



FTC Open Commission Meeting - April 28th, 2022

Lina Khan:

Good afternoon everyone and thank you for joining us. This meeting will come to order. We are meeting in open session today to consider certain items before the Commission. As usual, we will start by hearing from members of the public who wish to share their concerns. I'll turn it over to Peter Kaplan to open things up.

Peter Kaplan:

Thank you, Chair Khan. Before we begin, please note that the FTC is recording this event, which may be maintained, used, and disclosed to the extent authorized or required by applicable law, regulation, or order. It may be made available in full or in part in public record and accordance with the Commission's rules. Now, we'll hear from members of the public. Each member of the public will be given two minutes to address the Commission. Our first speaker is Shannon Smith, who is council and senior consumer advisor for the Senate Subcommittee on Consumer Protection, Product Safety and Data Security. Shannon will be delivering remarks on behalf of Chair Maria Cantwell of the Senate Commerce Committee. Shannon.

Shannon Smith:

Thank you very much and thank you Chair Khan. Good afternoon. I appreciate the Commission's invitation to speak today at this open meeting on the Commission's authority to provide consumer relief. Senator Cantwell is committed to a strong Federal Trade Commission to protect American consumers. It shouldn't be news to anyone that it is essential for the FTC to be able to go to court to obtain refunds and relief for consumers who have been harmed by deceptive, unfair, and anti-competitive practices. In the just few years before the AMG decision, the FTC was able to return more than \$11 billion to American consumers, including small business consumers. That's \$11 billion dollars that the FTC was able to put back in the pockets of American consumers and small businesses who were tricked, scammed, swindled, or locked out of competitive markets.

We are working on a fix for this authority or the lack of this authority and hope to have a bipartisan solution soon. Thank you very much for the opportunity to speak today. I know this issue strikes at the very heart of the Federal Trade

Commission, and we will work our hardest to restore the FTC's authority. Thank you for the opportunity to share these comments.

Peter Kaplan:

Great. Thank you, Shannon. Our next speaker is Patrick Pespas. Patrick. Patrick, are you on mute?

Patrick Pespas:

Is that better?

Peter Kaplan:

Yes, I think we can hear you now.

Patrick Pespas:

great. Good afternoon, Chair Khan and the esteemed members of this Commission. My name is Patrick J. Pespas. For over 10 years, I was a telemarketer at one of the largest telemarketing companies in the United States. That company was effectively shut down by this agency for deceiving Americans. That is why I was relieved they were effectively struck down by this body because I had hoped that it would encourage change of the landscape of the telemarketing industry for the better, but the greed predatory practices are still as audacious as ever. I have spent the last 16 years investigating and documenting the dark world of the telemarketing industry. There is one constant, greed and corruptions know no bounds and there is no one, no grandparent, no war veteran, no retired cop, no cancer patient, that is safe from being preyed on for their last dollar.

Based on my review of IRS tax filing, telemarketers representing the two largest police organizations in the country have raised least \$169 million since 2009 from Americans who thought and were hoping to help out the police officers, but the telemarketers have kept \$143 million of that money, which is 85% out of every dollar. Most of it goes to the salaries, overhead expenses, very little of it actually benefits the police officers. That's a problem. Just last month I traveled to Houston, Texas where I sat down with the president of the local lodge Fraternal Order of Police. His predecessor, Robert Lozano, bled the lodge coffers dry. Lozano owned telemarketing company, RG Benefits, that raised funds on behalf of the FOP. His company's made calls claiming to be raising money for the FOP sponsored children's program while virtually none of it went to these programs. His callers even go as far as to imitate police officers, but thank-

Peter Kaplan:

Thank you. Thank you, Patrick. Thanks a lot. Appreciate it. Our next speaker speaker is Brandon Moore.

Brandon Moore:

Hi, I'm Brandon Moore, a former franchisee of the DentalFix RX Franchise System. In November of 2020. I participated in the FTC workshop titled Reviewing The Franchise

Rule, along with fellow franchisee, Keith Miller. During my panel, I discussed the very real danger that disclaimers, waivers, and questionnaires posed to franchisees. This journey began when I uncovered a serious concern within the sales process for this franchise by comparing my disclosure document to one that was six years older and finding a serious glaring omission regarding a key participant in their discovery day. I approached the franchisor regarding this matter in the fall of 2017 and was sued abruptly and without discussion. I've since organized the franchisee base and we have successfully helped state regulators in both Virginia and Washington enter settlements based on this information, forcing the franchisor to offer rescissions to the franchisees in these states and we are currently working with two other states in hopes of the same outcome.

We must choose this path of appealing to regulators due to our inability to prevail civilly, in large part due to the reasons discussed during the workshop panel. In retrospect, whether this specific agreement was intentionally designed to deprive franchisees of the protections afforded by the FTC act, that does not matter as it is the exact same impact it has had on many of us. Today, we approach the FTC in hopes that we can officially begin an investigation to cover impacted franchisees across the nation, but more importantly, in those states where the franchisee does not have a state regulator they can rely on. This is a gap that currently exists in our strategy to stop these impacts of the scheme .between Texas and Florida, for example, two states without state level regulatory authorities, there are over 50 DentalFix franchises that have been sold. Many of us, which are out of business and bankrupted.

Please rely on the credibility afforded to us by having two settlement orders already entered by two separate state regulators. And finally, we ask that you assign an investigator to FTC report number 143934979. That is my personal complaint and has my contact information. Thank you and we hope that you consider our request. For many of us, our livelihoods depend on it. Thank you.

Peter Kaplan:

Thank you, Brandon. Our next speaker is Ashley Votaw. Ashley.

Ashley Votaw:

Hi, I'm Ashley from Green Blue Marketing, and I'm here to say that the FTC should add targeted dream incubation to deceptive advertising rules and ad examples. Companies want to increase sales exponentially, so advertising culture takes a scale at all cost mindset, rewarding growth hacking and new verticals. If there is proof of a working technique, it will be used and optimized. There is new evidence that marketers can manipulate a consumer's hypnogogic state, also known as sleep onset. In the Dormio Test at MIT, a user wears a biosignal tracking device to mark critical transitions in sleep stages. Once the dreamer enters sleep onset state, the device triggers audio of a word or phrase, implanting it into the dream. Not only is it possible in marketing, Coors did it successfully. In sleep studies, they implanted product imagery into test subject's dreams. Right now, targeted dream incubation is device dependent and there is access to fully functional devices on the market.

