



September 25, 2026

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue NW
Washington, D.C. 20580

Re: Comment on the Federal Trade Commission's Proposed Enforcement Policy Statement Regarding Personalized Pricing (Docket No. FTC-2026-1057)

Dear Chairman Ferguson and Members of the Commission:

TechNet appreciates the opportunity to comment on the Federal Trade Commission's (Commission) Proposed Enforcement Policy Statement Regarding Personalized Pricing (Statement).

TechNet is the national, bipartisan network of technology chief executive officers and senior executives that promotes the growth of the innovation economy by advocating a targeted policy agenda at the federal and 50-state level. TechNet's diverse membership includes dynamic American businesses ranging from startups to the most iconic companies in the world and represents over five million employees and countless customers in the fields of information technology, artificial intelligence, e-commerce, the sharing and gig economies, advanced energy, transportation, cybersecurity, venture capital, and finance.

TechNet and its members share the Commission's objectives: consumers should not face hidden, higher prices set through the exploitation of their personal data, and pricing should be fair and non-deceptive. We support vigorous enforcement against deceptive or harmful pricing conduct. We write to raise a threshold concern about the vehicle the Commission has chosen and, should it proceed, to identify revisions ensuring the Statement targets real consumer harm without chilling the pro-consumer pricing practices consumers rely on.

An Enforcement Policy Statement Is Not the Appropriate Vehicle

The Commission's statement notes that Congress has not authorized the regulation of personalized pricing, and that such practices are "not well understood." In the absence of explicit congressional authority, and based on a need for further study of personalized pricing, the Commission's ability to develop an actionable policy is limited.

Consumers would be best served by a process that first develops a firmer evidentiary footing. Defining what constitutes personalized pricing, establishing the baseline of

consumer expectations against which personalization is measured, and reconciling any federal conception of personal data with existing state frameworks are substantive line-drawing exercises that determine what conduct is lawful. This process should be undertaken by Congress, or through one that involves notice, comment, and a factual record. Because the Statement, by its own terms, confers no rights and is non-binding, it is not the appropriate vehicle for resolving these questions. We respectfully urge the Commission to develop a fuller factual record, and to seek direction from Congress where appropriate, before proceeding.

Distinguish the Use of Data to Raise and Lower Prices

The Statement's disclosure expectation does not distinguish between personalization that raises a consumer's price from one that lowers it. State laws addressing this subject generally limit their reach to price increases or expressly exempt ordinary promotional pricing.¹ TechNet recommends the Commission align with these state measures. Under the current proposal, the proposed framework applies the same warning-style disclosure requirements to price increases, such as markups based on estimated willingness to pay, as it does to price reductions, including discounts or coupons grounded in a customer's purchase history. This requirement also impacts introductory offers for prospective customers who lack a prior purchase history or personalized baseline. Mandating such disclosures for price cuts harms consumers by disincentivizing savings. To avoid chilling beneficial pricing practices, the Commission should explicitly exclude routine, pro-consumer promotions — such as coupons, discounts, loyalty and membership rewards, promotional and time-limited deals, retention or win-back incentives, and abandoned-cart offers — from the scope of the Statement's disclosure expectations.

The Commission Should Define Its Terms and Provide a Workable Test

The Statement would benefit from (1) establishing that consumers reasonably expect the prices they see to be non-personalized, (2) defining that baseline, and (3) outlining an administrable test to determine compliance. As a result, identical conduct could be lawful in a market where personalized pricing is established and unlawful in a market where it is not. These factors lie outside a business's control and make compliance unpredictable. Rather than cataloging every pricing scenario as permitted or prohibited — an approach that is neither feasible nor durable — the Commission should articulate a clear principle distinguishing a business's use of its own customer relationship and data to set prices. Pricing set using signals beyond a business's own customer relationship is not, for that reason, unlawful, but it should be evaluated under ordinary Section 5 standards on the facts of the conduct.

