial factor to be used in making the decision.”).

⁴² The most notable example is California, which passed a law that banned personalized algorithmic pricing:

It shall be unlawful for a person to use or distribute a common pricing algorithm if the person coerces another person to set or adopt a recommended price or commercial term recommended by the common pricing algorithm for the same or similar products or services in the jurisdiction of this state.

A.B. 325, 2025–2026 Legislature, Reg. Sess. (Cal. 2025). This law enhances California’s ability to respond to companies that, unbeknownst to consumers, use algorithms to “influence [the] price” of goods and services they buy. *Id.*

⁴³ See Public Statement, Andrew N. Ferguson, Chairman, FTC, Concurring Statement of Chairman Andrew N. Ferguson: *FTC v. Greystar Real Estate Partners* (Dec. 2, 2025),

regulating personalized algorithmic pricing. U.S. Senators Josh Hawley (R-MO), Mark Warner (D-VA), Ruben Gallego (D-AZ), and Richard Blumenthal (D-CT) submitted a letter to the FTC warning against the use of “demographic information, precise location, or even browsing history[] to target individual consumers with different prices for the same goods and services.”⁴⁴

In light of the increasing availability of the technology for personalized algorithmic pricing, the Trump-Vance Administration itself has warned against these practices. U.S. Transportation Secretary Sean Duffy announced that the Department of Transportation would investigate any company that used AI for setting personalized airline prices.⁴⁵ Specifically, Secretary Duffy stated he has a “concern broadly about AI pricing.”⁴⁶ He warned that “to try to individualize pricing on seats based on how much you make or don’t make or who you are, I can guarantee you that we will investigate if anyone does that. . . . We would engage very strongly if any company tries to use AI to individually price their seating.”⁴⁷ Secretary Duffy’s announcement bears noting given that the Department of Transportation enforces a prohibition on unfair and deceptive practices in air travel with a grant of authority modeled after the FTC’s.⁴⁸

The wide array of cross-partisan interest from federal and state policymakers signals the support and need for the FTC to act on personalized algorithmic pricing.

https://www.ftc.gov/system/files/ftc_gov/pdf/2025.12.02-greystar-chairman-ferguson-statement.pdf. (“Greystar misrepresented the true amount to rent its properties by withholding from consumers the existence of fixed monthly fees . . . in violation of Section 5 of the FTC Act.”); *FTC Submits Draft ANPRM Related to Rental Housing Fees to OMB for Review*, FTC (Jan. 30, 2026), <https://www.ftc.gov/news-events/news/press-releases/2026/01/ftc-submits-draft-anprm-related-rental-housing-fees-omb-review> (“For too long, Americans have been unjustly squeezed of their hard-earned pay by hidden fees and other unfair or deceptive business practices in housing rental markets.”); see also H.B. 8002, 2025 Gen. Assemb, Spec. Sess. (Conn. 2025) (“It shall be an unlawful practice . . . for any person to use a revenue management device to set rental rates or occupancy levels for residential dwelling units.”).

⁴⁴ Letter from Mark Warner et al., U.S. Senator, U.S. Senate, to Andrew N. Ferguson, Chairman, FTC (Dec. 17, 2025), https://www.warner.senate.gov/public/_cache/files/f/2/f2a2d4c9-fcd8-4657-a975-bbb44f355352/247826215C0FDEB472CAD25C116BE9F9C7FA4EB79AE462CDD70D6225A30442F0.251217.ferguson-warner-hawley-blumenthal-gallego-re-surveillance-pricing.final.sign.pdf.

⁴⁵ David Shepardson, *US Criticizes Use of AI to Personalize Airline Ticket Prices, Would Investigate*, Reuters (Aug. 5, 2025), <https://www.reuters.com/world/us/us-criticizes-use-ai-personalize-airline-ticket-prices-would-investigate-2025-08-05/>.

⁴⁶ U.S. Department of Treasury, *Secretary Duffy Hosts Press Conference on Unleashing American Drone Dominance*, at 21:25 (YouTube, Aug. 5, 2025), <https://www.youtube.com/live/iGwZFhUO41U?t=1281s>.

⁴⁷ *Id.* at 21:32–22:02.

⁴⁸ Compare 49 U.S.C. § 41712, with 15 U.S.C §§ 45(a), 57(a).

II. THE COMMISSION SHOULD REQUIRE CLEAR DISCLOSURE OF THE USE OF PERSONALIZED ALGORITHMIC PRICING AND COMPLETE ITS STUDY.

