



## Open Commission Meeting | May 23, 2024

Ms. Kahn, Chair:

Hello everybody. We're meeting today as an open commission meeting. Unfortunately, Commissioner Slaughter is not able to join. We will go ahead and get started as usual by hearing from members of the public. So I will now turn it over to Doug, our director of Public Affairs.

Doug Farrar:

Thank you so much, chair Khan. Before we begin, please note that the FTC is recording this event and that recording may be made available in the public record in accordance with the commission's rules. Now we'll move to hear from members of the public. Each member of the public will be given two minutes to address the commission once I recognize them, and we will begin with Berin Szoka. Berin?

Berin Szoka:

Thank you. I'm President of Tech Freedom. The commission recently proposed to extend its new trade regulation rule on impersonation of government and businesses to include parties who provide goods and services with reason to know that those goods or services will be used in unlawful impersonations. But essentially all AI developers have reason to know that generative AI can be used for legal impersonations. Criminal scams that use generative AI are increasingly common and are highly publicized. So a constructive knowledge standard effectively means that all developers and distributors that offer generative AI services to the public, would be subject to the kind of know your customer obligations borne by financial institutions, so a higher standard is necessary. That standard must be consistent with how courts have interpreted Section 230, which might apply to AI services. In Accusearch, a company made a material contribution to the development of unlawful content because it, "Knowingly sought to transform virtually unknown information into a publicly available commodity."

No court has denied section 230 protection under some lower knowledge standard. Any means and instrumentalities rule should be modeled on the willful blindness standard of the telemarketing sales rule. A developer must either know or consciously avoid knowing, not merely that someone might misuse its tool, but that the particular party to which the developer provides an AI tool, will use it to violate the rule. The commission should clearly state the practical bottom line of this standard by adding an additional proviso as A16Z proposes. "Nothing in this section shall be interpreted to require a provider of goods or services to conduct prior due diligence on any or all parties that may use the goods or services." Such disclaimers against general monitoring obligations are commonly used to ensure that intermediary liability laws do not cast too long a shadow over legitimate operators. Setting the right knowledge standard is key. The proposed standard would be impossible for all but the largest, best finance companies to bear and would be crushing to all other developers. Indeed, a constructive

knowledge standard, could drive the development of AI technologies outside the United States entirely, which would only aggravate impersonation fraud. Thank you for your time today.

Doug Farrar:

Thank you. Next up we have Paul Steidler. Paul?

Paul Steidler:

Yes, thank you. My name is Paul Steidler and I'm a senior fellow at the Lexington Institute, a public policy think tank in Arlington. On May 17th, the Federal Trade Commission engaged in deceptive advertising when it claimed on Twitter and LinkedIn, to be one of the 10 best places to work in the federal government. The data tells a different story. The FTC owes all its employees, former, current and perspective, an explanation of the real statistics and what management is doing to recover from a precipitous decline in morale from 2021 to '22, that shook the agency to its core.

First, the numbers. Reading the fine print on the Twitter and LinkedIn posts, which is invisible without clicking a link and scrolling, may show that the FTC is in the top 10 for mid-size agencies, a small category with only 26 organizations. The FTC was in fact in a three-way tie for ninth place, and it is unclear whether the FTC would make the top 10 if more decimals were included in the calculations.

The study compiled by the Partnership for Public Service and Boston Consulting Group evaluated 73 government agencies in three different categories. The more troubling issue is that the FTC's index score was 75.4% in 2023, down sharply from 96.4% in 2020. Former FTC commissioner noted in her March 2023 resignation letter to President Biden, for more than a decade under the leadership of both Republicans and Democrats, the results of the Federal Employee Viewpoint Survey confirmed the excellence of the FTC. It ranked in the top five mid-size agencies between 2010 and 2018 and ranked either first or second between 2018 and 2020.

One factor driving the rise in FTC worker satisfaction in 2023 is many employees continue to work remotely. The FTC should address how this affects productivity. If there's no impact, the FTC should abandon its plans to spend 32 million on a new headquarters building in next year's Congressional budget. Thanks for your consideration.

Doug Farrar:

Thank you, Paul. Sorry I mispronounced your name and I appreciate your concern for the staff to this agency. Next, I will call on Shane Taylor. Shane?

Shane Taylor:

Thank you, sir. Hi, my name is Shane Taylor. I'm a Desert Storm veteran and I'm a franchisee for Premier Martial Arts and Unleashed Brands. I'm here today to talk about my experience in the franchising industry and the need for more oversight and fairness in franchising. Excuse me. I started looking at franchising as a way to exit my 30 plus year career in technology solutions sales.

After a two-year process and looking at opportunities, I believe franchising was a good opportunity to eventually exit that career, and at its core was about being in business for yourself but not by yourself. I actually put that term in quotes because at some point in looking at any specific opportunity within this industry, you will hear that phrase. The pitch goes on to explain that the franchisor has developed a proven proprietary successful system so you can alleviate some of the trial and error that you may experience in starting a traditional business.

I knew going in because I had experience with starting and running business, that it would take some time to learn systems and fully expected to work fully in both careers. I want to address the franchises. I'm going to specifically address some of the issues that I encountered with my experience and that could have avoided and had better oversight in providing a level playing field for franchisees be in place. I believe fairness and franchising begins with transparency. Potential franchisees need to have a clear and honest picture of what they're investing in. An informed decision is the first step towards a fair and successful partnership.

