Before the
United States Federal Trade Commission
Washington, D.C.

In re Request for Public Comment Regarding Proposed Enforcement Policy Statement Regarding Personalized Pricing	Docket No. FTC-2026-1057

COMMENTS OF

THE COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION (CCIA)

In response to the Federal Trade Commission's ("FTC") request for public comment on its proposed enforcement policy statement regarding personalized pricing ("proposed statement"),[1] released on August 19, 2026,[2] the Computer & Communications Industry Association ("CCIA")[3] submits the following comments.

I. Introduction

CCIA appreciates the opportunity to comment on the proposed statement. Section 5 is not a general-purpose price regulation statute: it reaches deceptive or unfair conduct associated with pricing, not the amount, structure, or variation of a price merely because consumers receive different offers. As the FTC has observed, personalized pricing is well-established and expected in certain markets.[4]

As the proposed statement also states, Congress has not authorized the FTC to prohibit personalized pricing in all circumstances.[5] Yet, the proposed statement broadly suggests that

[1] Fed. Trade Comm'n, *Federal Trade Commission's Proposed Enforcement Policy Statement Regarding Personalized Pricing* (Aug. 19, 2026), https://www.ftc.gov/system/files/ftc_gov/pdf/p034101-ftc-enforcement-policy-statement-re-personalized-pricing-proposed-for-public-comment.pdf [hereinafter Proposed Statement].
[2] Press Release, Fed. Trade Comm'n, *FTC Seeks Comment on Enforcement Policy Statement Regarding Personalized Pricing* (Aug. 19, 2026), https://www.ftc.gov/news-events/news/press-releases/2026/08/ftc-seeks-comment-enforcement-policy-statement-regarding-personalized-pricing.
[3] CCIA is an international, not-for-profit trade association representing a broad cross-section of technology and communications firms. For over fifty years, CCIA has promoted open markets, open systems, and open networks. The Association advocates for sound competition policy and antitrust enforcement. CCIA members employ more than 1.6 million workers, invest more than $100 billion in research and development, and contribute trillions of dollars in productivity to the global economy. For more, visit www.ccianet.org.
[4] Proposed Statement, *supra* note 1, at 1.
[5] *Id.* at 1–3.

businesses must disclose the fact of personalization, its basis, and the types of data used whenever consumers reasonably expect prices not to vary based on personal data.[6] That suggestion is difficult to reconcile with the FTC's acknowledgments that the prevalence and effects of personalized pricing remain uncertain, competitive constraints matter, and some consumers benefit.[7] Although the proposed statement is described as nonbinding and recognizes that the FTC must prove an existing violation, its operative language reads as a generally applicable disclosure rule.[8]

The proposed statement also does not distinguish personalized price increases from personalized discounts. The FTC's own research identifies coupons, discount codes, and tailored promotions as common forms of personalized pricing.[9] Subjecting those benefits to the same presumptive nondisclosure theory as personalized price increases may deter targeted offers and encourage greater reliance on uniform pricing, which could be particularly detrimental to price-sensitive consumers.[10] The FTC should ensure the proposed statement preserves discounts, loyalty programs, dynamic pricing, and other beneficial consumer tools.

CCIA therefore recommends that the FTC revise the proposed statement in several respects. The proposed statement should preserve case-specific proof under the FTC's deception framework and Section 5(n); define both the conduct and actors within scope; expressly exclude bona fide discounts, promotions, rewards, loyalty programs, and membership benefits from any disclosure expectation; distinguish personalized pricing from dynamic pricing based on non-individual operational factors; tie any disclosure obligation to the entity responsible for determining the challenged personalized price or making the relevant consumer-facing representation, without requiring platforms and service providers that merely supply tools or infrastructure to monitor or police their customers' pricing practices; and ensure any remaining disclosure expectations are accurate, flexible, and workable.

