CHAIR LINA KHAN: Good afternoon. This meeting will come to order. We are meeting in open session today to consider several items before the commission. That we will be voting on these items, please note that this will not be a deliberative meeting.

Once the meeting is concluded we will remain online for an open forum during which we will hear from members of the public on their thoughts regarding the work of the commission generally and any relevant matters they wish to bring to the commission's attention. After our last meeting, we heard from more than 31 members of the public and received over 100 written submissions. I found this feedback to be helpful in identifying issues affecting the American public we worked hard to protect. I'm excited to continue this effort to provide the public with a window into the agency's work and its priorities.

Turning now to the business of the commission, the first item on the agenda is the care labeling of textile wearing apparel and certain piece goods rule, better known as the Care Labeling Rule. The Care Labeling Rule makes it unfair or deceptive for manufacturers and importers to sell clothing without attaching care labels. The Federal Trade Commission first promulgated the Care Labeling Rule in 1971, with the goal of ensuring buyers were provided clear and accurate information on how to take care of their fabric.

Since then, the agency periodically has reviewed the rule seeking public comments to ensure the rule is keeping pace with new developments and still providing buyers with relevant information. The public comments the Federal Trade Commission has received during these reviews have highlighted the many benefits that care labels provide to both clothing buyers and cleaners. Although some consumers have raised concerns about the standardized symbols and terms used on the labels, the majority of comments the FTC has received over the years support retaining the rule.

In July 2011, the commission issued a notice requesting comments on the overall costs, benefits, and necessity of the Care Labeling Rule. Of the 120 comments submitted all but two agreed that care labels are necessary for consumers and industry stakeholders alike.

In a 2012 summary of the preceding, the FTC stated that the two commenters opposed to the rule had failed to provide any tangible evidence to support their assertions and that there was no evidence in the record showing that a voluntary scheme would work better than the rule.

In March 2014 the FTC held a roundtable to give members of the public the opportunity to present their views orally. The discussion at this event focused mainly on amendments proposed in comments during the 2011 review, such as the inclusion of wet cleaning instructions, clarifications to the rules of reasonable basis requirement, and the use of various specific cleaning symbols. None of the participants contested the commission's 2012 decision to retain the rule.

In July 2020 the FTC issued a supplemental notice of proposed rule making, this time seeking comments to determine whether the roles requirements are burdensome to manufacturers and whether that rescinding the rule would be in the public interest.

During this comment period the agency received 244 responses, most of which were submitted by individuals and small businesses who opposed the repeal. These comments emphasize that buyers rely on clothing labels to help extend the life of their clothes and that these labels provide valuable care guidance to both consumers and businesses. Many in the apparel manufacturing and cleaning industries noted that removing the labels would increase the likelihood that their customers items might be damaged in the wash and as a result expose their business to liability.

After careful consideration, I believe that the record supports retaining the Care Labeling Rule and that it should not be rescinded. For this reason I move that the commission issue a statement informing the public that it does not intend to repeal the rule, but will continue to consider ways to improve the Care Labeling Rule to the benefit of buyers and businesses alike. I move that the commission issued a statement circulated by the Office of the Secretary regarding the Care Labeling Rule matter number R511915. Is there a second?

COMMISSIONER ROHIT CHOPRA: I second.

CHAIR LINA KHAN: I will now turn to my other fellow commissioners to share any remarks before this item is moved for a vote. Commissioner Wilson.

COMMISSIONER CHRISTINE WILSON: Yes. Thank you, Chair Khan. Before voting on the first matter I'd like to touch on process. The public comments during our last open commission meeting were thought provoking and I look forward to hearing from the public today. But the value of these open meetings for commission decision making is another matter.

To avoid waiving our deliberative process privilege, we must avoid both staff participation and a dialogue among the commissioners. Instead we are left to deliver monologues with no interaction, making these events more akin to theater than to the recent decision making that should characterize our institution. To reach conclusions about policy matters the commission should proceed in the manner that has served the agency well for decades. I benefit greatly from a process that facilitates full consultation with staff through oral briefings and comprehensive memoranda, as well as a robust dialogue among the commissioners.

News reports have revealed that FTC staff has been muzzled externally, and it appears that staff is being silenced internally as well. Perhaps this is due to a view some have expressed that FTC staff is unimaginative and has failed to advance the commission's mission effectively for decades. I strongly disagree. FTC staff include some of the most talented lawyers in the competition and consumer protection bar.

Staffers skilled at executing the agency's mission in an exemplary manner, giving clear direction regarding the commission's strategic and enforcement priorities. I saw this firsthand as chief of staff for Chairman Tim Muris who brought to the commission an aggressive agenda and worked constructively with staff to implement it.

For example, staff brought the agency's first privacy and data security cases against Microsoft and Eli Lilly, laying the foundation for the protection of sensitive health and other information for years to come. In the competition arena both FTC and DOJ had lost a string of hospital merger challenges in the late '90s. Chairman Muris created a cross disciplinary hospital merger task force to conduct retrospectives and create a new litigation approach. Since then, the commission has had only one loss in this sector and Chairman Muris solicited the views of others.

I am encouraged that Chair Kahn worked with our office more collaboratively on some of today's agenda items. I urge her to continue the FTCs longstanding tradition of bipartisan collaboration. While we may not always agree with each other or with staff, our analysis is made deeper and richer through dialogue.

Our agency has come under attack in recent years. In the face of these attacks we could be proud of our robust dialogue and thorough analysis at every stage of each matter and proceeding. Crushing internal dialogue diminishes the quality of our decision making and gives our detractors more ammunition. Process matters. So let's get it right.

And now let me move to care labeling. The FTCs Care Labeling Rule specifies clear instructions that can be placed on garment labels. There is no question that this information is useful to consumers. Less clear is whether a rule is necessary to ensure that clothing manufacturers provide care instructions.

These requirements don't exist in Europe, but they still have clear labels. Regulations by nature risk inhibiting innovation and stifling competition. The care labeling rule provides a great example of these phenomena because the rule is tied to specific care instructions and procedures and is woefully out of date.

Industry associations have developed new types of care instructions for both existing and new fabrics that are not reflected in this rule. In addition, the rule references symbols that are generations out of date and the inaccuracies in the Care Labeling Rule are not trivial.

The failure of the FTC to acknowledge the existence of an emerging rival to dry cleaners, known as wet cleaners, likely has impacted competition in this industry as comets reveal. And in today's global economy I do not understand why the commission would maintain a rule requiring symbols that do not align with international standards.

I reluctantly agree with the commission's decision to refrain from repealing the rule and I am pleased the commission will continue to consider changes to update the rule. I would have preferred that the commission commit to a timeline and direct the staff to prepare a supplemental notice of proposed rulemaking to make the necessary changes, but to update and to reassess the rule, particularly so that our agency is not impeding competitive entry.

As this commission appears poised to engage in an aggressive period of rulemaking, we should first ensure that our existing rules are sensible and facilitate competition and innervation to the benefit of consumers. So I urge the commission to prioritize updates to this rule. Thank you.

CHAIR LINA KHAN: Thank you, Commissioner Wilson. Commissioner slaughter

COMMISSIONER REBECCA SLAUGHTER: Thank you, Chair Khan. I'll just keep my remarks brief. I agree with Commissioner Wilson that it is much better to update this rule than to eliminate it because I think it serves important values. But I also think that we need to be thinking very, very carefully about our priorities with our limited resources in terms of rulemaking. And it isn't clear to me that these labels, the legal requirements, even if they do require updating, come at the top of that priority list for staff engagement, given limited resources.

Although I do think it is an important thing for us to tackle, I look forward to working with the rest of the commission and with you, Madam Chair, to set an agenda and a set of priorities where we are using our resources to be the most responsive to the most pressing problems that are facing consumers, small businesses, and workers in today's market.

So with that I support the motion to end the process to eliminate the repeal of the Care Labeling Rule and look forward to further conversations about how we can best use commission resources that target really pressing problems in the economy.

CHAIR LINA KHAN: Thank you, Commissioner Slaughter. Commissioner Chopra.

COMMISSIONER ROHIT CHOPRA: Thank you Chair Khan, and thanks to my colleagues. It's good to be here. Small businesses across the country were slammed last spring, unable to make ends meet due to the spread of COVID-19 and the resulting shutdown orders. Hundreds of thousands of local businesses shuttered for good, and millions feared that they wouldn't survive over the long-term.

Even early on in the pandemic the FTC began to hear from local restaurant owners about abuses by food delivery apps, from pharmacists and medical providers about unfair practices by pharmacy benefits managers, from farmers and ranchers about monopolistic practices, by meat conglomerates, from franchisees faced with onerous requirements imposed by franchisors and from so many other small, local, and independent businesses.

The FTC was also hearing an uptick in reports about a wide range of other frauds facing families, including fake products sold on e-commerce marketplaces and new concerns about surveillance and privacy in elearning and remote work.

So of all the things that the Federal Trade Commission would prioritize during the pandemic, I am still puzzled that the removal of required laundry labels somehow made the list. The proposals seem to come out of nowhere given the extensive comments collected about updating the Care Labeling Rule to reflect market changes. I support updating rules, but repealing this rule altogether created immediate panic among small businesses and the laundry and dry cleaning sector.

Local laundry establishments were already on the brink of collapse as the need for professional care plummeted, with Americans working from home and canceling special events. Repealing the rule would simply shift more risk and liability from big clothing manufacturers, mostly located overseas, to small dry cleaning shops, often owned by families.

Laundry professionals had repeatedly made clear that they rely on these care labels since they often face fierce competition and must serve their customers well. Many establishments in the dry cleaning and laundry industry are owned by immigrants who speak English as a second language. Yet there didn't seem to be any attempt to meaningfully engage those communities at all.

The CDC had previously issued guidance, recommending that people pay attention to care labels to reduce the likelihood of spreading sickness. And repealing the Care Labeling Rule wouldn't necessarily mean that clothing makers could eliminate a label, since care labeling instructions are often combined with requirements to disclose the fabric content and country of origin.

Unsurprisingly, the commission's sudden proposal to repeal received virtually no support. In my view, the most responsible thing that the commission can do right now is to make it abundantly clear that we will not be finalizing this repeal effort.

