

In the Matter of:

Rule on Impersonation of Government & Businesses

May 4, 2023
Open Business Meeting

Condensed Transcript with Word Index



For The Record, Inc.
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1 UNITED STATES FEDERAL TRADE COMMISSION
 2 OPEN BUSINESS MEETING
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 6 RULE ON IMPERSONATION OF GOVERNMENT AND BUSINESSES
 7 RE: PUBLIC COMMENTS
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 12 FEDERAL TRADE COMMISSION
 13 ZOOM VIDEOCONFERENCE
 14
 15 Thursday, May 4, 2023
 16 1:00 p.m.
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1 rulemaking record.
 2 The FTC's vendor, Open Exchange, will be
 3 managing the logistics of this informal hearing. A
 4 court reporter will be transcribing this the hearing.
 5 Will the court reporter please identify yourself.
 6 THE REPORTER: My name is Deborah Wehr.
 7 THE COURT: Thank you. After reviewing the
 8 comments that were submitted in response to the Notice
 9 of Proposed Rulemaking, the Commission identified no
 10 disputed issues of material fact necessary to be
 11 resolved at this informal hearing. Because of that,
 12 this informal hearing will include no cross-examination
 13 and no rebuttal submissions, and as the presiding
 14 officer, I will make no recommended decision. My role
 15 is to preside over and ensure the orderly conduct of
 16 the informal hearing, including selecting the sequence
 17 in which oral statements will be heard.
 18 Fourteen interested persons requested to make
 19 an oral submission at this hearing. The list of those
 20 persons has been published on the FTC's website. We
 21 will follow the list in the same order today. Each
 22 individual who submitted a request to speak will first
 23 identify themselves by name and the organization they
 24 represent, if any, and identify their interest in the
 25 proceeding.

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1 P R O C E E D I N G S
 2 - - - - -
 3 THE COURT: Good afternoon, I'm Judge Chappell.
 4 I want to talk about what has gone on this afternoon.
 5 Around 1:00 p.m. when we started, I covered my agenda
 6 and the procedures for this informal hearing, and then
 7 I learned that the speakers probably did not hear what
 8 I had said. Then I learned there was a closed
 9 captioning issue, and then I learned that the
 10 captioning could not be fixed. So we are starting over
 11 with my opening remarks so that everyone involved is
 12 going to hear everything that they need to hear, and
 13 even though captioning is not available right now,
 14 there will be a verbatim transcript of the proceedings
 15 that will be on the FTC website for anyone who needs to
 16 look at that.
 17 I am the designated presiding officer for this
 18 informal hearing on the FTC's proposed trade regulation
 19 rule titled Rule on Impersonation of Government and
 20 Businesses, which would prohibit the impersonation of
 21 government, businesses or their officials. This
 22 informal hearing is being conducted virtually using
 23 videoconferencing and is available for the public to
 24 watch live from the Commission's website. A transcript
 25 of the informal hearing will be placed in the

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1 Each speaker is limited to five minutes. At
 2 the end of the allowed five minutes or the allotted
 3 five minutes, the speaker's audio and video will be
 4 terminated by Open Exchange. Each speaker's oral
 5 presentation is limited to the topic of the proposed
 6 trade regulation rule titled Rule on Impersonation of
 7 Government and Business, which would prohibit the
 8 impersonation of government, businesses or their
 9 officials in the manner set forth in the proposed rule.
 10 If a speaker raises any other topics, I retain the
 11 discretion to direct Open Exchange to cut the audio and
 12 video feed.
 13 Speakers will not have the ability to display
 14 material during their oral presentation. Interested
 15 parties were given the opportunity to provide written
 16 submissions, and the time period for doing so is now
 17 closed. Today's informal hearing is solely to allow
 18 oral presentations. When the hearing is concluded, the
 19 transcript will be entered into the record.
 20 Open Exchange will inform me when the next
 21 speaker is ready -- set up and ready. Open Exchange
 22 will then turn on the audio and video of the designated
 23 speaker and will then announce each speaker by their
 24 designated number and name. For each speaker, I remind
 25 you to first identify yourself by name and the

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1 organization you represent, if any, and then to
 2 identify your interest in the proceeding.
 3 With those instructions covered, it's time to
 4 hear our first speaker. Open Exchange, is the first
 5 speaker ready?
 6 MR. RUFF-LYON: -- Lyon. I work for RIMS,
 7 which is the Risk Management Society.
 8 THE COURT: Hold on, sir. Your name and number
 9 were not announced, as far as I could hear, and I
 10 didn't hear your beginning. So Open Exchange, please
 11 announce the speaker's number and name, and he can
 12 start again.
 13 OPEN EXCHANGE: Speaker 1 is Stuart Ruff-Lyon.
 14 Please identify yourself by name, your company and your
 15 interest in the proceedings.
 16 MR. RUFF-LYON: Good afternoon. My name is
 17 Stuart Ruff-Lyon. I'm representing RIMS, which is the
 18 Risk Management Society. Our interest in the
 19 proceeding is to address reputational damage caused to
 20 our organization and to our event portfolio from
 21 attempts to sell fraudulent products and services to
 22 our customers while under the guise of representing
 23 RIMS.
 24 THE COURT: Right. Go ahead, sir.
 25 MR. RUFF-LYON: RIMS is the largest association

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1 of risk managers and commercial insurance buyers in the
 2 world. We have some 80 chapters that serve more than
 3 200,000 risk practitioners and business leaders from
 4 over 75 countries. On behalf of RIMS, I want to thank
 5 the Commission for considering a rulemaking to address
 6 impersonation fraud, an issue that has plagued RIMS for
 7 well over a decade.
 8 Each year RIMS produces RISKWORLD, which is the
 9 largest annual conference of global risk professionals
 10 in the world. RISKWORLD traditionally attracts
 11 approximately 10,000 attendees who represent all
 12 touchpoints of risk management and the business
 13 insurance community, and each year as RISKWORLD
 14 approaches, our members, attendees and exhibitors are
 15 inundated with impersonation fraud scams, the most
 16 common of which are hotel reservation scams and
 17 attendee list scams.
 18 Hotel reservation scams typically take the form
 19 where a third-party housing provider would e-mail or
 20 call our attendees and fraudulently identify themselves
 21 as the official housing provider for RISKWORLD. The
 22 outreach often includes statements that the room block
 23 is filling up quickly and that rooms may not be
 24 available for much longer. Their e-mail signatures
 25 will often include the RIMS name and logo, implying

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1 that they are affiliated with or endorsed by RIMS.
 2 These impersonators often ask attendees to prepay the
 3 entire amount of their hotel stay plus room and tax
 4 rather than the one night deposit typically requested
 5 by legitimate housing providers. Once the attendee
 6 purchases what they believe is their hotel room, the
 7 impersonators will either make off with their credit
 8 card information or place them in lower quality rooms
 9 located far from the RISKWORLD campus.
 10 Attendee list scams also plague our membership.
 11 Rogue list brokers e-mail or call members and offer to
 12 sell them the RISKWORLD attendee list before the event
 13 even takes place. These impersonators often use the
 14 RIMS name and logo on their e-mail signatures, again
 15 implying that they work for or are endorsed by RIMS.
 16 RIMS does not sell our attendee registration list. Nor
 17 do we authorize third parties to distribute or sell our
 18 list. Rather, these impersonators will troll websites
 19 to harvest usable e-mail addresses which they will then
 20 target with phishing scams designed to illegally obtain
 21 business and financial information.
 22 We do send cease and desist letters to any
 23 impersonators who come to our attention. We cannot
 24 know, however, how many members of the RIMS community
 25 have been deceived by these fraudulent solicitations.

