



Office of Commissioner
Rebecca Kelly Slaughter

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

**OPENING STATEMENT OF
COMMISSIONER REBECCA KELLY SLAUGHTER**

*Before the United States Senate
Committee on Commerce, Science, and Transportation
Hearing on Oversight of the Federal Trade Commission
August 5, 2020*

Chairman Wicker, Ranking Member Cantwell, and Members of the Committee, thank you for inviting us here today.

Like most Americans and yourselves, fallout from the coronavirus is front of mind for me these days, so I am going to confine my oral remarks to that topic. I worry most about the burden borne by three groups in particular: kids, workers, and patients.

Supporting Solutions for Educational Equity

As a working parent with four young children at home who has been struggling to manage distance learning for her kids, even with the *best* circumstances and resources, I am especially sensitive to education issues. The pandemic has exacerbated the existing deep disparity in educational equity in this country. From day one, we saw well-resourced schools transition relatively seamlessly to online models with continued learning. Families with access to broadband and devices, and the flexibility for a parent to be available at home, muddled through.

But for millions of America's kids from vulnerable communities, school simply stopped.¹ As many as one in six kids lack the equipment necessary to participate in distance learning,² and nearly one quarter of kids lack reliable internet access—conditions that particularly affect rural, urban, and low-income families.³

¹ Emma Dorn, Bryan Hancock, Jimmy Sarakatsannis, and Ellen Viruleg, "COVID-19 and Student learning in the United States: The Hurt Could Last a Lifetime," *McKinsey* (June 1, 2020) (collecting data showing that "only 60 percent of low-income students are regularly logging into online instruction; 90 percent of high-income students do. Engagement rates are also lagging behind in schools serving predominantly black and Hispanic students; just 60 to 70 percent are logging in regularly."), <https://www.mckinsey.com/industries/public-and-social-sector/our-insights/covid-19-and-student-learning-in-the-unit-ed-states-the-hurt-could-last-a-lifetime>.

² Catherine E. Shoichet, "These Kids are Getting Left Behind When Schools Go Online," *CNN* (July 31, 2020, 8:36 AM), <https://www.cnn.com/2020/07/31/us/distance-learning-inequality/index.html>.

³ Emily A. Vogels, Andrew Perrin, Lee Rainie, and Monica Anderson, "53% of Americans Say the Internet Has Been Essential During the COVID-19 Outbreak," *Pew Research Center* (Apr. 30, 2020); *see also* John Kahan, "It's time for a new approach for mapping broadband data to better serve Americans," *Microsoft* (Apr. 8, 2019),

The solutions parents and school districts are considering pose increased risks of privacy harms to kids, particularly kids in communities already battling the equity gap; we need to acknowledge that *privacy and data issues are also equity and civil rights issues*.⁴ Hybrid and in-person learning models will require unprecedented collection of personal data to facilitate contact tracing, quarantines, and family choices. Online learning demands rapid adoption of a suite of technologies that may be unvetted and used without supervision. Where wealthy children's families can pay for privacy-protective services, poor kids may pay by sacrificing their privacy. The FTC should help mitigate these potential harms.

I was glad that the agency worked quickly to put out guidance on how to protect student privacy.⁵ The FTC must aggressively use COPPA and general Section 5 authority to hold companies accountable if the solutions offered to fill the education gap violate current law. But I want to be realistic about the best-case scenario many families face for the current academic year: shared devices, hastily filled with emerging apps and platforms, being used by kids for hours with little oversight by adults. Current law provides very little protection in these circumstances, particularly for applications targeting teenagers or general audiences.

The need for comprehensive data-privacy legislation with *meaningful limitations on the collection and use of data and prohibitions on discriminatory practices, dark patterns, and data abuses* has never been greater. The FTC stands ready to enforce a federal privacy law, and my hope is that the pandemic's catastrophic consequences for children will serve as the final push for such legislation. Until then, I believe the mounting data harms emerging from the crisis demand that the Commission consider initiating a rulemaking under Magnuson-Moss to identify and address serious data abuses.