Again, the commission should always think about ways to update its rules to ensure they are effective. And I am open to these suggestions. But more broadly, I am concerned that for years and years, the commission's record has shown the agency is not clearly listening to the problems facing small and independent businesses. This has to change.

This is not the fault of staff. The accountable individuals are the commissioners. There are so many abuses that businesses are facing today and so many things that small businesses are looking to the commission to act on. Removing the required care labels on our clothing is just not one of them. Thank you, Madam Chair.

CHAIR LINA KHAN: Thank you, Commissioner Chopra. Commissioner Philips.

COMMISSIONER NOAH PHILLIPS: Thank you, Chair Khan. I think I'll just pick up on Commissioner Chopra's righteous indignation. I do wonder why we're spending time at this meeting if what we're coming up with is a short statement. I do think everyone needs to heed some of the serious concerns that Commissioner Wilson has raised with respect process at the commission. She has a lot of experience and I think her advice is always worth listening to.

On the Care Labeling Rule, I think many Americans would probably be surprised to learn that the federal government regulates the labels on the clothing that they wear, which give guidance to those interested on how to care for the garment. The labels are useful to people treating garments as we've heard. But the question is whether the regulation is necessary or useful in getting us the right kind of label.

In most European Union nations and in Canada, for example, care instruction systems enable manufacturers voluntarily to provide similar labels. And they generally do so.

One thing we learned in the recent review of the Care Labeling Rule is that wet cleaning, as economic health and environmental benefits compared to dry cleaning, but that the labels we mandate don't take this new technology for professional cleaning into account. According to some, that is making it hard for wet cleaning to compete with dry cleaning regulations, even seemingly little ones like the Care Labeling Rule, can operate to make market entry harder and thwart innovation. We should update our rules to embrace new and better technology, including this one. Thank you, Madam Chair.

CHAIR LINA KHAN: The motion being seconded, I'm calling for a vote. Commissioner Philipps.

COMMISSIONER NOAH PHILLIPS: I vote yes.

CHAIR LINA KHAN: Commissioner Chopra.

COMMISSIONER ROHIT CHOPRA: Yes.

CHAIR LINA KHAN: Commissioner Slaughter.

COMMISSIONER REBECCA SLAUGHTER: Yes.

CHAIR LINA KHAN: Commissioner Wilson.

COMMISSIONER CHRISTINE WILSON: Yes.

CHAIR LINA KHAN: And I vote yes. The motion passes by a vote of five to zero.

Next on the agenda is a proposed policy statement on repair restrictions imposed by manufacturers and sellers.

Today, the Commission will vote on whether to adopt this policy statement, which lays out our concerns about repair restrictions, and commits the agency to focus greater enforcement efforts and resources on unlawful repair restrictions practices going forward.

This effort flows directly from the Commission's call in 2019 for public comment and empirical research on repair restrictions, which culminated in the FTC's Nixing the Fix workshop and report to Congress. While efforts by dominant firms to restrict repair markets are not new, changes in technology and more prevalent use of software has created fresh opportunities for companies to limit independent repair.

As both the FTC's work and public reporting have documented, companies routinely use a whole set of practices, including limiting the availability of parts and tools, using exclusionary designs and product decisions that make independent repairs less safe, and making assertions of patent and Trademark rights that are unlawfully overbroad.

These types of restrictions can significantly raise costs for consumers, stifle innovation, close off business opportunities for independent repair shops, create unnecessary electronic waste, delay timely repairs, and undermine resiliency.

The FTC has a range of tools it can use to root out unlawful repair restrictions. And today's policy statement would permit us to move forward on this issue with new vigor. The Commission calls on the public to submit complaints of violations of the Magnuson-Moss Warranty Act, which prohibits, among other things, tying the consumers product warranty to the use of a specific service provider or product, unless the FTC has issued a waiver.

Further, the policy statement notes that the Commission will target repair restrictions that violate the antitrust laws or the FTC Act prohibitions on unfair or deceptive acts or practices. An interdisciplinary approach will also allow the FTC to use the full range of its expertise when seeking to enforce the law.

I urge my colleagues to support this policy statement and the Commission's effort to use our full authority to protect consumers and businesses from unlawful repair restrictions. Accordingly, I move that the Commission issue a policy statement on repair restrictions imposed by manufacturers and sellers as circulated by the Office of the Secretary, matter number p194400. Is there a second?

COMMISIONER SLAUGHTER: I can second.

CHAIR KHAN: I will now turn to the other commissioners to share any remarks before calling for a vote. Commissioner Philipps.

COMMISIONER PHILLIPS: Thank you, Madam Chair. My apologies. I was doing a little adjustment. The FTC has a proud history of bipartisanship and an analytic approach to policy making, which has served the agency consumers and competition well.

When we have spotted areas of concern or heard about them from the public, we have sought input from stakeholders, and use that information to determine the best course of action. That thoughtful approach has historically facilitated bipartisan agreement on policy solutions, paving the way for legislation, successful cases, and new policy.

This right to repair policy statement continues that tradition. Staff, in the bureaus of consumer protection and competition, identified repair restrictions as an area that deserved additional attention and study.

Former chair Ramirez, a Democrat, oversaw a review and updates of the interpretations of Magnuson-Moss Warranty terms and conditions, and brought an enforcement action against BMW mini for illegally conditioning warranty coverage on the consumer's use of genuine mini parts, and on the usage of many dealers to perform repairs.

In 2018, underreacting Chair Ohlhausen, a Republican, staff-sent warning letters to six companies that quickly and efficiently resulted in policy changes by all of the targets. Former Chair Simons, also a Republican, approved the 2019 Nix the Fix workshop, that solicited the views of industry and the public. Acting Chair Slaughter, who's with us today, a Democrat, then presided over the drafting and approval of a substantial Nixing the Fix Report for Congress, that was approved by a consensus 4-0 commission vote.

And now, Chair Khan, also a Democrat, has overseen the effort to develop this policy statement. This is a complicated policy area, where there is disagreement. And we got to commission consensus. That helps with fashioning policy going forward, and making it stick. And I want to thank Commissioner Slaughter for her work on the report-- the Nixing the Fix Report, and Chair Khan for her work today.

These efforts began a long time before the president's recent executive order. But that added to the call for work in this area. I support the decision reflected in the policy statement-- a focused law enforcement effort on a legal repair restrictions.

While there are repair restrictions that are legitimate, whether it's smartphones or tractors, I absolutely agree that there are many unwarranted restrictions that make it excessively difficult and expensive for consumers to obtain repairs. And so I'm glad to join all my colleagues in announcing this new policy.

The right to repair is just one of the many topics addressed in President Biden's recent executive order. Another, overly restrictive occupational licensing also reflects the FTC's long history of protecting consumers and competition. I look forward to more bipartisan work with my colleagues on that issue as will.

I'll end by thanking our career staff for their diligent work and expert advice. It was years of their investigative and policy work on right to repair that paved the way for today's policy statement. Thank you.

CHAIR KHAN: Thank you Commissioner Phillips. Commissioner Chopra.

COMMISIONER CHOPRA: Thank you to my colleagues for coming together on this. The pandemic exposed very serious weaknesses in our nation's resilience and ability to recover from shocks. And while we typically, view improper repair restrictions through its effects on fair competition consumers and small businesses, the Right to Repair movement also showed us how these problems can be matters of life and death.

During the FTC's review of this issue, we heard about hospitals worried that it would not be able to fix ventilators because a manufacturer was seeking to deny access to repair them. Outages caused by repair restrictions like these can really make a difference in times of emergencies. Families with broken appliances, including refrigerators and other devices necessary for day to day life, had been blocked or stymied from even attempting to fix things themselves.

Farmers, relying on tractors and other equipment, couldn't always access an open repair market, which can lead to spoiled crops and missing out on critical income. We've even heard from service members, who shared how they were stymied from repairing their own gear and equipment because they had to wait for the contracted manufacturer who was often less familiar with the technical specifications than they were.

Items such as computers and cell phones, already such an essential part of the lives of many, became a primary pathway to obtaining food, medicine, health care, education, and at times, the only means of communication with loved ones.

The nation started this school year with a vast laptop shortage. We were reportedly $5 million short at one point. The start to remote learning, already so astoundingly difficult, was worsened by unnecessary repair restrictions on refurbishing computers, leaving those students without one, unable to learn.

The business incentive for many makers of equipment and devices is to figure out how they can extract recurring revenue or to induce new purchases, rather than allowing families and businesses to reap the benefits of an open and competitive repair market.

This isn't just about saving money. When laws go unenforced, we weaken our country by making us less resilient, and less able to meet our basic needs, particularly, in times of stress. We make it harder for the most economically vulnerable, and we deny opportunities to small and minority-owned businesses.

Unreasonable restrictions on repairs can hit communities of color and rural communities, particularly, hard-- both as consumers and these business operators. The adoption of today's policy statement makes clear that the Commission will investigate unlawful repair restrictions using the Magnuson-Moss Warranty Act and other consumer protection laws, as well as antitrust law to promote fair and open repair markets.

I believe the Commission should also take other steps beyond ramping up enforcement. First, we should actively engage the independent repair community to solicit complaints and other intelligence about manufacturers that are blocking families and businesses from repair.

I'm also concerned that the user experience on reportfraud.ftc.gov can make it difficult for individuals and consumers to report certain types of problems, including problematic repair restrictions. And I think this needs a close review.

Second, the Commission should work with other agencies to reform existing procurement policies that allow contractors to block government buyers from self repair or seeking third party repair services. This would support broader efforts to promote resilience in our supply chains and preserve public resources.

And finally, the scope of existing federal and state laws may be too limited in terms of coverage, and in terms of remedies. For example, the Magnuson-Moss Warranty Act only covers goods for household use. And it is not simple for the FTC and state attorneys general to obtain civil penalties or other monetary relief from large firms that violate the law.

The commission should also devote resources to assisting policymakers, including at the state and local level as they craft right to repair laws, to ensure that any new policies are clear, enforceable, and promote open and competitive markets.

Thank you. And I look forward to supporting this initiative.

CHAIR KHAN: Thank you Commissioner Chopra. Commissioner Slaughter.

COMMISIONER SLAUGHTER: Thank you, Madam Chair. As Commissioner Phillips noted, earlier this month, the president issued and executive order on promoting competition in the American economy. I welcome that order. It represents an ambitious agenda that will help our markets work better, and create a more equitable economy for everyone, especially workers, small businesses, and marginalized communities.