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[6] *Id.* at 1, 3–8.
[7] *Id.* at 3-4.
[8] *Id.* at 8.
[9] Fed. Trade Comm'n, *Issue Spotlight: The Rise of Surveillance Pricing 4*, at 14–15 (2025), https://www.ftc.gov/system/files/ftc_gov/pdf/sp6b-issue-spotlight.pdf, [hereinafter Issue Spotlight]; Aviv Nevo & Catherine Wolfram, *Why Do Manufacturers Issue Coupons? An Empirical Analysis of Breakfast Cereals,* 33 RAND J. Econ. 319, 334–36 (2002), https://doi.org/10.2307/3087436.
[10] *See* Issue Spotlight, *supra* note 9, at 14–15; Nevo & Wolfram, *supra* note 9, at 334–36; *see also infra* notes 15–16 and accompanying text.

II. The Proposed Statement Risks Deterring Beneficial Discounts

Personalized pricing is not a single practice with a uniform effect: it may include personalized price offerings such as targeted coupons, retention offers, loyalty rewards, membership benefits, and discounts for price-sensitive consumers. Dynamic pricing is different. It responds to non-individual operational factors, such as supply and demand, inventory, time, region, delivery costs, taxes, or service characteristics, rather than to information used to estimate a particular consumer's willingness to pay.[11]

The economics literature confirms that the welfare effects of personalized pricing vary by practice and market, and three recent studies illustrate why a uniform presumption of harm is unwarranted.[12] A randomized field experiment at a large digital retailer found that personalization increased the firm's expected profit and reduced aggregate consumer surplus, yet more than 60 percent of consumers still benefited, and the relationship between data granularity and consumer surplus was variable.[13] A general oligopoly model reached a similar conclusion, finding that the effect of personalized pricing depends on market coverage and on how data is distributed across competing firms. At high coverage, personalization can intensify competition and benefit consumers, while asymmetric data access across firms can produce different outcomes.[14] A study of a two-sided ride-hailing market likewise found that personalized pricing slightly reduced average prices and benefited a majority of consumers, even though average consumer surplus fell modestly. This result depends on the welfare benchmark used and on which side of the two-sided market is examined.[15]

Together, these findings call for close attention to market structure, switching costs, output effects, and inference accuracy, rather than a one-size-fits-all presumption about whether

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[11] U.S. Submission to the OECD, *Personalised Pricing in the Digital Era*, DAF/COMP/WD(2018)140, paras. 5–7 (Nov. 28, 2018), https://www.ftc.gov/system/files/attachments/us-submissions-oecd-2010-present-other-international-competition-fora/personalized_pricing_note_by_the_united_states.pdf; OECD, *Personalised Pricing in the Digital Era*, OECD Roundtables on Competition Policy Papers No. 222, 7–12 (2018), https://doi.org/10.1787/db4d9c9c-en.
[12] Trevor Wagener, *The FTC's Personalized Pricing Disclosures Would Cost Consumers Their Discounts,* CCIA (Sept. 18, 2026), https://ccianet.org/articles/the-ftcs-personalized-pricing-disclosures-would-cost-consumers-their-discounts/.
[13] Jean-Pierre Dubé & Sanjog Misra, *Personalized Pricing and Consumer Welfare*, 131 J. Pol. Econ. 131, 131–34, 170–78 (2023), https://doi.org/10.1086/720793.
[14] Andrew Rhodes & Jidong Zhou, *Personalized Pricing and Competition*, 114 Am. Econ. Rev. 2141, 2141–45 (2024), https://doi.org/10.1257/aer.20221524.
[15] Nicholas Buchholz et al., *Personalized Pricing and the Value of Time: Evidence from Auctioned Cab Rides*, 93 Econometrica 929, 932, 954–56 (2025), https://doi.org/10.3982/ECTA18838; *see also* Daniel J. Gilman, *Fine Print for Every Price: The FTC's One-Size-Fits-All Guidance*, Truth on the Mkt. (Aug. 28, 2026), https://truthonthemarket.com/2026/08/28/fine-print-for-every-price-the-ftcs-one-size-fits-all-guidance/ (explaining that the studies cited by the proposed statement report contingent and context-dependent effects rather than a uniform relationship between increasingly sophisticated personalization and consumer harm).

personalization raises or lowers prices. The evidence does not support the assumption that restrictions on the information used for personalization necessarily improve consumer welfare. Increased pricing sophistication is not, by itself, a proxy for greater consumer harm.

