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

**Statement of Commissioner Rebecca Kelly Slaughter**  
*As Prepared for Delivery*

Before the Subcommittee on Consumer Protection and Commerce  
Of the Committee on Energy and Commerce  
United States House of Representatives

Washington, D.C.  
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Chair Schakowsky, Ranking Member Bilirakis, and members of the Subcommittee, I am pleased to appear before you today (and I appreciate the opportunity to appear remotely; with four children too young to be vaccinated at home, I am being extra cautious about COVID exposure).

I want to start by thanking this Committee for its incredibly hard work to pass the Consumer Protection and Recovery Act—what we refer to as the 13(b) fix—through the House earlier this month. I am grateful for your appreciation of the challenges the recent Supreme Court decision posed for the Commission, and for your hard work to arm us with the tools we need to protect your constituents.

I'm eager for us to continue to partner with Congress and this Committee. While I am happy to discuss the bills before the Committee today, I also want to encourage you to continue work on a meaningful, comprehensive legislative approach to data abuses.

**Data Abuses, Not Just Privacy**

Yesterday, the FTC held its sixth annual PrivacyCon conference, with presenters covering topics including algorithmic bias, issues around consent, misinformation during the pandemic, and special concerns related to kids and teens. That broad agenda reflected our understanding that data issues have moved past the narrow framework of who has access to your personal data. This understanding is why I prefer the term “data abuses” to the narrower language of “privacy.”

Thinking in terms of abuses reflects the fact that rampant data collection, sharing, and exploitation harms consumers and competition in ways that affect nearly every aspect of our lives.

## **Moving Away From Notice and Consent**

I know this topic is front of mind for members of this Committee, and that you are actively considering how best to craft legislation to directly address the harms faced by consumers, workers, and small businesses in our data-driven economy. I also understand that doing this well takes time and thought, and encourage you to focus on approaches that not only address the full panoply of harms that stem from indiscriminate data collection—including civil rights violations, abuse of market power, economic exclusion, and exploitation of children—but also provide meaningful solutions that root out damaging and dangerous business models and market practices.

When it comes to questions about personal data, I respectfully suggest we move past outdated notice-and-consent models that put untenable burdens on users. Instead, we should turn our focus to changing the underlying incentives that fuel data-driven business models such as behavioral advertising. One approach to consider is data minimization, a principle that would ensure companies can collect only the information necessary to provide consumers with the service on offer, and use the data they collect only to provide that service. That minimization could be coupled with further use, purpose, sharing, and security requirements to ensure that the information companies collect isn't used to build tools or services that imperil people's civil rights, economic opportunities, and personal autonomy, or facilitate corporate self-dealing. We have to recognize that, as long as key digital markets are controlled by just a few large, data-hungry online platforms, both consumers and prospective entrants are at their mercy.

## **The Importance of Rulemaking**

As Congress continues to debate these issues, I believe it is incumbent upon the Commission to act within the full scope of our existing authority to target pernicious data practices with both aggressive enforcement and rulemaking.

A quick note about rulemaking, which I know can generate big reactions. Congress specifically delegated to the FTC the authority, albeit with a burdensome process, to write rules that prohibit or regulate any unfair or deceptive practice that is prevalent in interstate commerce. In other words, if we can already sue someone for committing an unfair or deceptive practice in violation of Section 5 of the FTC Act, and the practice is prevalent, then we can also write a rule that clarifies for the markets that the conduct is prohibited. That means rulemaking can only target conduct that is already illegal. Rules are developed using a participatory process with substantial stakeholder engagement, and, when finalized, provide notice and certainty to the markets about what conduct is outside the scope of our hundred-year-old statute.

As I've said before, I believe it is past time for the FTC to begin a rulemaking process on data abuses; among other benefits, this process can have a clarifying effect for the Congressional debate as well. Participating in the rulemaking process means businesses, advocates, consumers, workers, researchers, and other interested parties will all have the opportunity to make their opinions known, out in the open, and with specificity in the public record. An open record can provide substantiation of the types of consumer protection and competition harm people are

experiencing in digital markets, and illuminate how we can act decisively to stamp out these abuses.

I look forward to working with my fellow Commissioners and with Congress to advance these efforts and I welcome your questions.