Although the order does not direct the FTC to engage in any particular actions as we are an independent agency, it does encourage us to undertake overdue rule-making in a number of areas critical to consumers, workers, and markets.

I agree with the president and share the sentiment frequently, including today, expressed by Chair Khan, Commissioner Chopra, as well as myself, that the FTC needs to make sure it is utilizing all of the tools in our toolbox, including enforcement, and also policy-making and rule-making authorities.

And that's why, in my time as acting chair, I worked hard to streamline the agency's structure by establishing the rule-making group and processes by improving our rules of practice to ensure we are well-positioned to act within the full extent of our authority.

Broken repair markets are one of the areas where the president suggested the Commission consider rule-making. I am very pleased to support today's bipartisan policy statement on right to repair, which builds on the important data gathering the Commission did over the last several years, and the report we issued in May of this year.

And I want to give a particular acknowledgment to the work of Dan Salzberg and Christine Todaro and Kelly Signs in putting that report together, and doing the work for the workshop in laying the groundwork for today's policy statement.

Today's policy statement is a significant and important step in making clear that the FTC is dedicated to eliminating anti-competitive and anti-consumer restrictions, and empowering all consumers with choice and access to repair their products and extend the life of expensive, but indispensable equipment.

I hope we will utilize what we learn from dedicated enforcement efforts in this space to consider whether markets could benefit from more clarity in the form of explicit rules as the president suggests. Among the reasons I support the Commission in making it a priority to target repair restrictions, is that the burden of these restrictions can often fall more heavily on communities of color and lower income communities.

This fact has not been lost on supporters of right to repair legislation, who have highlighted the impact repair restrictions have on repair shops that are independent and owned by entrepreneurs from black and brown communities.

Repair restrictions for some products, such as smartphones, also may place a greater financial burden on communities of color and lower income Americans. According to Pew Research, black and Hispanic Americans are about twice as likely as white Americans to have smartphones, but no broadband access at home. So they rely on these devices more heavily.

Similarly, lower income Americans are more likely to be smartphone-dependent. This smartphone dependency makes repair restrictions on smartphones more likely to affect these communities adversely. Smartphones is just one example. The same can be said for lots of different areas of repair restrictions. And I think it is exactly why this is an important area of focus for the Commission.

So I want to thank Chair Khan for her leadership on this statement, including continuing the bipartisan consensus we achieved on Nixing the Fix Report that the Commission unanimously issued in May. Thank you very much.

CHAIR KHAN: Thank you, Commissioner Slaughter. Commissioner Wilson.

COMMISIONER WILSON: Thank you, Chair Khan. In recent years, as has been discussed, stakeholders increasingly have expressed concerns about their ability to repair items they have purchased. I think it's important to understand the FTC's response to these concerns is emblematic of the agency's unique capabilities, including policy, research, and development.

Here, as others have noted, the FTC launched a multipronged response to address repair markets in measured and thoughtful ways. First, we used our authority under the Magnuson-Moss Warranty Act to launch enforcement efforts.

Under Democrat chairwoman Ramirez, the FTC charged BMW's Mini division with violating magmas by telling consumers that BMW would void their warranty, unless they used Mini parts and Mini dealers to maintain and repair their vehicles.

Second, under Chairman Simons, we issued a call for empirical research regarding the prevalence and impact of repair restrictions. And third, in July 2019, the Commission hosted the Nixing the Fix Workshop. I was honored to provide opening remarks at that workshop.

And fourth, in May 20, 2021, the four-member Commission under Acting Chair Slaughter, issued a unanimous report to Congress on our findings today. I applaud Acting Chair Slaughter for leading that transparent and bipartisan process.

The FTC's bipartisan study of this issue in recent years has underscored the need to craft policy positions that balance both competition and consumer protection goals. On the competition front, consumers rightly seek to enjoy competition in the consumer goods repair market. On the consumer protection front, while competition is beneficial, it is not the only worthy goal-- safety, privacy, and data security are other laudable goals. And the FTC has experience addressing these twin concerns.

The contact lens rule strikes a balance between promoting competition in the sale of contact lenses, and promoting consumers eye health by requiring prescriptions for these FDA-regulated medical devices.

But if consumer protection is a veneer for eradicating competition in the consumer goods repair market, the FTC must act. I support enforcement efforts to challenge companies that violate the antitrust consumer protection laws.

And I also support the efforts of this Commission to translate the learnings of our Nixing the Fix Report into a Commission policy statement. And I applaud Chair Khan for leading efforts to reach consensus on this policy statement.

I offer two points of clarification on my understanding of the policy statement. First, our report acknowledged that IP rights foster innovation by protecting investments in research and development. IP rights can create barriers in repair markets, but manufacturers have IP rights that may justify certain restrictions. A full exploration of those IP issues fell outside the scope of the report, but I am confident, that we will be asked to consider those issues in upcoming cases and we should do so, thoughtfully.

Second, I do not support blanket condemnation of exclusionary design choices. The House Judiciary committee's majority staff report recommends that Congress consider whether making a design change that excludes competitors, or otherwise, undermines competition should be a violation of Section 2. If this criterion is satisfied, the recommendation suggests finding an antitrust violation quote regardless of whether the design change can be justified as an improvement for consumers.

This approach elevates rivals over consumers and stifles innovation. I prefer the approach advanced by the DC Circuit in Microsoft. There, the court warned that in a competitive market firms routinely innovate in the hope of appealing to consumers, sometimes in the process, making their products incompatible with those of rivals.

The imposition of liability when monopolist does the same thing will deter a certain amount of innovation. This is all the more true in a market in which the product itself is rapidly changing. Judicial deference to product innovation does not mean that a monopolist product design decisions are per se lawful, but we should proceed with the appropriate level of caution in considering instances in which manufacturers are also competing downstream and repair markets.

And I urge the Commission to adopt this approach when evaluating the issue of exclusionary design. Thank you.

CHAIR KHAN: Thank you, Commissioner Wilson. The motion being seconded, I will call for a vote. Commissioner Wilson?

COMMISIONER WILSON: I vote yes.

CHAIR KHAN: Commissioner Slaughter?

COMMISIONER SLAUGHTER: Yes.

CHAIR KHAN: Commissioner Chopra?

COMMISIONER CHOPRA: Yes

CHAIR KHAN: Commissioner Phillips?

COMMISIONER PHILLIPS: Yes.

CHAIR KHAN: And I vote yes. The motion passes by a vote of 5 to 0. The third item on the agenda today is the rescission of the agency's 1995 policy statement on prior approval and prior notice provisions in merger cases.

Before it adopted the 1995 statement, the Federal Trade Commission had generally included prior approval provisions in settlement agreements with companies that had then attempted an unlawful merger. This prior approval provision required companies seeking to merge to show why those follow on deals would not harm competition or create the same risks that the FTC had previously warned about.

Alongside these prior approval provisions, the FTC also often included prior notice provisions requiring businesses to report to the FTC, even those deals that fell below the Hart-Scott-Rodino reporting threshold. The FTC used these prior approval and prior notice provisions to ensure that the agency was making effective use of its scarce resources.

Without the prior approval provision, the FTC could spend months reviewing documents, interviewing parties, and thoroughly investigating a merger the agency determined was unlawful, spend additional months drafting a complaint, and pursuing judicial or administrative proceedings, spend, yet, more months negotiating with the companies to enter into a settlement agreement, rather than pursue the deal.

And then be forced to redo all this work any time the companies attempted a similar acquisition or the same acquisition, even though the agency had already previously determined that this type of deal was illegal.

Recognizing that the FTC has broad discretion to fashion settlement agreements, so that the remedy and prevent the recurrence of unlawful practices, courts across the board held that these prior approval and prior notice clauses were entirely appropriate for the agency to use.

Although the 1974 Hart-Scott-Rodino Act required prior notice for some deals, it did not relive the FTC from having to redo its work even in cases where the agency had already investigated and determined that a merger was unlawful. And deals below the HSR threshold would not be reported. HSR, therefore, was a complement to, not a substitute for a prior approval and prior notice policy.

While we use to prior approval was successful at ensuring the FTC, it was able to use its scarce resources efficiently. The agency, citing cost to industry and the prior notification regime provided by HSR, in 1995, switch course.

The 1995 statement replaced the agency's practice of requiring prior approval as a routine matter. And instead, now, only recommended such provisions, where there was a credible risk that the merging parties would attempt another anti-competitive deal.

Dissenting from the FTC decision to move away from these prior approval provisions, Republican Commissioner Mary Azcuenaga warned that the shift would incentivize corporations to repeatedly attempt unlawful deals. She wrote that the prior approval requirement is a simple direct in limited remedy to prevent recurrence of unlawful acquisitions. And that it benefits the Commission by conserving public law enforcement dollars.

She added, to the extent that the prospect of the prior approval requirement made it occur unlawful acquisitions by a respondent. This would appear to be a benefit to the extent that the prospect of prior approval may deter unlawful acquisitions by firms that are not under this order. This, too, would appear to be a benefit.

The practical effect of the 1995 statements has been that the FTC has drastically scaled back its use of prior approval provisions. While the 1995 statement noted that the Commission may use prior approval in situations where there is a credible risk, the merging parties would do the very same or similar deal. Parties challenged by the FTC with proposing an unlawful merger rarely signal an intent to do so again. As a result, the Commission since the 1995 statement has required prior approval provisions in only a handful of cases.

Since the FTC substantially reduced using these prior approval provisions, the agency has encountered numerous examples of companies repeatedly proposing the same or similar deals in the same market, despite the fact that the Commission had earlier determined that those deals were problematic.

Companies have also, in several cases, sought to buy back assets that the Commission ordered those same companies to divest. Without a prior approval provision, the Commission must initiate a whole new investigation and then go into court to block the deal anew. This additional burden drains the already strapped resources of the Commission and the agency staff.

Prior approval and prior notice provisions have routinely been upheld by courts as lawful fencing and remedies. The Department of Justice also, routinely, bars merging parties from reacquiring assets ordered to be divested. The FTC, by contrast, uses no such bar as a general matter.