Biosignal devices like Apple Watch or Fitbit could sync to audio devices like Siri, Alexa, and Google Nest. A few minor tweaks and could be subject to dream implantation, stoking purchase behavior. Even more smart devices are vulnerable to security breaches. Widespread use of targeted dream incubation for marketing will inspire exploitation. Advertisers are exploring this method to capitalize and are seeking scientific help for initial tests. As a leader in global development, we should limit targeted dream incubation to science as there is damning evidence of potential corruption in marketing. Thank you.

Peter Kaplan:

Thank you, Ashley. Our next speaker is Julie Merrill. Julie.

Julie Merrill:

Good afternoon. My name is Julie Merrill. I come to you as a private citizen. I appear before you today to advocate for legislation based on your proposed ruling dated December 16th, 2021, titled Rule Making to Combat Sharp Spike in Impersonation Fraud. Last summer, I was in fact the victim of this type of fraud while working as a healthcare executive on the front lines of the pandemic, my bank account was defrauded out of nearly \$90,000. The individuals who contacted me for financial assistance purported to be US army doctors and officers stationed in Kabul, Afghanistan. They feared they'd never return to their families here in the United States alive. During this time, and unbeknownst to me, I had a yet to be diagnosed brain tumor, which has been determined to have influenced my decision making skills at the time.

Thankfully, my health is perfectly fine after having the lemon size benign brain tumor removed. This matter has been reported to a variety of law enforcement agencies, a bank, the CFPB, and the FTC. I'm currently unemployed and there's yet to be a resolution to this matter, including the return of my money from TD Bank North America now that it has been determined I have been defrauded by deception. In closing, we must heighten the public's awareness regarding this type of scam as I believe they've gone under reported and are still on the rise. Therefore, I would advocate strong legislation to combat these nefarious activities. As law enforcement agencies have advised me, they're simply unable to keep up with the influx of these scams. Thank you today for the opportunity to speak before you.

Peter Kaplan:

Thank you. Our next speaker is Gay Gordon-Byrne. Gay.

Gay Gordon-Byrne:

Hello, thank you very much for the opportunity to speak. My name is Gay Gordon-Byrne. I'm the executive director of the Digital Right to Repair Coalition, otherwise known as Repair.org. I am calling to speak about the fact that we sent a letter last month opposing the Microsoft/Activision merger because we were concerned that console repair is already constrained and it will only get worse with the merger, so I wanted to elaborate on those concerns. 10 years ago, Microsoft started to pair their Xbox game disc drives with the device motherboard and the Parts Pairing Statute has

been a documented disaster for repair because the manufacturer is the only entity that can make the pairing happen. So disc drives, although they're very inexpensive in the marketplace, maybe a \$20 item, can't be replaced in a Microsoft Xbox without also buying the corresponding motherboard, raising the entire cost of the repair to roughly \$220, which is almost exactly the cost of buying a whole new unit off the used market.

As a result, there's thousands and thousands of Xbox consoles that have been sent to the trash heap and the few parts that are useful in repair only can be salvaged out of a very few of those that have been discarded, so there's a lot of waste there. And we're very concerned that because Microsoft has such a lock on the market for Xbox and game consoles, that they're so dominant as a player and Activision is equally dominant as a player in the delivery of games, that the merger of these two large dominant players will never be good for consumers. We fear that there will be just less opportunity for repair and that those that have invested in games that might operate on other platforms may wind up having to only operate them on a repair monopolized platform, such as the Xbox. That is our concern.

Every three years, we try to get the Copyright Office to make changes to their policies so that repair is more available and they did that just recently saying it's legal to repair your Xbox optical drive, but you still can't do it. Functionally, you can't do it because the exemption didn't include permission to develop and distribute the exact same software tools that you would need to do the repair so there's no relief there from the Copyright Office. That's our major fear, and we hope that the FTC will work on that. Thank you.

Peter Kaplan:

Thank you. Thank you, Gay. Appreciate it. And thank you to all of today's speakers. Now I'll turn it back over to Chair Khan.

Lina Khan:

Thanks so much, Peter, and thanks everybody who took the time to come and share your views. We're really mindful of your feedback and really look to it closely to inform some of our future priorities and actions. The first topic on today's agenda is the Telemarketing Sales Rule in connection with the Commission's routine review of this rule, the Bureau of Consumer Protection has recommended that we amend the rule to ensure that it's fully accomplishing its goal in light of certain changes in market conditions and the legal landscape. And specifically, staff has recommended that we approve for publication in the Federal Register two separate proposed rulemaking documents. I will now turn it over to Ben Davidson from the Bureau's Division of Marketing Practices to present an overview of the proposed amendments. Thanks, Ben. Kicking it over to you.

Ben Davidson:

Thank you, Chair Khan and Commissioners Phillips, Slaughter, and Wilson for considering our recommendation to initiate a rule making that would make changes to the telemarketing sales rule. The proposal has two pieces, the Notice of Proposed Rule Making, the NPRM, and an Advanced Notice of Proposed Rule Making, the ANPR,

which reflect different stages of the rule making process. I appreciate the opportunity to appear before you today and to present on this issue. Next slide. To begin, the proposed NPRM would prohibit deception and calls made from one business to another, known as B2B calls. When the TSR was created in 1995, the TSR exempted most B2B calls. The Commission did require some B2B calls, such as calls selling office supplies, to comply with the TSR because those calls were often deceptive. The Commission continues to see businesses harmed by deceptive B2B telemarketing, particularly in recent years. Deceptive B2B telemarketing also comes in many forms.

Today, staff proposes that the Commission amend the TSR to require all B2B telemarketing calls to comply with the TSR's existing prohibitions on misrepresentations. Requiring sellers and telemarketers to avoid deception in B2B calls should help protect businesses without burdening honest sellers and telemarketers. Next slide. The proposed NPRM would also enhance the TSR's record keeping requirements. Today's telemarketing landscape is a lot different than it was in 1995 when the TSR's record keeping requirements were created. Technology has made it easy for bad actors to send a flood of illegal robo calls with spoofed caller ID numbers that do not identify the person making the call. Investigating these campaigns often requires sending multiple civil investigative demands to different phone companies in order to trace the call from the consumer to the telemarketer. When the correct phone companies located, they do not always retain records that would identify the telemarketer that made the call and the telemarketers do not always keep the records we need to determine whether the call is compliant with the TSR, such as the script that was used to make the call.