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1 In many cases, impersonators will simply change their
 2 e-mail address once they receive our cease and desist
 3 letters. In virtually no instance will an impersonator
 4 respond to our and demands that they stop their
 5 activities, and taking additional legal action beyond
 6 our cease and desist communications would prove both
 7 costly and very time prohibitive.
 8 The damage caused by these impersonators is
 9 real and easy to demonstrate. For example, an
 10 impersonator convinced a RIMS exhibitor to book housing
 11 for a RIMS event in Miami by sending an e-mail that
 12 included the RIMS name and logo. When the exhibitor's
 13 team arrived in Miami, they discovered they had no
 14 housing. This not only caused financial harm and
 15 significant inconvenience for the exhibitor but also
 16 caused a real reputational damage for RIMS. And in
 17 this case, as in most others when our members fall prey
 18 to these scams, they have little recourse. Their money
 19 is gone, the impersonators are virtually impossible to
 20 track down and limited judgements to have an award
 21 against them are difficult to enforce.
 22 For all these reasons, RIMS supports the
 23 Commission's consideration of a proposed rulemaking
 24 targeting individuals and entities engaged in
 25 impersonation fraud. RIMS also supports the

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1 Commissions' inclusion of impersonation of nonprofit
 2 entities as it moves forward with the rulemaking.
 3 Lastly, RIMS has strongly encouraged the
 4 Commission to promote business and consumer education
 5 on this subject. The FTC has played an important role
 6 in educating the public on the dangers of many types of
 7 fraud, including identity theft, imposter scams
 8 targeted at the elderly and business outreach on data
 9 security. Educating consumers and small businesses on
 10 the dangers of impersonation fraud would seem a natural
 11 extension of the FTC's efforts to educate and protect
 12 consumers. Thank you, Your Honor.
 13 THE COURT: Open Exchange, please announce the
 14 next speaker.
 15 OPEN EXCHANGE: Speaker number 2 is Tommy
 16 Goodwin. Please identify yourself by name and your
 17 interest in the proceedings.
 18 MR. GOODWIN: Judge Chappell, I'm Tommy
 19 Goodwin, vice president of the Exhibitions &
 20 Conferences Alliance or ECA, and we are here today to
 21 testify in support of the proposed FTC rule.
 22 THE COURT: Thank you. Go ahead, sir, when you
 23 are ready.
 24 MR. GOODWIN: Thank you, Judge Chappell. For
 25 background, ECA is a coalition of 10 professional trade

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1 and labor associations that make up the face-to-face
 2 business events industry, which includes exhibitions,
 3 conferences, trade shows and other events. What's
 4 particularly unique about our entity is that at our
 5 core we are America's small businesses helping
 6 America's small businesses.
 7 More than 99 percent of business events
 8 organizations are small businesses themselves, and more
 9 than 80 percent of the exhibitors at our exhibitions,
 10 conferences and trade shows are also small businesses.
 11 It's these small businesses that are the frequent
 12 targets of business impersonation fraud. Each of ECA's
 13 member associations are targets of business
 14 impersonation fraud, as are their members, attendees,
 15 exhibitors and others, most of whom are small
 16 businesses and entrepreneurs themselves.
 17 As you just heard from the previous speaker,
 18 the most common forms of business impersonation fraud
 19 in our industry are hotel reservation scams and
 20 attendee list sale scams. For hotel reservation scams,
 21 third-party hotel brokers use deceptive practices to
 22 market either overpriced or nonexistent hotel rooms to
 23 exhibitors and attendees at our events. Instead of
 24 providing the hotel room promised, the fraudulent
 25 brokers often make out with the victim's credit card

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1 information or provide victims with low quality rooms
 2 in remote locations far away from the event itself,
 3 often with high booking fees and cancellation
 4 penalties.
 5 For the attendee list sale scams, event
 6 exhibitors are contacted by list brokers, often daily,
 7 fraudulently claiming to have and sell the event's
 8 attendee list before the event takes place. As you
 9 just heard, these scammers use the event's name, logo,
 10 organizer's name and others in their e-mail signatures
 11 to create the illusion that their efforts are conducted
 12 with the approval of the event organizers.
 13 Now, of course these aren't the actual attendee
 14 lists. Rather, these scammers troll events related to
 15 harvest e-mail addresses which they target with
 16 phishing scams designed to obtain the exhibitor's
 17 business and financial information illegally.
 18 Judge Chappell, let me share three examples
 19 that recently crossed my desk. One, each year the
 20 Radiological Society of North America, or RSNA, brings
 21 together more than 50,000 attendees and 700 exhibitors
 22 from more than 120 countries for its annual conference.
 23 In advance of this event last year in Chicago, RSNA was
 24 alerted to no fewer than 36 fraudulent sites that were
 25 illegally advertising housing registration or attendee

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1 lists on services. For its 2023 annual meeting, RSNA
 2 has already identified several hotel scam websites that
 3 are using its trademark and logo without its
 4 permission.
 5 Similarly, the International Sign Association,
 6 or ISA, recently convened its community of nearly
 7 20,000 attendees and more than 500 exhibitors last
 8 month in Las Vegas. In the lead-up to the
 9 International Sign Expo, the Association sent more than
 10 300 cease and desist letters to hotel reservation scam
 11 and attendee list sale scam artists preying on its
 12 event. They would get contact from their exhibitors
 13 and attendees daily voicing their confusion and concern
 14 about the e-mails they were receiving, many of which
 15 used trademarked information to create the illusion of
 16 being official.
 17 Finally, just this week, one of the events
 18 upcoming conference and expos in San Diego, California,
 19 was targeted by a hotel room booking scam where the
 20 scammers harvested contact information for registered
 21 exhibitors and called them in an effort to book their
 22 hotel rooms outside of the official process or rebook
 23 existing reservations almost certainly in an attempt to
 24 obtain financial information for fraudulent purposes.
 25 Judge Chappell, these three examples illustrate

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1 why the FTC's proposed trade regulation rule is both
 2 necessary and urgent. Given the breadth of business
 3 impersonation fraud perpetrated against stakeholders
 4 across the event sector, ECA and its members support
 5 the FTC's proposed rule prohibiting the impersonation
 6 of business, nonprofit organizations and associations.
 7 We believe this rule will provide the FTC with another
 8 important enforcement tool to target those who seek to
 9 commit business impersonation fraud, and we strongly
 10 urge the FTC to finalize the rule as soon as possible.
 11 Judge Chappell, thank you for this opportunity
 12 for ECA to share its perspective with you.
 13 THE COURT: Thank you. Open Exchange, before
 14 the next speaker is up, I have a question. Can you
 15 hear me?
 16 OPEN EXCHANGE: Yes.
 17 THE COURT: I had Mr. Goodwin, who just spoke,
 18 as number 3. I have a Mr. Grossman as number 2. What
 19 list are you using?
 20 OPEN EXCHANGE: Correct, that is the right
 21 list. He dropped for about two to three seconds. I'm
 22 not sure if it was on his end or our end, but he is the
 23 next speaker.
 24 THE COURT: Okay. So for the record, we've
 25 heard number 1 and number 3, and now we are going to

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1 hear number 2, correct?
 2 OPEN EXCHANGE: Correct.
 3 THE COURT: All right. Go ahead. Announce the
 4 next speaker, please.
 5 OPEN EXCHANGE: Speaker number 2 is David
 6 Grossman. Please identify yourself by name, your
 7 company and your interest in the proceedings.
 8 MR. GROSSMAN: Good afternoon, Your Honor. My
 9 name is David Grossman. I'm the vice president of the
 10 Consumer Technology Association. I'm here on behalf of
 11 CTA to share the impact that business impersonation
 12 fraud has on our organization, our industry and the
 13 need for expedited action by the Federal Trade
 14 Commission.
 15 THE COURT: Thank you.
 16 MR. GROSSMAN: CTA is North America's largest
 17 technology trade association. Our members and
 18 customers are the world's leading innovators, from
 19 startups to global brands, helping support more than
 20 18 million American jobs. CTA also owns and produces
 21 CES, the most influential tech event in the world.
 22 Impersonation fraud is personal for CTA. In
 23 2021 and 2022, our customers reported at least 60
 24 different instances of fraudulent e-mail solicitations
 25 related to CES, with 10 additional reports coming in

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1 the month leading up to this year's show. Many of
 2 these e-mails purport to be selling CES attendee lists,
 3 which CTA does not sell or otherwise make publicly
 4 available. The fraudulent e-mails often use either the
 5 CES logo or other CTA or CES branding in an attempt to
 6 deceive our customers.
 7 Fraudsters have also attempted to commit CES
 8 exhibit space fraud, victimizing startups seeking to
 9 showcase their products. In one case, a bad actor
 10 impersonated a CTA employee to bilk thousands of
 11 dollars from a potential CES exhibitor in exchange for
 12 nonexistent booth space. CTA also sees multiple
 13 instances of website domain scams each year. While we
 14 attempt to stop these scams, existing tools offer
 15 limited recourse. Like many victims, if contact
 16 information can be located, CTA typically starts by
 17 sending cease and desist letters to imposter domain
 18 name owners. While legitimate businesses usually will
 19 comply with the cease and desist letters, fraudsters
 20 typically ignore such correspondence.
 21 CTA also routinely files trademark infringement
 22 claims with the relevant domain registrar. However, we
 23 are not always able to pursue an informal trademark
 24 infringement claim without also filing a formal
 25 complaint in a court of competent jurisdiction. Many

