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

**Prepared Statement of Melissa Holyoak<sup>1</sup>**  
**Commissioner, Federal Trade Commission**

**Before the Subcommittee on Innovation, Data, and Commerce of the Energy and  
Commerce Committee, United States House of Representatives**

**Concerning “The Fiscal Year 2025 Federal Trade Commission Budget”**

**Washington, D.C.**  
**July 9, 2024**

Chairman Bilirakis, Ranking Member Schakowsky, Chair Rodgers, Ranking Member Pallone, and members of the Subcommittee: thank you for the opportunity to appear before you today. I am grateful to be here, and I welcome this hearing.

Congressional oversight is vital. The Federal Trade Commission’s authority comes from Congress. Among the many critical powers vested in Congress is its authority to set the funding level for the Commission. Our Constitution forces agencies like the Federal Trade Commission to regularly come to Congress and demonstrate why their budget requests are warranted. So it is right that Congress consider the agency’s stewardship of what’s been entrusted to it. Your oversight helps ensure our faithful execution of the law.

I’ll note at the outset that since being confirmed in March, I have been fortunate in getting to know and work with a number of the public servants at the Commission. Career staff at the agency make important contributions every day, both here in Washington and in the Commission’s

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<sup>1</sup> My comments today are my own and do not necessarily reflect the views of the Commission or my fellow Commissioners.

regional offices. These women and men enable us as Commissioners to do our jobs and ultimately staff's hard work benefits the American people.

A significant part of staff's most important work goes on behind the scenes, and takes the form of investigations. These investigative efforts lay the groundwork for public enforcement actions and enable the Commission to bring lawsuits against wrongdoers. In my opinion, the agency is at its best when it is robustly enforcing the law, and doing so consistent with the authorities Congress has given us. Since being confirmed, I have voted on a number of these enforcement matters. I would like to highlight a few examples of the Commission's activities in this area.

In April, I voted for the Commission to file a complaint against a bill payment company and two of its co-founders. The Commission alleged that the company used misleading advertising to impersonate legitimate billers, these deceptive practices misled consumers, and thousands of consumers complained about this company's deceptive practices. The Commission alleged violations of Section 5 of the FTC Act, the Gramm-Leach-Bliley Act, and the Restore Online Shoppers' Confidence Act (ROSCA).<sup>2</sup>

I also voted for filing a complaint against a payment facilitator and two of its executives. The Commission alleged that the defendants knowingly processed payments for deceptive and fraudulent merchants in violation of Section 5 of the FTC Act and the Telemarketing Sales Rule.

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<sup>2</sup> Press Release, FTC Takes Action Against Bill Payment Company Doxo for Misleading Consumers, Tacking on Millions in Junk Fees (Apr. 25, 2024), *available at* <https://www.ftc.gov/news-events/news/press-releases/2024/04/ftc-takes-action-against-bill-payment-company-doxo-misleading-consumers-tacking-millions-junk-fees>.

The defendants agreed to settle on terms requiring the return of \$10 million for refunds to consumers, and not processing payments for certain higher-risk companies.<sup>3</sup>

I voted for the agency to finalize settlements with three individual defendants who the Commission alleged had been running a sweepstakes scam that cost consumers millions of dollars. The settlements permanently ban defendants from running other sweepstakes and making future claims about prizes to consumers.<sup>4</sup>

In addition, I voted to approve filing in federal district court a settlement with an online seller that allegedly violated Section 5 of the FTC Act, the Commission's Mail, Internet, or Telephone Order Merchandise Rule, the Commission's Used Motor Vehicle Trade Regulation Rule, and the Commission's Rule Governing Pre-Sale Availability of Written Warranty Terms.<sup>5</sup>

I am grateful for the opportunity to have participated in these and other important enforcement efforts. Where Congress has specifically given the FTC statutory authority, I believe in faithful enforcement of those laws. And I look forward to carefully considering and voting on other cases that benefit consumers and protect the American people from unlawful conduct.

As a general matter, I believe the Commission is at its best when it focuses on enforcing the law, not writing it. Creating new law is the job of Congress—not the Federal Trade Commission.<sup>6</sup> With that said, I am not reflexively opposed to rulemaking where Congress has

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<sup>3</sup> Press Release, FTC Takes Action Against BlueSnap and its Former CEO and Senior VP for Credit Card Laundering, Processing Payments for Known Scammer (May 1, 2024), *available at* <https://www.ftc.gov/news-events/news/press-releases/2024/05/ftc-takes-action-against-bluesnap-its-former-ceo-senior-vp-credit-card-laundering-processing>.

<sup>4</sup> Press Release, FTC Action Leads to Sweepstakes Ban For Three Individuals Who Ran Massive Scheme That Cost Consumers Millions (June 24, 2024), *available at* <https://www.ftc.gov/news-events/news/press-releases/2024/06/ftc-action-leads-sweepstakes-ban-three-individuals-who-ran-massive-scheme-cost-consumers-millions>.

<sup>5</sup> Press Release, FTC Takes Action Against Online Used Car Dealer Vroom for Deceiving Customers, Failing to Deliver on Time and Provide Required Disclosures (July 2, 2024), *available at* <https://www.ftc.gov/news-events/news/press-releases/2024/07/ftc-takes-action-against-online-used-car-dealer-vroom-deceiving-customers-failing-deliver-time>.