Although the Commission continues to bring successful enforcement actions against companies that violate the TSR,

Ben Davidson:

Staff believes that additional record keeping provisions are warranted to help our investigations and to better protect people from illegal calls. First, the proposed NPRM would add new records that must be retained, such as audio files of prerecorded messages. Second, the proposed NPRM would also update existing provisions, such as specifying the records sellers need to keep in order to demonstrate that consumers actually agreed to purchase the product that was sold on the call. Next slide.

In addition to the NPRM staff also recommends issuing an ANPR that would see comment on three issues. First, whether to modify or repeal the B2B exemption entirely. Second, whether the TSR should apply to inbound tech support calls. And third, whether the TSR should require a simple notice and cancellation mechanism for negative option sales. Next slide.

While the proposed NPRM would require B2B calls to comply with the TSRs discreet prohibitions on deception, the proposed ANPRs solicits broader comments on the B2B exemption, including whether the exemption should be removed entirely. People's working environments have changed since the B2B exemption was created in 1995. Even before the COVID pandemic, some people increasingly worked from home

on either a part-time or full-time basis, and the COVID pandemic has accelerated these changes, potentially on a permanent basis for some.

Additionally, the rise of the gig economy and the economic impact of the pandemic have resulted in more people using alternative work arrangements to earn income. It is not uncommon for some people to use a single phone for their personal and business purposes. One of the TSR central purposes is to protect consumers privacy from unwanted calls. The number of consumers working from home who are using a single phone for personal and business calls raises the question of whether the B2B exemption compromises the TSRs abilities to stop unwanted calls to consumers in their homes. The ANPR solicits comments on the cost and benefits of B2B telemarketing generally, and whether the B2B exemption should be kept, repealed, or modified.

Additionally, from its law enforcement experience and through its policy working connection with the every community initiative, the commission is cognizant that fraud and business concerns can have disproportionate negative impacts on underserved communities. Thus the proposed ANPR also seeks comment on whether modifying the B2B exemption will impact underserved communities differently. For example, would regulating B2B marketing impose greater burdens on minority owned businesses engaged in telemarketing, or would it provide greater protection to minority owned businesses against fraud and disruptive telemarketing? Next slide.

For the most part, the TSR exempts calls made from the consumer to a business, known as inbound calls. Inbound calls, selling particular products like investment opportunities, are subject to the TSR because the commission has found that these products are often sold deceptively. The proposed ANPRs solicits comment on whether tech support calls should be added to the list of inbound calls that are subject to the TSR. Tech support scams typically begin with an outbound telemarketing call or an online advertisement directing a consumer to call a 1-800 number. The telemarketers then convince consumers that their computers have a variety of problems and they persuade people to purchase tech support services that they do not need. Consumer complaints about tech support scams have increased dramatically over the last few years. Our data indicates that tech support scams disproportionately harm older adults. Consumers age 60 and over are six times more likely than younger consumers to report a financial loss to tech support scams. The proposed ANPR solicits comment on whether the TSR should apply to inbound telemarketing of tech support services. Next slide.

The proposed ANPR also solicits comment on whether the TSR should be amended to require parties that sell products with negative option features to provide consumers a simple notice and cancellation mechanism. Products are sold using a negative option feature when the seller will continue providing the product until the consumer takes an affirmative action to terminate the arrangement.

The commission's October 2021 enforcement policy statement regarding negative option marketing highlights how widespread negative option programs are in the marketplace. Negative option programs can benefit people by making it easier and more convenient for them to obtain the products they want. And they can also injure people when they face recurring payments for products and services that they did not intend to continue to purchase. The TSR currently requires sellers of negative

option programs to disclose all material terms of the negative option feature and the steps that people must take to avoid being charged. It also requires sellers to obtain a person's express agreement to be charged. But even with these protections in place, the commission regularly brings cases challenging a variety of harmful negative option practices, some of which involves products sold through telemarketing. The ANPR solicits comment on whether sellers and telemarketers who sell negative option products should be required to provide consumers with a simple notice and cancellation mechanism. Next slide.

Thank you, chair con and commissioners Phillips, Slaughter and Wilson for the opportunity to present on this matter today.

Lina Khan:

Thanks so much, Ben, for the great presentation and thanks as well to Lois Reisman and Patty Sue from the division of marketing practices, Leah Frazier, Alejandra Rosenberg, and Monica Vaca from the BCP front office, as well as Kenny Wright, Josephine Lou, and Rich Gold from the office of general counsel for all of the fantastic work on this. I'm really excited about this rule making proceeding. I think it's a critical effort to be ensuring that we're able to update our rules where needed to match modern day market realities.

When the FTC issued the telemarketing sales rule in 1995, a key goal was to help protect consumers from unwanted calls. And as we've heard, while the commission has had great success in bringing lawsuits to enforce the rule over the years, it's clear that illegal calls remain a significant problem. And not all of the calls that we are seeing reports about are currently covered by the TSR, leaving critical gaps where consumers and small businesses remain susceptible to scams and frauds.

And so I strongly support the rule makings before the commission today. And I think that they could make the TSR a stronger tool to protect Americans from unwanted calls and deceptive and abusive telemarketing practices.

As we heard from staff, the notice of proposed rulemaking would close a key gap and prohibit deceptive telemarketing from one business to another, no matter what product is being sold. The original TSR included prohibitions on deceptive telemarketing to businesses pitching office and cleaning supplies while exempting all other B2B calls. And it's clear that times have changed. And the rise that we've seen in telemarketing fraud, targeting small businesses in particular, really invites us to be revisiting this exemption and looking into whether we should really be expanding the coverage.

We've also seen how small businesses aren't the only ones being harmed, even under the existing regime. We've seen a troubling increase in scams reporting to offer tech support services to older consumers who are nearly six times more likely to lose money to these scams than younger consumers. And that's one reason why staff is also recommended that we issue an advanced notice of proposed rule making that seeks the public's input.

The ANPR seeks comment in three areas, each of which I think is very worthwhile. First, the question of whether TSR should add provisions to address the rise in tech support scams is extremely relevant given that this is an area where we have been seeing a rise in scams that take place through inbound calls initiated by

the consumer. I think the inquiry into whether TSR should also require telemarketers to provide a simple notice and cancellation mechanism when they sign up for subscriptions or negative options plans is also extremely timely. As we heard Ben mention last year, the commission issued a policy statement on negative option marketing, where we indicated that online signups must be clear, consensual and easy to cancel. And I think now contemplating whether we should expand that requirement to subscription plans that are brought through telemarketing is extremely timely and relevant. And I strongly support exploring that.