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1 of our customers have shared their own stories of how
 2 impersonation scams harm their brand and reputation,
 3 leading to significant consumer confusion and economic
 4 losses.
 5 CTA therefore strongly supports the FTC's
 6 proposed rule targeting government and business
 7 imposters and is encouraged as well by the NPRM's
 8 inclusion of nonprofit organizations in the proposed
 9 definition of business. An appropriately tailored rule
 10 will benefit consumers and businesses by helping to
 11 combat damaging brand impersonation fraud committed
 12 through various communications channels.
 13 As drafted, proposed Section 461.4 would make
 14 it unlawful to, quote, provide the means and
 15 instrumentalities, end quote, for a government or
 16 business impersonation scam. CTA supports making clear
 17 that a party can violate the FTC Act by providing the
 18 means and instrumentalities for such fraud, including
 19 actors that intentionally create misleading collateral
 20 such as fake credentials or the design imposter
 21 websites. However, we are concerned that the proposed
 22 rule does not explicitly include a knowledge
 23 requirement and could be misinterpreted to impose
 24 strict liability on a platform that unwittingly passes
 25 along another entity's false claims to third parties

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1 that then deceive consumers.
 2 To be consistent with the discussion in the
 3 NPRM, CTA encourages the FTC to make clear that the
 4 proposed rule only applies to entities that have
 5 knowledge or that consciously avoid knowing they are
 6 making representations being used to commit
 7 impersonation fraud under Sections 461.2 or 461.3.
 8 Adding this knowledge requirement to the text of the
 9 rule will promote regulatory predictability and
 10 compliance.
 11 Ultimately, business impersonation fraud is not
 12 unique to our association or our industry. On
 13 March 31st, more than 200 trade associations and
 14 professional organizations in the face-to-face business
 15 events industry joined CTA in urging the Agency to
 16 proceed expeditiously to a final rule targeting
 17 government and business imposters. Today's hearing is
 18 an important step in reaching that goal. Thank you,
 19 Your Honor, again for the opportunity to testify, and
 20 we look forward to working with the FTC to combat this
 21 persistent problem.
 22 THE COURT: Thank you, sir. Open Exchange.
 23 OPEN EXCHANGE: Speaker number 4 is Nicole
 24 Bowman. Please identify yourself by name, your company
 25 and your interest in the proceedings.

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1 THE COURT: Hold on. Open Exchange, I don't
 2 think you heard me. I had a question for you before we
 3 start with the next speaker. Can you hear me now?
 4 OPEN EXCHANGE: Yes, Your Honor.
 5 THE COURT: I don't see any way for me to
 6 identify who is, for example, in the speaker's room.
 7 Could someone from Open Exchange please e-mail the list
 8 of everyone in the speaker's room, everyone who is in
 9 the speaker's room, to my staff.
 10 OPEN EXCHANGE: Yes, Your Honor.
 11 THE COURT: Let's have the next speaker,
 12 please.
 13 OPEN EXCHANGE: Speaker number 4 is Nicole
 14 Bowman. Please identify yourself by name, your company
 15 and your interest in the proceedings.
 16 MS. BOWMAN: Good afternoon. I'm Nicole Bowman
 17 with the International Association of Exhibitions and
 18 Events or IAEE. I want to thank the FTC for allowing
 19 me to address you today on this important topic of
 20 business impersonation fraud and how it affects the
 21 business-to-business exhibitions or trade show industry
 22 in the U.S. and has for decades.
 23 Our members are trade show organizers and the
 24 suppliers that support this vast ecosystem of commerce.
 25 Today I'm here representing this industry, which,

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1 according to data from CEIR, the Center For Exhibition
 2 Industry Research, contributed more than \$100 billion
 3 to the USGDP in 2019. Trade shows or buyer/seller
 4 marketplaces are a key driver of commerce and occur in
 5 all 50 states and Puerto Rico, and they take place in
 6 every major city in the U.S.
 7 Business impersonation fraud is a multilayered
 8 crime because it not only affects trade show organizers
 9 who spend countless hours and legal dollars for cease
 10 and desist letters to no avail, but it also affects the
 11 tens of millions of professional attendees and
 12 exhibitors who are victims of fake websites, phone
 13 calls and e-mail outreach where they have given their
 14 personal information for hotel bookings and other
 15 event-related services. These websites and call
 16 centers commit copyright and trademark infringement by
 17 recreating sites to mirror official event websites,
 18 stealing millions of dollars from consumers and sowing
 19 distrust with brands through no fault of the show
 20 organizer or their event stakeholders.
 21 As I mentioned, this crime has been occurring
 22 for decades and will not stop until there are true
 23 consequences for perpetrators. As it stands now, if a
 24 trade show organizer wins a judgment, which is rare,
 25 against a scammer, there is no payout. Just a paper

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1 judgment. Therefore, no consequences.
 2 At IAEE, we hold a trade show annually, and our
 3 staff receives no less than 75 attempts each year for
 4 our one show trying to scam our own attendees and
 5 exhibitors. Our show is one of roughly 9600 that take
 6 place every year in the U.S. The magnitude of this
 7 multilayered crime is staggering. IAEE and its members
 8 support the proposed rule prohibiting government and
 9 business impersonation and encourage the FTC to
 10 complete this work and enact tough policies to protect
 11 our consumers. Thank you for your time.
 12 THE COURT: Thank you. Open Exchange, please
 13 announce the next speaker.
 14 OPEN EXCHANGE: Speaker number 5 is Michelle
 15 Mason. Please identify yourself by name, your company
 16 and your interest in the proceedings.
 17 MS. MASON: Good afternoon, Your Honor. Thank
 18 you for having ASAE here today. I am Michelle Mason,
 19 president and CEO of ASAE, the American Society For
 20 Association Executives. Our interest centers around
 21 reputation and economic damage to associations. ASAE
 22 supports the FTC's proposed rule to prohibit
 23 impersonation of businesses, nonprofit and government,
 24 and we commend your efforts to protect consumers from
 25 impersonation scams.

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1 The American Society For Association Executives
 2 is the association for associations, the trusted
 3 resource for information and expertise in firsthand
 4 knowledge about associations. We represent nearly
 5 48,000 association leaders who comprise our membership
 6 but also the entire ecosystem of trade associations,
 7 professional societies and similar nonprofits.
 8 Associations represent a nearly \$12 billion
 9 economic impact with more than 10,000 shows annual.
 10 ASAE stands alongside our colleagues, Consumer
 11 Technology Association, RIMS, IAEE, Exhibitions and
 12 Conference Alliance and others in our community. We
 13 are pleased that the proposed rule includes nonprofit
 14 organizations under the business definition.
 15 The potential impact of the proposed rule is
 16 critical because associations strengthen the economy in
 17 many ways such as hosting shows, which you have
 18 previously, heard conventions, business meetings and
 19 work force development programs which create valuable
 20 opportunities for associations to advance their
 21 mission.
 22 According to a recent study, associations
 23 commit 35 percent of their budget on average to the
 24 economy through the promotion of events. You heard
 25 significant metrics from our colleagues today.