Targeted discounts can intensify competition among firms for consumers likely to switch. Models of competitive price discrimination and coupon targeting suggest that firms may compete more aggressively for rivals' customers, and empirical work on manufacturer coupons shows that interbrand competition can lower shelf prices even for consumers who do not redeem a coupon.[16] Because personalized pricing systems estimate rather than observe consumers' willingness to pay, competition makes an excessive estimate costly: the seller may lose the transaction. Therefore, personalization can expand access for price-sensitive consumers who might not purchase at a uniform price.[17] Raising the cost or legal risk of targeted offers may reduce businesses' willingness to offer targeted discounts, even if framed as a disclosure requirement rather than a prohibition.

Moreover, the FTC's 2025 issue spotlight identified consumer effects, the role of discounts and coupons, and the circumstances in which personalization raises prices as topics requiring further research.[18] Then-Commissioner Ferguson likewise cautioned, in dissenting from the release of interim research summaries, against substituting hypothetical use cases for robust factual findings before the Section 6(b) work was complete.[19] The proposed statement nonetheless relies primarily on hypothetical examples and provides no consumer survey, behavioral study, or market-specific evidence establishing a general expectation of price uniformity or identifying the markets in which such an expectation would be reasonable.[20]

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[16] Kenneth S. Corts, *Third-Degree Price Discrimination in Oligopoly: All-Out Competition and Strategic Commitment,* 29 RAND J. Econ. 306, 311–18 (1998), https://doi.org/10.2307/2555890; Greg Shaffer & Z. John Zhang, *Competitive Coupon Targeting*, 14 Mktg. Sci. 395, 397–406 (1995), https://doi.org/10.1287/mksc.14.4.395; Nevo & Wolfram, *supra* note 9, at 334–36.

[17] Trevor Wagener, *Personalized Pricing Is Good, Actually*, CCIA (Aug. 11, 2026), https://ccianet.org/articles/personalized-pricing-is-good-actually/; *see also* U.S. OECD Submission, *supra* note 11, paras. 11, 14, 16.

[18] Issue Spotlight, *supra* note 9, at 14–15.

[19] Andrew N. Ferguson, Comm'r, Fed. Trade Comm'n, *Dissenting Statement of Commissioner Andrew N. Ferguson Joined by Commissioner Melissa Holyoak Regarding the Surveillance Pricing 6(b) Staff Research Summaries,* at 1–2 (Jan. 17, 2025), https://www.ftc.gov/system/files/ftc_gov/pdf/surveillance-pricing-6b-research-summaries-ferguson-dissent-final.pdf.

[20] Proposed Statement, *supra* note 1, at 1. While the FTC observes that "personalized pricing is a long-established norm in some markets," it does not specify which markets.

III. The Proposed Statement Should Preserve Every Element of Section 5

A. Silence About Personalization Is Not Categorically Deceptive

Section 5 readily reaches an express or implied claim that a price is static, generally available, or a special discount when that claim is false. But the FTC's established deception framework does not impose an affirmative disclosure obligation for every fact that might interest a consumer.[21] The FTC must identify a representation, omission, or practice likely to mislead a reasonable consumer, and the matter must be material to the consumer's choice or conduct. Whether silence creates a misleading net impression depends on the transaction, the relevant market, the surrounding representations, and evidence of consumer understanding.

