



December 20, 2023

Massachusetts Office of the Attorney General
Attn: Policy & Government Affairs Division
One Ashburton Place, 20th Floor
Boston, MA 02108

Re: Comments of News/Media Alliance on 940 C.M.R. 38.00: *Unfair and Deceptive Fees*

The News/Media Alliance (“N/MA”) respectfully submits these comments in response to the Massachusetts Office of the Attorney General (“the Office”) request for public comment on its Proposed Regulation 940 C.M.R. 38.00 regarding *Unfair and Deceptive Fees* (“the Proposed Regulation”). We are generally supportive of Massachusetts’ efforts to join the growing number of states with clear rules and a framework for automatic renewal subscriptions and trial offers. However, in several material respects the Proposed Regulation is inconsistent with the general approach taken by other states, including an extremely short and unworkable time frame for sending automatic renewal notices and a requirement to allow phone cancellation without customer authentication. N/MA proposes several modifications to promote consistency with other states, protect consumers, and ensure workable subscription practices for publishers and other businesses.

N/MA is a nonprofit organization that represents more than 2,200 diverse news media (newspaper and magazine media publishers) in the United States, including Massachusetts. N/MA’s members include publishers ranging from large companies and international outlets to small, hyperlocal sources. N/MA’s members are trusted and respected providers of quality journalism. They use a variety of platforms to provide information to consumers, including digital-only, digital-first, and print. Their business models are based on attracting and retaining long-term subscribers, most of whom purchase their products through automatic renewing subscriptions. To introduce new readers to our publications, we commonly offer introductory low-cost trial offers.

Publishers, as well as other businesses, have seen a large growth in automatic renewal subscriptions. For N/MA members, automatic renewal subscriptions have steadily increased and become standard practice. Almost all publications provided by N/MA members are sold by subscriptions, and many are offered only on a recurring subscription basis.

The benefits are substantial. Customers benefit from low-price introductory offers; lower-cost, continuous 24/7 access to content; access to members-only content, custom e-mail news alerts, products, and experiences; and eligibility for gifts and other enhancements. Publishers benefit by avoiding the costs of creating and disseminating multiple renewal notices, and the costs of changing subscriber files and re-enrolling customers if subscriptions lapse. For publishers and



customers, ongoing subscriptions help avoid unnecessary and unintended lapses in the delivery of periodicals and access to subscriber-only online content behind paywalls, which in turn helps publishers continue to provide affordably priced news products.

I. The Proposed Regulation Should Be Consistent With Existing State Laws and Regulations.

N/MA supports efforts to ensure subscription sales are not unfair or deceptive. But the Office should be careful not to disrupt publishers' and other sellers' efforts to follow standardized, customer-expected subscriptions methods. To be effective and not harm consumers, the Proposed Regulation needs to be consistent with existing state laws governing automatic renewals and trial offers, which have resulted in well-established, workable practices and procedures.

Thirty-five states and the District of Columbia now have automatic renewal laws aimed to protect consumers through a variety of means, including requirements that such offers be clearly and conspicuously disclosed by sellers and affirmatively agreed to by consumers. In addition, for example, under at least ten state laws, sellers must provide consumers written acknowledgments of the terms of the automatic renewal, cancellation policies, and instructions on how to cancel, in a manner consumers can retain. For longer-term subscriptions, several state laws require that sellers provide consumers renewal notices before a product or service renews containing information about the length and additional terms of the renewal period, cancellation methods, contact information for the seller, and, if sent electronically, a link to the cancellation process. As required by many states, cancellation methods must be cost-effective, timely, and easy to use; if an offer is made online, often an online cancellation option is required. While not impeding consumers' ability to cancel, for added security for both consumers and sellers and to help combat fraud, many states allow authentication of consumers prior to cancellation. If a consumer is unable to authenticate online, he or she may use other methods of cancellation.