Supporting Workers

In addition to supporting kids, we must support workers. I recognize how fortunate I am to navigate the challenges of child-care and online learning from the privileged position of employment. At *least* 11% of my fellow Americans do not share that good fortune.⁶ I echo Commissioner Chopra's calls for the FTC to focus on supporting small businesses, which are a

(estimating that about half of Americans, 163 million people, do not have high-speed internet at home), <https://blogs.microsoft.com/on-the-issues/2019/04/08/its-time-for-a-new-approach-for-mapping-broadband-data-to-better-serve-americans/>.

⁴ Hannah Quay-de la Vallee and Cody Venzke, "Privacy and Equity in the New School Year: Steps for In-Person, Remote, or Hybrid Learning," Center for Democracy & Technology (July 2020), <https://cdt.org/wp-content/uploads/2020/07/2020-07-16-Privacy-Equity-in-the-New-School-Year-Guidance-FINAL-2.pdf>.

⁵ See, e.g., Lisa Weintraub Schifferle, *COPPA Guidance for Ed Tech Companies and Schools during the Coronavirus*, Fed. Trade Comm'n: Business Information Blog (Apr. 9, 2020), <https://www.ftc.gov/news-events/blogs/business-blog/2020/04/coppa-guidance-ed-tech-companies-schools-during-coronavirus>; Lisa Weintraub Schifferle, *Remote learning and children's privacy*, Fed. Trade Comm'n: Business Information Blog (Apr. 9, 2020), <https://www.consumer.ftc.gov/blog/2020/04/remote-learning-and-childrens-privacy>.

⁶ *Employment Situation Summary*, U.S. Bureau of Labor Statistics (July 2, 2020), <https://www.bls.gov/news.release/empsit.nr0.htm>.

significant source of employment and may be particularly squeezed right now.⁷

I believe the FTC must also use its competition authority to better protect our workforce by sharpening our attention on anticompetitive conduct and mergers that harm workers. Employers ought to compete to attract workers by providing the highest wages, most attractive benefits, and, especially today, the most robust health and safety measures. We should focus on these issues in our enforcement actions and also consider whether and how our rulemaking authority might be applied to address them.

Supporting Access to Affordable Care

The most fundamental challenge we all face, of course, is how to help overcome the deadly public-health crisis, which we know has an outsized impact on seniors and communities of color. The FTC must continue to protect access to care by challenging problematic hospital and healthcare-provider mergers that increase prices and limit patient choice.⁸ We must vigorously apply scrutiny to pharmaceutical mergers as well as address anticompetitive conduct involving healthcare services. We also must seek creative ways to challenge price-gouging.⁹ Creativity is no substitute, however, for clear authority, and I would ask Congress to give the FTC a direct mandate to stamp out abusive pricing practices.

Conclusion

In closing, I want to acknowledge the dedicated public servants at the agency who have been working through this crisis in incredibly challenging circumstances. Working from home, especially for parents of young kids, is harder than I could have imagined. Chairman Simons deserves great credit for providing unmatched flexibility for staff across the agency to ensure they and their families remain safe, and the staff deserve equal credit for their tenacity, resilience, and unwavering commitment to the important work of the Commission.

I look forward to answering your questions.

⁷ More than 40% of American workers are employed by small businesses and small businesses can be significant drivers of new jobs. See *2018 Small Business Profile*, U.S. Small Bus. Admin., <https://www.sba.gov/sites/default/files/advocacy/2018-Small-Business-Profiles-US.pdf>.

⁸ See Remarks of Commissioner Rebecca Kelly Slaughter As Prepared for Delivery, Antitrust and Health Care Providers Policies to Promote Competition and Protect Patients, Center for American Progress (May 14, 2019), https://www.ftc.gov/system/files/documents/public_statements/1520570/slaughter_-_hospital_speech_5-14-19.pdf.

⁹ See *Concurring Statement of Commissioner Rebecca Kelly Slaughter Regarding the Matter of Federal Trade Commission and State of New York v. Vyera Pharmaceuticals, LLC; Phoenix AG; Martin Shkreli; and Kevin Mulleady*, Fed. Trade Comm'n (Jan. 27, 2020), https://www.ftc.gov/system/files/documents/public_statements/1564517/2020_01_27_final_rks_daraprim_concurring_statement.pdf.