Comment submitted to the agency under former Chairman Simons, showcase support for these provisions, particularly, from state attorney's general, who recommended that the FTC readopt prior approval and prior notice provisions in digital markets.

The FTC is a significantly under-resourced agency, tasked with enforcing antitrust and consumer protection laws economy wide, even as its staff count remains roughly 50% less than it was in 1980. A recent surge in merger filings is stretching these resources even further, resulting in an enormous burden on the agency staff.

For these reasons, I propose that the Commission rescind the 1995 statement concerning prior approval and prior notice provisions. If the statement is rescinded, the Commission will employ prior approval and prior notice provisions based on the facts and circumstances of the proposed transaction, including when the structure of the industry and the concentration of the market call for it.

And I would look forward to working with my fellow Commissioners and the agency staff to carefully craft the processes and procedures by which we would use this tool. I urge my colleagues to support the rescission, so that we may better protect the public from unlawful mergers and acquisitions.

Accordingly, I move that the Commission rescind the statement of Federal Trade Commission policy concerning prior approval and prior notice provisions, which became effective, June 21, 1995. And the text of which was published in the Federal Register on August 3, 1995.

A copy of the Federal Register notice containing the statement was circulated by the Office of the Secretary. And the relevant matter number is P859910. Is there a second?

COMMISIONER SLAUGHTER: I second that.

CHAIR KHAN: I will now open it up to my fellow Commissioners to share any remarks before I call for a vote. Commissioner Wilson?

COMMISIONER WILSON: Thank you, Chair Khan. I oppose rescission of the 1995 policy statement concerning prior approval and prior notice provisions in merger cases for at least three reasons. First, this policy was adopted in 1995, following nearly nine years of highly resource-intensive litigation undertaken by the FTC against an abandoned transaction.

A second similar transaction undertaken contemporaneously didn't receive the same treatment, leading some to question the motives of the agency in pursuing litigation against the first. Chairman Robert Pitofsky, a democrat in the Commission, implemented this policy, at least, in part, as a guardrail to prevent similarly questionable exercises of enforcement discretion.

Given recent actions by this Commission to bulldoze through other guardrails, I have heightened concerns about removing this one. The details, the history is enlightening. The 1995 policy statement was adopted following the Commission's pursuit of almost nine years of litigation in connection with Coke's proposed acquisition of Dr. Pepper. The saga began when, in 1986, Pepsi sought to acquire 7 Up.

Coke soon announced its intention to acquire Dr. Pepper. After the FTC voted to challenge both deals, Pepsi and 7 Up abandoned their deal. Coke chose to litigate with the FTC. After the district court granted the FTC a preliminary injunction, Coke abandoned the transaction. But the Commission didn't abandon its own litigation efforts.

Notably, the FTC did not pursue a similar path with Pepsi, which abandoned its deal before trial. Some observers viewed this disparate treatment as FTC punishment for Coke's temerity to exercise its legal rights and litigate. The FTC insisted on a full part 3 trial, and sought a prior approval obligation.

The administrative law judge found that the Coke-Dr. Pepper deal would have been unlawful, but also found a prior approval order unnecessary. On appeal, the Commission issued and order that included a prior approval provision. While Coke's appeal was pending before the Court of Appeals, the Commission recognized that its ongoing nine-year litigation with Coke regarding an abandoned deal was not good government.

In short, the Commission issued the 1995 policy as it reflected on its excessive burdensome litigation against Coke. I am concerned that the Commission intends to revert to the vindictive approach that led to nine years of litigation against Coke.

A press release discussing Berkshire Hathaway's abandoned proposal to acquire assets of Dominion Energy issued just a few days ago by the FTC makes clear that the majority's purported rationale for rescinding the policy statement lies in saving agency resources that would otherwise spend to review deals the Commission previously considered.

But the agency's previous investigation of the BHE Dominion deal occurred in 1995. Will we issue prior approval orders lasting more than 25 years? Only then, would this policy change save Commission resources in that instance.

My second concern is that the 1995 policy statement did not eliminate the use of prior approval and prior notice provisions. The policy statement provides that we will continue to use them when there is a good reason to do so. For example, if there's a credible risk that a company would attempt the same or approximately the same merger or engage in an otherwise, unreportable anti-competitive merger. And the commission actually does use these provisions frequently.

In 2020, there were seven commission orders with prior notice provisions, and one, with a prior approval provision. I doubt that rescinding this policy will facilitate further constructive use of prior notice and prior approval provisions. Instead, I fear it will facilitate a massive end run around Hart-Scott-Rodino filing requirements. And for merger's subject to prior approval provisions a shifting of the burden of proof that will chill pro-competitive deals and hurt consumers.

If the majority wishes to overhaul the pre-merger notification framework, and flip the burden of proof in mergers, it should ask Congress to pass the appropriate legislation. The Commission is conducting a six-piece study involving acquisitions made by large tech companies, but not reported to the antitrust agencies.

In a statement, I urged the Commission to study sub HSR deals in other industries, including dialysis facilities and hospitals. And Commissioner Chopra joined that statement. We've not yet issued findings from our six-six-piece study, and have not yet announced studies in other industries. These analysis may provide a basis for recommendations to Congress about changes to the HSR framework, but the majority's actions, today, are unsupported by empirical analysis.

Third, rescinding the 1995 policy statement will create uncertainty. For example, under what circumstances will the Commission, now, seek to impose prior notice and prior approval provisions. On a related note, existing Commission rules established the procedure for the Commission to consider prior approvals. Should we anticipate changes to these commission rules?

Similar uncertainty was created three weeks ago, when the majority rescinded the commission's section 5 policy statement, and offered only vague promises of filling the vacuum in the future. Today, by rescinding the 1995 policy statement without providing further guidance, the Commission substitutes uncertainty for a policy that has worked for more than 25 years.

This uncertainty is heightened by the potential for differing practices at the two federal agencies. This differential will enhance perceptions that the agencies apply different standards, and give ammunition to those who seek to consolidate antitrust jurisdiction at the DOJ.

When the Commission issued the policy statement in 1995, it solicited public comments. Chair Khan and Commissioners Chopra and Slaughter, previously, have emphasized the importance of Democratic participation in government.

In the interests of facilitating stakeholder input on the benefits and costs of withdrawing the 1995 policy statement, I offer a topping motion. I move that the Commission direct staff to prepare a Federal Register notice seeking public comment on the proposal to rescind the 1995 statement of Federal Trade Commission policy concerning prior approval and prior notice provisions.

COMMISIONER PHILLIPS: I second the motion.

CHAIR KHAN: The motion, having been seconded, I will call for a vote. Commissioner Slaughter?

COMMISIONER SLAUGHTER: No.

CHAIR KHAN: Commissioner Chopra?

COMMISIONER CHOPRA: No.

CHAIR KHAN: Commissioner Philips?

COMMISIONER PHILLIPS: Yes.

CHAIR KHAN: And I vote no. The topping motion has failed. Commissioner Wilson, unless you have further-- Oh, go ahead Secretary Tabor.

SECRETARY TABOR: You did not call for Commissioner Wilson's vote on this--

CHAIR KHAN: Apologies. Commissioner Wilson-- I will take the whole vote and starting again on Commissioner Wilson's motion. Commissioner Wilson?

COMMISIONER WILSON: Yes.

CHAIR KHAN: Commissioner Slaughter?

COMMISIONER SLAUGHTER: No.

CHAIR KHAN: Commissioner Chopra?

COMMISIONER CHOPRA: No

CHAIR KHAN: Commissioner Phillips?

COMMISIONER PHILLIPS: Yes.

CHAIR KHAN: And I vote no. The topping motion has failed. Apologies for the procedural error there. Commissioner Wilson, I don't know if you had further remarks. But if not, we will move on to Commissioner Slaughter for any remarks that you may have.

COMMISIONER WILSON: I have nothing further. Thank you.

CHAIR KHAN: Great. Thank you. Commissioner Slaughter?

COMMISIONER PHILLIPS: Thank you, Madam Chair. I am not going to be lengthy. I just wanted to make a couple of points. Commissioner Wilson expressed concern about the entry of uncertainty into markets by the proposal in front of us today, and by the section 5 statement when we adopted before.

And I actually think the actions of the Commission are doing the opposite of creating uncertainty. I think and I hope that they are creating certainty that this commission intends to aggressively enforce the antitrust laws to use all of the tools at our disposal, and do not tie our own hands in exercising our statutory responsibilities. So I think that the proposal we have in front of us today is a really good and important one.

Something that has struck me, since I arrived at the Commission three years ago, is how much time and effort the staff and the commission spends investigating mergers that are clearly illegal. We spend resources, we spend literal money with expert witnesses, and on documents. And we get all the way to a complaint when we vote a complaint, and then we see a merger abandoned. Or, right before we vote a complaint, a merger is abandoned.

Many of those mergers shouldn't have been proposed in the first place. And figuring out how we can send a message to the markets that we are not OK with these clearly anti-competitive mergers is a really important thing. And so I think a lot about the deterrent effect that we need to be sending, both in the challenges we do bring and in the policies that we adopt and in the terms and conditions we attach to settlements where we Enter into them. And I think thinking about prior approval in that context is very important.

The other observation I'll share is that in addition to clearly illegal mergers that we see frequently, we also have a-- or I have observed a rash of what I think of as frequent flyer filers. Companies that come back again and again and again with merger proposals, many of which, we end up challenging. And that's exactly the kind of conduct that a prior approval regime could help effectively deter in order to preserve the limited resources that the Commission has as the chair has so eloquently discussed.

So with that, I'm pleased to support this proposal. And I thank you for bringing it forward.

CHAIR KHAN: Thanks so much, Commissioner Slaughter. Commissioner Chopra?

COMMISIONER CHOPRA: Thank you, Madam Chair. I just want to echo what Commissioner Slaughter has said. I completely agree. And it is so important that Commissioners empower our staff rather than set them up to fail. We need to give them the tools and the leverage to go after anti-competitive conduct and mergers. And what we are doing today is another tool in their toolkit.

When companies strike agreements to fix prices or merge in ways that substantially reduce competition, this is a violation of longstanding US law. And after collecting input from stakeholders in the Federal Trade Commission hearings on competition and consumer protection in the 21st century, convened by Chairman Simons, I am pleased that we will be voting to rescind a misguided policy crafted during the Clinton administration, that undermined deterrence and promoted repeat offenses of illegal merger activity.