Because many N/MA members operate nationally, they have implemented policies and procedures for automatic renewals and trial offers that are based on the consensus of state automatic renewal laws as well as requirements imposed by credit card companies for processing these types of subscriptions. As newer state laws have been added, state legislators have borrowed from other states' laws to establish consistency. We urge the Office not to upend the well-established system and practices that are already in place and working effectively.

II. The Timing Window for Automatic Renewal Notices Needs To Be Workable

N/MA members routinely send renewal notices prior to the end of subscription terms for annual or longer subscriptions, in keeping with many state laws that require such renewal notices. Some states recently added requirements for renewal notices for somewhat shorter terms (six months or longer) or when shorter terms reach a year in consecutive terms.

While the timeframes for sending automatic renewal notices are not precisely uniform nationwide, there are two key elements that we wish to bring to the Office's attention:

- (1) The timing windows for providing notice are generally 30 days long; and

- (2) The timing windows encompass notice 30-45 days prior to renewal (for example, this may be expressed as 15-45 days or 30-60 days prior to renewal).

A five-day window as contained in the Proposed Regulation is not feasible. First, the notice may need to be sent by mail. Time in the mail alone could take five days. More generally, some publishers use fulfillment bureaus to handle renewal notices, which are batched and processed monthly for efficiency and accuracy. Complying with requirements from an “outlier” state would not only be very expensive for publishers but would likely cause confusion and errors, upending processes, and customer expectations. Rather than risk existing operations, an inconsistent time frame in Massachusetts could lead to publishers not offering automatic renewals or low-price trial offers to Massachusetts customers, an outcome we do not believe the Office intends.

We urge the Office to modify the window for automatic renewal notices to 30-60 days as in most states. We also recommend that such a notice not be required for subscription terms shorter than six months. When subscriptions are monthly, subscribers are constantly aware of their renewals, especially with news media products with which our customers interact daily.

We recommend the following language for the automatic renewal provision in 38.05: 4) of the Proposed Regulation:

4) Failing to provide the consumer additional notice within no more than 60 and no fewer than 30 calendar days prior to the date upon which the consumer must cancel the Automatic Renewal or Continuous Service Contract in order to avoid incurring an additional financial obligation, if the contract term is six months or longer. The notification shall include the calendar date on which the consumer will be charged for the subsequent term.¹

III. Cancellation Methods Should Accommodate Technological Innovation and Allow for Customer Authentication

N/MA supports providing customers a simple way to cancel a recurring subscription. Customarily, state laws allow flexibility in the cancellation methods a business makes available to customers, in keeping with the various methods generally used by businesses and their customers to communicate. Several states use common language, specifying that a seller must provide a “toll-free telephone number, electronic mail address, a postal address (if the seller directly bills the consumer), or another cost-effective, timely, and easy-to-use mechanism for cancellation”. In general, the method or methods of cancellation are contained in an acknowledgment sent to the customer after they accept the subscription offer, in a manner the customer can retain for future reference.

¹ The final sentence of 4) in 38.05 as proposed should be deleted with respect to automatic renewal notices. Long-time customers may change the manner in which they communicate with a seller over time, or even change the product they receive (digital versus print editions). The method of automatic renewal notification that a new subscription term is beginning should be flexible to accommodate changes in customer preferences over time. The inclusion of this sentence is more relevant for Trial Offers which we deal with in section IV.

Flexibility regarding cancellation methods is increasingly important as technology evolves. A natural cancellation method is often the medium customers used to initiate their subscriptions. However, over time, other methods may become more convenient. For example, subscribers who sign up by mail may prefer to cancel online or by telephone, and consumers who subscribe by telephone may prefer to cancel online. With technological advances, a sign-up method used by a longstanding customer may no longer be available to new customers and the communication channels customarily used may change.

Specifically, with respect to the Proposed Regulation requiring a telephone cancellation method, it may not be feasible to completely effectuate cancellation through a voice message recording system or automated feature. As part of good business cancellation procedures and to help combat fraud, sellers need the ability to authenticate requests to cancel subscriptions. This avoids the possibility of individuals falsely cancelling subscriptions on behalf of others. Some newer state laws explicitly allow sellers to authenticate cancellation requests. For example, under California law, prior to cancellation a seller may require a consumer to enter account information or otherwise authenticate online if the consumer has an account with the business. If a consumer cannot authenticate online, the consumer may authenticate using an alternate method.