22

1 Economic and reputational risks to associations is
 2 important, and that's why this issue needs to be
 3 addressed. Fraudulent impersonation has increased
 4 sharply in recent years, made easier by technology and
 5 the internet. However, we believe that technology can
 6 positively support correcting this issue.
 7 Bad actors field a variety of scams offering
 8 nonexistent hotel reservations or registrations for
 9 upcoming meetings by impersonating representatives of
 10 their sponsor, promoting fictitious or nonexistent
 11 contact lists of meeting attendees and similar fraud.
 12 This progression damages valuable revenue streams,
 13 tarnishes brand reputations, violate innocent consumers
 14 who play their important role in our economy. It's not
 15 just the conference attendee who purchased a four-night
 16 hotel stay, only to arrive and find no such
 17 arrangements exist. Not just the employee who alerts
 18 supervisors to an expensive and embarrassing mistake.
 19 This fraud harms others in our ecosystem who service
 20 our meetings and support our nation's economy.
 21 Let me share a story from one of our members,
 22 Angela Hollis, president of the Georgia Association of
 23 Convenience Stores. From Ms. Hollis: For over 20 years
 24 our state association has held members hotel trust to
 25 the premium. When a spammer solicited dues-paying

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1 members and claimed they can provide for a fee a member
 2 benefit that GACS provides, it creates skepticism and
 3 suspicion among our membership. Members wonder how
 4 spammers collect their personal information and that
 5 GACS sells it for profit, thus violating privacy. When
 6 we hold our events, it's in our best interest to share
 7 members' information with their colleagues. If we post
 8 information anywhere at all on the internet or even an
 9 app, scammers find it and exploit it. We have e-mailed
 10 cease and desist notices to every spammer GACS
 11 encounters, only to find our communications lead to
 12 dead ends. Scam solicitations weaken members' trust,
 13 violate ethical standards and are morally unacceptable.
 14 And ASAE has experienced the same issues. Our
 15 members are being impacted on a significant level. We
 16 realize that cease and desist letters are no longer
 17 effective, so we do not advise our members pursue them.
 18 They are just a waste of time and time lost. As long
 19 as scammers and other bad actors can operate with ease,
 20 our community and our economy remain at risk.
 21 Thank you for your time and your attention to
 22 this critical matter. I'm honored to represent the
 23 association community and speak to you today in support
 24 of the FTC's proposed rule. Thank you, Your Honor.
 25 THE COURT: Thank you. And I'm going to note

24

1 for the record, I have checked the video feed, and the
 2 speaker looked normal but it shows me moving in slow
 3 motion when I blink especially. So I just want
 4 everybody to know I'm not moving in slow motion. Thank
 5 you. Go ahead, Open Exchange, with the next speaker.
 6 OPEN EXCHANGE: Speaker number 6 is William
 7 MacLeod. Please identify yourself by name, your
 8 company and your interest in the proceedings.
 9 MR. MACLEOD: Thank you. I am William MacLeod,
 10 a partner at Kelley Drye & Warren, LLC, and I thank
 11 you, Your Honor, and the Commission for holding this
 12 hearing. I am appearing as an attorney who represents
 13 parties in advertising investigations and disputes.
 14 The views I express are my own. Not necessarily those
 15 of the firm or anyone associated with it.
 16 But like most lawyers, I spend most of my time
 17 advising people on how to comply with the law, and this
 18 proposed rule raises difficult questions of compliance
 19 for us advertisers as well as the advisors who counsel
 20 the advertisers. Let me illustrate with a conversation
 21 I could have with a client who wants to advertise a new
 22 line of electric cars. The client calls me with big
 23 news: Our engineers have developed a battery that
 24 charges in half the time and goes twice as far as
 25 anything out there today. We are ready to launch.

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1 I say, "wow, that could be a game changer.
 2 What is the pitch?" Here you go. It's a Friday
 3 afternoon in the office of a famous senator from
 4 Kentucky. He calls his staff in and says, "Pack a bag.
 5 We are going to the Derby." They head down to the
 6 garage, hop in their new SUV and start a 600-mile trip
 7 to Churchill Downs. Along the way, they outrun
 8 Corvettes and they pass cars stalled along the side of
 9 the road, obviously out of gas. They pull into
 10 Churchill Downs on race day, all the way 600 miles in
 11 one charge. Trainers and jockeys and horses, everyone
 12 admires the car. Nobody notices the senator.
 13 I say, "That could become a classic ad." The
 14 client asks, "Do you see any issues?" "Well, you are
 15 going to need to substantiate your faster charge and
 16 think of potential implied claims of longer range than
 17 gas cars, faster than Corvettes. Those are going to
 18 attract attention. You are going to need solid data to
 19 fend off challenges."
 20 Now, there's one other issue. This ad would
 21 violate the FTC's impersonation rule. Characters in
 22 settings are not allowed to pose as officials or
 23 entities of government or business. This ad has all
 24 four: A senator, his office, Churchill Downs, jockeys
 25 and trainers. Our client is incredulous. "What, are

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1 you serious? Who is going to believe any of this is
 2 real? These actors aren't the people they play. These
 3 are mockups."
 4 I sympathize and say, "I agree. These
 5 impersonations won't fool anyone, and under the law
 6 that used to apply, you wouldn't have to worry about
 7 them. Ads that did not mislead reasonable people to
 8 their detriment weren't illegal. The rule changed
 9 that. Its language bans false depictions and
 10 affiliations, period. And once a rule applies, forget
 11 about arguing that you didn't deceive anyone. Remember
 12 when one of your dealers got caught failing to post a
 13 used car window sticker? No deception alleged in that
 14 case. He just broke the rule and he paid. Your energy
 15 claims are going to be magnets for scrutiny. If the
 16 Commission investigates and finds fault with them, the
 17 impersonations will open the door to civil penalties."
 18 I would like to tell you the FTC staff won't be
 19 tempted to use civil penalty authority, but the
 20 penalties are tempting tools. The rule, as written,
 21 gives them that tool. There goes a nervous client who
 22 may be looking for other ideas.
 23 Let me finish by saying I support an
 24 interpretation rule. My comment on the NPRM I said
 25 penalizing fraudsters and compensating victims are

27

1 important objectives. A rule could enhance that
 2 enforcement. This rule would make it easier to catch
 3 con artists pretending to be government officials and
 4 company execs, and that is as it should be.
 5 Unfortunately, it also authorizes penalties for honest
 6 marketing and threatens anyone involved in it.
 7 The rule just needs some clarification. As
 8 written, it bans all false impersonations, but all
 9 impersonations are false. It needs to target something
 10 more narrow. It needs to target deceptive, dishonest
 11 or fraudulent interpretations. Another approach, it
 12 could prohibit particular scenarios that fraudsters
 13 use, and we heard some of them already today, but
 14 somehow it needs to distinguish the good from the bad
 15 or a lot of good ads are going to disappear.
 16 Likewise, the rule needs to clarify that
 17 providing the means and instrumentalities doesn't
 18 already expose -- automatically expose everyone
 19 involved, from the actors to the ISPs to civil
 20 penalties. People unaware of a fraud should not face
 21 massive liability for it.
 22 Thank you, Your Honor. That concludes my
 23 statement.
 24 THE COURT: Thank you. Let's have the next
 25 speaker, please.

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1 OPEN EXCHANGE: Speaker number 7 is Josh Bercu.
 2 Please identify yourself by name, your company and your
 3 interest in the proceedings.
 4 MR. BERCU: Thank you. My name is Josh Bercu,
 5 and I'm vice president for policy and advocacy at U.S.
 6 Telecom - The Broadband Association.
 7 U.S. Telecom is the premier trade association
 8 representing service providers and suppliers for the
 9 communications industry. U.S. Telecom also leads the
 10 industry trade group, a collaborative effort of
 11 companies across the communications industries to trade
 12 and identify the source of illegal robocalls. I serve
 13 as executive director of that effort.
 14 U.S. Telecom supports FTC and other government
 15 agency efforts to hold accountable those responsible
 16 for impersonation-based fraud, as our members'
 17 customers are the victims of such fraud, which is why
 18 we are interested in this proceeding.
 19 U.S. Telecom members are particularly active
 20 fighting robocall-based impersonation fraud as well as
 21 trademark and domain name squatting abuse. Two-thirds
 22 of the illegal robocalls traced by the industry concern
 23 fraudulent impersonation of government agencies,
 24 utilities and companies. Our effort, combined with
 25 targeted law enforcement, including through the FTC's

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1 Project Point of No Entry initiative is proving
 2 impactful. Once prolific robocalls from fraudsters
 3 pretending to be the Social Security Administration,
 4 for instance, are increasingly rare, But bad actors are
 5 now shifting to new tactics such as highly targeted
 6 and, unfortunately, highly successful attacks where the
 7 fraudster may pretend to be a particular customer's
 8 bank, for example. Continued law enforcement vigilance
 9 in partnership with and across the industry is critical
 10 to investigate such attacks and hold the fraudsters
 11 accountable. Our members also are active protecting
 12 their customers and brand from trademark and
 13 cybersquatting abuses.

