



FTC – Open Commission Meeting – November 16, 2023

Lina Khan:

Good morning, everybody. Thank you for joining us. The meeting will come to order. We're meeting in open session today to consider a couple of items before the FTC. As usual, we'll start by hearing from members of the public, so I'll turn it over to Doug, our director of Public Affairs to get us started.

Douglas Farrar:

Thank you very much, Chair Khan. Before we begin, please note that the FTC is recording this event and that this recording may be made available in the public record in accordance with the commission's rules. Briefly, before we move to the members of the public, we will see two recorded videos from members of Congress. I believe up first we have Senator Amy Klobuchar.

Amy Klobuchar:

Hello to everyone attending today's Federal Trade Commission open meeting. Thank you to Chair Kahn and Commissioners Bedoya and Slaughter for holding this important public forum. You can't protect consumers if you don't listen to consumers. Thanks for doing it. Today, the FTC is tackling one of the most troubling uses of generative artificial intelligence we have encountered, the alarming rise in criminals stealing people's voices to scam others. We're seeing this all over the country, including in my home state. Recently, the husband of a member of my staff in Minnesota was targeted by a terrifying phone scam. He received a call from someone who sounded just like his son who is currently serving in the military overseas. It was a panicked voice saying, "Mom, dad, are you there?" Implying he was in danger. Of course, it wasn't actually him. Scammers had used AI to clone his voice. Fortunately, my staff member and her husband knew that this wasn't really their son and hung up before the scammers could extort them for money.

But if the scammers that called the grandparents, it might've been a very different story. This is horrifying for any family and unfortunately, it is not an isolated instant. This summer in Iowa, a couple received a panic call from a voice that sounded like their son who was on his way to basic training saying he was in jail and needed \$7,000 for bail. Luckily, the couple reached their son who was safe at home before wiring any money. In Utah, another man got a call from a voice clone that sounded like his grandson claiming to need \$5,000 in bail after a car crash. As AI advances, these stories are becoming far too common. It only takes three seconds of audio to clone a voice, and criminals can pull the sample and backstory from public sources like social media. By preying on our best instincts to help their loved ones

in need, these scams cause great distress, raise security concerns and even take a serious financial toll on families.

As technology improves, voice clones will only become more convincing, and as the FTC knows, we must address this emerging threat. That's why I teamed up with Republican Senator Susan Collins to call on the FTC and the FCC to continue their efforts to raise awareness of and prevent AI voice cloning scams. I'm pleased that the FTC is announcing today's challenge to work with private partners to spur innovation on ways to identify and block these predatory scams. I look forward to ensuring the FTC has the resources it needs to establish safeguards to prevent cyber criminals from abusing this rapidly-emerging technology. AI can bring some good stuff, but as we know, it presents us with significant risks. I know you are up to the task, and I look forward to working with you to crack down on voice scams and implement the creative solutions I know we're going to hear from all of you. On behalf of the Senate, thank you so much for participating in this really important open meeting. Let's get the good ideas going. Thanks, everyone.

Douglas Farrar:

That was Senator Amy Klobuchar, and we have one more video from Representative Jan Shakowsky.

Jan Shakowsky:

Hi, I'm Congresswoman Jan Shakowsky, and I want to thank the chair of the Federal Trade Commission, Lina Khan. She is doing a great job to protect us from scams by introducing what we are calling the Voice Cloning Challenge. Now, there's always been scams to look out for except that this has a new twist to it and that's because of artificial intelligence. Now they can duplicate a voice of perhaps a relative of yours saying, "You better send me money right now because I'm in trouble, and if you want to save my life, send money," all kinds of scams that could take your money out of your pocket. Protecting consumers from fraud and scams has been something I have really focused on in all of my time in the Congress of the United States. Now the scammers are coming up with new ways to do it, and so I am very happy that I can be some part of making sure that we're going to protect consumers.

Douglas Farrar:

Thank you very much, Congresswoman Shakowsky. Okay, now we will go to members of the public. As I've noted, each member of the public will be given two minutes to address the commission, and we will get started with Mort Skroejer. Mort?

Mort Skroejer:

Thank you. Chair Khan, commissioners, I'm here today on behalf of the Software and Information Industry Association, and I'd like to make a few comments about cloud computing and competition. Cloud computing is less than 20 years old and cannot be viewed in isolation. It is, after all, only a minor part of the overall IT industry. According to some estimates, cloud services comprised as 15% of total IT spend in 2021. Customers choosing cloud have a range of providers. All the top 10 global IT companies by revenue offer at least some cloud services, and there are more than 1600 cloud infrastructure startups, nine of them unicorns. As the use of cloud computing expands, all of these companies compete fiercely to innovate and offer their customers new products at low prices.

The cloud has also helped to democratize access to technology. It provides consumers better opportunities to buy and use increasingly sophisticated IT offerings. Nowhere is this more true than for the use of AI. Today, even small companies meet the capacity to manage and manipulate mind-numbing amounts of data. AI enables them to automate these routine processes, quickly analyze essential data

and develop new services, all of which allows them to compete effectively. That said, software licensing restrictions designed with legacy technology in mind could harm the ability of the IT sector to remain dynamic and highly competitive. While we urge a cautious approach and do not recommend unilateral FTC action, we believe this is an area that merits further study. Thank you.

Douglas Farrar:

Thank you very much, Mort. All right. Next we're going to go to Dani Cook. Dani?

Dani Cook:

Thank you, Commissioner Kahn and commissioners. I am here on behalf of the 1.2 million people being served in the region of northeast Tennessee and southwest Virginia by Ballad Health. They are a medical monopoly that was created via a COPA. Since they were granted a COPA in 2018, we have lost a tremendous amount of services. Nurses are being paid what they were being offered 14 years ago, so therefore, they're leaving the industry. It's causing a lot of harm to patients. Our three tertiary hospitals went from being four stars and three-star hospitals by CMS to two stars and one-star hospitals while the CEO blames CMS's flawed waiting system and the socioeconomic factors of the region, instead of taking accountability for the opportunities that need to be addressed. This COPA that was granted for them is the largest of its kind. They are the largest employer in our region.

They are suing thousands of our folks while being \$148 million behind on their charity care requirements. They are also what, failing 80% of their target quality measures for the fiscal year 2022. They're still failing about 70% for the ones that just came out November 8th of this month. Understaffing, I don't know how to express what I want to tell you because there's so much. Your staff has been fantastic, and I appreciate them being invested and aware of what's happening in our community despite the Tennessee Attorney General and the state legislature tying your hands in this matter. But what's happened is the people that are part of this COPA that pushed it forward, there are 15 of them. They control 65% of our workforce in our region. They control the wage index. They control the quality of healthcare that we have. It is affecting patients even up until death. I'm not speculating. These are absolute facts. So what I'm asking you to do is take some action where this COPA is regarded, and I think you can do that under the nowhere Noerr-Pennington doctrine. Thank you so much.

Douglas Farrar:

Thank you so much for that reflection. Okay. Next, we'll go to Andy Jung.

Andy Jung:

Good morning. I'm Andy Jung, associate council at TechFreedom. This fall, the commission has spent considerable time discussing artificial intelligence and copyright. In October, the commission hosted a roundtable on creative economy and AI, and last week the FTC submitted a comment on AI to the U.S. Copyright Office. The comment claims that conduct like selling AI-generated content mimicking an artist may both violate the copyright laws and also constitute an unfair method of competition or an unfair or deceptive practice. At the October Roundtable, Commissioner Slaughter listed copyright alongside the FTC's UNC and UDAP powers describing them as powerful tools we can use to protect artists from AI. But let's be clear, none of the FTC's authorizing statutes mention copyright. Copyright law has a structured and unambiguous enforcement process centered around the U.S. Copyright Office whose authorizing statutes do not mention the FTC.