Equitable financial practices are also crucial. Franchisees often invest substantial amounts of money, time, and effort in their business and in return, they deserve a fair share of profits and the autonomy to make decisions that best suit their local markets. Franchisers should avoid excessive fees, most importantly, ensure that their franchisees have the support needed to thrive and not just survive. What I learned throughout this process was yes, there are a number of documents and things that are put out there to disclose financials and business practices. However, at no point in this process are those documents having any oversight by any government agency. For me, that process of exploring the franchises was about two years, asking questions along that way, I have a long list of examples for most-

Doug Farrar:

Shane-

Shane Taylor:

Sorry, I apologize.

Doug Farrar:

It's fine. No, don't apologize. We've come to the end of the time, but if you want to submit your list of examples and other remarks, please send it to [opa@ftc.gov](mailto:opa@ftc.gov) and we are grateful for your service. Next, we have Andy Young. Andy Young.

Andy Young:

Good morning. I'm Andy Young, Associate Counsel at Tech Freedom. There is an ongoing debate over the extent to which Section 230-C1 applies to AI. Currently, the debate focuses on text-based AI tools like ChatGPT. AI technology has already advanced far beyond chatbots. Law review articles simply cannot keep up with the robots. The proposed impersonation rule would terminate the Section 230 debate before it has even really begun, by extending liability to AI platforms used to generate infringing content. The commission, however, has not sought public comment on the Section 230 question. Ultimately, whether courts extend Section 230-C1 immunity to AI will likely depend on how the specific product or tool at issue functions. For large language models like ChatGPT, the question will likely turn on whether an AI's output is an algorithmic augmentation of third party information or whether the tool was responsible in whole or part for creating or developing the generated output, probably the former will receive immunity.

By imposing broad liability on AI developers, the proposed rule presumes that Section 230-C1 does not apply to generative AI at all. This presumption can have no basis in the record because the commission has not sought public comment. The entire means instrumentality's provision of the proposed rule glosses over complex questions of fact regarding how particular AI systems work and the nature of their outputs. During the recent MAGMOS hearing on the negative option rule, the presiding officer found that the commission had overlooked several issues of material fact in that rulemaking. Here, the commission is headed down the same path on AI and Section 230. Thank you so much for your time.

Doug Farrar:

Thanks, Andy. Next we have Danny Cook. Danny?

Danny Cook:

Thank you, Chair Kahn and commissioners for the opportunity to speak again regarding the nation's largest state sanctioned medical monopoly, Ballad Health, and your recent RFI on health care consolidation. Today I will show information obtained in the latest COPA Monitor Report submitted by Larry Fitzgerald. It begins talking about a complaint letter that was filed by a physician on July 1st of 2022, which was also signed by 14 other cardiologists regarding inadequate cardiac cath labs at Johnson City Medical Center.

Now, the COPA investigation found that those claims were accurate and although there was an executed plan of action, it did not result in the operating hours of the cardiac cath labs, meaning the required minimum for any month in fiscal year 2023. Their quality sub index accounts for 20% of Ballad Health's total COPA score. For fiscal year 2023, they failed 47% of their target quality measures. They were unable to be scored for 27 of their quality monitoring measures, and for the 54 quality monitoring measures that they were scored on, they failed 50 of those because they didn't meet the baseline score, so they failed 93% of the quality monitoring measures, and yet remarkably, they received a passing score for their quality sub index.

Their access sub index accounts for 30% of their total score. They failed 4 of 25 measures, and one of those measures is the access for excessive emergency wait times. Of its 21 emergency care sites, 11 of those, 52.3% did not receive a passing score. They failed to meet monetary commitments for two of six plan areas required by the terms of certification. Those are non-compliance events, which can assess a fine of up to a million dollars each for each violation, nor did they say that, "Hey, we're going to have an event of noncompliance and give a report of action items to fix it," which those could also have fines. No fines have been imposed ever by the Department of Health at this point.

They've overspent their budget by 51 to 136%. They're not investing in their facilities, 74% of their depreciation expense for the last two fiscal years, and their new plan is only 60% of their protected depreciation expense. According to this report, the result will be that Ballad Health operates subpar facilities with older equipment without adequate cash flow. They will struggle to meet the objectives of the terms of certification. Thanks again, I'm always available for any questions or concerns, and I appreciate your efforts to assist us with our medical monopoly.

Doug Farrar:

Thank you so much. Okay, next we have Kowsillya Loomis.

Kowsillya Loomis:

Yeah. Good morning everyone. My name is Kowsillya Loomis and I'm a former franchisee for Premier Martial Arts and Unleashed Brands. My husband and I, along with other PMA franchisees have been defrauded over \$10 million. We used the money we saved over our career to buy a franchise where we hope would allow us to have a positive impact in the community and be financially independent. Unfortunately, everything we were told by Premier Martial Arts and Unleashed Brand, including the FDD was a lie, and yet we appeared to have limited recourse due to the lack of protection in the current franchisee law and regulations.

Instead of financial independence, my husband and I, along with many others, are facing bankruptcy. With the FTC ruling under review, the International Franchise Association are devaluing our story and

hardship. Excuse me. There is no coincidence that Unleashed Brands, CEO Michael Browning Jr. happened to be on the Board of the International Franchise Association. Unleashed Brands have used and continue to use bullying tactics of PMA franchisees for telling them the truth as they continue to steal from us and others.

Kowsilliya Loomis:

... a right for private action should be mandatory or else organization like Premier Martial Arts and Unleashed Brands will continue to be allowed to lie, cheat, steal, ruin the lives of more people by defrauding their savings and retirement. Please strengthen the standards for franchiser so others will never live in the nightmare we're experiencing. Thank you for your time today.