To allow for technological innovation as well as customer authentication, the Proposed Regulation in 38.05 1) should, at a minimum, be modified to substitute “or” for “and” as follows:

- 1) For any business that enters an Automatic Renewal or Continuous Service Contract or Trial Offer with a consumer, failing to provide a telephone number, electronic mail address, or, if the seller directly bills to the consumer, postal address for cancellation.***

More optimally, the Proposed Regulation should add the well-established language, “or another cost-effective, timely, and easy-to-use mechanism for cancellation” in 38.05 1) as follows:

- 1) For any business that enters an Automatic Renewal or Continuous Service Contract or Trial Offer with a consumer, failing to provide a telephone number, electronic mail address, a postal address for cancellation if the seller directly bills the consumer, or another cost-effective, timely, and easy-to-use mechanism for cancellation.***

IV. Trial Offers Should Not Require an Additional Notice

N/MA believes that trial offers should not be included in the automatic renewal notice requirement contained in 38.05 4). Trial offers are different from automatic renewals in several key respects and should be evaluated separately in terms of notification requirements.

Trial offers are by nature of limited duration and unlikely to be forgotten by consumers. Depending on the product, trial offer periods can last for days, weeks, or one or more months.² Many states specify upfront disclosure requirements for trial offers, as the Office has in two provisions -- 38.04: *Unfairness and Deception in Connection with Marketing/Solicitation/Sale* that requires sellers to disclose the total price of any product, and 38.05: *Recurring Fees & Trial offers* 3) that spells out the disclosures required for trial offers. Consumers being offered a trial subscription will have full knowledge of the pricing at the end of the trial period. An additional notice for a trial offer is not necessary.

Too many notices can cause consumer confusion and dissatisfaction as well as unnecessary expense for businesses. We urge the Office to eliminate the need for an additional notice prior to the end of a trial period, especially since the Proposed Regulation requires an autorenewal or continuous service notice.³

Many states utilize an acknowledgement instead of extra notices for trial offers. Acknowledgments convey all the terms of the offer, including detailed information on trial offers included in the contract, and provide new customers detailed information on how to cancel, all in a manner that can be retained. If the Office wishes to consider this alternative, we recommend consistency with existing standard language on acknowledgments.

V. The Prominence Requirement for Total Price Should Recognize That It May be Selected by the Consumer

There may be circumstances in which a consumer selects between various subscription options, such as a one or two-year subscription, or is given the choice of an introductory rate followed by a higher monthly rate versus a flat annual price. In these cases, there are multiple Total Prices complicating the requirement in 38.04 5) that Total Price be more prominently displayed than any other pricing information. To allow for customer choice and multiple Total Prices, the Proposed Regulation should specify in 38.04 5) that Total Price be at least as prominent as any other pricing information, as follows:

5) failing, in any offer, display or Advertisement that contains an amount a consumer may pay, to display the Total Price as least as prominently as any other pricing information.

VI. Cancellation is With Respect to the Automatic Renewal Feature

In recent years, several states have included provisions in their laws making clear that when a consumer chooses to cancel an automatic renewal contract, the consumer is cancelling the

² Longer-duration trial offers may use months to express the trial term or 31 days for a month long trial offer. The Proposed Regulation should use 31 days as the cutoff for covered trial offers.

³ While California's automatic renewal law includes a provision for a trial offer notice for trial offers longer than 31 days (with a timing window of 3-21 days for the notice), the statute specifies that such notice is not necessary if a seller will be providing the customer an automatic renewal notice.

automatic renewal feature, not cancelling the current term's contract. The Proposed Regulation should be consistent with existing practices in the states in this regard.

N/MA thanks the Office of the Attorney General for its consideration of these comments. We would be pleased to answer any questions or provide additional information.

Respectfully Submitted,

NEWS/MEDIA ALLIANCE

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