The harms to consumers posed by personalized algorithmic pricing warrant the FTC’s attention. Regulating personalized algorithmic pricing falls squarely within the FTC’s authority under the FTC Act. This technology risks deceiving consumers by unfairly targeting certain individuals based on their own behaviors, such as their private browsing histories.⁴⁹ Without a disclosure rule, personalized algorithmic pricing creates an “obstacle to the free exercise of consumer decision[-]making,” which is prohibited under Section 5 of the FTC Act, by offering different prices to different consumers without their knowledge.⁵⁰

In light of the increasing prevalence of personalized algorithmic pricing and the wide opportunities for deceptive practices, the FTC should grant the rulemaking petition and require the disclosure of the use of this technology.⁵¹ In particular, we recommend that the FTC consider mandating that companies **clearly and conspicuously disclose to consumers whenever they use personalized algorithmic pricing technologies** to set the prices of goods or services. Transparency preserves informed consumer choice in complex digital markets.

Clear and conspicuous price disclosures are well-established tools to prevent deception. The Commission has repeatedly emphasized that when material information is necessary to prevent deception, disclosures must be prominent, unavoidable, and understandable across all platforms, reflecting long-standing truth-in-advertising principles.⁵² In its recent enforcement and policy work, the FTC has also recognized that design practices that obscure key information or bury material terms can impair consumer decision-making and distort marketplace transparency, reinforcing the agency’s consistent focus on ensuring that pricing and commercial

⁴⁹ Danzinger, *supra* note 5 (“On the face of it, using personal data to set individualized prices stretches the definition of what consumers would reasonably expect. ‘A more pernicious use is a business taking your zip code and using that as a proxy for socioeconomic class or protected class to charge people more who live in Beverly Hills or price gouge people living in depressed socioeconomic neighborhoods.’”).

⁵⁰ Letter from Michael Pertschuk et al., Chairman, FTC, to Wendell Ford & John Danforth, U.S. Representatives, U.S. House of Representatives (Dec. 17, 1980), <https://www.ftc.gov/legal-library/browse/ftc-policy-statement-unfairness>.

⁵¹ Alternatively, we request the FTC construe this proposal as a petition for rulemaking to adopt the disclosures described in this section. 16 C.F.R. § 1.31.

⁵² See, e.g., *Greystar Agrees to Pay \$24 Million and Stop Deceptive Advertising Practices as a Result of FTC and Colorado Lawsuit Alleging the Firm Deceived Consumers About Rent Prices*, FTC (Dec. 2, 2025), <https://www.ftc.gov/news-events/news/press-releases/2025/12/greystar-agrees-pay-24-million-stop-deceptive-advertising-practices-result-ftc-colorado-lawsuit> (explaining how the FTC’s proposed order required Greystar to “clearly and conspicuously provide details about all fees.”); FTC, *Dot Com Disclosures Information About Online Advertising* (2000) (“Disclosures that are required to prevent an ad from being misleading, to ensure that consumers receive material information about the terms of a transaction or to further public policy goals, must be clear and conspicuous.”).

claims are presented truthfully and clearly.⁵³ Chairman Ferguson in fact recently emphasized the importance of clearly presented pricing when he announced that “[o]ne of my enforcement priorities is ensuring that advertised pricing is transparent and honest.”⁵⁴

In addition, the Commission has long treated the price and total cost of a product as material information to consumers. For this reason, the FTC requires that companies present pricing terms clearly and not obscure fees or conditions that would affect purchasing decisions.⁵⁵ Because price is a material term under Section 5 and misleading price representations are prohibited, presenting a consumer with a price that appears to be a generally available market price—without clearly disclosing that it may be individualized or not offered in the same way to others—can create a misleading net impression and therefore be deceptive absent clear and conspicuous disclosures. In this context, a rule requiring transparent notice of commercial AI would thus not create a novel obligation for companies using personalized algorithmic pricing. Instead, it would apply well-established standards: when algorithmic practices materially affect price or product presentation, disclosure is essential to prevent deception, preserve fair competition, and maintain the integrity of price discovery in digital marketplaces.

