



New York Association of Convenience Stores
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Hon. Chuck Schumer
United States Senate
322 Hart Senate Office Building
Washington DC 20510

Dear Senator Schumer:

On behalf of the New York Association of Convenience Stores, I wanted to bring to your attention concerns about your recent portrayal of New York motor fuel retailers and their pricing disclosure practices.

Your letter to Federal Trade Commission Chairman Liebowitz creates the false impression that New York gas stations and convenience stores are failing to disclose the cash and credit prices for each grade of fuel as required by state law.

Neither federal nor New York State law requires motor fuel retailers to have a pole-mounted price sign on the street. Where permitted by local zoning, many do have one, as part of their fuel brand identity. It is an *advertising* vehicle – not a fixture erected for the purpose of complying with any pricing disclosure regime.

There is, however, a section of state Agriculture and Markets Law requiring the retailer to display “pump topper” signs disclosing the price for each grade of fuel offered, so the consumer can make an informed choice. These black-and-white signs, whose numerals by statute must be at least 4½ inches high and 1 inch wide atop multi-grade dispensers, constitute **New York State government’s chosen method of consistently, clearly, and fully informing consumers of the prices of gas** before they activate the pump. Our members must and do abide by this law.

New York law permits retailers to offer a lower price to cash customers, which is good for consumers who want to save on gas. To do this, the dispenser must allow the consumer to select cash or credit, and then display the correct price once the selection is made. The law further requires the retailer to post both the cash and credit prices on the pump-topper signs.

If a retailer is not displaying these pump-topper signs, he is violating the law and should be penalized. If a retailer has pump-topper signs but they display only the cash price and not the credit price, he is violating the law and should be penalized. If a retailer’s pump-topper signs display cash and credit prices that don’t match what the pump is really charging, he is violating the law and should be penalized.

However, if the retailer lawfully posts all cash and credit prices on the pump-topper signs, but advertises only the cash price on his street-view pole sign, I fail to see how that constitutes a bait-and-switch practice. Retailers of all types advertise their most heavily discounted prices, and as long as the condition for getting that price is disclosed (such as by including the word “cash” next to the price) it accurately informs consumers how they can save money.

If a customer sees the street-view price sign, pulls onto the lot, parks at the pump island, gets out of the car, stands and faces the pump-topper signs disclosing the cash and credit prices for all grades, selects “credit,” swipes a card, and starts pumping gas, he or she was properly informed of all prices as directed by New York State law, and had the opportunity to pay the lower cash price. Rather than being duped, the customer *made a choice*.

If people ignore the price signs that are expressly designed by the State of New York to protect them as consumers, there is not much more the retailer can do, short of hiring a concierge to announce the day’s prices to each arriving motorist. Unless, of course, we were to discontinue cash discounts, denying consumers the opportunity to save money, or remove our pole-mounted street signs altogether, so people could no longer comparison shop at 40 miles an hour.

The only other solution is to require municipalities – especially those on Long Island, which is notorious for severe signage restrictions – to amend their zoning ordinances to permit street-view gas price signs to be large enough to accommodate display of both the cash and credit price, or perhaps the high/low range of prices, at every location.

Lost in all this is the reason so many motor fuel retailers on Long Island and elsewhere are offering a cash discount – excessive credit and debit card swipe fees. Banks and other card issuers are charging the retailer 7 to 10 cents per gallon to electronically process fuel transactions, wiping out much or all of the retailer’s gross profit margin. By avoiding these outrageous fees, retailers save money, which they share with consumers in the form of a discount for paying with cash.

We know you understand the deleterious effects of runaway swipe fees on small businesses and consumers, and we applaud your leadership in trying to address the issue. Last year, you voted in favor of the Durbin Amendment reforms to debit card swipe fees, and in favor of the Wall Street Reform and Consumer Protection Act containing that amendment. Unfortunately, the Federal Reserve subsequently adopted debit fee limitations far short of what Congress intended, and credit card fees remain excessive, anticompetitive, and hidden from view.

As a representative of responsible motor fuel retailers, NYACS would be pleased to be part of meaningful discussions with you to help rationally address the problem of out-of-control swipe fees and any concerns about gasoline price signage.

Sincerely,

James S. Calvin
President