On its website, the Copyright Office lists executive branch agencies. It works alongside on copyright matters. It does not list the FTC. In its comment to the Copyright Office, the FTC expressed an interest in

the question of where to draw the line between human creation and AI-generated content, but an interest is not equivalent to congressional authorization to regulate. The commission proposes to use its unfairness authority to regulate AI-related copyright violations. To prohibit an AI practice as unfair, the commission would have to show that it likely causes substantial injury to consumers that is not outweighed by countervailing benefits and that consumers cannot reasonably avoid. The FTC has no authority or experience related to copyright. It has no expertise weighing the trade-offs between creativity, innovation and free speech inherent to AI-generated content, so the commission should trend carefully. Courts are likely to strike down any broad conception of unfairness, which would allow the FTC to regulate copyright. Here, AI is just a red herring. Thank you so much.

Douglas Farrar:

Thank you, Andy. Okay, I'm going to go to Benjamin Harbakk. Benjamin?

Benjamin Harbakk:

Yes. Hello. Can you hear me?

Douglas Farrar:

We hear you great.

Benjamin Harbakk:

Perfect. I have to respectfully disagree with Andy Jung. I am a game developer who represents a grassroots movement of artists all across the internet who collectively feel in many ways that AI is a technology, at least generative AI image generators are technology based on the unsanctioned, unlicensed and unauthorized use of copyrighted material posted on the web under a different social contract than the ones that we currently experience today. As a result of this, artists now experience that on websites such as CivitAI or Hugging Face. People are training models, uploading them to these websites and using those models to generate countless images in the likeness of the artist's art style, competing directly with them in the market and replacing the need for them, so to say.

People who use these generators sell posters, sell cups, sell curtains, they sell products with artwork on them that mimic the style of artists. This has become quite prevalent and understood to be troublesome for artists. Right now, just looking at CivitAI, a website that hosts tons of these models, I, with a consumer-grade graphics card, can train a model on random artists in about two to three hours and produce thousands of artworks per hour that mimic their style and then select the best ones, automatically, mind you, and then try to sell those on Shopify or other platforms.

This is relatively easy. Right now, I'm looking at Sam Yang's, a model that was trained on Sam Yang that has been downloaded 54,000 times being trained on his artwork. I could train a similar model on any artist online really, and then produce thousands of artworks per hour and then select the best ones and then sell them and compete with the artist. Right now, there are really no protections for this other than lengthy legal processes and trying to send in strikes or DMCA's. This website has just received \$ 5.4 million from Andreessen Horowitz, and it just tells me that competition cannot exist in this space. When actors that act in ways that seem to me unethical are not struck down, then ethical competitors can't even float above the water if you try to launch a company-

Douglas Farrar:

Benjamin.

Benjamin Harbakk:

... based on AI. Thank you.

Douglas Farrar:

Thank you. Sorry to cut you off. Thank you very much. All right. Let's all try to stick to our two minutes, but thank you very much for your comments and your graphic demonstration as well. Okay. Let's go to Steve Noyes. Steve?

Steve Noyes:

Hey, there. Good morning. My name is Steve Noyes, and I'm an independent manufacturer's rep and the principal owner of Noyes Associates. I've been an active business-to-government marketplace member since 1987. Very much appreciate the opportunity to participate in this forum. As this is an open session, two topics that are relevant to the focus of the FTC concern commerce through the Federal Government. This ensures fairness for small independent office products dealers and representation and visibility of AbilityOne skill craft products to the federal consumer. This is relative to the evolving GSA commercial platform program. AbilityOne is a program that employs 37,000 people that are blind or have significant disabilities. They employ more than 2,500 veterans including wounded warriors. Nearly \$4 billion worth of products and services were purchased by the Federal Government in fiscal year 2022.

In response to the Section 846 of the National Defense Authorization Act, procurement through commercial or e-commerce portals was established by GSA. The current players are Amazon and Overstock Gov and Fisher Scientific. Changes were made. A notable change was made in regard to helping promote the buyer compliance with the Javits-Wagner-O'Day Act, and that was positive because it prohibits the purchase of essentially the same items. However, in response to a protest filed by the Coalition of Plaintiffs led by the National Institutes for the Blind, GSA amended its solicitation to add an evaluation preference for companies that offer to block and sub. The solicitation closed on June 12th. At issue is the subjective interpretation regarding the term preference. That could imply a formula interpretation to blend other criteria. We prefer the word shell to offer to block and sub.

A reason for that is the reliance on this language is because the GSA Multiple Award Schedule does require dealers to block and sub ETS items. If the commercial platform program's not clear, then it would create an alternative universe that could confuse certain federal shoppers. It would negatively impact the number of jobs for the AbilityOne program. Some of you listening may recognize the 86-year-old AbilityOne SKILCRAFT brand. Many of those products are featured on abilityone.com and offered through the Multiple Award Schedule. The reason for my visit today is to help put the program in the context that agencies are not merely buying a SKILCRAFT pen or a SKILCRAFT remanufactured laser toner cartridge, but they're helping to provide a job-

Douglas Farrar:

Steve.

Steve Noyes:

... for someone that otherwise might not be employed. Thank you.

Douglas Farrar:

Thank you. Thank you. Appreciate it. I know everyone's got a lot of stuff to say, and let's really try to stick that two minutes. I'm going to have to start cutting people off earlier, but thank you very much for your comments. Okay. Let's go to Bilal Sayyad. Bilal?

Bilal Sayyad:

Thank you. The FTC's monopolization and UMC case against Amazon raises interesting and complex questions of law, so too, does its monopolization and exclusive dealing case against Syngenta, the monopoly maintenance case against U.S. Anesthesia Partners and the monopolization case in the Endo Impacts matter. In these four matters, the commission has chosen to bypass the FTC's administrative trial and commission review process and file in federal court. The very significant Shire, Qualcomm, Surescripts and Facebook monopolization cases were also filed in district court by recent previous commissions. Each of these matters was a significant lost opportunity for the commission to clarify and shape monopolization law much more directly than in its briefing and arguing of the cases or through its Amicus Program.

While I likely disagree with some of the theories the commission has pursued in the aforementioned cases and in its over two dozen post Microsoft monopolization complaints and settlements, during the last century, the commission writing and review of an initial decision of the ALJ has issued thoughtful opinions in nearly a dozen competition matters, most of which have been upheld on appeal. The commission should not shy away from attempting to develop an updated competitive effects analysis framework for monopolization law and should have the goal of replicating in the monopolization area then Chairman Muris' use of the Part 3 process to revive the hospital merger program. Some procedural corrections of the Part 3 process are necessary, and without endorsing each of his recommendations, the commission may wish to consider the thoughtful analysis and recommendations of Keith Klovers. Thank you.

Douglas Farrar:

Thanks, Bilal. Okay. Next up we have Aaron Frazier. Aaron?