I, especially, want to thank the bipartisan group of 43 state attorneys general, who highlighted the importance of prior approval and prior notice provisions, particularly, as they relate to platform markets in their formal comment submission in docket 2019-0032. Today's action is a small, but important step to safeguard competition in our markets and prevent these repeat offenses.

Over the years, Commissioners have typically shown a willingness to bring down the hammer on small businesses when they break the law. But in many cases, we see commissioners are comfortable to vote to ban individuals and small businesses from engaging in a business activity altogether. This is fencing in relief to prevent the recurrence of illegal conduct. These measures are entirely appropriate. It better protects the public and saves public resources.

However, these measures should be applied equally to all lawbreaking firms regardless of their size or cloud. And in particular, I'm concerned that when it comes to enforcement of illegal mergers and acquisitions-- sometimes, facially, illegal ones, the commission too often acts as a deal proponent looking to fix the deal, rather than a law enforcement agency.

As a law enforcement agency, the Commission must redouble its efforts to halt recidivism of our nation's antitrust laws, particularly, when it comes to illegal merger agreements. And again, the tool that we can deploy is prior approval and prior notice.

Prior to 1995, when prosecuting illegal merger agreements, the commission routinely sought to not only enjoin the illegal merger, but also sought a requirement that the company seek the prior approval of the commission before engaging in a related transaction. This is highly sensible since it helps to prevent repeat offenses of the law and conserves limited public resources, especially in economic cycles right now with high levels of transaction activity.

A simple requirement that a law violator in the merger context be required to gain the approval of the commission before trying to do the same or similar unlawful deal is rather modest. Courts have routinely held that the Commission can impose prior approval requirements in merger cases.

And in 1994, in a unanimous opinion, the Commission found that the Coca-Cola corporation's acquisition of Dr. Pepper was unlawful. And imposed a requirement that Coca-Cola seek the prior approval of the commission in advance of making similar acquisitions in the carbonated beverage market.

Despite the clear logic of seeking these requirements and its unanimous decision, in 1994, the Commission took a dramatic turn-- just one year later. The new policy strongly disfavored the use of prior approval and prior notice with, I believe, a highly questionable justification since the issuance of the statement the commission seeks prior approval in a small number of cases.

And at the time, independent commissioner Azcuenaga explained how the rationale for the policy lacked a proper basis, and took away a key tool for the Commission and its staff to combat illegal merger activity. And nearly over a quarter century later now, it is clear that the statement has undermined the Commission's mission, and disempowered our staff.

Firms are repeatedly proposing illegal mergers, as Commissioner Slaughter mentioned, soaking up resources. And just last week, alone, the Commission, for the second time, rejected a deal involving pipelines that had been proposed and investigated before.

With M&A activity, at an all time high, our dedicated staff is stretched to the breaking point with a surge of merger filings reported to the government. Leaving almost no room to investigate anti-competitive roll ups and serial acquisitions unknown and unreported to the agency.

With this year on pace to be a blockbuster year, we should all be concerned that the commission is simply not equipped right now to halt harmful mergers in this environment absent more tools. And by rescinding this policy that lacked logic and rigor, the Commission is making clear to the market that it will seek depending on the facts and circumstances, appropriate fencing and relief to prevent repeat offenses by firms that propose illegal mergers. Thank you, Madam Chair.

CHAIR KHAN: Thank you, Commissioner Chopra. Commissioner Phillips?

COMMISIONER PHILLIPS: Thank you, Madam Chair. Over two decades ago, a bipartisan commission announced, we would no longer require prior approval for or prior notice of future transactions as a routine matter in merger consents, recognizing that a premature notification regime that Congress established in Hart-Scott-Rodino Act protects consumers and the public from anti-competitive mergers before they occur.

The Commission opted to give companies legal clarity, and reduce burdens on those that entered into merger consent with the FTC. Today, a partisan majority will rescind that policy. For the second time this month, with the minimum notice required by law, virtually, no public input and no analysis that is no basis, no rigor, or guidance, this agency is reducing clarity in the application of the law. It is bad government and bad policy.

Since 1976, when Congress enacted HSR, we have sought to resolve anti-competitive mergers before they happen. Most transactions are not problematic to go through-- some we block. And consistent with the congressional design, some we resolved through consents agreement.

For example, by compelling the divestiture of the part of the company that raises the competitive concern. The point of a consent-- the point of these agreements is to protect competition that existed before the transaction takes place, and permit the non-problematic aspects of the deal to proceed.

The policy we are rescinding concerns terms and consents, agreements that require companies to give us special notice, and get our affirmative approval before making future transactions, which depending on the scope, may or may not be problematic at all.

To preserve the level of premature competition parties to consent should not be able to buy back divested assets, as with DOJ. Or re attempt the same transaction under similar circumstances. But our current policy protects against this. Saving the commission resources and time and money of relitigating issues in the same market.

The commission retains discretion today to include prior approval or prior notice provisions, where we determine there is a risk that the companies may engage in another anti-competitive transaction in the same market or fly under the HSR Act radar. We exercise that discretion today, and include such provisions as necessary.

What does the majority hope to accomplish with a blanket policy of routinely including such provisions in merger orders going forward? I don't know. Is that actually the new policy? I don't know that either. They offer no clarity-- none, as to when they will require prior notice or prior approval or for how long.

What they are doing is imposing a decade long, perhaps, merger tax on anyone who enters into a consents. But this will deter his consents. Meaning, the companies that are willing to work with us will be less likely to do so. The people who come to us looking to resolve the competitive concerns will be less likely to do so. Contrary to the express purpose of the HSR act, and leading to less efficient merger enforcement. We don't have to go into court.

Under the new regime, we will have to go to court more, spending more precious taxpayer dollars, and we will accomplish less. The point of the Clayton Act and the HSR Act is to deter anti-competitive mergers-- bad mergers, not all mergers.

What the majority wants to do today is impose costs on all companies that enter into consents. By definition, those are the ones seeking to remediate problems with their merger. We have processes in place to catch and stop at deals. Requiring future commission approval for all deals will also deter good ones, like our allegedly, temporary suspension of early termination. This amounts to a gratuitous tax on normal market operations. Ultimately, American consumers will pick up the cost.

At our last public meeting, my colleagues criticized the prior Commission's "abrogating" Section 5 of the FTC Act. I disagree with that. But today's action, and other things we have seen lately, suggest their intent to abrogate Hart-Scott-Rodino. That law was enacted to help stop anti-competitive mergers.

Giving regulators an early look at transactions and time to deal with them before asking skeptical courts to unwind them, and giving businesses the ability to plan in advance was a win-win for regulators and also for businesses. And I caution my colleagues and the public against weakening that statute.

You heard earlier, from Commissioner Slaughter, about the concept of repeat players. Commissioner Chopra mentioned serial acquisitions and lawbreaking firms, as if what we were doing is identifying companies, and then looking to tar them.

Merger analysis is and should be a fact specific consideration. We have to look at the market, like Chair Khan said. And we need to understand that conditions change. At the risk of a little bit of a dad joke, Commissioner Chopra talked about serial acquisitions. So we looked at a transaction involving serial not long ago.

In 2019, we brought a lawsuit to stop a merger. And the parties pulled off the merger. They canceled their deal. Well, it recently merged. So what happened? Things changed in the market. And recognizing that the Commission did not challenge the second merger, even though it was exactly the same.

And the point of this is that you have to actually study the market. Yes, it costs money to investigate. But understanding the business is in front of us, understanding markets, is our job. And when things change, even if the name in the complaint is the same, even if the merging party is the same, we need to take new facts, understand market realities, and put that all into account.

Our agency has nearly half a century of experience, enforcing Hart-Scott-Rodino. We should draw on that experience to stop bad mergers. But also, let good ones through. Failure to do so, along the lines today, will hinder normal market operations and weaken our enforcement efforts-- both at the detriment of the American public. I oppose rescission. Thank you, Madam Chair.

CHAIR KHAN: Thank you, Commissioner Phillips, both for your comments and for what I believe is the first official dad joke at an Open Commission meeting. I will now call for a vote on the motion. Commissioner Phillips?

COMMISIONER PHILLIPS: No.

CHAIR KHAN: Commissioner Chopra?

COMMISIONER CHOPRA: Yes.

CHAIR KHAN: Commissioner Slaughter?

COMMISIONER SLAUGHTER: Yes

CHAIR KHAN: And Commissioner Wilson?

COMMISIONER WILSON: No.

CHAIR KHAN: And I vote yes. The motion passes by a vote of 3 to 2. With that final vote, this concludes the official agency business of the Commission that we are disposing of today under the Sunshine Act. The meeting is adjourned.

Before we turn to statements from members of the public, I'd like to briefly note a couple of ways that I believe we can build on matters voted on today, and preview topics that I hope we can all engage on in the coming weeks and months.

First, given the surge in merger filings that Commissioner Chopra mentioned, I'd love for the Commission to consider additional ways that we can address the immense staff burden associated with investigating deals, which Commissioner Slaughter so eloquently spelled out earlier. While we embracing prior approval provisions as we voted on today will help ensure more efficient use of agency resources.

I believe there's more that we can be doing to deter facially, unlawful mergers, and to maximize staff capacity to pursue comprehensive investigations. And I'll look forward to discussing with the staff and with my fellow commissioners what some of these additional changes would look like. And we would update guidance to market participants accordingly.

Second, the right to repair restrictions that we voted on today-- we voted to prioritize today are just one type of a broader set of market restraints and exclusionary provisions that the commission has heard concerns about. Potentially, harmful restraints are also routinely included in contracts, including non-compete clauses and exclusionary contractual provisions.

And to help inform our work in this area going forward, I will invite public comment on contract terms that may undermine fair competition, and we'll be accepting these comments on our website starting today. Going forward, I'd also like us to consider more generally recommendations from the administrative conference on the United States on best practices for accepting comments on formal publication.

So I want to thank my fellow commissioners for the meeting today. And I want to thank the invited members of the public for their patience, and for sharing their feedback. The commission really valued public input. And today, I believe around 25 people have signed up to address the Commission to ensure that each person has a chance to be heard. We've asked each person to limit their remarks to 1 minute. And with that, I will turn it over to Lindsey Crisac to open it up to the public. Thanks, Lindsey.