Doug Farrar:

Thank you so much, Mrs. Loomis. And we appreciate you sharing your story and your courage to be here to tell us about it. Okay. The next speaker is David Luttway. David?

Davd Luttway:

Yes. My name is David Luttway. I represent PITCO Foods, a wholesale grocery warehouse that services about 12,000 independently owned convenience stores, grocery stores, liquor stores and other food service operators in Northern California and Nevada. And it's really an honor today to address the members of the FTC, especially Chair Khan, who was kind enough to visit one of our warehouses last November and hear for herself the stories of independent grocers on the front lines.

Since visiting with us, I know the FTC has published its study of supply chain disruptions back in 2020 and now you can see in black and white why and how the big businesses have been unfairly using the power to put us and all the rest of us at disadvantage. These huge corporations like to claim that they're more efficient than we are, but the price of a truckload or food or merchandise cost the same to send to us as it does to them. There's no good reason why we should be paying more than them just because of the logo on their truck. And supply chain disruptions that you documented in your documents underscore the consequences of doing nothing. Our national supply chain has lost some vital links in the last few decades because of unfair practices and the empty store shelves that we all witnessed should be a wake-up call. The problem is clear and we hope the solution is too. You have the power and the tools to make things right, and we're asking that you enforce the RPA, the Robinson-Patman Act, and restore fair competition to the marketplace. [inaudible 00:17:21].

Doug Farrar:

Thank you so much, David. Good to see you again. Okay. This next and second to last speaker on my list is Leslie Taylor. Leslie?

Leslie Taylor:

Hi. Thank you all for having us today. I do want to say first I am able to speak very boldly and confidently today to you all because I'm not an employee of the monopolized healthcare systems that I'm bringing to you today, but I, like Danny Cook, would like to speak to you about Ballad Health. I'm a psychiatric nurse practitioner and I own a private practice. I'm a native of East Tennessee and I received my education from ETSU. I'm severely concerned and I'm angry about monopolized healthcare systems. I worked for Ballad Health two different times, in 2019 before the pandemic, we already had staffing deficits due to staff morale, extremely low wages and health and safety concerns within the hospitals.

Alan Levine and Ballad Health decided the solution was to hire groups of nurses from the Philippines to fill the floors of our hospitals. I was making \$19 an hour as a registered nurse with a Bachelor's degree. Instead of paying me more and others like me, they decided to outsource that to other countries. I spoke out. I felt like if Ballad invested in their own employees, they wouldn't have staffing issues, but I was called a racist and I was silenced, so I left, but I left in good standings. I had to in order to be able to ensure my future with another job in case other things didn't work out. So I traveled to other areas to work and that did prove to be too difficult because I had two young daughters at home. So I came back and I worked in the float pool. Then the pandemic happened. And due to the mishandling of the resources and their greed during the pandemic, I was forced to leave my home of over 40 years again just to find work.

This time I had to go further. I obtained my Master's degree amid the pandemic in tribal nursing and I became a site nurse practitioner. All of my training came from ETSU, but yet I can't go home to give back to my community because Ballad is a monopoly. I was considered not able to be rehired because I left during the pandemic. So I practice elsewhere. But see, when a hospital monopoly is formed, it affects everyone and everything in a community. The ripple effect it touches, it touches the job market, health disparities, health outcomes, hospital ratings, rates of suicide, homelessness disparities, we criminalize those with mental health issues and illness, the cost of living, the local salaries and earned wages. They're all effects of this monopolized healthcare system. Not only that, but the media, the local universities, the persuadable politicians and the only one hospital system, they sit on each other's boards, so it stagnates the community. All choices taken away. The amount of waste that is created through this bloated, mismanaged monopoly is egregious. In 2019, Ballad is-

Doug Farrar:

Leslie?

Leslie Taylor:

Yes?

Doug Farrar:

Sorry. We've come to the end of our two minutes, but we appreciate your words today. And thank you for coming.

Leslie Taylor:

Thank you. People are dying. Thank you.

Doug Farrar:

Thank you. Thank you for coming. Okay. Our last speaker will be Cale Bearden. Cale?

Cale Bearden:

Yeah. Thank you. I'm Cale Bearden. I'm a former franchisee of Premier Martial Arts and Unleashed Brands. Now as the FTC franchise rule is under review, the International Franchise Association has started their attack by belittling franchisees and referring to our stories as, quote, anecdotal, end quote. Myself and 100s of PMA franchisees have been defrauded out of over \$100 million. I can assure you my substantial losses are not make believe. Unleashed Brands has openly admitted that franchisees were

lied to and, quote, sold the farm, end quote, but insists they will bankrupt even our grandchildren if we push this. The VP of operations has even threatened to assault me.

The IFA wants you to believe they have it all figured out by creating the buzzword responsible franchising and gracing you with their solution. The reality is they won't even hold their own board of directors and members accountable for many of the same solutions they proposed. Instead, they heavily promote sponsored content knowing it's false. In my opinion, franchising is currently best summarized by a quote from Princeton Equity Group's founder at a recent franchisor conference saying it's, quote, "A little like a Ponzi scheme," end quote. Princeton is the largest private equity investor in franchising and Unleashed Brands' first investor. They sold their stake the month after 54 franchisees sued Unleashed Brands and PMA for fraud. I guess that makes me a first rounder in the Ponzi scheme.