Aaron Frazier:

Hello. Hi, Aaron Frazier. Thank you so much for having us today. Commissioner Kahn and all the commissioners of the FTC, to give you a

Aaron Frazier:

I'll give you a quick background on the National Restaurant Association. We're the nation's largest organization representing the food service industry with over a million locations and about 15 million employees. Last week at this time, the FTC published a rule on deceptive practices and fees, and I just want to encourage the commission and everyone who's working on this rule to provide as much guidance as possible because it really does take a lot of scrutiny and a lot of new rules on restaurant practices in terms of restaurant service fees, a large party fee for a catered dinner or for a private dinner, it's changing the way those service charges would be applied. And we really encourage the FTC to provide more guidance, provide time for us to collect information, educate restaurants about this really, really expansive rule because it changes, it proposes tremendous and comprehensive changes for the second-biggest private sector employer in the country that is comprised mostly of small businesses. So thank you for your time and I will try to give back some more time.

Douglas Farrar:

Thank you, Aaron. Appreciate that. All right, next is Neil Chilson. Neil?

Neil Chilson:

Good morning, chair Khan and Commissioners. I'm Neil Chilson. I'm a senior research fellow at the Center for Growth and Opportunity at Utah State University. Recently, chair Khan spoke to emphasizing the importance of rule of law and suggesting that the FTC is enhancing rule of law by taking a textualist interpretation approach to its enabling statutes. But the rule of law and textualism are not the same, and it can even be at odds. Law is not statutes. It is the outcome of an emergent process affected, yes, by the choices of what legislators write down, but also by the many and varied choices and judgements of enforcers, judges, and individuals. Rule of law is a measure of how well that outcome reflects overarching principles of fairness, consistency, and predictability in the legal process. Rule of law can exist absent any statute, in tort law, for example. By contrast, statutes can violate or undermine rule of law considered the Sedition Act of 1798, which made it a crime to punish false, scandalous and malicious writing against the government.

In short, the rule of law stands in contrast and contrary to rule of man. To be ruled by law means to not be ruled by the whims and preferences of elite individuals. As a law enforcer, the FTC has a pivotal role in this emergent process of law and can bolster the rule of law by interpreting the FTC act and other statutes properly. FTC guidance that increases clarity and predictability can strengthen rule of law. Unfortunately, the guidance that we have seen from this commission from the section five statement to the merger guidelines add many factors to enforcement decisions, increasing the discretion of the agency rather than focusing it. I am glad that the FTC recognizes the rhetorical power of an appeal to the rule of law, and I encourage the agency to actively exercise its authorities in a way that strengthens rather than undermines the rule of law. Thank you.

Douglas Farrar:

Okay. Jim Bates. Jim?

Jim Bates:

All right, thank you. Yeah, I'm Jim Bates with the Funeral Consumers Alliance, speaking on behalf of that organization. This is specific to the item under consideration at the FTC on online disclosure of pricing from the funeral industry. At the workshop in September 7th, industry cited a lot of surveys that they did themselves on happy customers and said everybody was happy. So the Funeral Consumer Alliance, we took that upon ourselves to respond with a way to do a self survey.

And what we did was we added an AI chatbot to our simulator website at acmefuneralretailer.com. And so we're encouraging the commissioners to go to that website and use the chatbot that's on there and ask it, how do I find funeral pricing? And of course, the public can use that too. And by doing that, that externalizes, the survey is very specific. You're making your own survey to find out really what's going on out there and the chatbot can't even find funeral pricing online itself. So that's what we're doing. We're just putting that out there for the commissioners to give that a try as they consider whether to add to the funeral rule online pricing or not. Thank you.

Douglas Farrar:

Thanks. That's an interesting comment. Thanks, Jim. Okay, Benjamin Barber. Benjamin?

Benjamin Barber:

Okay, can you hear me?

Douglas Farrar:

We can. Go right ahead.

Benjamin Barber:

Hi there. So my name is Benjamin Barber. What I'm working on is using generative machine learning for civil rights complainants because our state only has a third of the required number of public defense attorneys according to the American Bar Association, for which the US District Court has admonished the state and they just can't print lawyers out of thin air. At the same time, I've seen a number of generative AI startups who are trying to use products like GPT-4, and the problem is that these are all trained off of next token prediction, which is not the same thing as logical inference such that, for example, you ask the chatbot if abortion is protected underneath the US Constitution and because there's so many previous samples for 30 years, you get the wrong output because of the recent change in case law. And there's hallucinations and things like this as well.

So I do think there needs to be some sort of regulation such that there is consumer protection. And then I've seen that you are discussing the issues of publicity and the issue with publicity is that has to be narrowly tailored according to the Supreme Court case, *United States versus Stevens*, to one of the historical exemptions of the right of publicity. So the right of publicity is limited to confusing people with commercial endorsements or false light and not parody or satire. So as for an example, the people at South Park Studios have used Donald J Trump's image in their satire and to crack down on this Donald Trump deep fake would be like a violation of the First Amendment because it's not integral to crime, it's not integral to defamation, that sort of thing. So I have concerns that the idea that you can own as a personal property, your name or your likeness or your voice leads to some very serious First Amendment issues that the Ninth Circuit Court of Appeals has discussed-

Douglas Farrar:

Benjamin, sorry, we're over time. Thank you for your comment. Appreciate it. Okay. Jess Miers?

Jess Miers:

Good morning, chair Khan and commissioners. I'm Jess Miers from Chamber of Progress, the Center Left Tech Industry Coalition. Our partners span various industries, but they do not have a voter veto over our positions. I'd like to address the FTCs recent comment submitted to the US Copyright Office regarding generative AI and copyright policy, which we believe is inconsistent with the FTCs mission to promote more competition. The commission's remarks imply that misusing copyrighted materials could be deemed unfair per section five of the FTC Act, and they further assert that behavior consistent with copyright law might still violate section five. This stance leads the commission to erroneously support a licensing framework for using publicly available works to train AI models. Contrary to this view, the rightful interpretation of copyright law is the jurisdiction of the courts, not within the scope of section five's enforcement. Accordingly, copyright law has traditionally recognized the fair use of intermediate copying for activities such as search indexing or browsing, a principle that should logically extend to using such materials for AI model training.

With that said, AI outputs that are substantially similar to the existing works used for training will not be considered fair use. The courts have made this painstakingly clear. The doctrine of fair use closely aligns with the FTCs goal to encourage competition and consumer choice. It avoids the monopolization of creative ideas fostering a conducive environment for innovation and emerging talents. Yet the FTCs

suggestion of a content licensing regime for AI training data will disproportionately benefit established entities potentially hindering new entrants and consequently detrimentally impacting consumer welfare.

Finally, it is imperative to highlight that when evaluating the market impact factor in the context of fair use, copyright law specifically focuses on the influence on an artist's ability to make mark to market in an individual work. This approach does not consider the broader impact of competition on the artist's ability to develop new and competing works. A broad assessment of generative AI's influence on a human artist's ability to compete with a machine falls outside the purview of copyright discussions. Recognizing the subtlety is crucial for the FTC and consumers alike as they both benefit from the increased availability of a wide range of creative works irrespective of whether they're created by humans or AI. Ultimately, we believe that current legal challenges against generative AI underscore the adequacy of existing copyright law in this new context. Thank you for considering our perspective on these evolving issues.

Douglas Farrar:

Thank you, Jess. Okay, next up is Nicholas Parks.

Nicholas Parks:

Thank you. Can you hear me?

Douglas Farrar:

Coming through great.