The proposed statement instead assumes that consumers generally believe a posted price is the same as the price offered to every other consumer at the same place and time. That proposition may be true in some settings and false in others. Consumers have long encountered negotiated prices, loyalty offers, personalized coupons, subscription benefits, retention offers, and targeted promotions. The Deception Policy Statement recognizes that consumer interpretation is contextual and that evidence of expectations may be needed.[22] An accurately displayed final price, without more, should not be treated as an implied claim that no personalized input affected it.[23] Furthermore, the FTC should not presume different consumer expectations solely because of the sales channel, industry, or business model. Equivalent discounts offered through a seller's website, app, or retail partner should receive consistent treatment under the proposed statement, absent a relevant difference in the representations or transaction circumstances.

FTC v. Colgate-Palmolive does not establish a general duty to disclose personalization.[24] The case concerned a deceptive simulated product demonstration and the net impression created by the advertisement; it did not hold that an accurately displayed price implies uniformity across consumers.[25] Accordingly, when a deception theory rests on silence, the FTC should require evidence that, in the relevant market and transaction context, reasonable consumers understood

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[21] Fed. Trade Comm'n, *FTC Policy Statement on Deception,* appended to *Cliffdale Assocs., Inc.,* 103 F.T.C. 110, 174, 175–77 & nn.4 & 13 (1984), https://www.ftc.gov/legal-library/browse/ftc-policy-statement-deception.
[22] FTC Policy Statement on Deception, *supra* note 21, at 175–77 & nn.4 & 13.
[23] *See* Proposed Statement, *supra* note 1, at 1–3; U.S. OECD Submission, *supra* note 11, paras. 5–16; FTC Policy Statement on Deception, *supra* note 21, at 175–77 & nn.4 & 13.
[24] *FTC v. Colgate-Palmolive Co.*, 380 U.S. 374, 386–92 (1965).
[25] *Id.*

the displayed price to imply price uniformity and that the omission was material. Neither proposition should be inferred from price variation alone.

B. Unfairness Requires a Defined Injury and Full Statutory Balancing

An unfairness theory must independently satisfy FTC Act Section 5(n), which requires the FTC to show that the injury is substantial, that consumers could not reasonably avoid it, and that it is not outweighed by countervailing benefits to consumers or competition.[26] Public policy may inform the analysis but cannot serve as its primary basis. A price difference, by itself, does not establish those elements.

First, the FTC must define the relevant counterfactual. A consumer does not incur a higher-price injury merely because another consumer received a targeted discount. Nor is the lowest price offered to any person necessarily the price the first consumer would have received under a uniform-price policy. An alleged increase should be measured against a clearly defined baseline, such as the price generally available to the public for the same product or service in the same region, holding time, channel, quantity, product quality, delivery terms, taxes, supply-and-demand conditions, and other non-individual transaction characteristics constant. Where no single public or uniform price exists, the FTC should identify and prove a valid but-for price generated by the seller's otherwise applicable pricing process, absent the challenged consumer-specific adjustment. The absence of a uniform price should not, in itself, establish injury or an upward personalized adjustment.

Second, reasonable avoidability requires a case-specific assessment of whether the challenged practice deprived consumers of a meaningful opportunity to make a free and informed choice. The FTC's Unfairness Policy Statement explains that the marketplace ordinarily relies on consumers to survey available alternatives, select the offers they prefer, and avoid those they find inadequate; intervention is warranted when a practice unreasonably creates or exploits an obstacle to that decision-making.[27] Courts similarly ask whether consumers had reason to anticipate the alleged injury and practical means to avoid it, either before the

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[26] 15 U.S.C. § 45(n).

[27] *See* Fed. Trade Comm'n, *FTC Policy Statement on Unfairness* (Dec. 17, 1980), appended to *International Harvester Co.*, 104 F.T.C. 949, 1070–76 (1984), https://www.ftc.gov/legal-library/browse/ftc-policy-statement-unfairness; *Am. Fin. Servs. Ass'n v. FTC*, 767 F.2d 957, 976 (D.C. Cir. 1985).

transaction or through subsequent mitigation.[28] An undisclosed personalized price, by itself, should not establish that any resulting injury was reasonably unavoidable. The FTC should consider whether the consumer knew the price before becoming committed to the transaction, could decline the offer or compare reasonably available alternatives, and faced material switching or search barriers. Whether those conditions are satisfied will depend on the transaction and market; they should not be presumed from price variation or nondisclosure alone.