14 As we noted in our written comments on the
 15 Notice of Proposed Rulemaking, one fundamental
 16 challenge in combatting website impersonation is the
 17 current lack of access to domain name WhoIs
 18 information. Today, critical WhoIs information is
 19 either totally dark or references proxy privacy
 20 services rather than the real person or legal entities
 21 behind the registration of fraudulent and infringing
 22 domains. Domain name registrars, registries and proxy
 23 privacy services are largely unresponsive to requests
 24 to access this data which is needed to protect
 25 customers and users from such frauds. We, therefore,

30

1 urge the FTC to address the need for transparent domain
 2 name registrant information by requiring timely
 3 disclosure of accurate information to the FTC and
 4 victims of website impersonation upon request.

5 Finally, consistent with discussion in the
 6 Notice of Proposed Rulemaking and relevant case law, we
 7 encourage the FTC to make clear in the text of the
 8 impersonation rule itself that liability for providing
 9 the means and instrumentalities of the illegal
 10 impersonation only attaches when a person has knowledge
 11 or reason to expect it is providing such a means and
 12 instrumentalities. Making this clarification will help
 13 to avoid confusion about the application of the rule to
 14 intermediaries that are unknowingly unintentional
 15 conduits for impersonation fraud.

16 Thanks again for the opportunity to speak, and
 17 we stand ready to continue to partner with the FTC and
 18 other government agencies to protect our customers from
 19 impersonation fraud. Thank you.

20 OPEN EXCHANGE: Judge, you are muted.

21 THE COURT: Let's have the next speaker,
 22 please.

23 OPEN EXCHANGE: Speaker number 8 is Neil
 24 Chilson. Please identify by yourself by your name,
 25 your company and your interest in the proceedings.

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1 MR. CHILSON: Good afternoon, Your Honor. I am
 2 Neil Chilson, a senior research fellow at the Center
 3 For Growth and Opportunity at Utah State. Research is
 4 how key institutions ignite economic growth and
 5 increase opportunity for all.

6 From 2013 to 2019, I was an employee of the
 7 FTC, first as an attorney-advisor to Acting Chair,
 8 Maureen Ohlhausen, and then as the acting chief
 9 technologist for the Agency. I do not represent any
 10 parties in this matter and these views are my own. My
 11 interest in this proceeding is as a consumer with a
 12 stake in efficient and effective fraud enforcement and
 13 as a former FTC employee proud of the antifraud work
 14 that I contributed to.

15 As the record clearly shows, imposter fraud is
 16 a too common occurrence and costs consumers and
 17 businesses millions of dollars a year. We need a good
 18 rule here, one that effectively targets fraud with
 19 minimal impact on lawful behavior and that is legally
 20 sustainable. To that end, two points.

21 First, the rule, as written, unlike every other
 22 Section 18 rule, is broader than Section 5 and ought to
 23 be narrowed. Second, the FTC case law is indefinite on
 24 the contours of means and instrumentalities. The
 25 record shows that this provision is already being

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1 misunderstood. The FTC should correct this
 2 misunderstanding.

3 Together these issues mean that this proceeding
 4 may have failed to put potentially affected parties on
 5 notice, leaving a factual gap in the record and in the
 6 Agency's regulatory impact analysis. First, the text
 7 of the rule is overly broad. This proceeding is
 8 targeted at addressing impersonation fraud and scams in
 9 commerce acts that clearly violate Section 5. Yet, as
 10 the rule as written declares and as Mr. MacLeod
 11 mentioned earlier, it declares unlawful activities that
 12 would not violate Section 5's prohibition on deceptive
 13 acts or practices. The rule does not reference
 14 unfairness or deception or note that prohibited
 15 activities must be in commerce. On its face, the draft
 16 rule would prohibit a comedian from impersonating Elon
 17 Musk, John Ratzenberger from portraying a mailman or a
 18 kid from dressing up as Abraham Lincoln. With the
 19 means and instrumentalities provision, it would appear
 20 to be unlawful to even provide an Abraham Lincoln
 21 costume to said child. Of course, courts would not
 22 permit such an overbroad application of the rule under
 23 Section 5, and it seems unlikely that this FTC would
 24 spend its resources pursuing cases that the courts
 25 would reject out of hand, but rules should be written

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1 assuming that some future leadership might seek to
 2 abuse them, perhaps to chill unflattering portrayals of
 3 national politicians.
 4 The NCRM states that Section 5 hems in the
 5 broad language of the rule, but that gets the purpose
 6 of FTC's rulemaking backwards. The text of the rule
 7 should clearly delimit a subset of practices prohibited
 8 by Section 5. Not the other way around. Indeed, every
 9 one of the six past rules created through Section 18
 10 has been written as a subset of Section 5. Every one
 11 of them specifies in the text that the prohibited
 12 conduct is in commerce. Each one also describes the
 13 prohibited conduct that these are an unfair act or
 14 practice or a deceptive act or practice or both. For
 15 example, the Used Motor Vehicle Trade Regulation Rule
 16 states it is a deceptive act or practice for any used
 17 vehicle dealer, when that dealer sells or offers for
 18 sale, a used vehicle in or affecting commerce as
 19 commerce is defined in the Federal Trade Commission
 20 Act, to misrepresent the mechanical condition of the
 21 used vehicle, et cetera. Adding similar language to
 22 the draft impersonation rule would be simple and it
 23 would still achieve the goals of the proceeding, and it
 24 would be a better match -- it would better match the
 25 text of the rule to the NPRM's description of the rule

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1 scope, helping to cure some of the notice concerns.
 2 On the second matter of means and
 3 instrumentalities provision, I echo the value of having
 4 a knowledge requirement. As former BCP director,
 5 Jessica Rich, had noted, there has been a debate over
 6 the years about the contours of means and
 7 instrumentalities, with some Commissioners saying that
 8 others are using it as a substitute for aiding and
 9 abetting a form of secondary liability not within
 10 Section 5 or the FTC's authority. Indeed, some parties
 11 in this record have made this exact mistake. The FTC
 12 must clearly articulate the proper scope of the rule,
 13 potentially by putting the standard for means and
 14 instrumentalities in the rule itself. To the extent
 15 the standard for applying means and instrumentalities
 16 liability under Section 5 is itself unclear, it is not
 17 a good candidate for rulemaking.
 18 Thank you very much, Your Honor. This
 19 concludes my statement.
 20 THE COURT: Thank you. Please announce the
 21 next speaker.
 22 OPEN EXCHANGE: Speaker 9 is Glenn Richards.
 23 Please identify yourself by name, your company and your
 24 interest in the proceedings.
 25 MR. RICHARDS: Good afternoon. My name is

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1 Glenn Richards. I'm a partner with Pillsbury Winthrop
 2 Shaw Pittman, and I am counsel for Voice on the Net
 3 Coalition or VON. VON's interest in this proceeding is
 4 the proposed liability section. VON is a trade
 5 association founded in 1996 that advocates for a fresh
 6 approach to regulation of internet communication. You
 7 could review all of VON's regulatory filings on its
 8 website, www.VON.org. VON would like to thank the
 9 Commission for the opportunity to speak today and
 10 address the proposed rule on impersonation of
 11 government and businesses.
 12 VON fully supports the FTC's efforts to curb
 13 impersonation-based fraud and to reduce spam targeting
 14 American consumers. The communication industry has
 15 already contributed significant resources to the FTC's
 16 robocall mitigation campaign, which includes
 17 implementing STIR/SHAKEN, creating robocall mitigation
 18 plans, implementing know-your-customer procedures and
 19 monitoring traffic patterns to identify and eliminate
 20 fraudulent activity. However, despite these measures,
 21 fraudsters are constantly adapting their tactics to
 22 reach American consumers. As a result, service
 23 providers must continually evolve their techniques to
 24 keep pace with emerging threats in order to protect
 25 themselves and consumers.