Nicholas Parks:

Okay. I'm Nicholas Parks, owner of snobfoods.com. We sell a variety of spices, hot sauces, barbecue sauces, similar items. We've done so for a little over 20 years. We sold on Amazon before FBA or Prime or even the grocery section existed. I've been fortunate to work with a small business rising coalition, and I'm speaking today in support of the FTC lawsuit against Amazon. Because of the ever-increasing seller fees charged by Amazon, the markup required for me to break even is four and a half times greater on Amazon than on my own website. Meanwhile, Amazon has a fair pricing policy that punishes us if they find us selling cheaper outside of Amazon. This creates a Hobson's choice for sellers, either lose money selling on Amazon or increase their prices off of Amazon. Further, Amazon uses the profits derived from third party seller fees to offset losses on their own inventory.

Thus, we know that once Amazon starts selling a product in direct competition with us, they will sell below our cost and drive us away as a competitor. Our fees today are paying for our destruction tomorrow. Similarly, because we are dependent upon the Prime badge to generate sales volume, most of our inventory is required to reside at FBA warehouses, leaving us unable to use that inventory to fill orders generated elsewhere. Amazon has evolved to control our pricing, advertising, sales volume, sales data, inventory, logistics, customer data and customer service. Amazon sellers are now merely consignment inventory providers, assuming all of the risk, while enjoying almost none of the profits. The only reason we continue to sell on Amazon is because they have spent decades suppressing every platform viewed as a potential rival. Thank you for your time today.

Douglas Farrar:

Thank you very much, Nicholas. All right. Next up we have Berin Szoka. Berin?

Berin Szoka:

I'm Berin Szoka, president of Tech Freedom and a scholar of internet law. The Federal Communications Commission has proposed reclassifying broadband as a Title II common carrier service. As in 2015 that would strip the FTC of its jurisdiction, which excludes common carriers. The FTC should file comments with the FCC defending its jurisdiction and explaining its approach. The FCC repealed its net neutrality rules in 2018, yet the internet remains as neutral as ever. That's because broadband providers have long committed to respect net neutrality principles and the FTC enforces those commitments. The FCC calls consumer protection law inadequate because industry's commitments are voluntary, but the judges who upheld the FCC's 2015 rules did so precisely because those rules too were voluntary. If they said an ISP were to hold itself out to consumers as offering them an edited service rather than indiscriminate internet access, it would bring itself outside the FCC's rule.

This surprising conclusion flowed from the FCC's definition of broadband internet access service. The FCC's rules applied only to services that promised neutral connectivity. The same goes for the new proposed rules. That makes the FCC's approach essentially similar to how the FTC police's deception, except the FCC would lose jurisdiction entirely over any service that involved any clearly disclosed non-neutral practice.

The FTC by contrast could still enforce every representation about such non-neutral broadband service, punish every material omission, and also police non neutrality as an unfair or anti-competitive practice. When it comes to marketing representations, the FTC has a lot to teach the FCC. The FTC will continue to play a much larger role than most realized. Few Constitutional scholars expect the courts to uphold reclassification of broadband. In 2017, then Judge Brett Kavanaugh called broadband regulation, a major question that the FCC can't decide without unambiguous authority. The Supreme Court has since struck down a slew of agency actions under the major question doctrine. Title two reclassification is almost certainly next, but the sky won't fall without FCC rules. It hasn't fallen yet. The FTC will continue to be the real cop on the net neutrality beat, but the sooner the commission explains its approach, the better. Comments to the FCC-

Douglas Farrar:

Thank you, Berin. Sorry, we're over. Oh, thank you very much. All right, next up is Zohaib Ahmed. Zohaib?

Zohaib Ahmed:

Thank you. Good morning everybody. My name is Zohaib Ahmed. I'm the CEO and Co-founder of Resemble AI. Over the last five years, we've been creating generative voice technology working with enterprises across the United States and across the world. We've made various contributions to open source, published papers on voice cloning, and over the last two years, we've really put in a lot of effort and focus towards what we call antivirus software for voice cloning. It's very clear that AI and generative AI can be somewhat controlled by regulation, but it needs to look towards practitioners to create innovative solutions in the space and based off of other technologies in the past, say the internet, which created antivirus software and created spam filters for email, it's very clear that we need protective technology as well.

Over the last year, we published and officially publicly announced two innovations in this area, the first being a neural water marker that's able to detect the authenticity of audio, but a general purpose, deep fake detector, which has the ability to look at any piece of audio created by any open source platform or any public vendor, and able to determine at an 87% accuracy out of the box, whether a piece of generated audio is fake or real.

All of this works in real time, and we believe that this is a huge step forward in trying to create technology that will protect consumers and also enterprises in various use cases. We're hopeful that this technology will surface in the next coming weeks to more people. At the moment, it is being served to a handful of enterprise customers who are already using in production, but our goal is to open this up to a wider community. I wanted to share this to the FTC and hopefully we can make a dialogue of this in the future, but there's proactive steps that are being taken by us in terms of creating technology that helps detect deep fakes.

Thank you.

Douglas Farrar:

Thank you, Zohaib. Okay, next we have Lanny Swerdlow. Lanny? Are you there?

Lanny Swerdlow:

I had to unmute myself. Sorry about that.

Douglas Farrar:

There you go. Nope. No problem.

Lanny Swerdlow:

Robocalls are more than a nuisance, especially when they come a dozen times a day and even more, especially when they come at 6:00 AM. I've had two robocalls while I'm sitting here waiting for my turn to speak. My phone company, Frontier Communication, wants to charge me \$10 for an unknown call blocker. They should provide this service for free, and even then it would only stop some robocalls. The way to stop them will be to make robocalls illegal and then let people sue the robocallers and collect the large bounty. In the same way Texas has made abortion illegal and allows any US citizen to sue Texas-based abortion clinics, doctors and anyone else who abides an abortion and if successful receive a \$10,000 reward and attorney fees. With over 50 billion robocalls made every year in the US, a \$10,000 reward plus attorney fees will inspire many people to go after the people who are robocalling them and will be a boon to lawyers looking for big bucks for easy work. This will definitely put an end to robocalls. I hope you will look into this and make it a reality.

Douglas Farrar:

Thank you, Lanny. Appreciate that. Okay, next is Ellia Kassoff.

Ellia Kassoff:

Hi chairman Khan and commissioners. I want to thank you for your time. We submitted a complaint against Mondelez back in July 14th of 21 for unfair competition where we own the Hydrox cookie brand, as you can see, and it was the original sandwich cookie, and there's always been a competition between Oreo and Hydrox. What we didn't know was that Mondelez would take an active role in hiding our product and making sure we fail. We found this out while we were in the buyer's office for the largest retailer in the world who point blank said, "You will have a major issue, and that is when Mondelez comes in and puts their cookies on the shelf, they're going to hide your product to make sure you fail." With that said, Mondelez has a multi-channel pricing strategy, and that strategy is designed to exclude competition in the channel, specifically the retail supermarket channel. They supplement the pricing to make sure that it's low, that nobody can actually enter that market. And I was told this by a company,

another competitor who was bought out by Mondelez, the CEO, who said specifically, "That's what they do." So they artificially lower their price to make sure we can't get on shelves, and that stifles the competition. On top of that, we had a category captain issue. Category captains are

Ellia Kassoff:

Are usually supermarkets that bring in their largest vendor, and that vendor is responsible for the placement of everything in that category, which is, by definition, conflict of interest, and that is something that the commission should be looking at as well. Because what happens is you get increased prices to consumers, and at a time of high prices, so many consumer goods are with so many consumer goods. The Federal Trade Commission should take this active role in looking at it to keep prices competitive and to let small guys like us compete, and right now we're not able to. Hydrox is roughly \$4.99 on the shelf in the retailer, and in supermarkets we know that Oreo is still keeping it low, very low, in the three-

Douglas Farrar:

Sorry, we're over time. Thank you very much for your comments. All right. Faith Carlson. Are you there? Oh, I'm sorry. You're muted. There you go.