Third, the FTC must weigh the full set of benefits against the costs of the remedy. Those include targeted discounts, increased output, better matching of demand and inventory, reduced waste, lower search costs, and intensified competition, as well as interface burdens, consumer confusion, and reduced incentives to offer discounts. The FTC's own Unfairness Policy Statement requires attention to net effects, regulatory burdens, and innovation; a conclusory assertion that benefits could be achieved without nondisclosure is not a substitute for that balancing.[29] The statutory balancing must also account for the costs of the proposed remedy itself, including compliance expenses, paperwork, reduced information flow, impaired innovation, and the possibility that sellers will replace targeted discounts with higher uniform prices.[30]

The proposed statement's analogies to the Fair Credit Reporting Act and state insurance laws reinforce the need for a narrower approach. Those regimes impose express adverse-action notice duties in specifically regulated settings and focus on unfavorable decisions, such as denials or higher charges, based on identified information. They do not establish a general Section 5 duty to label every discount or beneficial offer. At most, they support confining any disclosure discussion to demonstrated upward adjustments rather than all data-informed price variation.[31]

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[28] *Orkin Exterminating Co. v. FTC*, 849 F.2d 1354, 1365–66 (11th Cir. 1988); *FTC v. Neovi, Inc.*, 604 F.3d 1150, 1158–59 (9th Cir. 2010).
[29] FTC Policy Statement on Unfairness, *supra* note 27, at 1070–76.
[30] *Id.* at 1071–76.
[31] 15 U.S.C. § 1681m(a); Cal. Ins. Code §§ 791.02, 791.10 (West 2026); Va. Code Ann. §§ 38.2-602, 38.2-610 (2026); Wash. Admin. Code ch. 284-30A (2026); Proposed Statement, *supra* note 1, at 6 nn. 22–23.

IV. The FTC Should Define the Covered Practice and Exclude Beneficial or Unrelated Conduct

The proposed statement does not provide an operative definition of either "personalized pricing" or "personal data." It alternates among estimates of willingness to pay, predictions about comparison shopping, and pricing based on personal data without clearly identifying which practices trigger the proposed disclosure expectation.[32] That uncertainty is especially consequential for discounts, loyalty programs, and operational dynamic pricing.

The FTC should clarify that any disclosure requirement is limited to an actual upward personalized adjustment above a defined baseline, in settings where representations to the consumer or established consumer expectations make the information material. The proposed statement should limit any enhanced disclosure expectation to an upward adjustment: using information linked or reasonably linkable to an identified consumer to raise the price of the same good or service above the counterfactual baseline described above in Part III.B.

The proposed statement should expressly exempt bona fide discounts, coupons, promotions, rewards, loyalty programs, loyalty prices, and membership benefits from any disclosure obligation, as well as the absence of a discount offered to another consumer, unless the seller makes a separate false or misleading claim. It should also exclude dynamic or contextual pricing based on non-individual operational factors, including local supply and demand, inventory, time, region, channel, transportation or delivery costs, taxes, and characteristics of the requested service; negotiations; risk-based credit and insurance pricing to the extent governed by specific pricing, underwriting, or adverse-action disclosure requirements; and de-identified or aggregate information not reasonably linkable to a consumer. The FTC's own research and a prior U.S. submission to the OECD recognize the distinction between personalized and market-responsive dynamic pricing.[33]

Data provenance should be a factor, not a conclusive rule. The use of purchase history, account data, or stated preferences collected within a business's own customer relationship should not, by itself, create a presumption of deception or trigger an enhanced disclosure expectation. The proposed statement should establish a safe harbor from any enhanced