The state of New York has already adopted a disclosure law that recognizes the importance of ensuring consumers are well-informed when making purchasing decisions. The FTC can consider adopting that disclosure in formulating its rule:

Any entity that sets the price of a specific good or service using personalized algorithmic pricing, and that directly or indirectly, advertises, promotes, labels or publishes a statement, display, image, offer or announcement of personalized algorithmic pricing to a consumer in [the state], using personal data specific to such consumer, shall include with such statement, display, image, offer or announcement, a clear and conspicuous disclosure that states: “THIS PRICE WAS SET BY AN ALGORITHM USING YOUR PERSONAL DATA.”⁵⁶

A federal court has held that this basic disclosure is fully consonant with the First Amendment because it “‘accurate[ly]’ describes” algorithmic pricing practices and is neither subjectively nor objectively controversial.⁵⁷ Moreover, the government has a “legitimate interest in ensuring that consumers are ‘informed[ed]’ about the terms on which products are offered to

⁵³ See, e.g., Trade Regulation Rule on Unfair or Deceptive Fees, 16 C.F.R. pt. 464 (2025); Negative Option Rule, 16 C.F.R. pt. 425 (2024), *vacated*, *Custom Commc’ns, Inc. v. FTC*, 142 F.4th 1060 (8th Cir. 2025); FTC, *Bringing Dark Patterns to Light 2* (2022).

⁵⁴ Andrew N. Ferguson, Chairman, FTC, Remarks of Chairman Andrew N. Ferguson to the Meeting of the National Automobile Dealers Association 8 (Sep. 10, 2025).

⁵⁵ See *supra* notes 51–52.

⁵⁶ N.Y. Gen. Bus. Law § 349-a.

⁵⁷ *Nat’l Retail Fed’n v. James*, 806 F. Supp. 3d 427, 437 (S.D.N.Y. 2025) (quoting *Nat’l Elec. Mfrs. Ass’n (NEMA) v. Sorrell*, 272 F.3d 104, 114 (2d Cir. 2001)).

them, including the price,” and this basic disclosure does not burden businesses by prohibiting them from communicating any other message about the practice or their products.⁵⁸ Any alleged financial burden would be minimal considering how the “one-sentence disclosure may be in any font or format” and would take up a negligible amount of “pixel space” that a company could have used for another purpose.⁵⁹

We also encourage the FTC to **complete its study under Section 6(b) around personalized algorithmic pricing**. As Chairman Ferguson observed when the initial findings were released, “The American public and Congress will surely value what the Commission ultimately learns and shares as to whether and how consumers’ private data may be used to affect their pocketbooks.”⁶⁰ The FTC is the best positioned agency in the U.S. to acquire and release comprehensive, nationwide information on this issue. The release of its data and findings are strongly in the public interest.

CONCLUSION

We applaud the FTC’s continued efforts to protect consumers from unfair and deceptive trade practices in an increasingly technologically advanced environment. The Commission’s 5-0 vote to authorize its landmark 6(b) investigation made clear that the threats to consumer welfare posed by personalized algorithmic pricing are a bipartisan concern. As these models proliferate across industries, the urgency only grows for the Commission to enact meaningful guardrails. Commonsense, simple disclosures—supported by a completed report by the Commission—are reasonable first steps.

Accordingly, we encourage the Commission to grant the petition and initiate rulemaking proceedings.

Respectfully submitted,

/s/ David S. Nahmias

Seth E. Mermin

David S. Nahmias

CENTER FOR CONSUMER LAW AND ECONOMIC JUSTICE

UC BERKELEY SCHOOL OF LAW

308 Law Building

Berkeley, CA 94720-7200

dnahmias@law.berkeley.edu

⁵⁸ *Id.* at 440–42 (quoting *NEMA*, 272 F.3d at 115).

⁵⁹ *Id.* at 443.

⁶⁰ See Ferguson, *supra* note 3.

Nam Lam '27
Carly Choppin '28
Adele Krabak '28
CONSUMER LAW ASSOCIATION
THE GEORGE WASHINGTON UNIVERSITY LAW SCHOOL
Washington, D.C. 20052

On behalf of:

Center for Democracy & Technology
Center for Digital Democracy
Consumer Federation of America
Demand Progress Education Fund
Electronic Privacy Information Center
National Association of Consumer Advocates
National Consumers League
National Consumer Law Center
New America's Open Technology Institute
TruthInAdvertising.org
Consumer Advocacy Society, Stetson University, College of Law
Consumer Advocacy & Protection Society, UC Berkeley Law
Consumer Law Advocates, Fordham University School of Law
Consumer Law Advocates, Scholars & Students Network, New York University School of Law
Consumer Law Association, The George Washington University Law School