Faith Carlson:

Thank you. Hey, thank you Chair Khan and the FTC for the opportunity to speak. My name is Faith Carlson and I'm a licensed mental health counselor in South Dakota, Iowa, Minnesota, and Florida, and co-founder of Victus Counseling and Nutrition Services, and I specialize in the treatment of mental health and eating disorders. I'd like to share with the FTC the appreciation of the efforts made to date in monitoring and holding accountable big tech companies, violations, and advertising fraud scams attempts made in holding them accountable to the harms that big tech has done with our youth, and listening to recent whistleblower sharing accountable what's really going on in real time with our mental health and youth. My hope this continues with the Kids' Online Safety Act being reviewed. We also can do so much more.

In today's challenge announcement regarding artificial intelligence, it is imperative we take into account mental health, our youth, and the negative mental health influences that can happen. We, the mental health professionals, are already flooded with clients being influenced by social media images, written messages, and social media influencers in real time, completely separate from artificial intelligence. Artificial intelligence is progressing in the field, as it crosses over into the general population, we need to prioritize, protect, and prevent continued and increased mental health harms. As a professional in the field of mental health, providers, I can't express enough how imperative it is a proactive versus reactive approach is used in protecting this health, particularly in our youth who are inherently vulnerable to deception and cognitive abilities to discern this new level of mental health challenges with artificial intelligence, let alone the general population and adults.

We are seeing artificial intelligence step into the mental health field, testing as AI speech as a therapist replacement. We have no boundaries, guidelines, or direction currently in our professional field for regulation and artificial intelligence. While it can be both a tool of support in our field, we can see in real time how big tech has already caused in mental health. The balance with AI needs to be closely monitored, specifically when it comes to youth, elderly, and the most vulnerable populations. I do challenge the FTC and the supporting resources to please keep in account the mental health guidelines and standards of practice. We're seeing the implications of big tech and mental health harms and the years trying to reign this in as it stands. AI, big tech, and mental health decline in our youth is a

pandemic causing challenges beyond measure, professionals are drowning in trying to help. Please keep in mind treating eating disorders is the number one cause of death out of all mental health illnesses, second to opioid overdoses, the risks and benefits treating mental health and AI is complex.

Douglas Farrar:

Sorry. Thank you very much. Appreciate your comments. Okay, Julie Anderson. Julie?

Julie Anderson:

Good morning Chair and members of the commission. Thank you for the invitation for members of the public to share feedback on the commission's work generally and to bring relevant matters to the commission's attention. Firstly, I'd like to draw attention to the commission's abject failure to protect consumers against multi-level marketing pyramid schemes. On the FTC website, the section entitled Multi-Level Marketing Businesses and Pyramid Schemes incorrectly makes a distinction between the two. The truth that everyone, including the commission, knows is that there is no difference, MLMs are pyramid schemes. It's appalling that the commission continues to deliberately confuse the public and give them false hope that there is a good MLM out there and that an endless chain recruitment proposition with a well-documented 99% failure rate isn't fraud, but a viable business model.

Secondly, the commission's revolving door conflicts have resulted in consumers simply not trusting the commission wants to protect them. According to a public citizen report from May 23rd, 2019, by Rick Claypool, over 75% of top FTC officials over the past two decades have either left the agency to serve corporate interests confronting FTC issues, joined the agency after serving corporate interests on these issues, or both. John Liebowitz, Chair Commissioner, goes on to represent Herbalife. Pamela Jones Harbor, Commissioner, goes on to become the senior vice president and legal officer for Herbalife. So you have Grameen America, who targets women living below the federal poverty line, giving them micro loans. Some of these women take those loans and go around the corner to one of the Herbalife sale locations clustered around the Grameen offices. And what happens when one of these women files a complaint to the FTC after realizing that an endless chain recruitment model, where over 99% of people must lose money, is fraud? Is the person reading that their complaint going to be working for Herbalife the next week? How does the commission expect to be taken seriously? Thank you.

Douglas Farrar:

Thank you very much, Julie, for your comment. Okay, next up is Leanna Wade. Leanna?

Leanna Wade:

Good morning. My name is Leanna Wade and I am representing ACT, The App Association, the leading trade association for small technology companies across the United States. Our members are entrepreneurs, innovators, innovators, and independent developers within the mobile app ecosystem, and they deeply rely on cloud computing services to deliver solutions, create jobs, and efficiently run their business. The nature of cloud infrastructure, which consists of many different data centers located in different places, let small businesses minimize outages and data losses by eliminating single points of failure that still exist for on-premises solutions.

Notably, cloud services have been central to moving digital adoption forward, making it a strong competitor due to the shift towards remote work environments. Roughly 60% of companies moved their business to the cloud in 2022, and the toolkits provided by CSPs have allowed smaller businesses to, one, scale their resources to specific workloads as needed, and two, save roughly \$1,200 a month on costs, empowering them to reallocate those funds into fueling innovation and job creation. For these

reasons, we strongly encourage the commission to recognize the positive correlation between cloud computing services and digital economy growth for small businesses, and we urge the commission to pursue policies that will foster a healthy and competitive cloud ecosystem. Thank you for your time.

Douglas Farrar:

Thank you very much, Leanna. Thank you all for your patience. We have about four speakers left, and the next speaker is Joseph Van Wye. Joseph?

Joseph Van Wye:

Thank you very much. My name is Joe Van Wye and I'm the policy and outreach director at Farm Action, a farmer led nonprofit organization working to fight monopoly power and promote competition on our food system. We would like to thank the Chair and the entire commission for holding today's open meeting, and for your excellent work to foster competition across our economy, specifically in the agricultural sector.

First, we want to commend you for publishing new comprehensive merger guidelines earlier this year. These guidelines mark a turning point in our government's approach to antitrust enforcement and are proof positive that largest agrichemical companies, grocery chains, and meat packers will no longer be allowed to engage in the clearly anticompetitive acquisitions that have gone unchallenged in the past. We look forward to the finalization of these guidelines and the bold enforcement regime they outlined.

Second, we were pleased to see the FTC and DOJ work together to propose overdue updates to the Hart-Scott-Rodino premerger filing form. HSR forms should be a helpful tool for enforcers, allowing them to gather information about a potential deal, and any anticompetitive effects it might have. However, as markets evolved and our economy has become ever more concentrated, these forms have failed to provide the details necessary to understand the real impact the deal might have. We're particularly pleased to see the company seeking to merge, we'll have to divulge more information about regional concentration effects, as regional concentration is particularly relevant to food and agriculture markets. We urge you to act quickly in finalizing these updates.

Lastly, Farm Action thanks you for your close scrutiny to the proposed merger of Kroger and Albertsons, two of the largest grocery giants in the country. We appreciate your efforts to gather more details from affected parties on what impacts we might see from this merger. Farm Action believes that should this deal be allowed, because of the already highly concentrated retail grocery market and the vertically integrated nature of these companies, we can expect to see farmer income decrease in the face of Kroger's buyer power, farm concentration increase as farmers seek to meet the scale demanded by the new entity, a rash of closures of both new Kroger stores and independent grocery stores, and increased prices for consumers. We urge the FTC to block this deal. Thank you again for your work to protect farmers, ranchers, and consumers and for the opportunity to speak today.

Douglas Farrar:

Thank you, Joe. That was a very efficient use of your two minutes there. Okay, two more speakers. Krisztian Katona? Go ahead.