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[32] Proposed Statement, *supra* note 1, at 1–3, 6–7.
[33] Issue Spotlight, *supra* note 9, at 4, 14–15; U.S. OECD Submission, *supra* note 11, paras. 5–7, 12–16.

disclosure expectation when using first-party purchase, membership, account data, or stated preference within an existing customer relationship to provide a bona fide discount, reward, loyalty benefit, or membership benefit, absent a separate false or misleading representation. Conversely, third-party data use should not, without more, create a presumption of deception or trigger an enhanced disclosure expectation. Terminology should align with established privacy-law concepts and, as appropriate, exclude de-identified, aggregate, and publicly available information.[34]

V. Responsibility For Disclosure of Personalized Pricing

The proposed statement repeatedly refers to businesses, retailers, and merchants but does not address platforms, commerce providers, cloud services, analytics vendors, and other intermediaries that may supply configurable pricing technology.[35] The FTC should clarify that any applicable personalized pricing disclosure obligation applies only to entities that determine, control, or materially influence the personalized price or, at its own direction, data used to determine the price presented to a consumer. Transaction intermediaries such as online marketplaces that provide the infrastructure for independent third-party sellers to list and sell goods, but do not set the prices of those goods, should not be held responsible for a seller's independent pricing decisions. Where an independent seller decides whether and how to personalize its prices, any associated disclosure obligation should rest with that seller. Transaction intermediaries should not become responsible for that decision merely because it hosts a listing, facilitates a transaction, or displays a seller's independently-determined price.[36] Accordingly, the FTC should expressly clarify that a marketplace or other intermediary is not responsible for personalized pricing undertaken independently by a third-party seller absent the marketplace or intermediary having a direct role in determining or materially influencing the personalized price at issue.

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[34] Fed. Trade Comm'n, *Protecting Consumer Privacy in an Era of Rapid Change: Recommendations for Businesses and Policymakers* 38–42, 48–50 (Mar. 2012), https://www.ftc.gov/system/files/documents/reports/federal-trade-commission-report-protecting-consumer-privacy-era-rapid-change-recommendations/120326privacyreport.pdf; Conn. Gen. Stat. §§ 42-515, 42-523 (2026).

[35] *See*, *e.g.,* Proposed Statement, *supra* note 1, at 1–5.

[36] Cf. Guides Concerning the Use of Endorsements and Testimonials in Advertising, 88 Fed. Reg. 48,092, 48,096 (July 26, 2023), https://www.govinfo.gov/content/pkg/FR-2023-07-26/pdf/2023-14795.pdf (clarifying the intermediaries covered by the guidance); Trade Regulation Rule on the Use of Consumer Reviews and Testimonials, 89 Fed. Reg. 68,034, 68,051 (Aug. 22, 2024), https://www.govinfo.gov/content/pkg/FR-2024-08-22/pdf/2024-18519.pdf (expressly excluding mere consumer review hosting from specified prohibitions).

The proposed statement should make clear that a platform intermediary or service provider of personalized pricing technology has no duty to investigate, monitor, audit, or police a seller's disclosure obligation merely because its products or services can support personalized offers. Requiring intermediaries to investigate sellers' pricing practices could also increase costs for the small businesses that rely on their services.[37] That allocation would not immunize a provider from liability for its own conduct: Section 5 would continue to apply where the intermediary makes its own materially misleading representation concerning that price, or otherwise directly engages in conduct that independently satisfies every element of Section 5.[38] Mere technical capability, general contractual rights, the provision of pre-built pricing, discount, or offer tools that a seller configures and controls, processing at a seller's direction, or awareness that independent sellers may personalize offers should not, standing alone, establish that the intermediary determines, controls, or materially influences the seller's decision to personalize a price, or create an associated disclosure obligation.

VI. Any Disclosure Expectation Should Be Narrow, Accurate, And Workable

The proposed statement calls for disclosure of the fact of personalization, its basis, the types of data used, and all relevant information.[39] Those terms are undefined. A literal reading could require a notice for every affected item and a description of numerous interacting signals, data sources, model features, or proprietary logic. It would also apply the same approach to physical stores, websites, mobile apps, voice interfaces, and third-party checkout flows, despite material differences in screen size and interaction.

