



UNITED STATES OF AMERICA  
Federal Trade Commission  
WASHINGTON, D.C. 20580

**MAJORITY STATEMENT OF CHAIRMAN JOSEPH J. SIMONS AND  
COMMISSIONERS NOAH JOSHUA PHILLIPS AND CHRISTINE S. WILSON**

*In the Matter of NTT Global Data Centers Americas, Inc. as a successor in interest to  
RagingWire Data Centers, Inc.  
Commission File No. 1823189  
June 29, 2020*

The Federal Trade Commission remains committed to enforcing the EU-U.S. Privacy Shield and Swiss-U.S. Privacy Shield programs, and the order we approve today is consistent with that commitment. This order is, in fact, more protective of the Privacy Shield Principles than the 14 orders this Commission (including Commissioner Chopra) has approved in prior Privacy Shield cases. Specifically, it requires Respondent to obtain third-party assessments for as long as it participates in Privacy Shield.

Notably, this heightened obligation exceeds the scope of the notice order that the Commission (including Commissioner Chopra) unanimously approved in November 2019 in this case. Commissioner Chopra asserts that new facts have emerged in litigation that would support even more relief. But what staff did here is obtain additional evidence, through discovery, that supports the complaint's allegations. The Commission had reason to believe that Respondent's Privacy Shield representations were included in a variety of publications and were material when we voted to litigate. During litigation, staff uncovered further evidence confirming materiality. This should not have come as a surprise to Commissioner Chopra. For example, the complaint specifically alleges that Respondent claimed, both in its privacy policy and in marketing materials, that it participated in Privacy Shield, and staff found evidence that Respondent was, in fact, touting its participation in Privacy Shield as a selling point.

Commissioner Chopra would ask us to reject a settlement that protects consumers and furthers our Privacy Shield goals, to instead continue litigation during an ongoing pandemic. There is no need and doing so would unnecessarily divert resources from other important matters, including investigations of other substantive violations of Privacy Shield. We do not support moving the goalposts in this manner<sup>1</sup> and for this reason vote to accept the settlement, which not just accords with but exceeds the relief the Commission unanimously sought to obtain at the outset of the case.

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<sup>1</sup> Commissioner Chopra attempts to distinguish his earlier approval of settlements by arguing that additional relief is warranted in cases involving large businesses that violate substantive provisions of Privacy Shield. Notably, however, several recent settlements approved unanimously by this Commission that similarly alleged substantive violations of Privacy Shield involved companies that also generated substantial revenue, nor have the allegations or the defendant changed since the Commission initially approved the notice order.