<sup>6</sup> See Dissenting Statement of Commissioner Melissa Holyoak, Joined by Commissioner Andrew N. Ferguson, In the Matter of the Non-Compete Clause Rule, at 1-2 (June 28, 2024), *available at* [https://www.ftc.gov/system/files/ftc\\_gov/pdf/2024-6-28-commissioner-holyoak-nc.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/2024-6-28-commissioner-holyoak-nc.pdf).

delegated the agency such authority. Accordingly, since arriving at the agency, I have voted to amend or update several rules, such as the Eyeglass Rule.<sup>7</sup>

When engaged in rulemaking, though, the Commission should recall that Article I of the Constitution vests legislative powers in Congress, not with agencies. Congress, therefore, sets the requirements and boundaries the Commission must follow.<sup>8</sup> We should never act inconsistently with the authority Congress has entrusted to us.<sup>9</sup> Likewise, any rulemaking should rest on the sound economic and factual analysis that the law—and good policy development—require.

When considering the FTC’s mission and use of resources, it is worth recognizing that we live in an exciting time of industrial and technological advancements that have great promise. These new developments in various markets also present new challenges and opportunities for law enforcers. For example, artificial intelligence tools can benefit consumers and make American businesses more effective. But such tools can also enhance fraudsters’ schemes, raising new risks of misrepresentations and deceptions that violate the law. I am committed to using our existing authorities and applying the Commission staff’s expertise to understand evolving markets, and to act accordingly to enforce the law as new circumstances may require.

As we consider challenges from a law enforcement standpoint, the Commission is also recognizing that new innovations can protect consumers, too. For example, take the Commission’s

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<sup>7</sup> Press Release, FTC Announces Final Eyeglass Rule Implementing Updates to Promote Competition and Expand Consumer Choice (June 27, 2024), *available at* <https://www.ftc.gov/news-events/news/press-releases/2024/06/ftc-announces-final-eyeglass-rule-implementing-updates-promote-competition-expand-consumer-choice>; *see also* Trade Regulation Rule Relating to Power Output Claims for Amplifiers Utilized in Home Entertainment Products, 89 Fed. Reg. 49797 (June 12, 2024).

<sup>8</sup> *See, e.g.*, Dissenting Statement of Commissioner Melissa Holyoak, *supra* note 6; *see also* Oral Statement of Commissioner Melissa Holyoak, In the Matter of the Non-Compete Clause Rule, at 1 (Apr. 23, 2024), *available at* [https://www.ftc.gov/system/files/ftc\\_gov/pdf/non-compete-oral-statement-holyoak.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/non-compete-oral-statement-holyoak.pdf); Dissenting Statement of Commissioner Melissa Holyoak, Joined by Commissioner Andrew Ferguson, Health Breach Notification Rule, at 1 (Apr. 26, 2024), *available at* [https://www.ftc.gov/system/files/ftc\\_gov/pdf/p205405\\_hbnr\\_mhstmt\\_0.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/p205405_hbnr_mhstmt_0.pdf).

<sup>9</sup> *See id.*; *see also, e.g., Food & Drug Admin. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 161 (2000) (“[N]o matter how important, conspicuous, and controversial the issue, [however] . . . an administrative agency’s power to regulate in the public interest must always be grounded in a valid grant of authority from Congress.” (cleaned up)).

recent Voice Cloning Challenge.<sup>10</sup> Voice cloning is a technology that can aid consumers who have lost their voices. But bad actors and fraudsters can also use voice cloning to engage in deceptive practices. The Commission’s Voice Cloning Challenge helped highlight innovations—from a variety of sources—that address the threats voice cloning can pose.<sup>11</sup>

Finally, I’ll flag one other matter that is of great concern to me. As I’ve suggested recently, one of our country’s most pressing issues is the relationship between large technology companies and individual liberty.<sup>12</sup> The concern is one that should go beyond party politics. And I believe the FTC has more work to do on this front. My concern about large corporations and individual liberty has consumer protection implications.

For example, when technology or financial services companies use ambiguous or unclear terms of service to shield assessments of consumer conduct in ways that are inconsistent with consumers’ reasonable expectations—and sometimes in response to political or other pressure unrelated to traditional market constraints—those companies may violate the law. And, when platforms take steps based on their terms of service, that can have significant ramifications. Put bluntly, denying access to financial services or deplatforming can reduce these consumers to second-class citizens. In an era when cancel culture is rampant—including in corporate America—such concerns are far from hypothetical.

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<sup>10</sup> Press Release, FTC Announces Winners of Voice Cloning Challenge: Submissions include using algorithms to detect AI-generated voices and watermarking and authentication technologies to make it more difficult to clone voices (Apr. 8, 2024), *available at* <https://www.ftc.gov/news-events/news/press-releases/2024/04/ftc-announces-winners-voice-cloning-challenge>.

<sup>11</sup> *Id.*

<sup>12</sup> *See generally* Remarks of Commissioner Melissa Holyoak at the Competitive Enterprise Institute’s Annual Summit, Rediscovering Adam Smith: An Inquiry in the Rule of Law, Competition, and the Future of the Federal Trade Commission, at 12 (May 31, 2024), *available at* [https://www.ftc.gov/system/files/ftc\\_gov/pdf/holyoak-cei.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/holyoak-cei.pdf).

To the extent we at the Commission can wield our existing enforcement authorities to combat some of these problems, we should do so aggressively.<sup>13</sup> I also believe the Commission should seek to better understand the role that platforms play in controlling and denying access to the digital commons. The Commission should use its 6(b) authority to better understand how platforms enforce relevant contract terms, and how the enforcement of those terms affects consumers.

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I again, thank you for the invitation to appear, and I am happy to answer any questions you may have.

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<sup>13</sup> See *id.* at 13 n.67.