Krisztian Katona:

Yes, good morning, and thank you for the opportunity to provide comments as part of this open commission meeting. I'm Krisztian Katona, Vice President of Global Competition Regulatory Policy at CCIA, the Computer and Communications Industry Association, and my short remarks today will follow up on the comments CCIA submitted in response to the commission's cloud RFI in June.

So cloud computing as part of the global IT services industry provides users, customers, and companies new and innovative services. Now, cloud computing has changed the competitive landscape for IT services, offering greater choice in products and reducing the overall cost to IT services customers across all industries. In addition, the introduction of cloud computing has provided consumers and businesses with additional options to organize, store, and process data, allowing businesses to reduce expenditure on it. What we see is that the distinction between the different layers of IT, such as infrastructure, platform, and software, has really blurred over time and many services don't fit neatly into these categories.

This makes it particularly important to analyze cloud services, taking into account business realities and the ways in which these services are actually provided and used. So from a competitive perspective, IT services, including cloud service offerings, are highly competitive. Regarding storage, businesses also have robust options for IT services including on-premises offerings and a wide range of cloud services. And this dynamic competition makes cloud providers actively market solutions to compete with both cloud and on-premises alternatives, which importantly also provides cloud customers with numerous options and providers. Cloud providers also give greater access to AI and machine learning to consumers, offering companies and AI startups alternatives to compete.

Now, as our CCIA RFI comments also noted, a key concern from a competition perspective is how cloud providers may be harmed by legacy IT companies entering the cloud space and unfairly leveraging their market power in non-cloud markets to lock customers into their own cloud ecosystems through restrictive licensing and unfair practices.

To close, as the commission is looking to analyze cloud computing and other IT services following the RFI, it is really essential to understand the scale of the potential benefits of cloud services to consumers, innovation, and the US economy, and really to distinguish between legitimate and unfair business practices. Thank you very much.

Douglas Farrar:

Thank you. Thank you so much. All right, our last speaker today, and thank you so much for your patience, is Kimani Okearah. Kimani?

Kimani Okearah:

Thank you for the opportunity to share. My name is Kimani Okearah, founder of Let Me Out Productions, a collaborative media production studio. [inaudible 00:52:29] regarding network collaborative intellectual property products and brand services, experiences, and goods. Let Me Out Productions pioneered a network collaboration anchored by an intellectual property puzzle, a concept I invented in March of 2021. Similar to the board, API Club, whose products launched a month after our products, we built a brand around collaborative efforts. Let's clarify some terms. Cryptocurrency is a value transfer protocol shared by network for a specific purpose. Blockchain is a public notary service that arranges transactions of blocks and records them in a chain. Non-fungible tokens are digital titles for intellectual property. Despite the transparency of blockchain, the web3 sector faces issues like conspiracy competition, elusive market manipulation, advertising fraud, plagiarism, and a variety of other antitrust violations. Our brand is a network collaborative IP product. We're a theatrical company that sells our core product company ownership tokens, unique pieces of art to anchored customer collaboration, through intellectual property they own.

While the title of art may cause debate, as is the point of effective art, we're relying on the objective value of meaning delivered by each word. Company has formal guild of associated artists producing audience experiences, the word that originally came to exist to describe such a guild. Ownership is legal

right to, token is proof. These are not shares of the business activity, nor can that be misconstrued in the objective value of meaning. OpenSea, supposedly an impartial marketplace, disabled the trade of our core network collaborative IP products on September 14th, 2023. We satisfied two compliance audit and traded for 2.5 years without issue. Our product represents legal rights to associate with a group of artists, which comes with a variety of services, experiences, and shared marks of trade. It's not a facility for investment. Speculation harms our goal of creating quality self-sustainable experiences for our customers. OpenSea's actions amount to a conspiracy limit competition, an unreasonable restriction of trade violating the Sherman Act.

As an economically marginalized and disabled individual, enforcing my rights in basic decency is a challenge without legal support I'm unable to afford. I urge the FTC to investigate antitrust violations including, those by OpenSea and the SEC. The SEC is broad classification [inaudible 00:54:23] are typically investments of money hampers network collaborative IP products, like our brand and our productions. The Bored Ape Yacht Club collaborative brand sells pictures of [inaudible 00:54:30], the product anchors collaboration, and the strength and public presence of the market trade. The purchase premise of the \$200 initial price was collaboration. A few months later, some of those pieces were trading for over \$700,000, forming the objective market reality of an investment contract. However, the proprietor intent and the [inaudible 00:54:45] customer purchase premise need to be the priority. I encourage the FTC to extend-

Douglas Farrar:

Go ahead, finish up this last...

Kimani Okearah:

Okay. I encourage the FTC to extend prudence to the sector as soon as can be because self writers [inaudible 00:54:58] network collaborative products and IP is sending the United States economy backwards in ways we can't recover from. Thank you for your considerations.

Douglas Farrar:

Thanks. Thank you to all the members of the public who came here today. It's an honor and a privilege for the FTC to hear from all of you, and the wide variety of topics covered really reflects the important work we're doing here. And with that, I'll turn it back over to Chair Khan.

Chair Khan:

Thanks, Doug, for shepherding us through that so efficiently and deep thanks to everybody who took the time to come speak with us today. I know we all really benefit from hearing from such a wide set of perspectives on such a broad set of topics. Also, in particular, thanks to Senator Klobuchar and Congresswoman Schakowsky for also submitting videos.

We're going to get started with the two items that we have on the agenda. The first is we'll be hearing from staff about the commission's voice cloning challenge. All of us at the commission have made clear that we're watching developments in AI closely. These moments of technological transition can present significant opportunity, but these AI tools in particular also pose a set of risks, and it's our job at the FTC to ensure that the public continues to be protected from unlawful business practices, even when the lawbreaking is being done through the use of AI.

We've also signaled that we're committed to using all of our tools, and oftentimes that will mean activating our law enforcement authorities. But in this instance, our staff came up with the creative idea to use our authority under the America Competes Act to spur new thinking and ideas for how to

confront a challenge that we are now facing with voice cloning. We heard some of the challenges mentioned by Senator Klobuchar, and in some ways this is not new. Law enforcement agencies routinely get reports of individuals and companies being defrauded by scammers that are impersonating a voice. But of course now with voice cloning, we have the potential for these frauds and scams to be perpetuated with much more sophistication. We are already seeing reports of voice cloning being used this way. Over the last year in our consumer complaint database, we got around 165 reports of some of these frauds and scams being perpetuated through voice cloning, and that's included voice cloning enabled fake kidnapping or deep fakes of celebrities peddling fake promotions.

And we know that this is just the tip of the iceberg and the problem could get much, much worse with people having little ability to tell which voices are authentic and which are AI generated. And that's why this voice cloning challenge is so important and I'm so, so grateful to our staff for coming up with the idea. And this competition in particular is part of a broader whole of government effort to protect the public from AI enabled harms and we're looking forward to continuing to work closely with our government partners at this key moment. I'll now turn it over to James Evans and Amritha Jayanti to introduce the Voice Cloning Challenge. Over to you both.

Amritha Jayanti:

Thanks so much, Chair Khan. Good afternoon everyone. I'm Amritha Jayanti, a senior technologist in the Federal Trade Commission's Office of Technology.

James Evans:

And good afternoon, I'm James Evans, an attorney in the Division of Marketing Practices, which is in the FTC's Bureau of Consumer Protection.