In applying any such principle, the Commission should confirm that promotional discounts and other common cost- and context-based practices are not personalized pricing and fall outside the Statement's scope, including pricing that varies by geography, locality, or residency; dynamic pricing that reflects supply, demand, or the

¹ See, e.g., S.B. 4, 2026 Gen. Assemb., Reg. Sess. (Conn. 2026) (enacted) (exempting loyalty and rewards programs and member discounts); *Protection from Predatory Pricing Act*, Md. Code Ann., Com. Law § 13-321 (2026) (barring only higher grocery prices set through dynamic pricing and exempting promotional and loyalty pricing).

cost of providing a service; customer service discounts or retention discounts; and cohort or segment-based pricing, as distinct from pricing individualized to a single consumer. For example, locality-based pricing lets businesses reflect local cost differences rather than charging every consumer the same, which raises prices in lower-cost areas.

The Commission Should Make Compliance Workable and Certain

The Commission should confirm that clear disclosure through standard mechanisms, such as an updated privacy statement or service terms, can suffice. A single model sentence cannot function identically across the surfaces on which prices are presented, from mobile screens and voice assistants to kiosks and printed materials. The Commission should further allow flexibility in the form of any required disclosure rather than prescribe a uniform format, so businesses can convey the necessary information across any applicable environment surface.

Where disclosure is required, it should be sufficient to disclose the fact that a consumer's personal data is used to set the price. The Commission should not also require businesses to detail the specific purposes for which the data is used or the inputs relied upon. That information is often competitively sensitive or legally protected, and is not necessary to address the concern the Statement identifies: that a consumer may be receiving a personalized price at all.

Any expectations the Commission adopts should apply prospectively only, with a reasonable period for businesses to review pricing practices and update disclosures before enforcement begins. Furthermore, the Commission should explicitly state that any disclosure consistent with the Statement's standard cannot later be characterized as an unfair pricing standard.

The Commission Should Defer to Existing Frameworks

Pricing in several sectors already operates within comprehensive federal and state frameworks governing the use of consumer data, including the *Fair Credit Reporting Act*, the *Equal Credit Opportunity Act*, the *Gramm-Leach-Bliley Act*, and state insurance laws. The Commission should confirm that compliance with these existing regimes, including, for example, adverse-action notices under the *Fair Credit Reporting Act*, satisfies the Statement's disclosure standard, and, in the alternative, that pricing governed by those regimes falls outside the Statement's scope.

To avoid administrative burden and consumer confusion, businesses that already comply should not have to layer a second, differently formatted disclosure on top of the first. The Commission should likewise avoid introducing novel definitions of personal data that conflict with existing state privacy laws and should treat compliance with a substantially similar state disclosure requirement, including a disclosure made in the specific form a state statute prescribes, as satisfying the federal standard, so that a business selling nationally is not left managing conflicting obligations.

Liability Should Follow the Party That Sets the Price

Any enforcement posture should place responsibility on the party that sets the underlying price. Commerce platforms, software providers, and other service providers build tools that businesses configure and control; they do not determine what a given seller charges. Attaching exposure to the provision of a pricing capability, rather than to the decision of how to use it, would sweep in providers far removed from any consumer harm and restrict tools that small and medium-sized businesses rely on to compete. The same is true of online marketplaces that host independent third-party sellers: the Commission should expressly clarify that a marketplace is not responsible for personalized pricing undertaken independently by a seller absent a direct role in determining or materially influencing the price at issue.

Conclusion

TechNet shares the Commission's commitment to protecting consumers from deceptive and harmful pricing. For the reasons above, we respectfully urge the Commission to refrain from proceeding by enforcement policy statement and, should it proceed, to revise the Statement as described. We appreciate the Commission's consideration and welcome the opportunity to serve as a resource.

Sincerely,

A handwritten signature in black ink that reads "Mike Ward". The signature is written in a cursive, flowing style.

Mike Ward
Senior Vice President, Federal Policy and Government Relations