A poorly framed warning can itself mislead. Telling a consumer that a price reflects estimated willingness to pay may imply that the consumer is being charged more, even when the system delivered a discount. Repetitive or alarmist notices can create disclosure fatigue and obscure more important information. Behavioral research on online disclosures confirms that

[37] *Id.*
[38] *FTC v. LeadClick Media, LLC*, 838 F.3d 158, 169–77 (2d Cir. 2016) (affirming liability based on knowledge of and direct participation in deceptive affiliate practices); *FTC v. Neovi, Inc.*, 604 F.3d 1150, 1155–59 (9th Cir. 2010) (affirming liability where defendants created and controlled a system that caused substantial consumer injury).
[39] Proposed Statement, *supra* note 1, at 6–7.

information overload, repetition, framing, and limited attention can reduce disclosure effectiveness or produce unintended effects.[40]

The proposed statement should permit technology-neutral, performance-based, and layered notices; allow account- or session-level disclosure where effective; and allow voluntary disclosure of high-level data categories rather than algorithms, weights, data structures, or trade secrets. Where disclosure is warranted under the standards described above, disclosure of the fact of price personalization should ordinarily suffice. Any expectation of additional information should require a case-specific showing that it is necessary to prevent a materially misleading impression. The proposed statement should not prescribe language that states or implies a consumer paid more unless the entity responsible for the challenged personalization has determined that an actual upward personalized adjustment occurred. Consistent with the FTC's existing digital-disclosure guidance, effectiveness should turn on what consumers actually notice and understand in the relevant device and context. To avoid requiring sellers to make duplicative disclosure notices, the FTC should clarify that a disclosure complying with applicable state law is sufficient. For purposes of the proposed statement's nondisclosure theory, a clear, conspicuous, and accurate disclosure that prevents a misleading net impression and is presented before the consumer is committed to the transaction should ordinarily resolve a deception theory based solely on nondisclosure, without foreclosing independently established unfairness or another statutory violation.[41]

VII. The Proposed Statement Should Remain Nonbinding and Should Not Substitute For Rulemaking

The FTC may announce enforcement priorities and develop Section 5 doctrine through adjudication, but a policy statement does not itself establish a binding norm. The proposed statement correctly acknowledges that it binds neither the FTC nor the public and that the FTC must prove an existing violation in any enforcement action. Its operative language should reflect that disclaimer by stating that nondisclosure may be relevant to a case-specific analysis once

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[40] OECD, *Enhancing Online Disclosure Effectiveness*, OECD Digital Economy Papers No. 335, 29–35, 55–62 (2022), https://doi.org/10.1787/6d7ea79c-en; OECD, *Improving Online Disclosures with Behavioural Insights*, OECD Digital Economy Papers No. 269, 7–10, 38–49 (2018), https://doi.org/10.1787/39026ff4-en.

[41] Fed. Trade Comm'n, *.com Disclosures: How to Make Effective Disclosures in Digital Advertising* i–ii, 5–7, 18–21 (Mar. 2013), https://www.ftc.gov/system/files/documents/plain-language/bus41-dot-com-disclosures-information-about-online-advertising.pdf; OECD, *Enhancing Online Disclosure Effectiveness*, *supra* note 40, at 55–62.

each statutory element is established. If guidance instead functions as a generally applicable disclosure mandate, courts look to its practical effect rather than its label to determine whether the agency has imposed a binding rule.[42]