LINDSAY KRYZAK: Thank, Chair Khan. Before we begin, please note that the FTC is recording this event, which may be maintained, used, and disclosed to the extent authorized or required by applicable law, regulation, or order. And it may be made available in whole or part in the public record in accordance with the Commission's rules.

Each speaker will be given 1 minute to address the Commission today. Our first speaker is Joe Marion. Joe?

JOE MARION: Thank you. I am from the ASCDI, an association of companies that recycle, resell, and service tech equipment. We've been waiting 25 years for today. The right to repair and the right to resell are two sides of the same coin.

IBM, who was the dominant computer company in the 1950s, originally, only rented equipment because they didn't want to compete with anyone reselling their use products. In 1956, response to an antitrust action by the US Department of Justice, IBM entered into a consent decree agreeing to sell its equipment and provide the parts and wiring diagrams required to fix them. The results gave consumers choice and was good for the environment and fostered competition innovation.

In 1996, IBM and the DOJ vacated the consent decree. Since then, most tech manufacturers have made it next to impossible for anyone to fix and resell their products by withholding software parts and warranties. So I want to thank the Commission today for your vote.

LINDSAY KRYZAK: Thank you, Joe. Our next speaker is Jessa Jones. Jessa?

DR. JESSA JONES: I'm mute All right. Got it. All right. Hi. I'm Dr. Jessa Jones. And I fixed over 40,000 bones. And I urge the FTC to take, seriously, the enforcement of its regulations in regard to right to repair. Despite the anti tieing statement within the Magnuson-Moss Warranty Act, there is still rampant disregard of the FTC rules.

Consumers and manufacturers alike, still believe that you can avoid a warranty, simply by opening a device. Regarding repair, I'd like to tell you three things that most consumers don't realize about manufacturer controlled repair today.

Number 1, manufactures absolutely require branded parts and service. More and more parts of a serial number that only the manufacturer can program. And today, if I open two phones and swap original OEM parts between the two of them, I will lose the function of 8 different systems of the phone right now today.

Number 2, death by update and force security. Apple software updates are a one way street. You can't go back. And users have no recourse if the new update is too slow for their hardware or even nonfunctional on their device.

This inability to return is never disclosed to consumers. And their increasingly strong armed into forced updates that shortened device life. So much so that today's iPhones, they don't even ask you for consent before they just update themselves in the middle of the night.

Number 3, OEM's misrepresent the word repair to consumers. Repair to you and I means I turn in your device, something gets fixed on it. You get your device--

LINDSAY KRYZAK: Thank you, Jessa. Sorry, You've hit your one minute mark.

DR. JESSA JONES: All right.

LINDSAY KRYZAK: Thanks. Our next speaker is Edward Salamy. Edward?

EDWARD SALAMY: Thank you. My name is Edward Salamy, Executive Director of the Automotive Body Parts Association. Today, I'm speaking to you in my role as a board member for the consumer access to repair or CAR Coalition. The CAR Coalition is a growing group of independent automotive part distributors, management, and repair companies associations and insurers committed to preserving consumer choice and affordable vehicle repair.

The coalition commends the FTC's unanimously approved Nix the Fix report, which highlighted multiple cases of manufacturers limiting consumer choice in the automotive repair space. To quote the report, "there is scant evidence to support manufacturers justifications for repair restrictions." We could not agree more.

We also commend the President's executive order in competition, and strongly encourage the FTC to follow its guidance recommending a rule-making process in repair and maintenance restrictions. We feel strongly that the repair and maintenance of motor vehicles should be included in that process as Americans are, literally, paying for the price for the ever increasing cost of auto repairs.

The time to act is now. Please visit carcoalition.com for more information. Thank you.

LINDSAY KRYZAK: Thank you, Edward. Our next speaker is Joani Woelfel. Jonnie?

JOANI WOELFEL: Good afternoon. My name is Joani Woelfel. I'm the CEO of Far West Equipment Dealers Association. I appreciate the opportunity to speak about the right to repair restrictions policy being considered by the Commission.

Far West represents farm equipment dealers in seven states across the West. Please refer to our written comments submitted by Frieda Ann as a member of the coalition opposed to illegal tampering for the Commission's review, detailing our concerns about policy that would provide unlimited access to software that can be used to override equipment emissions and safety controls.

We support to facilitate consumer's right to repair their farm equipment. We oppose the right to modify. We welcome the opportunity to demonstrate to the Commission how dealers are supporting consumers in diagnosing and repairing their equipment, making regulations unnecessary.

My contact information is provided in our correspondents, and we look forward to being able to work with you on this. Thank you.

LINDSAY KRYZAK: Thank you, Joani. Our next speaker is Darren Tucker. Darren?

DARREN TUCKER: Good afternoon. My name is Darren Tucker. I'm a partner and chair of the antitrust practice group at Vinson & Elkins, and a former FTC attorney.

On January 4, the Commission, with the support of the Department of Justice, suspended the granting of early termination of the waiting period for Hart-Scott-Rodino pre-merger notification filings, and stated that the FTC plan to review the procedures used to grant early termination. The agency explained, at the time, that "we anticipate that this temporary suspension will be brief." Yet, more than five months later, the suspension remains in effect.

With the result of the closings of hundreds of competition enhancing or competitively neutral transactions have been delayed. I that the Commission, in conjunction with the Department of Justice, will give serious consideration to promptly restoring the early termination program, and of the standards for granting early termination change to provide guidance to the private sector. Thank you.

LINDSAY KRYZAK: Thank you, Darren. Our next speaker is Adonne Washington. Adonne?

ADONNE WASHINGTON: Hello. I'm an attorney with the Digital Justice Initiative at the Lawyers Committee for Civil Rights Under Law. The FTC must protect the civil rights and privacy of consumers and data driven commerce. Privacy rights our civil rights, and commercial data practices are inextricably intertwined with equal opportunity.

The FTC should initiate rule-making and take other appropriate actions to regulate commercial data practices, create an office of civil rights to examine how trade practices overseen by the Commission may result in unjust disparate treatment or impact on the basis of protected characteristics, and commit greater resources to aggressively enforce against unfair and deceptive practices.

The FTC has many tools at its disposal to help protect online civil rights and privacy, and must use all of them, including rule-making. The exploitative commercial data practices of big tech directly caused many harm, such as algorithmic discrimination and discrimination on the basis of protected characteristics. They are data breaches, privacy violations, and civil rights abuses that continue to go unchecked and slip through the cracks. The FTC must take immediate action to protect the civil rights of black Americans and other people of color. Thank you.

LINDSAY KRYZAK: Thank you. Our next speaker is Eric Null. Eric?

ERIC NULL: Thank you, Chair Khan and Commissioners, for allowing me to speak to you today, and for the extensive work that you do. My name is Eric Null. I am the US Policy Manager at Access Now, global human rights nonprofit that focuses on protecting and extending people's digital rights, including privacy.

I want to stress the importance of taking bold action on privacy and civil rights. As the foremost agency on data practices, the FTC is acutely aware of the harms, particularly, for communities of color caused by unbounded and unprincipled data collection and use-- algorithmic discrimination, biased facial recognition software, over collection of data, just to name a few.

To help prevent these harms, the FTC should capitalize on its various sources of authority, but specifically, it should begin a rule-making proceeding to build that record of harmful practices and to promulgate effective privacy rules that apply broadly. The proceedings should focus on, at least, preventing discriminatory data practices, minimizing data collected and retained, addressing data brokers, and ensuring data portability. Thank you for your consideration.

LINDSAY KRYZAK: Thank you, Eric. Our next speaker is Elizabeth Ropp. Elizabeth?

ELIZABETH ROPP: Hi. I'm Elizabeth Ropp. I'm a licensed acupuncturist in New Hampshire. I want the Commission to be aware of the-- Can you hear me? OK. Hi, I'm Elizabeth Ropp. I'm the I'm a licensed acupuncturist in New Hampshire. I want the commission to be aware of the anti-competitive practices of the National Certification Commission of Acupuncture and Oriental Medicine.

The NCCAOM is a trade association that acts as a test agency and a certification body. They lobby at federal and state levels for policies that force acupuncturists to continuously pay to maintain NCCAOM brand certification long after we pass their exams.

Without it, we can't work at the VA or keep licenses in roughly half of US states. The job market for acupuncturists is dismal, yet, NCCAOM executives make six figure salaries. Thank you for looking into it.

LINDSAY KRYZAK: Thank you, Elizabeth. Our next speaker is Nora Nellis. Nora?

Apologies. I think, Nora may have fallen off. Our next speaker is Scott Schlegel. Scott?

SCOTT SCHLEGEL: Scott Schlegel passes. Thank you. Scott Schlegel passes on comment. Thank you.

LINDSAY KRYZAK: Thank you, Scott. Our next speaker is Mary Scalco. Mary?

MARY SCALCO: I want to thank the Commissioners for their vote today to maintain the care labeling rule. I represent the Dry Cleaning and Laundry Institute. And we have small business-- dry cleaners and launders, retail dry cleaners and launders across the United States and international that depend greatly on the labor rule as to most consumers.

So I commend the commissioners for maintaining this care label rule. And I also agree with Commissioners that the rule needs to be updated to reflect current practices in current technologies that are out in the fabric care industry today. So I look forward to working with them in the future to update the rule. Thank you.

LINDSAY KRYZAK: Thank you. Our next speaker is Andrea Amico. Andrea?

ANDREA AMICO: Thank you. This is a Andrea Amico, the founder of Privacy for Cars. The right to repair movement is bringing to light the accelerating and dangerous collection of sensitive consumer data by vehicles. Such the presume information is collected, shared, and broken by the broad auto industry, often, without the industry and consumers.

Last year, more than four out of five cars were resold, while still containing personal information-- the home address, garage codes, text messages, biometrics, geolocation, and much more. The FTC spoke three times to this risks, but only some auto financing [INAUDIBLE] safety nets to prevent the selling data breach that affects tens of millions of Americans.

I hope that we renew the [INAUDIBLE] of the executive branch on the holding of consumer data. That this agency will issue clear guidance to dealership, rentals, auto finance, and insurance companies, and educate the public on the need to protect the personal information collected by vehicles. Thank you.

