

United States Senate

WASHINGTON, DC 20510

March 25, 2025

Chairman Andrew Ferguson
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Chair Ferguson:

Earlier this year, the Federal Trade Commission (FTC) released initial findings from its surveillance pricing market study indicating a wide range of personal data is being used to target individuals with different prices for the same products. I write to express my concern with your recent decision to close the public comment window two months early on the FTC's Request for Information regarding retailers' use of such surveillance pricing. I urge you to reopen this public comment period, as it is important for the agency to fully understand how surveillance pricing is potentially driving up costs for consumers.

Recent improvements in artificial intelligence (AI) and the accumulation of specific consumer data like geographic location and demographic information are allowing large corporate retailers to raise prices artificially, inconsistently, and unfairly. With Nevadans already experiencing some of the highest grocery prices in the United States, consumers' ability to compare costs across stores and find the lowest price is important for putting food on the table. Artificial price volatility lessens the ability of consumers to compare and choose the lowest cost item. As I noted in a recent hearing for FTC Nominee Mark Meador, the goal of surveillance pricing is to offer the highest price that a specific customer is willing to pay. With access to detailed consumer data and advancements in technology, corporations can now use targeted customer data to price gouge consumers more effectively than ever before.

Therefore, I request responses to the following questions by April 8, 2025:

1. Please explain your decision to close the comment period on a Request for Information (RFI) regarding retailers' use of surveillance pricing less than one week after it was opened.
 - a. Were other commissioners made aware of this decision before the comment period was closed?
 - b. Did staff recommend closing the comment period?
 - c. How many comments had been submitted when the comment period was closed?
 - d. How does closing this comment period help lower costs for consumers in Nevada and across the country?
2. In your view, would surveillance pricing be considered an unfair practice if a certain group was being harmed significantly by this practice? What if such practices took place during a time of unusually high demand or scarcity of a particular product, such as eggs or other groceries?

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3. Will you publicly release all of the comments received under this RFI?
 - a. If not, why?
4. Will you publicly release summaries of the comments received under this RFI?
 - a. If not, why?
5. Will you reopen the comment period for the RFI, and if so, for how long?
 - a. If not, why?
6. Will you commit to releasing the findings of the ongoing 6(b) study on surveillance pricing publicly, once it is complete?
7. Are there any active FTC investigations into surveillance pricing or dynamic pricing driven by AI tools?
 - a. Were there any active investigations at the FTC for the previously mentioned practices when you became Chair, and if so, how many?
 - b. As Chair, have you discouraged or directed staff to stop investigating differential pricing, surveillance pricing, or AI-driven dynamic pricing?
8. If consumers suspect a business is engaging in price gouging, discriminatory pricing, or other unfair practices linked to technological use, how can they notify the FTC?
 - a. Is there a hotline or report page specific to surveillance pricing?
9. Are additional consumer protections backed by Congressional action necessary to prevent AI-enabled price gouging?

Costs and consumer demand vary across markets, and companies have the right to set prices based on these factors. However, using unfair, deceptive, and potentially discriminatory practices like surveillance pricing to set prices and target consumers with artificially higher prices is unacceptable. I encourage the FTC to reopen the public comment period on this RFI for a full 60 days and continue investigating and holding corporations accountable for unfair and deceptive practices that raise consumer costs.

Thank you for your attention to this important matter.

Sincerely,



Jacky Rosen
United States Senate