Fair franchising can never exist when one party can falsify the FDD, openly lie during due diligence and the, quote, voice of franchising primarily lobbies for franchisers and now private equity. For franchising to thrive in the future, a private right of action for franchisees is mandatory and the FTC needs to act on franchisers continuously preying on families, especially ones that build themselves as a kids' company, #responsible franchising. Thank you.

Doug Farrar:

Thank you so much, Cale. And for folks interested, we just announced a request for information about private equity and its impact on your businesses and lives. So please submit your comments to the Federal Register, which you can do starting today. That's it for the speakers today. It's an important part of our job to hear directly from the public about our work. And we're grateful you took the time to tell us how competition and consumer protection issues affect you. And with that, I'll turn it back over to Chair Khan.

Lina Khan:

Thanks, Doug. And let me just echo your thanks to everybody who took the time to share a public comment, especially those who shared pretty harrowing personal stories. And I know it's not easy to come to these forums and share that, especially if you're doing so under fear of retaliation. So just really appreciate that courage. Commissioner Slaughter also passed along her regrets for not being able to join, but is really excited to listen to all of the public comments later on.

So we'll now turn to the agency's agenda for today. The first item of business is a presentation by staff in the Bureau of Consumer Protection's Division of Marketing Practices on the Government and Business Impersonation Trade Regulation Rule, which we recently finalized. And I'm happy to welcome Christopher Brown to give us an overview of the final rule and how it affects everybody. Chris, welcome, and whenever you're ready, please go ahead.

Christopher Brown:

Thank you, Chair Khan and Commissioners Slaughter, Bedoya, Holyoak and Ferguson, for the opportunity to discuss the commission's trade regulation rule on impersonation of government and businesses. This presentation begins with a brief recap of the history of the rulemaking, followed by an overview of the final rule and the public comments regarding proposed amendments. It then concludes with remarks regarding the commission's commitment to bring enforcement cases under this new rule, particularly in this post-AMG context and in light of growing concerns about AI-fueled impersonation and a surge in the volume of impersonation complaints generally.

For the last several years, scams that impersonate government agencies and well-known businesses have been consistently among the top category of fraud reports and largest sources of total reported

consumer financial losses. According to an FTC data spotlight released just last month, nearly half of all frauds reported to the commission in 2023 involved government or business impersonation. And the financial injury from these scams is staggering with reported losses exceeding \$1.1 billion. That's more than three times what consumers reported in 2020. The FTC routinely prosecuted these kinds of impersonation scams and returned millions of dollars to defrauded consumers until the Supreme Court's April 2021 decision in AMG Capital Management significantly curbed our ability to do so. Next slide, please.

In December, 2021, the commission launched the rulemaking to consider whether it has reason to believe that government and business impersonation is prevalent, and if so, whether and how to proceed with rulemaking. On February 15th of this year, the commission voted to issue the statement of basis and purpose and the final rule. This followed careful consideration of the record, including public comments from a broad spectrum of commenters in response to the advanced notice of proposed rulemaking, notice of proposed rulemaking, initial notice of informal hearing and informal public hearing. While some of these commenters raise concerns about the proposed rule and recommended specific modifications, nearly all generally expressed strong support for the commission's proposal. Representatives from a broad spectrum of businesses, trade associations, government organizations and individual consumers shared their experience, as well as data supporting their position regarding the harmful impact of government and business impersonation frauds on consumers and business. Next slide, please.

The final rule, which took effect on April 1, gives the agency stronger tools to combat and deter government and business impersonation, enabling the commission to file federal court cases to get money back for defrauded consumers and also to seek civil penalties against rule violators. The final rule contains some changes from the proposed rule, but overall remains straightforward. The prohibitions in sections 461.2 and 461.3, respectively, borrow from the telemarketing sales rules operative prohibition and are consistent with other existing commission rules. To avoid perceived conflict with non-commercial speech, the final rule modified the proposed rule language to clarify that it is consistent with Section 5 of the FTC Act and the Deception Policy Statement.

The commission declined to adopt in the final rule the proposed provision making it illegal to provide scammers with the means and instrumentalities to commit impersonation fraud, determining that further analysis and consideration were warranted based on the record. As a result, on March 1, the commission also published a supplemental notice of proposed rulemaking that solicited additional comment on this proposed means and instrumentalities provision and on another proposed provision to prohibit the impersonation of individuals. The public comment period for the SNPRM closed on April 30 during which the commission received more than 60 comments. Staff will review these comments and then make a recommendation to the commission about whether, and if so, how to finalize any rule amendments. Next slide, please.

In light of the current legal, technological and financial context, we expect the new rule to help in combating impersonation frauds. Throughout this rulemaking, the commission has described how the Supreme Court's ruling in AMG Capital Management significantly limited the agency's ability to return money to victims of fraud. This final rule restores the commission's ability to provide through federal court actions consumer redress in cases involving impersonation of government or business. And the commission is eager to use that renewed authority. The final rule also allows the commission to seek civil penalties against impersonators to increase deterrence of such harmful conduct. As AI technology continues to advance, there is rising concern around AI-enabled impersonation scams that mimic the voices or even the appearance of government officials and agencies, including the FTC, business executives, celebrities and even family members and loved ones. With these kinds of impersonation



becoming easier to execute and more common, it is important to amend the impersonation rule to help the commission protect consumers from such scams.

Given the ongoing surge in impersonation frauds, continuing to get reports from the public about what they are seeing and experiencing is critical to our law enforcement work. To this end, we urge consumers to file complaints, even in instances where they did not lose money, because every piece of information helps the commission to identify, investigate and prosecute such scams. Next slide, please. I want to thank Chair Khan and Commissioners Slaughter, Bedoya, Holyoak and Ferguson again for the opportunity to present on this important matter today.