And finally, I think looking into whether the TSR should repeal exemptions from B2B telemarketing to stop treating calls made to businesses differently from calls made to consumers is extremely timely given the trends that we've seen in some of the scams targeting small businesses in particular.

So I think that these proposals could help better protect Americans from unwanted calls and hope that my fellow commissioners agree. I really look forward to potentially hearing from the public to inform this proceeding. And with that, I'm making the follow motion, I move that the commission approve and publish in the federal register the notice of proposed rulemaking and the advanced notice of proposed rulemaking, proposing amendments to the telemarketing sales rule that the secretary circulated under matter number 411001 on April 28th, 2022.

Is there a second?

Patrick Pespas:

I'll second.

Lina Khan:

Thanks Commissioner Slaughter. I'll now turn it to my fellow commissioners to share any remarks before the item is moved for a vote, starting with commissioner Phillips.

Phillips:

Thank you, Madam Chair. And thank you Ben for that great presentation and to all who have worked over the last decade to improve the telemarketing sales for rule, staff at marketing practices in the office of general council, bureau of consumer protection, and the bureau of economics have all worked together to produce these thoughtful and well reasoned proposals.

This is the way it's supposed to work. In fashioning these proposed rule changes, staff not only considered public comments that we've received, they examined our law enforcement experience, they evaluated policy consideration, they weighed the costs and benefits of each proposal. And I'm looking forward to hearing what stakeholders have to say after we publish them in the federal register.

I also want to commend staff for their efforts to protect the American consumer while still ensuring that businesses big and small can compete to attract customers. I was impressed by the thorough and restrained consideration that they gave it. And I'm heartened that staff and my fellow commissioners have taken a reasoned and balanced approach. The TSR is replete with provisions that help protect consumers. But I want to focus on two elements today.

First is its critical goal of hectic Americans from unwanted calls that disturb their privacy and often expose them to fraudulent marketing practices. Every one of us and countless small businesses experience these annoying calls. They distract us and they waste our time. And they reduce trust in necessary communications technologies.

I learned a little bit more about this and in particular, on the impact on American hospitals, by participating in 2020 in a hospital robocall protection group. Congress directed the establishment of this working group as part of the trace stack, which provided additional tools and flexibility for government agencies to combat the scourge of malicious spoofing and spam robocalls plaguing our nation's hospitals. While the working group was specific to best practices to prevent unlawful calls affecting hospitals, it provided invaluable insight into how pernicious this problem is on a general level as well. I commend Congress for convening that effort.

The second aspect that I want to focus on with, respect to the TSR, is to emphasize that it gives us tools to pursue one of our most important duties, and that is protecting American consumers from fraud. The proposals put out for public comment to date are geared toward reducing fraud in the marketplace and giving us additional tools to pursue fraudsters. For example, we're soliciting comment on whether the rule should be changed to cover inbound tech support calls. That is where the consumer is calling the business rather than when the business initiates the call to the consumer. Many consumers have fallen victim to tech support scams when they place a call in response to a popup or an ad that they see. The TSR applies to inbound calls in certain areas where there are high rates of fraud like credit repair and debt relief. And we're exploring whether to broaden that out to include these tech support scams.

Another proposed change we're making is to record keeping. Requiring more comprehensive record keeping does impose a cost, but it will go a long way to assisting us in conducting thorough investigations of possibly illegal conduct, both to find the violators that are breaking the law and to exonerate people who are working in compliance with it. The request for public comment voted on today contain preliminary proposals as well. Other changes that we're still thinking about those.

I have a completely open mind about the final result. And I would like to reiterate that public comment, especially empirical evidence supporting your viewpoint, is crucial to this process. So I encourage all stakeholders to participate in this process to help ensure that the resulting product is robust and balanced. So with that, I thank you all for your interest in this important topic and I'm looking forward to supporting these proposals.

Lina Khan:

Thanks, Commissioner Phillips. Commissioner slaughter.

Patrick Pespas:

Thank you, Madam chair. I want to add my support for today's proposed action to issue a notice of proposed rule making and an advanced notice of proposed rule making regarding the telemarketing sales rule.

As you've heard today, the TSR is one of, if not the most heavily used in effective FTC rules. A true workhorse that TSR protects consumers from telemarketing fraud, unauthorized billing, abusive calling practices and unwanted calls. The TSR also prohibits misrepresentations regarding goods or services being marketed on the phone, including deception about the total cost restrictions, limitations, or conditions, material aspects of performance, central characteristics of the good or service, refund policies, material aspects of prize promotions, negative option offers, debt relief services or investment opportunities. It's a long list.

Like any critical and heavily used tool, the TSR has benefited from consistent maintenance over the years. First promulgated in 1995, the TSR has gotten substantial amendments and updates at least six different times, along with a host of rule reviews over the years. No doubt staff working to keep this important tool up to date, feel like they're painting the George Washington bridge, but their work serves as a reminder of the many benefits of rulemaking, providing clear protection for consumers, clear guidance to businesses, regular opportunities to hear from stakeholders on what is or is not working and flexibility to change and adapt to developments in the market.

Like many important rules the TSR also provides significant deterrents in the form of civil penalties. For example, highlighting just the portion of TSR cases that include unwanted call violations, the commission has brought over 150 enforcement actions and recovered over \$178 million in civil penalties and \$112 million in restitution of discouragement. The proposals in today's NBRM about which we are seeking public comment are designed to help improve our ability to protect consumers when they're on the phone and hold bad actors accountable when they violate the law, expanding required record keeping and prohibiting misrepresentations in B2B calls. Among other inquiries, the advanced notice of proposed rule making asked important questions about protecting consumers, including whether the TSR should apply to inbound tele-marketing of tech support services, whether or not the marketplace has changed such that distinctions between personal and business calls need to be revisited, and whether telemarketers should provide consumers with notice they're about to be billed for a negative option product or service and provide consumers with a simple cancellation mechanism.

I encourage all folks who wish to comment on proposals and questions to do so, including anyone who's had personal experience attempting to cancel an ongoing product or service by phone. I think the breadth and depth and importance of the TSR reflects the fact that what the TSR tackles, annoying fraudulent calls, is something that we hear frequently, both in our official capacity and as humans who participate in the marketplace as one of the greatest complaints that consumer face. I think it makes all of us crazy. So we should, must, we should do everything we can within the bounds of the TSR to stop bad actors, [inaudible 00:35:35].