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1 That said, given the complexities of call
 2 routing, terminating and transit providers do not
 3 always have access to information about the content of
 4 a particular call or whether the call is illegal. The
 5 FTC proposes to impose liability on parties who provide
 6 the means and instrumentalities to violations of the
 7 prohibition against impersonation of government and
 8 businesses. VON concurs with U.S. Telecom and joins in
 9 asking the Commission to modify 461.4's proposed
 10 language to implement knowledge-based liability and
 11 make it clear that a party must have had actual
 12 knowledge or a reason to expect that it's providing the
 13 means and instrumentalities of violations of the
 14 prohibitions against impersonation of government and
 15 businesses. As currently drafted, 461.4 could be read
 16 to impose strict liability on any party who even
 17 knowingly provides so much as a pen to a bad actor.
 18 Providers should not be held liable for the
 19 transmission of traffic related to illegal government
 20 impersonation campaigns conducted on their network that
 21 they had no knowledge or reason to know of such
 22 impersonation. The liability standard should be based
 23 on knowledge and the lack of action to prevent
 24 fraudulent activity by upstream providers or customers.
 25 Importantly, the FTC should not impose

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1 liability where service providers have implemented
 2 robust know-your-customer checks and verification of
 3 the customer identity prior to providing service.
 4 In sum, VON strongly urges the FTC to revise
 5 the proposed rule to impose liability only where a
 6 party acted knowingly. That concludes my remarks.
 7 Thank you.
 8 THE COURT: Thank you. Next speaker, please.
 9 OPEN EXCHANGE: Speaker number 10 is Paul
 10 Benda. Please identify yourself by name, your company
 11 and your interest in the proceedings.
 12 MR. BENDA: Thank you very much. My name is
 13 Paul Benda. I'm a senior vice president for
 14 Operational Risk and Cybersecurity.
 15 THE COURT: Hold on. This is speaker number
 16 10?
 17 OPEN EXCHANGE: Yes, sir.
 18 THE COURT: Thank you, sir. Go ahead. We'll
 19 restart your clock.
 20 MR. BENDA: My name is Paul Benda. I'm here
 21 from the American Bankers Association. I'm here to
 22 address the risk to American citizens from
 23 impersonation scams. The American Bankers Association
 24 represents banks of all sizes, from small community
 25 banks to large institutions. Impersonation scams

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1 affect the entire financial sector, which is why ABA
 2 partnered with other trades when responding to the
 3 Notice of Proposed Rulemaking and impersonation scams.
 4 We included representatives from the National
 5 Association of Federally Insured Credit Unions, the
 6 Credit Union National Association, Mortgage Bankers
 7 Association and American Association of Healthcare
 8 Administration Management. These associations strongly
 9 support the Federal Trade Commission's proposed rule.
 10 We believe existing remedies are currently
 11 insufficient to stem the increasing tide of
 12 impersonation scams, and bad actors regularly
 13 impersonate banks credit unions and other financial
 14 service providers, healthcare companies and other
 15 legitimate callers by illegally spoofing phone numbers
 16 belonging to these businesses. Additionally, bad
 17 actors send text messages from numbers that appear to
 18 belong to legitimate businesses, often including links
 19 to fake websites or send a text message from the bad
 20 actor's own number, making it appear that it is from a
 21 legitimate business, with the intent to defraud the
 22 recipient.
 23 According to AARP, illegal text messages cost
 24 consumers nearly \$10 billion in 2021. Currently
 25 89 billion texts were sent in 2021, up 58 percent from

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1 2020. Fraudulent calls were at 72.2 billion in 2021.
 2 Clearly this is an effort that is growing and just
 3 expanding the risk to American consumers. The goal of
 4 both call and text spoofing is to lead the recipient to
 5 believe the call or text was placed by a company with
 6 whom the recipient is doing business and to induce the
 7 consumer to divulge important information, such as
 8 account numbers, log-in credentials or other personally
 9 identifiable information to the fraudster, as well as
 10 induce them to send money through different
 11 peer-to-peer payment scams so they can recoup funds
 12 from the consumer.
 13 Bad actors have also illegally spoofed phone
 14 numbers belonging to the government, including the
 15 Consumer Financial Protection Bureau, CDC, IRS, US
 16 Treasury, posing as employees of these companies, all
 17 with intent to defraud consumers. We strongly urge the
 18 Commission to finalize the proposed rule as soon as
 19 feasible and once finalized initiate enforcement action
 20 against entities and individuals that impersonate the
 21 business. We support the Commissions' proposal to
 22 impose liability not only on those entities that
 23 impersonate a government or business but also on those
 24 entities that provide the means and instrumentality
 25 that allow another to impersonate a government or

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1 business.
 2 Once the rule is finalized, we urge the
 3 Commission to impose liability on telephone companies
 4 that provide consumers with unauthenticated and
 5 falsified caller ID information in the consumer's
 6 caller ID display. For example, those voice service
 7 providers that provide the means and instrumentalities
 8 for another entity to impersonate a government or
 9 business. We understand there are technical challenges
 10 fully implementing the caller ID authentication
 11 protocol STIR/SHAKEN that the SEC is running but
 12 strongly believe that unless data can be authenticated
 13 at the highest level from the origination point of the
 14 call all the way through to the consumer, that they
 15 should not be allow to show any name on a consumer
 16 device and it should show as unknown caller. Entities
 17 that do provide names on caller ID that aren't fully
 18 authenticated throughout the entire chain of the call
 19 should know that they are providing the means and
 20 instrumentalities for criminals to scam American
 21 consumers, and they should be held liable for those
 22 activities.
 23 America's banks are on the front line in this
 24 battle against scammers and invest billions of dollars
 25 every year in antifraud and cybersecurity measures to

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1 protect consumers and their accounts, but banks need
 2 help in protecting their customers, and we strongly
 3 urge the Commission to finalize the proposed rule as
 4 soon as feasible and implement enforcement shortly
 5 thereafter. Thank you.
 6 THE COURT: Thank you. Next speaker, please.
 7 OPEN EXCHANGE: Speaker 11 is Christopher
 8 Shipley. Please identify yourself by name, your
 9 company and your interest in the proceedings.
 10 MR. SHIPLEY: Good afternoon, Your Honor. My
 11 name is Christopher Shipley, and I serve as the
 12 executive director of public policy for INCOMPAS.
 13 INCOMPAS represents communications and technology
 14 companies, both large and small, offering a wide array
 15 of broadband video and data offerings. Our members
 16 believe the proposed rule could impact these services.
 17 INCOMPAS, the Internet and Competitive Networks
 18 Association, appreciates the opportunity to discuss the
 19 Federal Trade Commission's trade regulation rule on
 20 impersonating governments and businesses this
 21 afternoon. Our members represent a variety of
 22 different voice service models, including traditional
 23 competitive local exchange carriers and Voice over
 24 Internet Protocol providers that serve residential and
 25 enterprise customers in markets across the country.

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1 These providers are committed to mitigating the threat
 2 of illegal robocalls from bad actors impersonating
 3 government entities and businesses, while working with
 4 federal and state agencies to help identify ways to
 5 preserve competition and innovation in the market.
 6 INCOMPAS supports the efforts of the Federal Trade
 7 Commission to bring fraudsters to heel for
 8 impersonating government entities and businesses.
 9 Our primary goal today is to encourage the
 10 Commission to consider changes to Section 461.4 of the
 11 proposed rule, which would make it unlawful to provide
 12 the means and instrumentality to impersonate a
 13 government entity or business, a rule which, without
 14 revision, could implicate voice service providers that
 15 have taken active and positive steps to eliminate and
 16 mitigate the threat of impersonation through illegal
 17 robocalls and spam on their networks. We fully support
 18 efforts to reduce fraud and spam targeting American
 19 consumers.
 20 One of our members, Microsoft, has contributed
 21 at great length to this proceeding and is one of the
 22 businesses that fraudsters regularly impersonate to
 23 defraud U.S. consumers. The industry has contributed
 24 significant resources to the Federal Communication
 25 Commission's robocall mitigation campaign and efforts,

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1 which includes implementing the STIR/SHAKEN caller ID
 2 authentication framework, creating detailed robocall
 3 mitigation plans, implementing know-your-customer and
 4 know-your-upstream-provider procedures and monitoring
 5 traffic patterns to identify and eliminate fraudulent
 6 activity.
 7 Furthermore, our members are active
 8 participants in the industry traceback group robocall
 9 mitigation efforts through the North American Numbering
 10 Council and industry activities on IP internet
 11 connections that are intended to facilitate caller ID
 12 authentication from a call point of origination to its
 13 termination. Despite these robust robocall mitigation
 14 measures, fraudsters are constantly adapting their
 15 tactics to reach American consumers. Therefore,
 16 providers must continually evolve their techniques to
 17 keep pace with these emerging threats.
 18 While intermediate and terminating providers
 19 have been successful in investigating illegal robocall
 20 campaigns and taking mitigation steps to remove those
 21 calls before they can be completed, ubiquitous call
 22 blocking of fraudulent robocalls is extremely
 23 difficult, if not impossible, to implement.
 24 Terminating providers in particular, blocking illegal
 25 robocall campaigns would require extensive advance