Lina Khan:

Thanks so much, Christopher. And a big thanks to you and the full rulemaking team spanning the Bureau of Consumer Protection, our Bureau of Economics, and the Office of General Counsel

Lina Khan:

... For getting this rule over the finish line. As we heard from Christopher, unfortunately, impersonation fraud remains a big problem. And so you still have, for example, fraudsters calling up people pretending to be IRS agents and threatening to cut off government benefits, or even put people in jail unless they hand over money and a whole bunch of similar schemes. And so I'm really pleased that we were able to finalize this rule. This marks the first time since 1980 that the commission has finalized a brand new trade regulation rule prohibiting an unfair deceptive practice.

Congress gave us the authority to issue rules under section five, and so I'm glad we have been reactivating this. Practically, finalizing this rule means that anybody who commits impersonation fraud will now be on the hook for redress and civil penalties so that people who have been wronged can be made whole, and that lawbreakers are not profiting from lawbreaking. So I think overall this is also going to be promoting more efficient law enforcement and help with deterrence. As Christopher noted, alongside the final rule, we've also issued a supplemental proposed rule that would expand the rules of prohibition to also cover impersonation of individuals.

I'm really excited about this proposal given how we're now seeing AI tools enable more voice cloning of individuals, and so we're really eager for public comment. Specifically, the supplemental proposal is recommending extending liability to any actor that provides the means and instrumentalities to commit an impersonation scam. And so what this means is that under this approach, liability would apply, for example, to a developer who knew or should have known that their AI software tool designed to generate deep fakes of IRS officials, for example, would be used by scammers to deceive people about whether they paid their taxes. We already heard some comments and reactions to that in the public comment period, but will be eager for public input. To my mind, ensuring that the upstream actors that are best positioned to unlawful use of their tools, making sure they're not shielded from liability, I think will help align responsibility with capability and control. And so we'll be eager to read any public comments on that, in particular. I'll now turn it over to my colleagues to see if they'd like to share any remarks. We'll start with Commissioner Bedoya, then go to Commissioner Holyoak, and then Commissioner Ferguson.

Commissioner Bedoya:

Thank you Chair Khan. I'll add briefly that I'm also very glad to see this rule finalized and to move forward the supplemental proposed notice. Quickly, I'll say that one of the sobering things about this job has been to see how fraudsters are using government officials as a front to defraud people by impersonating those officials. That's happened to me personally and that's happened to a number of my

colleagues here at the Federal Trade Commission, and that's just the tip of the iceberg because I don't get the impression that artificial intelligence was used to impersonate us.

But I've read and heard from consumers in a number of situations that have just been harrowing where artificial intelligence has been used to clone or imitate a loved one's voice and used to try to defraud people for quite a bit of money. And so I think finalizing this rule will be a step forward in trying to combat this by providing both consumer address and civil penalties for situations like this. And I'm eager to read the feedback on the supplemental notice to see where we can take this further. Thank you. I'll turn it back to you. Chair Khan.

Lina Khan:

Thanks. Commissioner Holyoak.

Commissioner Holyoak:

Thank you Chair Khan, and many thanks to Chris Brown and the staff and the Division of Marketing Practices, the Office of General Counsel, the Bureau of Consumer Protection and the Bureau of Economics who assisted with this recommendation. Just like Commissioner Bedoya mentioned, I too have had family members that have been contacted by fraudsters impersonating government officials, so I'm very thrilled to be working on this rule. Impersonation fraud causes significant injury to consumers and businesses.

In fact, the statement of basis and purpose for the final rule notes that impersonation fraud causes hundreds of millions of dollars of losses to consumers every year. And because impersonation fraud makes it more difficult for consumers to discern legitimate from fraudulent businesses, it also harms competition. So the commission is at its best when it takes action to stop fraud. I'll note that in my dissenting statement on the Commission's Health Breach Notification Rule, I was concerned with rules that exceed our statutory authority or that may have unintended and consequences.

While I will not support rules that exceed our statutory authority, I do support promulgating rules that make appropriate use of authority Congress has given us and that protect consumers from harm such as the harm resulting from an impersonation fraud. Thank you. I'll turn that back to the chair.

Lina Khan:

Thanks, Commissioner Holyoak. Commissioner Ferguson.

Commissioner Ferguson:

Thank you, Madam chair. Thanks also to the staff for their Herculean efforts on this rulemaking. This is obviously a huge problem that plagues consumers. The plague grows exponentially every day, and I'm eager to read the public's response to the supplemental notice of proposal we're making. Thank you, Madam Chair.

Lina Khan:

Great. Thank you. I will now turn to the next item on our agenda, which is a staff presentation on an inquiry we've just launched today into serial acquisitions in roll-ups, where firms can use a series of smaller deals to consolidate a market. Over the last few years, we've heard significant concern about how roll-up strategies may have been used to consolidate market power across an array of sectors from housing to defense to cybersecurity. And so we've launched this inquiry to learn more from the public about where this might be happening.

To walk us through this request for information, I'm going to welcome Michael Aaron from the Bureau of Competition's Healthcare Division to walk us through this. So Michael, whenever you're on over to you.

Michael aaron:

Thank you, Chair Khan and Commissioner Slaughter, Bedoya, Holyoak, and Ferguson for the opportunity to speak about the request for information on serial acquisitions. Under competitive conditions, consumers are protected from high prices and low quality goods by rivalry among numerous firms. Under competitive conditions, small innovative businesses can take down giants resting on their laurels. And under competitive conditions, workers have opportunities to seek gainful employment among many firms competing to utilize their skill set most profitably.