But I also think it's important to be honest about what the TSR can't do, because I also feel frustration all the time about why haven't we, notwithstanding all of these actions, just stopped robocalls. We can do a lot. We should do a lot. We should do more. But I think even with these changes, the law doesn't allow us to stop all robocalls wholesale. And I think

Patrick Pespas:

A lot of the most annoying calls that we get are from criminals who are violating multiple laws in multiple ways and don't really care about the consequences of violating the TSR. That's just one of the ways they're violating the law. I have always thought, I continue to think, that it is incumbent on carriers, including working with Congress, to do more to stop this traffic to begin with, so I want us to do everything we can with the TSR, but I also want us to be realistic about how far that goes.

Finally, I'll join my colleagues in thanking the staff for their excellent work on this important project. Patty, Ben, Katie, Lois, Josephine, Kenny, Leah, Alejandro, Monica, Rich, Patrick, and Dan, thank you to all of you and to everyone at the Agency whose work, not just on the rule itself but on enforcement of the rule, goes a really long way to protect people every day from not only profound annoyance but also real harm that they would otherwise experience. So thank you.

Lina Khan:

Thanks, Commissioner Slaughter. Commissioner Wilson?

Christine S. Wilson:

Thank you, Chair Khan, for giving staff the opportunity to present their excellent work on these proposed notices. Many thanks to Benjamin Davidson from the Division of Marketing Practices in the Bureau of Consumer Protection for his informative presentation this afternoon. And thanks also to the broader array of staff who worked on the proposed advanced notice of proposed rulemaking and the notice of proposed rulemaking, the ANPRM and the NPRM. My colleagues have identified those folks. I won't go through that list again, but many thanks to you.

As I will explain, the approach proposed by staff is carefully tailored to addressing identified and prevalent harms and avoids amendments unsupported by evidence in the record, and so I would like to commend staff for their work on these notices. As a general matter, I believe that rulemaking can be very problematic, but the Telemarketing Sales Rule is a notable exception. In addition to disturbing consumers in their homes, deceptive telemarketing calls frequently involve fraud and cause financial harm, significant financial harm. To address these harms, Congress enacted the Telemarketing and Consumer Fraud and Abuse Prevention Act, the Telemarketing Act, in 1994 to curb deceptive and abusive telemarketing practices.

And the Telemarketing Act itself directed the Commission to adopt a rule prohibiting deceptive or abusive telemarketing practices and to consider including recordkeeping requirements. We have a long history of enforcement under this rule and amendments to this rule. In fact, the Commission first promulgated the Do Not Call provisions of this rule during my tenure as Chief of Staff to Chairman Muris roughly 20 years ago.

The revisions proposed in the notice of proposed rule making, the NPRM, seek to improve protections for consumers and enable the FTC more effectively to investigate potentially illegal conduct. For example, as we've discussed, the notice proposes modifying the exemption to the current rule with respect to business-to-business calls. As Mr. Davidson explained, the proposal would modify the rule to apply to B2B calls the prohibitions on both material misrepresentations and false or misleading statements. And the NPRM explains in detail how our law enforcement

cases for over a decade have shown a prevalence of unfair or deceptive conduct in B2B telemarketing.

Although the Commission has authority to bring law enforcement actions under Section 5 of the FTC Act to address these activities, removing the exemption for this conduct from the rule would allow the Commission additional remedies for consumers for these violations, and hopefully would result in greater deterrence. Given the well-documented history of unlawful practices in this area, I support this proposal.

The proposed recordkeeping provisions similarly result from extensive experience in our law enforcement work. The staff recommendation also includes the ANPRM that seeks comment on whether to propose additional revisions. For example, the notice asks whether the rule should continue to exempt inbound telemarketing calls regarding technical support services, negative option offers, and B2B calls. Here, in lieu of proposing amendments, the ANPRM seeks additional comment on the prevalence of unfair and deceptive practices and asks about the benefits and harms to consumers, businesses, and competition that might flow from further revisions. I commend this carefully tailored approach that is designed to develop the data on prevalence and fully understand the potential market effects before proposing changes to the rule.

Historical experience reveals that a heavy handed regulatory approach can cause significant harm, many times to the very people and entities intended to be the beneficiaries of those rules, so I will continue to look closely at any proposed rule, but here the proposals are grounded in our law enforcement experience and draw on the expertise of our seasoned staff who address these issues daily on the front lines. So to staff, thank you again for your thoughtful work on this proposed rule and thank you, Chair Khan, for advancing it.

Lina Khan:

Thanks, Commissioner Wilson. The motion being seconded, I'm going to call for a vote. Commissioner Wilson?

Christine S. Wilson:

I vote yes.

Lina Khan:

Commissioner Slaughter?

Patrick Pespas:

Yes.

Lina Khan:

Commissioner Phillips?

Noah J. Phillips:

Yes.

Lina Khan:

And I vote yes. The motion passes unanimously. Thanks so much again, Ben, for the terrific presentation. And as my colleagues shared, we're really looking forward to hearing from the public on this important rulemaking proceeding.

We will now turn to the second item on the agenda, which is an update on the Agency's ability to return money to Americans who are harmed by unlawful business practices. Last April's Supreme Court decision in *AMG Financial Services v. FTC* significantly impacted our ability to provide refunds to consumers harmed by deceptive, unfair, or anti-competitive conduct. And Audrey Austin from Bureau of Consumer Protection will shortly share a snapshot of these effects. I'll just say a few things upfront.

As we all know, before the AMG ruling, Section 13(b) of the FTC Act was a key engine of our law enforcement efforts. For four decades, the Agency had used Section 13(b) to obtain court orders that halted violations of laws that the FTC enforces and imposed injunctive relief designed to prevent these violations from harming consumers again. And in those cases, the FTC was able to secure court orders that required defendants to pay refunds to make harmed consumers whole, or to turn over the profits that they had earned from their illegal behavior. As we will hear today, the use of 13(b) allowed the Agency to secure tens of billions of dollars in refunds for harmed Americans.

The AMG ruling dealt a massive blow to the Agency's enforcement efforts by invalidating one of our main tools for providing these refunds to harmed Americans. Although the AMG ruling was a big loss, I'm incredibly proud of our Agency's response. In the wake of the ruling, our staff have worked tremendously hard to use our other legal tools and authorities for obtaining monetary relief, including through using Section 19 to obtain monetary relief in consumer protection cases that involve rule violations, through initiating new rule makings to codify conduct that courts had already determined was unfair or deceptive, so that the agency can obtain refunds for harmed consumers under Section 19.

