

Dissenting Statement of Commissioner Christine S. Wilson

Regarding Request to Extend Public Comment Period on Petition to Promulgate a Rule to Prohibit the Use of Certain Types of Engagement-Optimizing Design Practices on Minors

December 28, 2022

Today the Commission votes to publish a Federal Register Notice extending the public comment period for a rulemaking petition to prohibit “the use of certain types of engagement-optimizing design practices on minors in connection with internet services.” The same organizations that filed the petition with the FTC in November now return as requestors, asking the Commission to extend the timeline for filing comments on the petition.

I am sympathetic to the issues that the petition raises and share the concerns of requestors about design practices that entice children, including teens, to share sensitive data while spending unhealthy amounts of time online.¹ But the risks facing children online extend far beyond design tactics deployed to satisfy advertisers. Comprehensive federal privacy legislation would provide a firm foundation for beginning to address these important issues, and in recent months, Congress has made important strides toward this goal. Other constructive and noteworthy bills aimed at protecting children and teens online have also been introduced. As I noted when the FTC issued the Advance Notice of Proposed Rulemaking on Commercial Surveillance and Data Security, I remain concerned that opponents to Congressional bills will use FTC rulemaking efforts as an excuse to derail much-needed (and long overdue) federal legislation.²

Additionally, I continue to disfavor revising the FTC’s Rules of Practice to publish all petitions for rulemaking submitted to the agency. The Commission previously had a process in place to decide on a case-by-case basis whether to solicit public comment on petitions for rulemaking.³ I am always receptive to hearing from the agency’s stakeholders because my decisions are more informed when I engage with diverse viewpoints. But when the Rules of Practice were changed,

¹ Hugues Sampasa-Kanyinga and Rosamund F. Lewis, *Frequent Use of Social Networking Sites is Associated with Poor Psychological Functioning Among Children and Adolescents*, 18 CYBERPSYCH., BEHAVIOR, AND SOC. NETWORKING 380 (2015), <https://pubmed.ncbi.nlm.nih.gov/26167836/>; Matt Richtel, *‘It’s Life or Death’: The Mental Health Crisis Among U.S. Teens*, NY TIMES, Apr. 23, 2022, <https://www.nytimes.com/2022/04/23/health/mental-health-crisis-teens.html>. *But See* Amy Orben and Andrew K. Przybylski, *The association between adolescent well-being and digital technology use*, 3 NATURE HUM. BEHAVIOUR 173 (2019) (discussing uncertainty about relationship between teenagers, social media use, and mood disorders), <https://www.nature.com/articles/s41562-018-0506-1>; Niall McCrae, Sheryl Getting and Edward Purssell, *Social Media and Depressive Symptoms in Childhood and Adolescence: A Systemic Review*, 2 ADOLESCENT RSCH. REV. 315 (2017) (same), <https://link.springer.com/article/10.1007/s40894-017-0053-4>.

² Dissenting Statement of Commissioner Christine S. Wilson, *Trade Regulation Rule on Commercial Surveillance and Data Security* (Aug. 11, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/Commissioner%20Wilson%20Dissent%20ANPRM%20FINAL%2008112022.pdf.

³ Records show the FTC received 1.44 petitions on average each year between 2005 and 2013. In no year has the Commission receive more than three petitions, even after changes were made to our Rules of Practice.

I expressed concern that compelling the Commission to seek comment on every petition for rulemaking would tax our finite and scarce resources.⁴ In any event, the FTC’s Rules of Practice are clear that the public comment period for petitions is 30 days.⁵ I do not support expending additional resources to deviate from the Commission’s Rules of Practice for a process that could contribute to the derailing of important federal legislation.

For these reasons, I dissent.

⁴ Oral Remarks of Commissioner Christine S. Wilson, *Open Commission Meeting: FTC Procedural Rules Concerning Petitions for Rulemaking* (Sept. 15, 2021), https://www.ftc.gov/system/files/documents/public_statements/1596380/cw_remarks_open_commission_meeting_9_16_2021.pdf.

⁵ 16 C.F.R. § 1.31(f) (“After a petition has been docketed as described in paragraph (d) of this section, the Office of the Secretary will provide public notice of the petition on behalf of the Commission in the Federal Register and publish the document online for public comment for 30 days through the Federal eRulemaking portal at <https://www.regulations.gov>.”).