But when a company expands or entrenches its power by successive small acquisitions, the cumulative effect of these transactions may be to convert an industry from one of intense competition among many to one in which a few companies control the entire market. Roll-ups of smaller competitors can lead to the same magnitude and type of harms as mergers of large firms. The antitrust agencies remain committed to using the full scope of their statutory authorities to protect free and fair competition.

In order to do this, however, we must be aware of the conduct. Knowing is half the battle. Congress recognized this in passing the Hart-Scott-Rodino Antitrust Improvements Act, which requires companies to file pre-merger notifications for certain large transactions before they can be consummated. Early reporting of potentially anti-competitive mergers and acquisitions has helped the agencies pursue one of the oft-stated purposes of the antitrust laws, to stop anti-competitive tendencies and their incipency.

Where transactions fall below the reporting threshold, the agencies must rely on other means of detection, such as public press releases, investigative journalism articles, and consumer or worker complaints. These sources have become increasingly important to the agencies as we look beyond reported transactions and assess a company's pattern of acquisitions whose cumulative effect may threaten undue concentration or monopoly. Earlier this year, the antitrust agencies asked for the public's help in identifying serial acquisitions in the healthcare industry, a notable hotbed for private equity-fueled transactions.

However, both public reports and investigations by the agencies suggest that companies private equity firms and others engage in serial acquisition strategies across a wide array of markets and industries. Accordingly, the FTC and the DOJ today propose a broader request for information for public comment on corporate consolidation through serial acquisitions and roll-up strategies in any sector of the US economy. From all members of the public, we want to hear about companies making frequent acquisitions that may have gone undetected.

We want to hear how serial acquisitions have impacted competition for products, services, and labor leading to changes in prices, quality business practices, and working conditions. And we want to hear why businesses pursue roll-up strategies and ultimately how these strategies impact consumers, workers, and our communities. Comments submitted in response to this request for information would inform the agency's enforcement priorities and future actions as we continue our efforts to halt roll-up schemes that violate the antitrust laws. Thank you.

Lina Khan:

Thanks so much, Michael, and a big thanks to your colleagues in the Bureau of Competition as well as folks in the Office of Policy Planning and our partners in the Antitrust Division for working with us on this initiative. I'll just say briefly, I think this is a big area of interest for us and for policymakers, but this is not a new area of interest. It really goes all the way back to the passage of the Clayton Act, which

Congress passed so that enforcers could intervene in individually minute lessenings of competition rather than having to wait to use the Sherman Act until a firm had illegally monopolized a market.

The same set of concerns were top of mind when lawmakers passed the 1950 Celler-Kefauver Act, which as the Supreme Court is noted was specifically intended to address the rising tide of economic concentration in its incipiency to break the force at its outset and before it gathered momentum. And so really glad that we're able to continue in that tradition to put a light on some of these issues. In recent years, as we heard from Michael, there's been growing concern about the effects of roll-ups and stealth consolidation schemes.

Much of the focus has been on private equities firms use of these buy and build strategies where a portfolio company will buy a firm, oftentimes the market leader, and then roll up a series of smaller competitors. But this is not just happening in the private equity context. We've seen, for example, large digital platforms and dominant technology companies also engage in serial acquisition strategies. And so I'm really excited that we are launching this initiative and request for public comments so that the public can help us identify where this may have happened.

As Michael also mentioned, this inquiry is part of a broader set of projects right now to make sure that our tools as antitrust enforcers are keeping pace as business strategies evolve. And so the 2023 merger guidelines, for example, expressly acknowledge that enforcers will look at a series of acquisitions or a potential pattern of serial acquisitions rather than just looking at each deal in isolation. We've also proposed an update to the HSR form, which could give us more insight into some of the prior acquisitions and let us spot roll-ups at earlier stages.

The last thing I'll mention briefly is that the commission recently got an important win in our first roll up case, which we filed last fall, and where we alleged that US Anesthesia Partners had pursued a multiyear roll up strategy to buy nearly every large anesthesiology practice in Texas. And two weeks ago, the district court in Texas denied USAP's motion to dismiss and upheld the commission's serial acquisitions claim in full as it concerned USAP. So really just want to express my congratulations to the team for this important win.

With that, I will now turn it over to my colleagues for any remarks and we'll just go in the same order. So starting with Commissioner Bedoya.

Commissioner Bedoya:

Thank you, Chair Kahn. I just want to say I'm particularly interested in reading the comments that come in on healthcare. The start of the session, we heard from at least two people making some grave allegations about the impact of private equity in healthcare and how it was harming patient health. And I have to say, I have heard so many other comments like this and read so many other accounts like this, and so for me, that is top of mind. I also just want to communicate my gratitude to the staff putting forward this RFI and all the work that went into it.

So thank you for this and I'm looking forward to reading the comments. Thank you.

Lina Khan:

Commissioner Holyoak.

Commissioner Holyoak:

Thank you, Chair. Thank you to Michael. And I'll just add, I do look forward to seeing the responses and learning more about this issue from the staff. Thank you.

Lina Khan:  
Commissioner Ferguson.

Commissioner Ferguson:

Thank you, Madam Chair. Thanks to the staff as well. I also look forward to reading what the public has to say and particularly learning about the effects of this phenomenon in rural communities. Thank you, Madam Chair.