Our staff has also brought more administrative proceedings to preserve a pathway to monetary relief in cases that do not involve rule violations. And our staff has also warned companies and put them on notice to not engage in practices that the Commission has previously declared to be unfair or deceptive, and through obtaining civil penalties when they do not heed these warnings.

In addition, where we've lacked any pathway to provide refunds to harmed consumers, we've partnered with over a dozen different state attorneys general to harness their ability to obtain monetary relief. We're extremely grateful to all of our state partners for their valuable assistance. And overall, I would say our staff's creativity and determination to accomplish the Agency's mission is something that we can all be proud of.

That said, the loss of the Agency's ability to obtain monetary relief under Section 13(b) remains a major handicap. As we'll hear shortly, Section 19 of the FTC Act has several key limitations that make it an inadequate substitute for what was lost in AMG. And although obtaining civil penalties is a critical tool for deterring wrongdoing in the market, the FTC Act does not allow for those civil penalties to be used to provide refunds to harmed consumers.

So while our Agency continues to harness our full set of tools and authorities to fight hard to protect Americans from unfair, deceptive, and anti-competitive practices, there is now a major gap in our ability to make consumers whole and ensure that lawbreakers are not profiting from unlawful business practices. It's critical that Congress take prompt action to ensure that the Agency can obtain equitable monetary relief under Section 13(b) for violations of any law enforced by the Commission. Last summer, I was heartened to see the House of Representatives pass a bill that would do exactly that, and I would call on the Senate to take up the same bill and pass it as soon as possible.

Now I would like to welcome Acting Deputy Director in the Bureau of Consumer Protection, Audrey Austin, who will deliver a presentation describing AMG's impact on the Agency's enforcement work. Thanks, Audrey.

Julie Merrill:

Thank you, Chair Khan, for the introduction. Just over a year ago, the Supreme Court decided *AMG Capital Management v. FTC*, which stripped the Federal Trade Commission of certain powers, limiting our ability to get money back to consumers. While staff and the Agency continue to work tirelessly to protect consumers, the loss of our 13(b) authority has severely hindered our work.

The underlying case in AMG involved an online payday lending scheme operated by Scott Tucker, who is currently serving a prison sentence for this activity. The scheme involved completing an online application, which disclosed that consumers would have to pay back the loaned amount, plus a financing charge. For example, if a consumer borrowed \$300, the website informed them that they would have to pay \$300 plus a \$90 finance charge, for a total of \$390. But buried in confusing fine print was a different reality. There was more than one finance charge. Additional finance charges accrued for each pay period that passed when the loan was not repaid, for up to 10 pay periods. For the \$300 in our example, that consumer could end up paying not \$90 in finance charges, but \$675.

The Court ordered \$1.3 billion in restitution, calculated by the amount of additional financial charges consumers paid in aggregate. However, on appeal, Mr. Tucker challenged the Commission's authority to obtain monetary relief under 13(b), arguing that it only allowed a court to issue a permanent injunction stopping the conduct, but could not be used to force him to provide refunds to consumers. In April of last year, the Supreme Court agreed, holding that the Commission could not obtain monetary relief for consumers through this provision. For nearly 40 years prior to the AMG decision, the Commission used Section 13(b) to get money back to harmed consumers. Eight of eight courts of appeals that considered the question had agreed, based on precedent from two United States Supreme Court cases.

The loss of authority in AMG is compounded by limitations established in the Third Circuit's 2019 decision in *Shire ViroPharma*, where the court held that the commission cannot get an injunction unless the illegal conduct is ongoing or impending. In the four years prior to the decision in AMG, the Commission obtained \$11 billion for harmed consumers across all types of cases. It is important to remember that this is what it's really all about, consumer losses. This isn't money for the FTC, this is money for everyday people exploited by some illegal scam. And the

FTC gets money back to consumers very efficiently, with just a sliver spent on administrative costs. For consumers, the double impact of Shire ViroPharma's ongoing conduct requirement and the loss of monetary relief from 13(b) can be stark.

Next slide, please. Some years back Volkswagen claimed, as some of you likely remember, to run clean diesel vehicles with great fuel economy and low emissions. A professor conducting a different experiment found the purportedly low emissions were allegedly the result of a defeat device, software that could detect government emissions testing and artificially lower emissions. And in normal operating conditions, the vehicles polluted at a rate 40 times higher than claimed. Volkswagen ultimately stopped when their behavior became public, but only after approximately seven years and over 500,000 vehicles were on the road. The affected car values plummeted.

The FTC filed suit in 2016 and obtained over \$9 billion in relief for consumers. The Department of Justice and EPA were involved, but only had the authority to fine Volkswagen for their environmental violations, not their consumer-facing deception. 13(b) was the only legal authority that allowed for refunds to harmed consumers. Post-AMG, we could not obtain any refunds for consumers under Section 13(b), and Volkswagen would have evaded us on Shire ViroPharma grounds, because they stopped when their deception was discovered.

Some have said that Congress doesn't need to fix 13(b), because we have Section 19, which is now our only tool for getting money back to consumers. But Section 19 is no replacement. One significant flaw in relying on Section 19 is that it doesn't provide protection for consumers in antitrust cases. Next slide, please. Anti-competitive acts of drug companies have cost consumers billions. The AbbVie judgment, which involved meritless litigation to delay the availability of a generic option, caused consumers to pay substantially more. Section 13(b) protected consumers there, and the district court awarded nearly \$5 million, but the entire monetary judgment was vacated under the same legal reasoning as the Court's finding in AMG. Without 13(b), the consumers who paid more for their medication got nothing.

Additionally, Section 19 has a three-year statute of limitations. Many Commission actions involve schemes that have operated undetected for years. It sometimes takes time to realize one has been defrauded and complain to the FTC, and further, many FTC defendants take steps to conceal their identity and location. This short statute of limitations can mean that consumers who lost money in the early days of a scam, likely ones whose complaints prompted the FTC to investigate, will not get refunds, but consumers who suffered losses later are more likely to.

Further, courts may find the scope of conduct that falls within Section 19 is narrower than the conduct that the FTC can address under 13(b). And Section 19, which provides monetary relief for violations of some of the rules enforced by the Commission, can help provide refunds to some consumers in cases without a rule violation, but in the latter circumstance, the path to refunds for consumers is a very long one.

