

UNITED STATES OF AMERICA
FEDERAL ELECTION COMMISSION

PUBLIC HEARING ON
INTERNET COMMUNICATION DISCLAIMERS AND DEFINITION
OF "PUBLIC COMMUNICATION"

Washington, D.C.

Thursday, June 28, 2018

1 PARTICIPANTS:

2 FEC Members:

3 CAROLINE C. HUNTER
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5 Vice Chair

6 MATTHEW S. PETERSON
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8 Commissioner

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12 Acting General Counsel

13 Panel IV:

14 CHRISTINE BANNAN
Administrative Law and Policy Fellow
15 Electronic Privacy Information Center

16 DOUG HOCHBERG
Chief Digital Officer
17 Republican National Committee

18 CHRIS NOLAN
Founder/Chief Executive Officer
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20 Panel V:

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1 P R O C E E D I N G S

2 (9:35 a.m.)

3 CHAIRWOMAN HUNTER: Good morning,
4 everybody. Welcome to day two of our hearing on
5 internet communication disclaimers and definition
6 of public communication. So today we will start
7 the morning with panel number four.

8 We have Christine Bannan, administrative
9 law and policy fellow from the Electronic Privacy
10 Information Center. Doug Hochberg, chief digital
11 director Republican National Committee. Chris
12 Nolan, founder and chief executive officer of
13 Spot-On. Welcome to all three of you. Thank you
14 for coming.

15 So the way we're going to do this is we
16 -- each of you has an opportunity to give a
17 five-minute opening statement. The yellow light
18 will go on when you have one minute left, and when
19 the light turns red, you can just start wrapping
20 up your comments. That would be great. So we'll
21 go alphabetically and start, please, with Ms.
22 Bannan.

1 MS. BANNAN: Okay. Madam Chair, Vice
2 Chair, members of the commission, thank you for
3 the opportunity to testify today. My name's
4 Christine Bannan and I'm an attorney at the
5 Electronic Privacy Information Center known as
6 EPIC. EPIC is a public interest research center
7 established in 1994 to focus public attention on
8 emerging privacy and civil liberties issues.

9 I want to begin my testimony by stating
10 a simple principle, that users should know why
11 they are being targeted for an ad and who is
12 paying for it. Some commenters have argued that
13 there is a fundamental difference between internet
14 advertising and traditional advertising that
15 justifies lax disclosure requirements for online
16 advertisers. I agree that there is a fundamental
17 difference between online ads and traditional ads.

18 The difference is that online ads can be
19 micro-targeted by gender, race, sexual
20 orientation, religion, income, and anything you've
21 ever liked online. However, this requires more
22 scrutiny from the FEC not less. At the very

1 least, FEC rules should require at least as much
2 transparency for internet-based advertising as
3 they do for traditional print and broadcast
4 advertising.

5 For this reason, alternative A is a
6 stronger proposal. Whenever feasible, ads should
7 include a disclaimer on the face of communication
8 stating who paid for the ad. This should be the
9 default because it will ensure that everyone who
10 sees the add will also see the disclaimer as is
11 the case for ads on traditional media.

12 Alternative A allows adapted disclaimers
13 when a traditional disclaimer would not be
14 feasible using technological mechanisms such as
15 links and pop-up screens. Disclaimers that
16 require users to navigate to a different screen
17 should be disfavored because the vast majority of
18 internet ads have a click-through rate of less
19 than one percent. Therefore, if an ad requires
20 users to navigate to a different page to see the
21 disclaimer, less than one percent of users will
22 see the disclaimer. This should be the exception

1 not the rule.

2 If the FEC adopts the exception in
3 alternative B that allows advertisements, without
4 any form of disclaimer or indicator, it would
5 undercut the rest of the rule. While it's true
6 that there may be future forms of advertising that
7 are incompatible with the technological mechanisms
8 for adapted disclaimers contemplated now, this
9 does not mean that there will not be other
10 technological mechanisms for disclosing
11 information to users.