Lina Khan:

Great. So everybody can find the request for information on the FTC's website, and it'll take you to a portal where you can submit comments. So please do submit comments and input. It really does end up affecting how the commission learns about these issues and how we prioritize our work. The final item on our agenda is to have staff present the winners of the FTC's Voice Cloning Challenge. As we heard earlier, AI tools in particular are turbocharging sophisticated voice cloning scams where fraudsters are pretending to be somebody else by impersonating their voice.

Lina Khan:

Voice given what a serious challenge this could pose to people being able to tell which voices are fake or which voices are real, we also launched a competition to invite the public to submit ideas for how we can be better detecting and stopping voice cloning fraud. So we're really taking a multipronged approach as an agency. We got dozens of submissions and I'm just so grateful to everybody who took the time to submit an idea. We also recently announced several top winners who were picked by a panel of experts, and so our staff is going to go through and describe each of the winning proposals. With that, I will now turn it over to James Evans from our Bureau of Consumer Protection and Ben Swartz from our Office of Technology to go through the winners.

James Evans:

Thank you so much, Chair Khan and commissioners for the opportunity to present today the winners of the FTC Voice Cloning Challenge. Good afternoon, everyone. I'm James Evans, an attorney in the FTC's Bureau of Consumer Protection in the Division of Marketing Practices.

Ben Swartz:

And good afternoon. I'm Ben Swartz, a senior technology advisor in the FTC's Office of Technology.

James Evans:

As the Chair just mentioned, we heard earlier from my colleague Christopher Brown about how the commission is using rulemaking as part of our efforts to address the dangers of AI enabled voice cloning. Ben and I are here today to talk about another part of those efforts, the FTC Voice Cloning Challenge. Last November, the commission launched the challenge. It was an exploratory challenge to the public to encourage the development of multidisciplinary solutions from products to policies to procedures aimed at protecting consumers from the harms of AI enabled voice cloning fraud.

Ben Swartz:

Last month, the Federal Trade Commission announced that it had chosen four winning submissions, three of which from individuals and small organizations will split a total of \$35,000 in prize money and

one large organization that won a non-monetary recognition award. Today, we wanted to present the four winners of this challenge and briefly go over their solutions. Next slide please.

James Evans:

The first winner of the FTC Voice Cloning Challenge is AI Detect from OmniSpeech, which is led by David Przygoda and Dr. Carol Espy-Wilson. This solution is aimed at consumer and enterprise applications and devices and would use AI to detect AI. In real time, this solution can distinguish subtle discrepancies between authentic voices and their artificial counterparts. AI Detect also proposes a framework for increased public and private sector responsibility, suggesting that service providers that leverage voice as a modality integrate this technology to safeguard their users proactively. Next slide, please. David Przygoda, the CEO of OmniSpeech said about the challenge, "Innovation in this area is crucial because AI enabled voice cloning technology presents both an opportunity and a threat." And the next slide, please. And Dr. Carol Espy-Wilson, the founder and CTO of OmniSpeech said, "This award reaffirms our dedication to developing cutting edge technology that not only advances AI capabilities, but also prioritizes the safety and security of consumers against the latest AI voice clones." Next slide, please.

Ben Swartz:

Next is De-Fake from Dr. Ning Zhang, Assistant Professor in the Department of Computer Science and Engineering at Washington University in St. Louis. Given that voice cloning relies on the use of pre-existing speech samples to clone a voice, this approach adds carefully crafted distortions to voice samples which are imperceptible to the human ear, but protect the voice from being cloned. When such a voice sample is used for speech synthesis by an attacker, the resulting synthetic speech would resemble others' voices rather than the victims. The distortions can be added at any point, enabling websites to use the tool to ensure they aren't hosting content that an impersonator could use. Next slide, please. Dr. Zhang said of the challenge, "While our solution is recognized for its potential, it remains a first step towards making a difference for society at large. This award will serve as a reminder that we now have a greater obligation to the billions of AI users out there." Next slide, please.

James Evans:

The next winner of the FTC Voice Cloning challenge is OriginStory from OriginStory LLC, led by Dr. Visar Berisha, Drena Kusari, Dr. Daniel W. Bliss, and Julie M. Liss. OriginStory uses a new technique that authenticates the human origin of voice by using off-the-shelf sensors already integrated in many devices to simultaneously measure speech acoustics and the co-occurring biosignals in the throat and mouth that a person uses when speaking. It then embeds this authentication in the audio stream, which establishes a chain of trust from the moment the voice is captured to when it reaches the listener. With this solution, the listener can then validate that the speaker they're hearing is human. Next slide, please. Dr. Berisha said of the challenge, "It's exciting that the FTC has taken a leadership role in this space and we're honored to win the Voice Cloning Challenge. Our selection serves as further validation for our central thesis. We need new technology to establish a chain of trust that a voice is authentically human from the moment it is recorded to when it's listened to." Next slide, please.

Ben Swartz:

Finally, the fourth winning solution is from a large organization, Pindrop Security, which received the non-monetary recognition award. Pindrop's voice cloning detection technology detects voice clones and audio DeepFakes in real time. The technology evaluates each incoming phone call or digital audio in two second chunks and flags those that are potential DeepFakes. Large organizations were not eligible for

monetary prizes under the challenge rules. Dr. Khoury, the Vice President of Research at Pindrop, said of the issues involved in the challenge, "Voice cloning and gen AI- driven advanced speech and language tools have given scammers a potent weapon. A significant leapfrog in innovation is needed in the area of liveness detection, conversation security, and ethical use of AI to counter these threats before fraudsters cause long-term damage." Next slide, please.