Next slide, please. Seven to 12 years from complaint filing to sending checks to consumers, on top of however long it took to discover and investigate the wrongful conduct, is bad for everyone. Compare this with the old Section 13(b) process of a

district court proceeding and any potential appeals, which was usually two to four years until we were able to get money back to consumers. This was true regardless of whether there was a rule violation, even in competition cases, and to all consumers who are harmed, not just ones harmed most recently. And because of ViroPharma, defendants can try to use its holding to avoid injunctive relief, arguing that if they stop their conduct when they get wind of an FTC investigation, the Commission can't seek an injunction against them.

Since AMG, the Commission has continued its impressive work in providing millions of dollars of refunds to harmed consumers, but it is important to note that the overwhelming majority of those refunds were from cases that were resolved before the AMG decision. The Commission will continue distributing those refunds to harmed consumers, but once that task is completed, there is no doubt that unless Congress fixes Section 13(b), the limitations of Section 19 will result in the Commission only being able to provide a fraction of the refunds we have historically, leaving more in the hands of companies that unlawfully took money from consumers.

Next slide, please. Our mission here is to protect consumers. Our goal is to do that efficiently and effectively, and we will always work toward that mission and those goals. But without congressional action to amend 13(b), we are significantly hindered in that effort. That we continue to work zealously for consumers with impressive results is a testament to our grit and determination as an agency. It is not a sign that we have no need for a 13(b) fix. On the contrary, it is without question that the impact of these recent decisions creates a real loss to the Commission and therefore to consumers. Thank you, everyone, for your time today.

Lina Khan:

Thanks so much, Audrey, for the terrific presentation. I'd also like to thank your colleagues in the BCP front office, Bikram Bandy, Ian Barlow, and Elisa Jillson, for preparing the presentation, as well as the whole set of FTC staff who collaborated with BCP on this, including June Chang, Karen Hobbes, and Jennifer

Lina Khan:

Debra Leach from the Division of Consumer and Business Education. Nicole Christ, Aaron Hutchinson, and Maria Mayo from the Division of Consumer Response and Operations. Jim Comb in the Bureau of Consumer Protections Enforcement Shop. Brad Albert from the Bureau of Competition's Healthcare Shop. And lastly Josephine Lu and Liz Tochi in the Office of General Counsel. I'll now open it up to my fellow commissioners for any remarks, starting with Commissioner Phillips.

Phillips:

Thank you, Madam Chair, and thanks Audrey for that great presentation. It underscores what all of us have been talking about for a long time, and in particular gave testimony about basically a year ago, on the Eve of the AMG decision that we need a congressional fix for this problem. A key part, as I said earlier, with regard to the TSR of our jurisdiction, a critical aspect of the work that we do is working to fight frauds and scams, and to return money to consumers who have been defrauded or scammed. I was very heartened to hear from the congressional staffer for Senator

Cantwell that we heard from earlier, that Congress and in particular, the Senate is working on a bipartisan fix. Unfortunately, the legislation that moved in the house moved on a partisan basis, which doesn't tend to be a path to getting a fix and a fix is really what we need. So I'm very heartened to hear that. And I will defer further to my colleagues. Thank you very much, Madam Chair.

Lina Khan:

Thanks commissioner Phillips. Commissioner Slaughter.

Patrick Pespas:

Thank you so much, Madam Chair, and thank you to Audrey for that excellent presentation that really crystallized exactly why this issue matters so much and why it is so important, not just to the commission, but to the people that we serve every day. One year ago, the United States Supreme Court ruled an AMG that section 13B of the FTC Act does not authorize federal courts to require defendants to pay refunds, to harm consumers or to give up the unjust gains they earn from breaking the law. The federal court path now foreclosed, had been used for 40 years on a bipartisan basis to make injured consumers whole and to prevent wrongdoers from profiting from their unlawful conduct. The commission's loss of its ability to obtain monetary relief under 13B has already had a found effect on consumers and honest businesses. The Supreme Court's ruling eliminated the commission's primary and best tool to seek monetary remedies when a company violates the FTC Act.

This tool, referred to by its statutory provision in section 13B, enabled the FTC to provide billions of dollars of relief. \$11.2 billion from in 2016 to 2022 in a broad range of cases, including telemarketing fraud, anti-competitive pharmaceutical practices, data security, and privacy and scams targeting seniors and veterans. Examples of just a few cases in which the commission is able to provide funds to consumers have been outlined by Audrey and others. And I'll have some more in my written remarks, but in the interest of time, I'll jump ahead to talk about what the outcome has been for us in the year since the Supreme court eliminated our ability use section 13B to obtain monetary relief. We've confronted two predictable outcomes. First consumers who were wronged are not getting money back. And second, corporate wrongdoers are emboldening. There are a number of examples over this past year in which consumers received far less money back.

And in some instances lost all monetary relief because of the laws of our 13B authority. I want to highlight just a few examples, demonstrating what this means for consumers. The loss of our 13B authority has hindered our ability to protect every group of consumers from scams, including seniors. In late 2020, the commission voted unanimously to file a federal court complaint against ragingbull.com, LLC, and its co-defendants. The FTC's complaint alleged that the defendants fraudulently marketed investment related services that they claimed would enable consumers to make consistent profits. Instead, the FTC alleged that consumers, many of them retirees, older adults and immigrants, lost at least \$137 million to the scam in just the last three years. Following the loss of our 13B authority, the FTC ultimately resolved this matter with the company for about \$2.4 million, a fraction of the harm,

leaving injured consumers, some retirees with tens of thousands of dollars in losses with very little tangible help.

Cutting off our 13B authorities also hamstrung our ability to protect consumers, trying to access credit and manage their loans. The FTC sued lending club in April, 2018, charging that the company falsely promised loan applicants, that they would receive a specific loan amount with quote, no hidden fees. When in reality, the company deducted hundreds or even thousands of dollars in hidden upfront fees from the loans. Lending Club charged consumers over \$1.5 billion in these hidden origination fees. Following the loss of our 13B authority, the FTC results its charges against lending Club in a settlement for \$18 million, meaning consumers are unlikely to get back the vast majority of the fees they were unwittingly charged. Lending Club gets to keep them. And as Audrey outlined, loss of our 13B authority has taken a heavy toll on our ability to provide redress to consumers suffering from illegal conduct in the pharmaceutical industry.

In the Sham patent litigation case, AbbVie, the district court awarded \$493 million in monetary relief to consumers harmed by inflated drug prices. Previewing what the Supreme Court would ultimately make final in AMG, the third circuit held that the district court lacked authority under section 13B to grant monetary relief to consumers. Defendants were able to keep their nearly \$500 million in illegal proceeds and consumers received not \$1 back. By conservative estimates, AMG has caused consumers to already lose out on more than \$1.5 billion of relief that the agency previously could have obtained. And the losses increase with each passing day.