If the FTC seeks standardized disclosure content, placement, or timing across the economy, Section 18 provides the process Congress designed for rules defining unfair or deceptive acts or practices.[43] It requires specificity, public participation, consideration of alternatives, and analysis of costs, feasibility, consumer understanding, and competitive effects. The Eighth Circuit recently vacated the Negative Option Rule for a prejudicial failure to prepare the required preliminary regulatory analysis,[44] and the FTC used formal rulemaking for adjacent price-transparency issues.[45] The proposed statement may guide enforcement discretion, but it cannot create a generally applicable disclosure code without the required record and procedures. Separately, if the final document qualifies as significant guidance and imposes incremental compliance costs, the FTC should account for it under Executive Order 14192 and OMB guidance, which cover independent regulatory agencies and identify policy statements as possible significant guidance.[46]

Fair-notice principles also counsel against immediately enforcing a newly announced affirmative disclosure expectation. Regulated parties must be able to determine what conduct is required before liability attaches, and an agency should not impose retroactive consequences through a novel interpretation that creates unfair surprise.[47] Any materially new expectation should apply prospectively. The FTC should provide a reasonable implementation period sufficient to permit necessary system and interface changes and an opportunity to cure good-faith

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[42] *See* 5 U.S.C. § 553(b)(A); *Appalachian Power Co. v. EPA*, 208 F.3d 1015, 1020–23 (D.C. Cir. 2000); *Pac. Gas & Elec. Co. v. Fed. Power Comm'n*, 506 F.2d 33, 38–39 (D.C. Cir. 1974).
[43] 15 U.S.C. §§ 57a(a)(1)(B), (b)–(d), 57b-3.
[44] *Custom Commc'ns, Inc. v. FTC*, 142 F.4th 1060, 1064–70, 1074–81 (8th Cir. 2025).
[45] Trade Regulation Rule on Unfair or Deceptive Fees, 90 Fed. Reg. 2,066, 2,066 (Jan. 10, 2025) (codified at 16 C.F.R. pt. 464); Rule on Unfair or Deceptive Rental Housing Fee Practices, 91 Fed. Reg. 12,325, 12,332–33 (Mar. 13, 2026) (advance notice of proposed rulemaking).
[46] Exec. Order No. 14,192, §§ 1, 3, 90 Fed. Reg. 9,065, 9,065–66 (Feb. 6, 2025), https://www.federalregister.gov/documents/2025/02/06/2025-02345/unleashing-prosperity-through-deregulation; Off. of Mgmt. & Budget, Exec. Off. of the President, M-25-20, *Guidance Implementing Section 3 of Executive Order 14192*, at 2–3 (Mar. 26, 2025), https://www.whitehouse.gov/wp-content/uploads/2025/02/M-25-20-Guidance-Implementing-Section-3-of-Executive-Order-14192-Titled-Unleashing-Prosperity-Through-Deregulation.pdf.
[47] *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 253–54 (2012); *Christopher v. SmithKline Beecham Corp.*, 567 U.S. 142, 156–58 (2012).

technical errors, while preserving the FTC's authority to address false statements or other conduct that independently violates Section 5 or another law the FTC enforces.

VIII. Conclusion

CCIA supports enforcement against false price claims, materially misleading omissions, and conduct that satisfies every element of Section 5(n). But undisclosed price variation should not be presumed unlawful. The proposed statement should limit any enhanced disclosure expectation to actual upward personalized adjustments above a defined baseline; exclude bona fide discounts, promotions, rewards, loyalty and membership benefits, and dynamic or contextual pricing; preserve case-specific proof under the FTC's deception and unfairness standards; and assign any disclosure responsibility to the entity that determined the challenged personalized price or made the relevant consumer-facing representation.

Providers that merely supply tools or infrastructure should not be required to monitor their customers' pricing practices, although they remain responsible for their own conduct that independently violates Section 5. Relevant data definitions should align with established privacy-law concepts. Any materially new expectation should apply prospectively, with a reasonable implementation period and an opportunity to cure, and any standardized disclosure duties should be adopted through the rulemaking process Congress provided. These revisions would protect consumers without suppressing discounts, encouraging higher uniform prices, or burdening small businesses.

CCIA thanks the FTC for the opportunity to comment and looks forward to continuing to engage on this important topic.