

**Federal Trade Commission Commercial Surveillance and Data Security Public Forum**

**Major Concerns with the Proposed Rulemaking on “Commercial Surveillance and Data Security”**

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My name is Jennifer Huddleston, and I serve as Policy Counsel with NetChoice, a trade association dedicated to free enterprise and free expression online.

Data privacy is an important issue for many Americans as well as for the development and improvement of products in the tech sector and beyond. The Advanced Notice of Proposed Rulemaking, however, raises several key concerns.

As time is short, I would like to briefly highlight three of those concerns.

First, there is a threshold question about the FTC’s authority to undertake this process. While the FTC has the limited authority to enact unfair and deceptive acts or practices, this ANPR covers topics well beyond such practices. Without a clear grant of statutory authority from Congress to issue broad sweeping rules related to privacy and data use, the FTC arguably does not have the authority to undertake this endeavor. In fact, Congress is considering data privacy bills and has not granted the FTC with the authority to enact rules on this topic. Particularly, in light of the recent Supreme Court decision in *West Virginia v. EPA* regarding the “Major Questions” doctrine, any rulemaking not tied to a specific congressional grant of authority will likely face legal challenges to the agency’s authority and procedures.

Second, the framing of this rulemaking to address “commercial surveillance” wrongly vilifies beneficial data collection practices across all industries—not just tech. This gives the concerning impression that the FTC has reached a conclusion without first hearing the evidence. The ability of internet sites to recognize and quickly restore a user’s preferences has not been harmful. In fact, many of these practices are pro-competition and pro-consumer. The framing of this ANPRM purports to protect personal data privacy, but what it actually does is attack advertisements. The internet is a more democratic and accessible place because ads pay for much of the web we love. It’s why we can do a Google search and never pay a dime. It’s why we can use Facebook and not pay a subscription fee. It’s paid for by interest-based advertising.

Before moving forward, the FTC must do a robust economic analysis of the harms to low- and middle-income families from a loss of interest-based advertising – how many more ads will they see, more paywalls, less content? Likewise, the FTC must consider the economic impact these changes will have on the internet economy beyond the platforms themselves, like how such rules impact content creators and advertisers who will likely experience a loss of revenue.

Finally, the FTC should use its limited resources to focus on data privacy concerns that are clearly within its mission, rather than expanding to intervene in every facet of the American economy. Focus on those clear cases of bad actors and actual consumer harm, rather than create a burdensome regulatory regime that presumes innovative uses of data are guilty until proven innocent.

I thank you for your time, and I look forward to providing further comments for consideration throughout the process.

Sincerely,

Jennifer Huddleston  
Policy Counsel  
**NetChoice**

*NetChoice is a trade association that works to make the internet safe for free enterprise and free expression.*