12 Alternative B relies on this false
13 premise, assuming that future ads are not
14 well-suited to current adapted disclaimers like
15 hover-over mechanisms or pop-up screens. We'll,
16 therefore, be completely unable to include any
17 form of disclaimer. As long as the FEC does not
18 mandate the specific types of mechanisms that can
19 be used for adapted disclaimers, ad tech companies
20 will be able to develop new types of disclaimers
21 compatible with their innovative ads.

22 Alternative B's exception will

1 discourage advertisers and internet companies from
2 innovating new methods of disclosure. Companies
3 that are innovative enough to develop new methods
4 of advertising are also innovative enough to
5 develop disclaimers compatible with that
6 technology. The FEC should not remove the
7 incentive of companies to develop less burdensome
8 and more effective methods of disclosing the
9 funders of political ads to users.

10 Advertisers are experts in capturing the
11 attention of internet users, and they should use
12 their expertise to disclose important information
13 to the targets of their ads. The Supreme Court
14 had held that the government's informational
15 interest is sufficient to justify disclaimer
16 requirements even when a speaker claims that the
17 inclusion of a disclaimer decreases both the
18 quantity of effectiveness of the group speech.

19 Therefore, arguments that the FEC's
20 proposed rules would burden the effectiveness of
21 the ad are insufficient to justify changing the
22 disclaiming requirements. The government's

1 informational interest to prevent corruption or
2 the appearance of corruption is even stronger for
3 internet advertisements because they are
4 micro-targeted. The FEC should not abrogate that
5 interest.

6 Disclaimer rules for internet
7 communications are necessary to protect
8 transparency and campaign advertising
9 expenditures. However, in order for these
10 measures to be effective, advertisers should also
11 be required to disclose how they are targeting
12 political ads. Algorithmic transparency is the
13 public's right to know how they are being targeted
14 and by whom.

15 Advertisers are able to reach users
16 based on the intimate details of their lives in a
17 way that is not possible with traditional media.
18 Because of this, voters should know why they are
19 being targeted for a particular message. Now more
20 than ever, it's crucial that Americans are able to
21 trust the political ads they see online.

22 EPIC urges the FEC to finalize a rule

1 that requires disclaimers that provide at least as
2 much information to users as the rules for
3 traditional media require, and does not allow an
4 exception that allows some ads to evade all types
5 of disclaimers. Thank you again for the
6 opportunity to testify, and I'd be happy to answer
7 any questions.

8 CHAIRWOMAN HUNTER: Thank you very much.
9 Mr. Hochberg?

10 MR. HOCHBERG: Madam Chair, Madam Vice
11 Chair, Commissioners, thank you for inviting me
12 here to be able to testify on this. My name's
13 Doug Hochberg. I am the chief digital officer at
14 the Republican National Committee. You have my
15 written testimony, so I just want to cover a few
16 basic points from there, and then happy to answer
17 any questions afterwards.

18 The first is that I want to be very
19 clear; I want people to know who is buying the ads
20 that they're seeing online. That is a goal that I
21 think every good advertiser wants to have in the
22 political space. We may come to different

1 conclusions on how to display who is paying for
2 those ads, but the end, I want the user to have
3 that ability. The second is I really do recognize
4 that this is a very difficult task for you.

5 The rules that come out of these
6 hearings have to be able to be used for five to
7 ten years in the future, and we don't know what
8 type of ads are going to be available five to ten
9 years from now. If we look back five to ten years
10 in the past, ad types that I use today to -- for
11 get out the vote campaigns, for persuasion
12 campaigns, those weren't available back then.