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1 information about the kind of traffic that would need
 2 to be blocked. As constructed, the FTC's proposed rule
 3 would leave these providers open to liability for any
 4 failure to block an illegal call.
 5 INCOMPAS suggests that providers should not be
 6 held strictly liable for the transmission of traffic
 7 related to illegal government impersonation campaigns
 8 conducted on their networks if they are not aware of
 9 them. The liability standard should be based on
 10 knowledge and the lack of action to prevent fraudulent
 11 activity by upstream providers for customers. INCOMPAS
 12 would like to align itself with the position of the
 13 Consumer Technology Association, which recommended that
 14 the FTC not focus its rulemaking efforts on
 15 communications channels.
 16 Furthermore, we agree with stakeholders like
 17 U.S. Telecom, which in recommending liability for
 18 individuals or entities that provide the means and
 19 instrumentalities to impersonators like robocall
 20 enablers, noted that the proposed rule should make it
 21 clear that liability requires proof of knowledge of
 22 such fraud or conscious avoidance of it consistent with
 23 FTC precedent and Section 5 jurisprudence and Somos,
 24 which similarly encouraged the prosecution of those
 25 knowingly aiding and abetting impersonated toll-free

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1 numbers.
 2 With limited exceptions, the nation's voice
 3 service providers have been steadfast partners to the
 4 FCC, FTC and state and federal law enforcement agencies
 5 to help mitigate the threat of illegal robocalls and
 6 text messaging. INCOMPAS, on behalf of its members,
 7 urges the Commission to consider this minor change to
 8 Section 461.4 to ensure that fraudsters and not voice
 9 service providers are the subject of FTC enforcement
 10 actions. Thank you, Your Honor.
 11 THE COURT: Thank you. Next speaker, please.
 12 OPEN EXCHANGE: Speaker number 12 is Peter
 13 Cassidy. Please identify yourself by your name, your
 14 company and your interest in the proceedings.
 15 MR. CASSIDY: My name is Peter Cassidy. I am
 16 secretary general of the Anti-Phishing Working Group.
 17 The Anti-Phishing Working Group, known as APWG,
 18 was established in 2004 to exchange data related to
 19 cyber crimes, mostly common cyber crimes that most
 20 often abuse brands, identities and the trademarks of
 21 institutions that are being targeted, whose customers
 22 are being targeted in those kinds of attacks. We have
 23 a large membership that includes law enforcement,
 24 government ministries, commercial enterprises,
 25 technology companies and of course, financial services

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1 companies that have been the focus of and a common
 2 source of retail-level cyber crime since 2003.
 3 APWG and its directors believe the scope of the
 4 new rule should address the use of maliciously
 5 registered domain names and the impersonation schemes
 6 that are besetting banks, government agencies, law
 7 enforcement agencies, government ministries worldwide.
 8 Domain names are used for an ever increasing number of
 9 impersonation-related schemes, including phishing,
 10 online ad fraud, knock-off commercial fraud,
 11 counterfeiting and much, much more. Hundreds and
 12 hundreds of commercial brands and institutional
 13 identities, including government ministries and law
 14 enforcement agencies, most specifically the IRS, are
 15 abused every single month in the development and
 16 prosecution of phishing campaigns reported to the APWG.
 17 This shows no signs of abating. The first victim of
 18 most all phishing attacks is the brand or the trademark
 19 of a commercial enterprise or a government agency or an
 20 NGO. That hasn't changed since 2003.
 21 The FTC should consider also, in the
 22 development of this dimension of the new rule, the
 23 mobilization of WhoIs registrar data that is
 24 established in the creation of a registered domain
 25 name. Since 2018, most of this data has gone dark.

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1 The establishment of a GDPR was used as a pretext for
 2 ICANN, the governing agency in this space, to create
 3 its own temporary specification to respond to the GDPR,
 4 and their response was -- their only way to comply was
 5 to ask the registrars to put WhoIs data. This was a
 6 grave error that has prevented a great deal of
 7 preventative measures from being used by our members
 8 and commercial agencies worldwide. We believe that
 9 accurate, precise WhoIs data that is used to establish
 10 impersonated domain names is vital to the investigation
 11 and prevention of impersonation scams. As one former
 12 FTC chairman testified in 2006, having realtime access
 13 to WhoIs data is particularly important for civil law
 14 enforcement agencies like the FTC, particularly in
 15 cross-border cases whose databases are often a primary
 16 source of information available to the Federal Trade
 17 Commission about fraudulent domain name registrants.
 18 Finally, we should ask the FTC to consider the
 19 role of trusted notifiers. If WhoIs data is to remain
 20 limited access, it is important that legitimately
 21 authorized parties like private law enforcement and
 22 industrial entities have access to the data in realtime
 23 and as quickly as possible in order to exercise
 24 preventative measures that are most powerful in the
 25 programmatic suppression of cybercrime.

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1 Lastly, I would just like to make the point
 2 that the FTC and ministries of key nations can't act
 3 soon enough. We are way behind the curve. Year after
 4 year we report record numbers of phishing campaigns
 5 going up, record numbers of brands being attacked, and
 6 it never changes. It never, ever goes down. We
 7 approached ICANN with aspects of this interpretation of
 8 GDPR, and they responded they can't fix international
 9 law. We are helpless. Fine. If they are indeed
 10 helpless, it is time for the United States of America
 11 and the FTC to somehow provide guidance on how these
 12 exposures will be managed, as the governing agency
 13 would assume to do that work has abandoned all
 14 responsibility or interest.
 15 If the Federal Trade Commission has any
 16 interest in discussions of how operations work from
 17 this space, let us know. We are always happy to help
 18 and engineers are always happy to explain what they do
 19 and why they do it. Thank you.
 20 THE COURT: Next speaker, please.
 21 OPEN EXCHANGE: Speaker number 13 is Joni
 22 Lupovitz. Please identify yourself by name, your
 23 company and your interest in the proceedings.
 24 MS. LUPOVITZ: Good afternoon, Your Honor. I'm
 25 Joni Lupovitz.

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1 THE COURT: Go ahead. We can see you now.
 2 MS. LUPOVITZ: Good afternoon, Judge Chappell.
 3 I'm Joni Lupovitz, vice president and associate general
 4 counsel at NCTA, The Internet & Television Association.
 5 Our members include the nation's largest cable
 6 operators and broadband providers as well as
 7 programming networks that create the TV shows and
 8 movies that consumers enjoy. We appreciate the FTC's
 9 work on the proposed impersonation rule and the
 10 opportunity to participate today.
 11 NCTA members have significant interest in this
 12 proceeding and in support of an impersonation rule that
 13 is carefully calibrated to target problematic behavior.
 14 To avoid speaking too broadly, we urge the Commission
 15 to clarify that both actual knowledge and deception are
 16 required for conduct to be actionable under the rule.
 17 Let me begin with our interests. Imposter
 18 scams continue to be a prevalent, persistent and
 19 pernicious problem for NCTA member companies and their
 20 customers. Scam artists have impersonated our members'
 21 brands, misappropriated logos and posed as employees in
 22 a variety of frauds, including payment scams,
 23 prepayment scams, sales of content, fake job postings
 24 and more. We've recently seen increasingly
 25 sophisticated and technical means used in

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1 impersonation. These frauds have duped consumers into
 2 providing credit card, bank account and other payment
 3 and personal information, interfered with customer
 4 relationships and caused financial loss for consumers
 5 and businesses. Our products provide more detail about
 6 the scams in the significant resources that our members
 7 spend hiding imposter fraud, educating customers and
 8 supporting law enforcement. That's why NCTA supports
 9 an appropriately scoped FTC rule to prohibit
 10 impersonation scams along with robust enforcement to
 11 help stop and deter this fraud, to impose civil
 12 penalties against scam artists and to redress victims.
 13 At the same time, we are concerned that the
 14 impersonation rule, as proposed, is overbroad and could
 15 have uncertain application and unintended consequences.
 16 We respectfully urge the Commission to carefully craft
 17 the regulation so that the plain language clearly
 18 describes the intended scope. Simply put, the rule
 19 should say what it means and mean what it says.
 20 Former Director, Bill MacLeod, pointed out that
 21 the proposed impersonation rules are not limited to any
 22 context, not limited to fraud, deception or nefarious
 23 activity. He argues that advertisers, actors and the
 24 businesses and media supporting them don't have
 25 adequate notice to the activities that the Commission