LINDSAY KRYZAK: Thank you. Our next speaker is Charlotte Slaiman. Charlotte?

CHARLOTTE SLAIMAN: Thank you. I'm Charlotte Slaiman, the Competition Policy Director at Public Knowledge, a nonprofit consumer advocacy group. Thank you for your action at the last open meeting to rescind the 2015 policy statement, that unnecessarily tied the FTC's hands, preventing the Commission from taking aggressive action to increase competition across our economy.

At that meeting, Chair Khan suggested that it may be useful to adopt a new policy statement. We believe this is a smart strategy. A revised policy statement should make it clear that Section 5 is not identical to the Sherman and Clayton Acts. And that conduct can be challenged as an unfair method of competition under Section 5, even if it would not violate the antitrust laws. It should lay out the policy goals that will guide the FTC decision making as the agency reclaims its whole Section 5 authority.

I also want to thank the FTC staff for their invaluable work on behalf of the American people. Thank you.

LINDSAY KRYZAK: Thank you, Charlotte. Our next speaker is Ed Mierzwinski. Ed?

ED MIERWINSKI: Thank you. I'm Ed Mierzwinski. Chair Khan and Commissioners, I'm here with the US PIRG, as mentioned in the New York Times. The old FTC's decades long promotion of a week noticed in opt out privacy regime has fueled the 24/7 business model used by big tech, which the old FTC failed to hold accountable, but I'm confident that you will.

The FTC should back passage of strong federal privacy by default, privacy and digital rights protections, that allow stronger state laws and allow consumers to enforce their rights. The FTC should also urge the administration to reject pressure from powerful special interests to subject European citizens to a new privacy shield that subjects them to the US wild west surveillance advertising model without the substantive rights guaranteed by GDPR.

I've attached, in my comments, a copy of the privacy and digital rights for all platform, from leading consumer and civil rights groups. And I'm confident that the new FTC can do better than the old FTC, and I look forward to working with you.

LINDSAY KRYZAK: Thank you, Ed. Our next speaker is Daniel Mustico. Daniel?

DANIEL MUSTICO: Chair Khan, Commissioners, I speak today on behalf of OPEI's 100 plus members who manufacture outdoor power and lawn and garden equipment, golf cars, personal transport, and utility vehicles.

Today, I want to highlight two points from our submitted written comments concerning our opposition to a broad commission policy statement and subsequent rule proposal on the so-called right to repair. Simply, the role played by electronics software and code in our members products is vastly different than in other consumer electronics.

First, right to repair regulation fails to consider consumer safety and environmental protection with respect to our industry's products. As examples, it would allow for modification, tampering of safety controls of powered lawnmower blades required under law by US CPSC, and engine emission controls required under law by the US CPA. These are only a few of the countless examples within our industry alone.

Second, our OPEI members already provide all information and tools necessary to repair industry products, unless such--

LINDSAY KRYZAK: Thank you, Daniel. Appreciate your comments. Our next speaker is Toby Megson. Toby?

TOBY MEGSON: All right. First off, whoever change my name, you should have asked before doing that. But I have an official complaint to make against Adobe. The way their licensing is supposed to work is if you make something in their program, you legally own rights to it. The way their recent policy change has made it, is I can't access art that I legally own.

And that is unfair to me as a consumer. And there's a lot of other people who have mentioned this. I am not the only one. So I just thought that is something that should be brought to your attention. And that's all.

LINDSAY KRYZAK: OK. Thank you, Toby. Our next speaker is Gregory Scott. Gregory?

GREGORY SCOTT: Thank you. Thank you very much. My name is Greg Scott. I'm with the American Alliance for Vehicle Owner's Rights. AAVOR members are united with one common policy goal-- vehicle owners must be guaranteed access to and control of the data generated by their vehicles. AAVOR represents consumer advocates, fleets, aftermarket repair facilities, insurers, and telematics providers. AAVOR ask the FTC to look beyond phones and tackers as it implements its policy statement on non-competitive and anti-consumer practices by manufacturers.

AAVOR urges the FTC to focus on the broader principles that consumers own all aspects of their personal property, whether a phone, a tracker, a computer, or a car, and have the right to control access by third party to that device vehicle or equipment. AAVOR look forward to working with you and your staff in implementing to some important policy statement. Thank you.

LINDSAY KRYZAK: Thank you, Greg. Our next speaker is Tony Ledger. Tony?

TONY LEDGER: Yes. I'm in private practice as an independent service organization for over 30 years. We specialize in flow cytometry instruments, research instrumentation. Very few manufacturers in the flow cytometry world comply with Kodak.

Obtaining parts and service manuals has always been a challenge for our whole time. In the past 10 years, our main brand supplier has reversed their policy, making it extremely difficult to warn of diversion, denial and consistent delay in getting those parts. We observe this company treating others fairly, while we have a difficult time obtaining the same parts.

Factually, this has a dramatic negative impact on our ability to compete against those manufacturers. And it also has a dramatic impact on the ability for some researchers to obtain access to this very, very powerful research equipment. They simply can't afford it.

We would ask that you don't allow medical device manufacturers to do carve outs, and make sure that they have to comply the same as all the other manufacturers. Thank you.

LINDSAY KRYZAK: Thank you, Toni. Our next speaker is Randall Marks. Randall?

RANDY MARKS: Sorry. I'm trying to start my video. As a former PC staffer, here are two ways to conserve resources and deter violations. First, and act to rule barring naked and near naked price fixing, and identifying specific acts, that would subject an individual to liability for furthering that conduct.

Second, make more referrals for perjury and obstruction of justice, and advocate the DOJ prosecute them. DOJ declined to prosecute a pharmacy benefit manager despite the fact that I had a tape that contradicted his testimony about his invitation to collude.

Finally, I submitted a petition urging a rule requiring large social media companies to provide in-person customer service when I was hacked and lost access to my Facebook account for a month. I received over 100 automated emails before my account was restored. Thank you.

LINDSAY KRYZAK: Thank you, Randy. Our next speaker is Peter Sinsheimer. Peter?

PETER SINSHEIMER: Yes. So I applaud the Commission's vote to rescind the proposed repeal of the care label rule. Moving forward, I recommend proceeding with prior rule-making, which ended with the March 14 roundtable. This roundtable primarily focused on whether a new professional wet clean care label should be required.

Like my keynote presentation to the roundtable provided reliable evidence, strongly supporting each FTC criterion for requiring this label. Requiring a professional wet clean label would remedy unfair and deceptive practices created by current dry clean and dry clean only labeling. As such, this remedy requiring a professional clean label to correct unfair and deceptive practices supports the core mission of the FTC. Thank you.

LINDSAY KRYZAK: Thank you, Peter. Our next speaker is Kevin Kenney. Kevin?

KEVIN KENNEY: All right. Thank you for [INAUDIBLE] me here. My name is Kevin Kenney. I'm a farmer, Precision A advisor in Right to Repair act. I can report today farmers celebrate the president's executive order stating tractor companies block farmers from repairing their own tractors. Companies like John Deere, actually, hide their use of open source code to the farmers. They refuse to contribute and improve it. They refuse farmers request for copies of the code in direct violation of [INAUDIBLE] bill B3 license.

Number 1, I think the FTC should set up farm data and privacy task force through CISA to help monitor the abuse of data harvesting and monetizing farm data by the tractor owners. Number 2, I think we should engage in big data ad companies like Bayer Corporation, who are already connected 40,000 tractors to the internet to build a recovery and restore infrastructure, so farmers can store tractor data.

The most important thing I want you to know that we need help out here, and I think, now's the time to do it. You guys sound really positive. And that's the most encouraging thing. It's listening to the Commissioners, and keep up the good work. That's all.

LINDSAY KRYZAK: Thank you, Kevin. Our next speaker is Hannah-Beth Jackson. Hanna-Beth?

HANNA-BETH JACKSON: Good morning or good afternoon. I'm Hannah-Beth Jackson from Santa Barbara, California. And for the past two decades up to December 2020, I served in the California State Legislature. And for the past seven years, was chair of the Senate Judiciary Committee.

I had a constituent, Kelly Houck, whose two daughters were killed by an unrepaired recalled car, so I am familiar with this issue. I urge the Commission to undo the consent orders that the FTC entered into with General Motors CarMax and other auto dealership chains, that allow them to engage in false and deceptive advertising regarding the safety of dangerously defective used vehicles with unrepaired safety recalls.

Those orders condoned lying about the safety defects, and are frankly, worse than nothing. In fact, in California, our legislature also fought against similar efforts by car dealers to deceive consumers. And as a former policy maker, I know it's critical that the public trust that our government will not allow, tolerate, condone, or encourage false and deceptive practices that can lead to death or serious injury. Please, undo this consent order. Thank you.

LINDSAY KRYZAK: Thank you, Hanna-Beth. Our next speaker is Mark Hennessey. Mark?

MARK HENNESSEY: Good Afternoon. My name is Mark Hennessey. I'm the CEO of the Iowa Nebraska Equipment Dealers Association with over 100 dealership locations spread across two states. Today, nothing restricts the consumer from repairing their ag equipment. The same diagnostic tools, software documentation, and training that our dealers purchase from the respective ag manufacturers, such as Deere, Case and New Holland is available to the public.

Any producer, independent repair shop, or anyone who wishes to buy these products can do so today. Many of my dealer websites have these products available online to purchase. The ag industry has been rolled into this discussion by the right to repair advocates, claiming they can't repair their ag equipment. That is not true. We are not the cell phone industry where consumers or independent repair shops are unable to repair cell phones.

Therefore, I respectfully request this committee to exclude the ag industry from any ruling or further action as the same diagnostic tool, software documentation, and training that our dealers have invested and are available for purchase by anyone who wishes to repair their ag equipment today. Its right to repair already exist within ag, and available to anyone who wishes to do so. Thank you.

LINDSAY KRYZAK: Thank you. Our next speaker is Tim McGeth. Tim?

TIM MCGETH: Good afternoon. I'm Tim McGeth with TRIMEDX, speaking on behalf of the alliance for Quality Medical Device Servicing, and comprised of seven of the country's largest independent service organizations that maintain and repair medical devices.

First, we applaud the FTC's report to Congress on anti-competitive practices related to repair markets. While the report covers several areas, we're pleased to see recognition of these issues in the medical device field. We believe some medical manufacturers engage in anti-competitive practices by restricting access to critical parts, manuals, keys, tools, and training.