Another \$1 billion in relief stands to disappear from consumers in cases still in active litigation. Relief that could be preserved, if action were taken now to restore 13B to all current and future cases. Staff throughout the FTC has done an incredible job of pivoting in terms of tools and tactics to blunt the effect on consumers in the last year. They've deployed every other available tool for obtaining monetary relief, including utilizing Section 19 to obtain monetary relief and consumer protection cases that involve rule violations, initiating new rule makings to codify conduct that courts had already determined was unfair deceptive, so that agency can obtain refunds for harm consumers under Section 19, bringing more administrative proceedings to preserve a pathway to monetary relief in cases that do not involve rule violations, partnering with State Attorneys General to utilize their ability to obtain monetary relief for some consumers, and warning companies not to engage in practices that the commission has previous declared to be unfair and deceptive, in seeking civil penalties when they do not heed those warnings.

Despite these impressive efforts, our best outcomes are still justice diminished and delayed. The scope of relief available using our other tools is often considerably smaller limited by Section 19 short three year statute of limitations. That limitation has particularly harsh effects for consumers who are early victims of an illegal practice. Often their complaints initiate an investigation, but they are cut from relief. In addition, in many instances, there is no complementary rule violation under Section 19 to provide relief for unfair and deceptive practices that violate section five of the FTC Act. Longer term enforcement strategies such as sending company penalty offense warnings, and rule making initiatives take time, and has been well documented proceeding through our administrative process can add years to the

timeline of returning ill-gotten gains in the pockets of consumers when compared with our former federal court process, and is also subject to Section 19's abbreviated statute of limitations. Finally, the FTC has no alternative paths for monetary relief or discouragement of ill gotten gains for competition violations.

It is critical that Congress take prompt action to amend Section 13B to make clear, what was well established, black letter law for more than 40 years, namely that the agency can obtain equitable monetary relief, intersection 13B for violation of any laws enforced by the commission. This past summer, I was grateful that the House of Representatives passed a bill that would do exactly that, and I hope the Senate will do the same.

I want to thank Shannon and Senator Cantwell in particular, for their leadership on this issue. I know Senator Cantwell has been deeply, deeply committed to getting a fix done and she understands how important it is that that fix really give meaningful authority to the FTC to provide real relief to the people that we serve every day. So thank you again to the staff for your excellent presentation. Thank you to the Chair for continuing to champion all of these important pivots that the agency is taking to do the best we can with what we have. And thank you to the folks in Congress who are working hard. And I hope we'll work even faster to provide us with the tools we need to do the public service to which we are really deeply committed.

Lina Khan:

Thanks so much Commissioner Slaughter, for providing such a vivid and concrete sense of the stakes of having lost this authority. Commissioner Wilson.

Christine S. Wilson:

Thank you Chair Con for putting this important issue on today's agenda. Thank you also to Audrey for that incredibly informative presentation. And thanks also the staff from across the agency involved in this presentation, other colleagues have listed those folks, and so I won't repeat that list. But let me also acknowledge the work of countless other professionals across the agency who have been working on 13B issues and strategies, both in anticipation of and following the Supreme Court's decision. I know a lot of time and effort has gone into this. And so I just wanted to acknowledge the hard work on so many fronts. I want to share a few words regarding my views on the Supreme Court's decision and AMG, 13B and potential congressional legislation. I support the FTC's use of Section 13B to seek equitable monetary relief, inappropriate cases, and also to challenge conduct that wrongdoers have already halted.

I also support working with Congress to restore the ability of the FTC to use Section 13B to pursue wrongdoers with appropriate guardrails. As I've acknowledged previously, stakeholders have expressed concerns regarding various aspects of Section 13B usage. Some are concerned about the absence of a Statute of Limitations. I support including one in legislative revisions to 13B. Others are concerned about the unbounded use of 13B to achieve discouragement in any trust cases. I agree that guiding principles on when the FTC will seek discouragement, perhaps as detailed in the FTCs now rescinded 2003 policy statement on monetary equitable remedies and competition cases, would be constructive. And yet others

have expressed concern about the application of Section 13B and consumer protection cases that involve not fraud, but legitimate companies selling legitimate products, albeit with deceptive claims. Congress could set forth the framework under Section 13B, pursue it to which courts must evaluate the value that consumers may have retained from the product or service, despite the deception.

This approach has support in the case law and could assuage those concerns. So, as I've said, I share the concerns of stakeholders, I believe they can be addressed, but I also have another concern. In the wake of the Supreme Court's decision in AMG, the agency naturally and rightly has sought to identify other avenues to obtain relief for consumers. Yes, the AMG decision has impacted our ability to return money to consumer victims. And yes, we need to evaluate carefully our existing authority to ensure we are using it fully but appropriately in furtherance of our mission, but we must avoid using our authority in ways that exceed the boundaries of underlying statutes and corresponding congressional intent. The recently promulgated Made in USA rule provides one example of overreach. There, the commission exceeded its statutory authority to regulate labeling claims, and there have been other proposals behind the scenes that fortunately have not come to pass.

If we engage in rule making and enforcement actions that exceed our jurisdiction, we will not engender confidence among members of Congress who have expressed qualms about the FTC's history of frolics and detours. And that's not an old story. It is a continuing concern in the halls of Congress, but we need Congress to clarify our 13B authority, so we must demonstrate that we will be careful stewards of that authority. Unfortunately, I am not confident. The current commission leadership has demonstrated a desire to walk that path, which will be to the detriment of the FTC and ultimately to the detriment of consumers. And so for this reason, I urge my colleagues to try carefully. Thank you, Madam Chair.

Lina Khan:

Thanks Commissioner Wilson. I'll just say in closing, I think this is a critical issue for us as an agency, our efficacy and our ability to pursue law enforcement effectively depends on our being able to make consumers whole when they are harmed by illegal conduct, and ensure that law breakers are not able to profit from that conduct. And so these are two core areas for us. It was really fantastic, and I'm very grateful to the house for having passed the Bill last year and really fantastic that Shannon was able to join us today to share about some encouraging signs in the Senate. So fingers crossed we're able to get that over the line. With that we are... we have concluded our meeting. Thanks again to our staff who are able to join and present, as well as my fellow Commissioners for their insights and the public who joined to share remarks at the beginning. This concludes our official agency business. And this meeting is adjourned. Thanks everybody.