Amritha Jayanti:

Today, as Chair Khan mentioned, the FTC is announcing an exploratory challenge to address the present and emerging harms of artificial intelligence, or AI enabled voice cloning technologies. Voice cloning technology is becoming increasingly sophisticated due to improvements in text to speech AI engines. This technology offers promise for Americans in, for example, the medical field. It offers a chance for people who may have lost their voices due to an accident or illness to speak as themselves again. But it also poses significant risk. Families and small businesses can be targeted with fraudulent extortion scams, and creative professionals, such as voice artists, can have their voices appropriated in ways that could jeopardize an artist's reputation and ability to earn income. With these threats in mind, the FTC has made it clear that we are prepared to use all of our tools to hold bad actors accountable, including law enforcement actions under the FTC Act, the telemarketing sales rule, and other authorities. In addition, the commission is considering the adoption of a recently proposed impersonation rule that will give us additional tools to deter and halt deceptive voice cloning practices.

James Evans:

So let's talk in more detail about today's announcement of the FTC Voice Cloning Challenge. The FTC is launching this new exploratory challenge to encourage the development of multidisciplinary solutions, from products to policies to procedures, aimed at protecting consumers from AI enabled voice cloning harms, such as fraud and the broader misuse of biometric data and creative content. We're asking the public to submit ideas to detect, evaluate,

James Evans:

Evaluate and monitor cloned voices. This challenge reflects the reality that while the private sector has richly rewarded development of AI related technology, technology to mitigate potential harms is not developing as organically. Today we're launching the Voice Cloning Challenge website at ftc.gov/ftc-voice-cloning-challenge. The website has full details about the challenge, including what intervention points in the voice cloning system we're looking at.

People can participate in the challenge as individuals, part of a team, or as part of a business. Participants can start brainstorming great ideas now and start working on your challenge submissions. Our submission portal will be open online from January 2nd through January 12th, 2024. After that, submissions will be evaluated by FTC staff and by an expert panel of external judges.

Early next year, we'll announce the winning submissions. When looking at challenge submissions, we'll be assessing three things. First, how will it work in practice? Second, how does it put responsibility on companies and minimize burden on consumers? And third, how easily can it be resilient to rapid technological change and evolving business practices?

The present state of affairs in voice cloning is a lot like what we saw in the robocall context a decade ago. That's when the FTC successfully spurred innovators through challenges like this one to develop call blocking technology. Those technologies have advanced in the years since. In fact, while robocalls remain a scourge, we're proud that over the last few years, the number of robocall complaints to the FTC has steadily decreased. We hope this challenge will lead to similar successes.

Amritha Jayanti:

Thanks, James. And building on that, the goal of the Voice Cloning Challenge is to foster breakthrough ideas on preventing, monitoring, and evaluating malicious voice cloning. This effort may help push forward ideas to mitigate risks upstream, shielding consumers and creative professionals against the harms of voice cloning. It may also help advance ideas to mitigate risks at the consumer level.

And if viable ideas do not emerge, this will send a critical and early warning to policymakers that they should consider stricter limits on the use of this technology, given the problems in preventing harmful development of applications in the marketplace. As mentioned at the top, this challenge is one part of a larger strategy. The risks posed by voice cloning and other AI technologies requires a multidisciplinary response. That's why this challenge and so much of FTCs work is a cooperative effort across the entire agency.

In this case, the Office of Technology and Bureau of Consumer Protection are proud to coordinate on this challenge. But the risks involved with voice cloning and other AI technology cannot be addressed by technology alone. It is also clear that policymakers cannot count on self-regulation alone to protect the public. That's why at the FTC, we will continue to use all of our tools, including enforcement, rulemaking, and public challenges like this one, to ensure that the promise of AI can be realized for the benefit and not to the detriment of consumers and competition.

James Evans:

Thanks, Amritha. And thank you, Chair Khan and commissioners for asking us to share with you all today about the FTCs Voice Cloning Challenge. We also want to express our thanks to FTC investigator Christine Barker in the Division of Marketing Practices who rounds out our staff team. We also want to thank the many people in many parts of the FTC who made this challenge possible. And to highlight a few, including in the Bureau of Consumer Protection, Ben Davidson, Will Maxson, Lois Greisman, Alvaro Puig, Lesley Fair, Jennifer Leach, Monica Vaca, and Sam Levine.

In the Office of Technology, Madeleine Varner, Alex Gaynor, David Coe, and Stephanie Nguyen. In the Office of General Counsel, Richard McCune. In the Office of Public Affairs, Juliana Gruenwald Henderson and the entire web team. And in the Office of the Executive Director, Jeff Standifer and Stephanie Smith. Thanks to everyone for your crucial help. Again, folks, to learn more about the challenge, please go to ftc.gov/ftc-voice-cloning-challenge, or I think today, just go to ftc.gov you'll be sure to find it in the news, and you'll find a link to our page. We look forward to receiving your ideas and thank you. We'll turn it back over to Chair Khan.

Chair Khan:

Thanks so much to you both, and it was clear this was just such a team effort across the agency that thanks as well to everybody. You all mentioned. Floors open for Commissioner Slaughter, Commissioner Bedoya to also share any remarks.

Slaughter:

I don't have a lot to add to that excellent presentation other than chiming in with my own thanks to him within James and the rest of the cross-agency team. I think harnessing the creative energy and innovative spirit of the American public is an extremely, extremely exciting thing for us to be able to do, and I really look forward to the results of this challenge.

Bedoya:

Chair Khan, I just wanted to echo Commissioner Slaughters, thanks to the team putting this forward and working on this. I'll just add one note that I shared with the OT team right before this meeting, which is a particular interest I have in this for immigrant families. So it may be unusual for people to get a phone call from someone asking for money in most contexts, but it's pretty common in immigrant families for people in the US to get calls from their loved ones either here or abroad asking for funds.

And so I don't know if this presents particular technical wrinkles, but certainly it's one reason I'm excited for this. But if there are specific considerations for how to prevent voice cloning to be used in that context, I'd be very, very interested in any submissions that try to address that. So with that, I'll turn it back to you Chair Khan. Thank you.

Chair Khan:

That's a really key point. So thanks again to James and Amritha and I understand the challenges now live on our website so folks can get more information there. We're now going to switch over to a presentation on our cloud computing inquiry. So back in March, we issued a request for information to deepen our understanding of cloud computing. This is a market that's not always super visible to everyday people, but behind the scenes it increasingly plays a critical role. Companies across the economy rely on cloud providers to power their services, as does the US government.

And today it's primarily three cloud providers that are capturing a majority of the market. Because cloud computing increasingly serves as key infrastructure, it has been raising a whole set of competition and consumer protection questions, including whether firms may be using their dominance in ways that undermine fair competition. And whether dominance in this market may heighten fragility, creating a single point of failure or risk to data security.

And I'll just say as cloud computing is a key input for artificial intelligence technologies, fully understanding the dynamics in this layer is only more important and relevant today than it was even earlier this year. I'll also note that scrutinizing cloud computing is not new for our agency. Our staff has

been bringing a whole set of enforcement actions relating to lax data security practices in the cloud, including our actions against Drizly, Chegg, and Uber.

And just today, the commission also announced an action against a prison telephone services provider for allegedly misconfiguring a cloud environment, which then exposed the personal information of hundreds of thousands of people, which was then exfiltrated and many swayed onto the dark web. So a lot of material consequences for people in terms of what's happening in this somewhat opaque layer. Really glad that we have with us Krisha Cerilli from our Bureau of Competition and Nick Jones from our Office of Technology to share an update on what we've been hearing. So over to you, Krisha and Nick.