We stand behind the right of device owners to service their devices as they see fit. The pandemic highlighted this problem and the burden on hospitals and independent servicers to maintain critical devices, as noted by Commissioner Chopra, and also at a significant cost to an already overburdened health care system.

We urge the FTC to support right to repair efforts to ensure medical devices are included in that discussion. And to that end, appreciate the action taken by the Commission today. Thank you.

LINDSAY KRYZAK: Thank you, Tim. Our next speaker is Susan Grant. Susan?

SUSAN GRANT: Thank you. I'm Director of Consumer Protection and Privacy at Consumer Federation of America. Thank you for preserving the Care Labeling Act. The proposal to repeal the rule was shockingly, unfounded in anti consumer. It should be voluntary to provide consumers and cleaners with this vital information. In consumer groups comments, we suggested possible updates to the rule. But I want to make clear that if care information is provided online, it should be in addition to not replace the care labels affixed to the items.

The FTC should be focusing on cutting edge concerns, such as manipulatives surveillance advertising, as well as traditional issues that it seems to have been ignoring, like TV ads that don't provide the full costs, and hide other information in fine print. Instead of shifting risk from businesses to consumers, the FTC should be ensuring that consumers get the information and protection they need in the marketplace.

LINDSAY KRYZAK: Thank you, Susan. Our next speaker is David Owens. David?

DAVID OWENS: Esteemed members of the Commission, my name is David Owens, and I own Rockstar Championships. We are an Oklahoma-based cheerleading event production company. World of cheerleading market is run and completely controlled by one company-- Varsity Brands Inc., a subsidiary of Bain Capital. Through vertical acquisitions, they now controlled more than 90% of our market.

I spoke with FTC attorneys in 2015 regarding one of their mergers. That merger was the equivalent of Coke buying Pepsi. It was allowed, and more mergers followed that. Using deceptive business practices, they also control staff and run the governing authorities in the United States. The United States All-star Federation and USA Cheer are both owned by Varsity Brands Inc., and helped them engage in anti-competitive behavior.

They publicly portray themselves to be independent governing bodies. Hundreds of millions of dollars have been funneled through these entities under the name of sport governance with zero accountability for where the money has gone or who benefited. More than anything else, the deception of governance has left children exposed to sexual abuse. This has been reported the news, as recently as this week.

Due to this perceived governance, children have been encouraged to turn in their allegations of abuse to employees of Varsity through the United States All-star Federation. The persistence of this monopoly is an immediate threat to the health, well-being, and safety of the children and the sport. Thank you.

LINDSAY KRYZAK: Thank you, David. Our next speaker is Jason Levine. Jason?

JASON LEVINE: My name is Jason. I'm the Executive Director of the Center for Auto Safety of the nation's leading independent non-profit organization fighting for consumer protection and vehicle safety since 1970. First, we agree with the Commission's unanimous conclusion that right to repair restrictions are rarely, adequately, justified, and believe that consumer choice is beneficial to the safety of every driver, passenger, and pedestrian.

Next, in the three years since we asked this agency to investigate Tesla's section 5 violations, which put the lives of consumers in danger by using deceptive terminology, like auto pilot to describe vehicle features, the agency has failed to act when consumers have died. We ask you to act quickly.

Last, in 2016, a different set of Commissioners signed off on an ill-advised consent order, which bless the practice of used car dealers, selling known dangerous recalled vehicles as safe. Thus, encouraging this anti consumer practice to spread nationwide. The time has come to undo this consent order. And once again, protect consumers.

LINDSAY KRYZAK: Thank you, Jason. Our next speaker is Paul Roberts. Paul?

PAUL ROBERTS: Hey, there. Thank you, Commissioners. I really appreciate the opportunity to speak. My name is Paul Roberts. I'm the founder of Secure Repairs, which is a volunteer organization of 200 information security professionals, who support the right to repair. I'm here speaking to thank you for undertaking the right to repair issue.

I just want to make the point that the ability of individuals of service to repair and maintain their own property is a core right of ownership that's been recognized in US law and common law for centuries. And I urge, the FTC to use its rule-making authority to reinforce this basic consumer and private property right, and to update it for the digital age as manufacturers seek to turn hundreds of millions of owners of technology into tenants of their own property.

In a world that is increasingly populated by internet connected software powered objects, the so-called internet of things, a digital right to repair is a vital tool that we'll extend the life of electronic devices, ensure their safety, security, and integrity. And in the process, it will make homes, businesses, schools, cities, and towns more secure.

And finally, in this time of increasing wealth inequality, concentrations of market power by large technology firms--

LINDSAY KRYZAK: Thank you, Paul.

PAUL ROBERTS: Thank you.

LINDSAY KRYZAK: Our next speaker is Terry Balentini.

TERRY BALENTINI: Hi. I wanted to thank you for allowing me to speak today. My name is Terry Balentini. And give me a second. Terry Balentini-- and I operate Normal Gadgets with my wife Angie, here at Bloomington, Illinois. Our passion is to fix and repair electronic devices over 80,000 in the last nine years. We employ a technician to rely on their employment, making a livelihood assisting local customers, school systems, and businesses with their smartphones, laptops, tablets, and gaming systems.

Nobody wants to drive 2 and 1/2 hours to Chicago from our area, to wait hours to get a battery replaced if they can do so. 95% of our repairs we do are for replacement parts-- plug and play, no software, no chip replacement, no messing with the manufacturers secret sauce, just like changing the oil or plugs on your own automobile. We highly endorse the adoption of the findings of the Nixing the Fix Workshop and the right to repair. Thank you.

LINDSAY KRYZAK: Thank you, Terry. Our next speaker is Brett Davis. Brett?

BRETT DAVIS: Thank you for the opportunity to speak today. My name is Brett Davis. And I'm the Vice President for New Holland North America, which is a brand of CNH Industrial. We manufacture agricultural and construction equipment.

To be clear, CNH industrial in New Holland support the customer's right to repair their own equipment. But we do not support the right to modify and/or tamper with the equipment's operating software. Let's consider a couple of items.

First, we already supply the tools, information, and manuals that our farmers regularly use to repair their own equipment. Secondly, modifying operating software will impair the safety features that have been well-built and carefully thought into our equipment, and could potentially, present an undue hazard for the use of that equipment.

Third, we adhere to strict environmental controls. These controls are built into our machines in accordance with EPS standards. Any modification to the operating system will adversely impact the emission standards. Finally, our independent dealer network across rural America are mostly made up of small family businesses that have invested in trucks, workshop, tools and training to make sure our customers maximize the value of the equipment. Additionally, the employees who services equipment--

LINDSAY KRYZAK: Thank you, Brett.

BRETT DAVIS: Thank you.

LINDSAY KRYZAK: Our next speaker is Catherine Boland. Catherine?

CATHERINE BOLAND: Good afternoon. I'm Catherine Boland, Vice President of Legislative Affairs for the Motor and Equipment Manufacturers Association. I'm here today on behalf of our division-- the Automotive Aftermarket Suppliers Association. Thank you for the opportunity to speak.

My members are aftermarket suppliers that are committed to manufacturing quality parts and service choices for drivers. Contrary to what vehicle manufacturers claim, independent aftermarket vehicle service can be completed in a safe and cyber-secure fashion.

We applaud the findings and recommendations in the Nixing the Fix report, and thank the FTC for today's policy statement, that will ensure that vehicle owners will continue to be able to choose where to repair their vehicles. We also urge the FTC to consider what additional statutory authority may be necessary to protect consumer choice and repair, and work with Congress to seek those legislative changes.

Independent aftermarket service must remain a viable option. We look forward to working with the FTC and policy makers to find a solution that is acceptable to all parties. Thank you.

LINDSAY KRYZAK: Thank you, Catherine. Our next speaker is Sarah Robinson. Sarah?

SARAH ROBINSON: Thank you. Good afternoon, Chair Khan and members of the Commission. My name is Sarah Robinson, and I'm the public policy manager at the National Consumers League, founded in 1899 in Seattle's nonprofit. Mission is to advocate for social and economic justice on behalf of consumers and workers in the United States and abroad. I appreciate this opportunity to appear before you in support of the care labeling rule.

Last year in Seattle and 11 other national state and local consumer advocacy organizations filed comments urging the commission to protect this important regulation by terminating its efforts to repeal the rule. We do not believe that competition, alone, will prompt garment manufacturers to provide consumers with necessary garment care information.

Given the industry's long history of cost cutting on labor and materials, the care labeling rule is more important today than it has ever been. Thank you for your votes today to protect this important role.

LINDSAY KRYZAK: Thank you, Sarah. Our final speaker is Nora Nellis Nora?

NORA NELLIS: Can you hear me?

LINDSAY KRYZAK: We can. Thanks, Nora.

NORA NELLIS: OK, victory. Just so you know, I'm technology challenged.

I'd like to thank the Commissioners for their continued support of care labeling rule. For many years, the labels have served consumers and professional cleaners well. Both have come to rely on the information as a road map to ensure service stability and guaranteeing the useful life of a garment can be fully realized through proper care.

Our government analysis department has found that care labels are essential to resolving serviceability and liability issues among consumers, cleaners, retail outlets, and manufacturers. While the rule may not be perfect and the instructions may be not 100%, they are close enough to perfect to successfully guide and protect both consumers and dry cleaners.

In recent years, especially, post pandemic, dry cleaners are offering laundry services of wash and fold. And therefore, their continued or increasing reliance on pure labels is even more profound. Lastly, it should be noted that many professional cleaners have multiple processes at their disposal, including wet cleaning, as well as dry cleaning.

The care label, even as currently constituted, provides necessary guidance to these professionals to exercise their judgment based on their expertise as to best process to protect and ensure the longevity of the garment. I'd be happy to discuss industry and innovations in more detail with any Commissioners who are interested.

However, I would conclude by saying that while it may not be perfect, the care label rules should be considered essential. And you guys should take a bow because it is largely successful.

LINDSAY KRYZAK: Thank you, Nora. Appreciate your comments.

CHAIR KHAN: Thank you, Lindsay. And this concludes the open forum and today's event. Thank you so much for joining us. And we look forward to hearing more at future events. Take care.