James Evans:

The commission would like to send a huge thank you to our panel of expert external judges, Arvind Narayanan is Professor of Computer Science at Princeton and the Director of the Center for Information Technology Policy, Beau Woods is the founder and CEO of Stratigos Security and a Cyber Safety Innovation Fellow with The Atlantic Council, and Britt Parris is an Assistant Professor at Rutgers University's School of Communication and Information. She's a critical informatics scholar studying the political economy of the information infrastructure. Next slide, please. Congratulations again to our winners and a huge thanks to everyone who submitted an idea to the challenge. We hope that these winners will have similar success in coming to market as some of the winners of the FTC's Robocall challenges held between 2012 and 2016. Those winners after winning the challenge built successful and sustaining businesses that are still blocking robocalls today. We'd also like to thank everyone else at the agency who helped make this challenge a success.

In addition to Ben and I, our core team included Christine Barker, an investigator in the Division of Marketing Practices, and Amritha Jayanti, the Deputy Director of the Office of Technology. We had critical support from people all over the agency. So we'd like to quickly thank in the Bureau of Consumer Protection, Will Maxson, Lois Greisman, Ben Davidson, Alvaro Puig, June Chang, Marlena Patterson, Lesley Fair, Rosario Mendez, Jennifer Leach, Jenny Kellogg, Monica Vaca, and Sam Levine. In the Office of Technology, Madeleine Varner, Alex Gaynor, David Koh, and Stephanie Nguyen. In the Office of General Counsel, Richard McEwen. In the Office of Public Affairs, Juliana Gruenwald Henderson, Nicole Drayton and the web team, and in the Office of the Executive Director, Jeff Standifer and Stephanie Smith. Thank you all.

Ben Swartz:

These four winning submissions demonstrate the potential for cutting-edge technology to help mitigate the risks of voice cloning in the marketplace. They promote innovative approaches on which key consumer protections can be built. At the same time, the results of the challenge highlight that there is no silver bullet to this problem. And with that, I'll turn it back over to Chair Khan.

Lina Khan:

Thanks so much, James and Ben, and let me just echo your congratulations to the winners and your thanks to everybody who was part of this. Really appreciate you all coming up with this creative idea and executing on it. I was really blown away by the ingenuity and brilliance of the submissions and the winners in particular, and I'm really pleased that our agency was able to do its small part to really try to encourage innovation and technological development in the direction of helping consumer protection rather than just creating some of the problems that we have to address. So really pleased with this effort overall. With that, I'll just turn it over to my colleagues, Commissioner Bedoya, Commissioner Holyoak, and Commissioner Ferguson for any reflections.

Commissioner Bedoya:

Thank you, Chair Khan. I share your enthusiasm for this project, and I was particularly a fan of the winning entry that used adversarial design to fool some of these voice cloning efforts. I think my personal favorite from the field of face recognition was the ability to change a few pixels in an image of a face that would completely crash the face recognition system that was operating on that image. And it's neat to see that kind of thinking applied here.

I'm a long time and big fan of the vision of marketing practices and their work in this space here. I want to pay special tribute to the opposite technology though, and the role they played in moving this forward. The innovation and creativity that they're showing in their work is really special. Most recently, in addition to this voice cloning challenge, I really appreciated these research questions that the Office of Technology posted on the official FTC blog. I think the title is  $P = NP$ ? Not exactly, but here are some research questions from the Office of Technology trying to guide the research community in some persistent questions that come before us as law enforcers protecting both in consumer protection and competition law. So really terrific work by DMP, by the Office of Technology and by everyone involved, and I'm proud to be associated with it in any way. Back to you, Chair Khan.

Lina Khan:

Thanks. And yeah, really recommend, especially for the research community to check out that blog post and really hope that we'll be able to share with the academic community and scholars more in real time, some of the open questions and challenges that we face so that there can be more of a feedback loop in that way. Commissioner Holyoak.

Commissioner Holyoak:

Thank you Chair, and thank you to James and Ben and the staff and the Division of Marketing Practices and the Office of Technology who put together the challenge. This is a really exciting time with artificial intelligence. It presents this paradigm shift in technology and things that we can accomplish that were just unimaginable just a few years ago. It can present really some really amazing benefits for consumers ranging from just answers in a chat box to faster package delivery, but also we have seen developments in healthcare including tools for persons with disabilities.

So it is an exciting time. I do want to say that I think the FTC plays an important role in this and in making sure that consumers and competition can benefit from the innovation in AI. And as we do so, by supporting creative solutions to the problems that AI can present, I really applaud those participating in this challenge. It's really exciting. And what's really interesting and great is that the winners include academics, folks from small businesses, and a larger organization. And this highlights that innovation happens best when you have thought leaders from just a variety of perspectives with a variety of approaches, and they can work to solve problems posed by evolving technology. So thank you all.

Lina Khan:

Thank you, Commissioner Holyoak. Commissioner Ferguson.

Andrew N. Ferguson:

Thank you, Madam Chair. Thanks to the staff for putting it together. Congratulations to the winner, and it's a helpful reminder of the long American tradition of being able to innovate its way out of problems and the vibrancy of our free enterprise system that promotes that innovation and the importance of the FTC in promoting that innovation as well by protecting our markets. So thank you, Madam Chair.

Lina Khan:



Thank you. And thanks to each of you for your thoughtful comments and reflections, to all of the staff for the really terrific presentations and all the work that led up to those and to members of the public who joined at the beginning to share your views and thoughts. That concludes today's open commission meeting. Thanks so much again to everybody. Nice to see you all.