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1 may target. While we don't think the Commission
 2 intends the impersonation rule to prohibit TV and movie
 3 portrayals, we would appreciate further clarification.
 4 The proposed prohibition on providing means and
 5 instrumentalities to impersonation is especially
 6 problematic. The Commission should explicitly
 7 incorporate the fundamental elements of both actual
 8 knowledge and deception in any final rule. Taking the
 9 proposed rule on its face, a broadband provider could
 10 be liable simply for providing internet service to its
 11 customers without any knowledge that a customer is
 12 using the service to perpetrate fraud. Businesses
 13 shouldn't be subject to potential liability if their
 14 bona fide networks, business identities, logos or other
 15 legitimate products or services are misused by
 16 imposters.
 17 Several commenters, and NCTA included, have
 18 asked the Commission to clarify that liability requires
 19 knowledge that the means and instrumentalities will be
 20 used to commit violations, and NCT also urges the
 21 Commission to clarify that liability requires providing
 22 inherently deceptive means and instrumentalities such
 23 as false claims or counterfeit items with knowledge
 24 that these means and instrumentalities can be placed in
 25 the stream of commerce and passed on to consumers. And

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1 this is consistent with FTC case law and should be
 2 explicit in any final rule.
 3 By carefully framing a means and
 4 instrumentalities rule, the FTC can hold those who
 5 intentionally enable impersonation schemes to be
 6 accountable in appropriate circumstances while
 7 shielding legitimate business activities and services
 8 from potential liability. Again, we appreciate the
 9 consideration of Your Honor, the Commission and the FTC
 10 staff. Thank you.
 11 THE COURT: Thank you. Let's hear the next
 12 speaker.
 13 OPEN EXCHANGE: Speaker 14 is Cindy Brown.
 14 Please identify yourself by name, your company and your
 15 interest in the proceedings.
 16 MS. BROWN: Can you hear me?
 17 THE COURT: Yes.
 18 MS. BROWN: Good afternoon, Your Honor. My
 19 name is Cindy Brown. I'm a proud member of the United
 20 States Olympic gold medal team, a former WNBA player
 21 and NCQA record holder. Like millions of Americans, I
 22 worked hard to live the American dream of home
 23 ownership, and my celebrity status is not a shield from
 24 being -- becoming a target of impersonation fraud.
 25 Thank you for taking the time to hear my story today in

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1 your continued efforts to discuss the FTC's work to
 2 protect Americans from unfair or deceptive practices
 3 and unfair methods of competition. My colleague,
 4 Ms. Raye Mitchell, who is in the virtual audience, and
 5 I submitted a comment online about this very important
 6 issue of protecting Americans from business name
 7 impersonation fraud and corporate complicity in the
 8 fraud through silence.
 9 Business impersonation and complicity in the
 10 fraud through silence is an assault on our dignity, our
 11 mental health and financial stability. I should know.
 12 It happened to me. Someone using the Bank of New York
 13 Mellon claimed to own my home arising out of a case of
 14 identity fraud, except despite asking the bank directly
 15 for almost 10 years, that bank stayed silent and
 16 remained silent. Fraudsters using the name of Bank of
 17 New York Mellon foreclosed on my home, and I did
 18 nothing wrong. By 2020, I was evicted by that bank in
 19 an unannounced SWAT-like raid, leaving me in the
 20 streets with just the clothes on my back. I was left
 21 living in my car, and I'm still unhoused. I have done
 22 nothing wrong.
 23 This is not right. This is not how I had
 24 planned to live. That is not how any American should
 25 be treated. The horror of November 16, 2020, captured

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1 on video lives with me every single day. Lawyers
 2 claiming, without proof, that the Bank of New York
 3 Mellon directed them to act on the raid of my home at
 4 gunpoint, possibly 20 or more armed police officers for
 5 one unarmed black woman and a dog. I have been
 6 fighting to find the truth for 13 years and the bank
 7 remains silent.
 8 The eviction on November 16, 2020, could have
 9 been avoided, but the real company players are silent.
 10 Its silence has proven to be a safe zone for the fraud,
 11 and the misuse of its name lends the air of legitimacy
 12 and thus ordinary consumers become easy prey for the
 13 impersonation and fraud. I live unhoused. I live
 14 day-to-day in trauma and fear of my safety. Yesterday
 15 I had to move my RV two times or face being towed into
 16 the streets. I have had to move and uproot three times
 17 in the last two weeks. I am cold at nights, and I have
 18 no place to call home or to receive mail or to just
 19 rest. I have no space for a bed that is the proper
 20 size for someone as large as I am. I have no space or
 21 place for -- because some person is using my name and
 22 Bank of New York Mellon stole my equity. I think
 23 that's a misuse of a prominent name like the bank by
 24 its lawyers and others when the bank refuses to confirm
 25 it is, in fact, authorizing the use of its name. It is

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1 fraud, and the complicit and false advertising, privacy
 2 invasions, scams and other unfair and deceptive conduct
 3 when the business -- I think that the misuse of the
 4 prominent name like the bank needs to be curbed. I'm
 5 sorry. I'm hopeful that the comments today will
 6 help --
 7 OPEN EXCHANGE: Okay. We are no longer live
 8 now. I have had to go to a holder slide. We're no
 9 longer live. We lost the judge on the call. So we
 10 will see if we get the judge back here. We are on the
 11 technical difficulty slide.
 12 (Pause in the proceedings.)
 13 THE COURT: Let's go back on the record.
 14 Christine, could you -- I'm sorry, Bailey, could you
 15 put the speaker back on and set her timer at
 16 two minutes.
 17 OPEN EXCHANGE: Yes, Your Honor.
 18 THE COURT: And Ms. Wehr, I want you to read
 19 the last two or three sentences that Ms. Brown said.
 20 Just so everyone knows, right before the speaker
 21 finished, my computer went out. Evidently, it
 22 overheated, but we're back.
 23 Ms. Brown, she's going to read some of your
 24 last comments you made, and if you need more to jog
 25 your memory of where you were, let her know.

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1 MS. BROWN: Thank you, Your Honor.
 2 (The record was read as requested.)
 3 THE COURT: Does that help you find your place,
 4 ma'am?
 5 MS. BROWN: Yes, sir.
 6 THE COURT: Go ahead. You have two minutes.
 7 Gave you a little extra time there if you need it.
 8 MS. BROWN: Thank you. When the business name
 9 impersonators and fraudsters become the source of
 10 hiding the fraud and businesses remain silent, we all
 11 lose. I am hopeful that the comments today will help
 12 break the insidious silence of business name
 13 impersonation when the real business remains silent.
 14 The Federal Trade Commission can encourage full
 15 disclosure when consumers report business name
 16 impersonation and in collaboration with the SEC, the
 17 FBI and the CFPB, they can compel businesses to have a
 18 direct means to verify the legitimate use of its name.
 19 There is some currently to hold violators accountable.
 20 Let me say that again. There needs to be a rule to
 21 hold the violators accountable.
 22 I support the Federal Trade Commission's
 23 proposed impersonation fraud rule. Thank you for your
 24 hard work and effort to protect and restore dignity and
 25 mental health, financial stability for millions of

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1 Americans like me who have been ripped off through
2 silence when legitimate businesses face these types of
3 reports of their name being misused. Thank you again,
4 Your Honor.

5 THE COURT: Thank you. Open Exchange, am I
6 correct that there are no more speakers?

7 OPEN EXCHANGE: There are no more speakers,
8 Your Honor.

9 THE COURT: I can now confirm that all persons
10 who timely requested to make oral statements at this
11 informal hearing were given that opportunity today.
12 Accordingly, this informal hearing is concluded and
13 adjourned.

14 (Whereupon, the proceedings at 3:53 p.m., were
15 concluded.)
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1 CERTIFICATE OF REPORTER

2 I, Deborah Wehr, do hereby certify that the
3 foregoing proceedings were taken by me in stenotype and
4 thereafter reduced to typewriting under my supervision;
5 that I am neither counsel for, related to, nor employed
6 by any of the parties to the action in which these
7 proceedings were taken; and further, that I am not a
8 relative or employee of any attorney or counsel
9 employed by the parties hereto, nor financially or
10 otherwise interested in the outcome of the action.
11
12

13 _____
14 s/Deborah Wehr
15 Deborah Wehr, RPR
16 Notary Public
17
18
19
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22
23
24
25

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