Nick Jones:

Great. Thank you, Chair Khan and Commissioners Slaughter and Bedoya for the opportunity to speak about the key themes the FTC heard in response to our request for information on cloud computing from earlier this year. My name is Nick Jones and I'm a senior technology advisor in the FTC's Office of Technology. I'm joined today by Krisha Cerilli, the deputy assistant director of the Bureau of Competition, Technology Enforcement Division. Next slide.

Between March and June of this year, the FTC solicited comments from the public on the business practices of cloud computing providers. In addition, we hosted a public panel in May which featured five experts on a range of cloud computing issues. Both the panel and the comments received featured perspectives from industry participants, academia, and civil society groups. In the comments and in the panel, four key themes emerged, competition issues, single points of failure, security, and the intersection of generative AI and cloud. To kick off our discussion of these themes, I'll pass it over to Krisha to discuss the competition issues we heard about. Next slide.

Krisha Cerilli:

Thank you, Nick. As Nick referenced, competition was one major theme of the RFI submissions. A number of comments suggested that various services within the cloud stack have only a limited number of major suppliers and raise concerns that certain practices may hamper competition. I'll briefly describe several of those concerns here. Next slide. First, some submissions raise concerns that certain software licensing practices of cloud providers could limit the ability of customers to use software and rival cloud environments, thereby inhibiting cloud competition. Second, some commenters raise concerns about egress fees, which are fees to move or transfer data out of a cloud provider. The concerns included that egress fees could discourage the use of multiple cloud providers or switching from one provider to another. Third, some submissions argued that minimum spend contracts or similar contractual structures could lead to lock-in and consolidation of spend with one provider. I'll turn it back to Nick to discuss other areas of attention in the comments. Next slide.

Nick Jones:

Another theme which has some overlap with both competition and cloud security relates to the concept of cloud provider as a single point of failure. Certain submissions flag concerns around the widespread reliance on a small number of cloud providers, posing the question of, "What happens when a cloud provider experiences an outage or other service degradation. And the cascading impact such incidents could have on the economy or specific sectors."

In addition, one submission addressed how the resiliency of cloud systems depends on the implementation details of cloud providers' services with some offering generally more resilient systems than others. Next slide please. The next theme was around cloud security. Certain RFI submissions

compared the security that cloud services can provide to the security that more traditional on-premise options provide. Highlighting that the cloud generally provides a higher baseline level of security.

However, others focus on the areas of cloud security that could use improvement. For example, some submissions highlighted that default security configurations could be improved to decrease the likelihood that a customer of cloud services introduces security issues. Others focus on the so-called shared responsibility model between cloud providers and customers of cloud. Writing that this model can lack clarity, which can lead to situations where neither the cloud provider nor the cloud customer is implementing necessary safeguards. And I'll pass it back to Krisha for the fourth theme.

Krisha Cerilli:

Thank you, Nick. Next slide. The fourth theme relates to cloud computing and AI technologies. As a Bureau of Competition and Office of Technology recently observed in a blog post, competition for cloud services has the ability to impact competition for AI technologies. Comments to the cloud, RFI made similar observations highlighting several themes.

First, certain submissions highlighted that generated AI firms are often heavily reliant on cloud providers to deploy their AI products or technologies making cloud computing and important input to AI products. Second other commenters highlighted the importance of specific hardware needed for generative AI such as GPU chips, which are in high demand.

Third, certain submissions discuss cloud credits, which are a form of investment in which cloud providers invest in AI firms, the part of the trade being that the AI company uses the cloud providers cloud services. Some submitters wondered whether these credits could lead AI firms to become locked into particular cloud providers. Next slide.

In conclusion, the foregoing represents a brief summary of important themes in the RFI submissions. Nick and I would like to thank all submitters for their thoughtful comments and all staff throughout the agency who have participated in the RFI. Looking forward that the FTC will continue to evaluate issues raised by cloud and AI technologies and will hesitate to use our law enforcement authority to protect against harmful conduct. Back to you, Chair Khan.

Chair Khan:

Thanks so much, Krisha and Nick. Really appreciate both the presentation and the deep expertise that each of you brings to this topic. I know this as well was a real team effort across the agency. So also want to thank, Hillary Greene, Stephanie Wynn, Elisa Jillson, Mike Acorn, Alex Gaynor, Dan Principato, Patricia Galvan, and Kelly Signs for all of your contributions. This is going to remain a key area of scrutiny for us given how critical it is to some of these generative AI and other technologies. So really also appreciate the ongoing work in this area. With that, open the floor to Commissioner Slaughter, Commissioner Bedoya.

Slaughter:

Thanks, Chair Khan. And thanks, Krisha and Nick, I really appreciate you sharing those insights. I think as the chair mentioned, this is a really important area of ongoing interest. And one thing that people listening might not have picked up from the names of all the staff that the chair cited who worked on this is they are staffed from across our agency, not just the Office of Technology and the Bureau of Competition, but also the Bureau of Consumer Production.

And I think that highlights one of the really important areas of focus for us as a commission and on this topic particularly, which is the fact that many of the issues with which we are grappling, implicate

multiple different threads of our mission and making sure we're thinking about them holistically across our mission areas is a really key to being able to tackle those problems effectively and with a reflection of how the markets are actually operating. So I'm so grateful to everyone we've heard from today and to the fact that we have these cross-agency teams that are working so collaboratively and thoughtfully to tackle these really cutting-edge issues.

Bedoya:

Thank you, Chair Khan. And would it be okay to ask the team a question or two in this context? Okay, great. So like you Chair Khan and like Commissioner Slaughter, I'm very grateful for all the work that went into this from across the agency. I had two quick questions. The first was, I was particularly interested in the findings around cloud and generative AI. Obviously, compute is a key input into foundation models and right now in general, the more compute the better.

I was wondering if you'd received any indication from the comments or any allegations in the comments that cloud computing providers were starting to use their position as providers of this key input in a way that might be anticompetitive. Again, these would be allegations that we would not have looked into, but curious if you saw any of that in general. And then separately, the UK issued a report on foundation models that looked at compute as one of the key inputs. And I'm wondering if what you saw from the comments and the RFI responses to it aligned with the findings of the UK CMAs report or differed in any interesting ways.

Nick Jones:

Sure. So I'm happy to take certainly the first one. I think one thing to keep in mind with the cloud RFI was that it was opened a little bit earlier this year. And so some of the issues that we're starting to see both in public reporting and in other discussions, we heard a little bit less about just given that it was in April and May. But I think those are issues that I expect will continue to arise.

And there were a few submissions that highlighted that these are areas to watch and things that could become more problematic. Yeah, so I think we're starting to see some public reporting that suggests that may be the case, but the timeline was a little bit earlier on some of the issues that we're seeing now. Krisha, do you want to add either to that or the second one?

Krisha Cerilli:

All right. I could take the second one. I would indicate Commissioner Bedoya that I do think that the submissions that we received were consistent in a number of ways with the findings of the UK in their foundation's model. Some of the various themes that we mentioned about cloud computing being particularly important as a foundation for AI technologies was one through line in their findings as well.

Bedoya:

Thank you both. And thank you all.

Chair Khan:

Yeah, really salient questions and I really appreciate how the team is going layer by layer across the stack to figure out what might be the relevant issues in each area. Well, thanks so much again, Krisha and Nick, Commissioner Slaughter and Bedoya, this marks the end of our meeting. And thanks again also to all of the public participants who shared a comment at the beginning. Really great to see everybody. Thanks so much.