13 So to create new rules that are going to
14 be used in the future, I think there's a couple of
15 things that we should take into account on that.
16 First is that they have to be tech agnostic,
17 meaning whatever we come up with, whatever you
18 create as the new rules for us to follow, they
19 have to be able to work on every platform that we
20 currently use, and platforms that we don't even
21 know exist yet. So that is one piece of it, as
22 well as having and this is a new term to me that

1 I've learned from these hearings, and from our
2 lawyer here is bright-line rules.

3 I know it's a term you guys use a lot
4 more. I know that term only from the results that
5 I get from it usually which is you can't run this
6 rule -- you can't run this ad because we don't
7 know if there's a ruling on it. And campaigns
8 have a tendency to move so fast, especially in
9 September, Nov -- you know, September, October,
10 November, that there's not time for an advisory
11 ruling, and usually what the good actors on
12 campaigns and in committees, if there's a question
13 about if an ad will be struck down by the FEC,
14 usually the answer is we're not going to run that
15 ad.

16 So to give us those clear rules of
17 what's available to us is a very, very important
18 piece of it. And then finally that, and I think
19 we're in agreement here, online ads are inherently
20 different than TV, radio, and mail ads. Online
21 ads give the user more of an experience. They
22 give the user the ability to click, like, share,

1 pause the ad, interact with it in ways that you
2 don't get in TV and radio. And for that reason, I
3 don't think we should be considering them in the
4 same categories.

5 For instance, for if you don't hear the
6 end of a disclaimer of a TV ad, or if you're
7 looking down at your phone, and you don't see that
8 piece of it, if you mute your television during a
9 commercial break, you don't know who ran the ad as
10 clearly and you can't go back. Maybe some people
11 have TiVo and can rewind, but most people won't go
12 back and rewind their television to see who ran
13 that ad. On a computer, on your phone, when
14 you're seeing these ads appear in front of you,
15 you can click on it, you can scroll back up to see
16 the ad. There's a lot of options that have the
17 user -- that the user has that you don't just have
18 that ability on radio or television.

19 And for those reasons in general, we
20 would like to advocate for, at least, a one-click
21 rule. And this is something that has been used as
22 advisory opinions in the past where the disclaimer

1 for who's running the ad is never more than one
2 click away from the user. And for us, this
3 satisfies a lot of tech requirements. It doesn't
4 put a burden on companies to develop other pieces
5 that they don't have, and it doesn't put
6 advertisers and users, and the people who are
7 buying the ads at this point, in a difficult
8 situation of not knowing if a Facebook or Google
9 or Twitter or any other ad company is going to
10 satisfy a requirement for you that would
11 inherently make it unavailable for us in a new ad
12 type.

13 So I'm really happy to answer any
14 questions you have on this, and looking forward to
15 the rest of the hearing. Thank you.

16 CHAIRWOMAN HUNTER: Thank you very much.
17 Ms. Nolan?

18 MS. NOLAN: Good morning, Chairman
19 Hunter -- Chairwoman Hunter, I'm sorry, and
20 members of the Federal Election Commission. My
21 name is Chris Nolan. I am the founder and CEO of
22 Spot-On. Started in 2008 and based in San

1 Francisco, Spot-On is a cloud-based ad buying
2 platform for advocacy efforts and political
3 campaigns across the country.

4 Spot-On works for a variety of causes
5 and parties. Our clients have included oil
6 refineries and environmental efforts,
7 organizations back by tobacco companies, as well
8 as nonprofits interested in improving healthcare
9 for undocumented California residents. We work
10 for Republicans and for Democrats. We are here
11 today as vendors with ten years of market
12 experience.

13 As such, Spot-On's written responses
14 today are tailored to focus on the parts of the
15 Commission's NPRM where we feel our experience can
16 be the most help. Over the past four years, as
17 political consultants and campaigns have come to
18 understand the power of the internet and its
19 ability to reach, and yes, target voters, Spot-On
20 has noticed a number of disturbing trends that we
21 think will impact the Commission's effort in
22 regard to this rulemaking.

1 I'd like to highlight two today. The
2 first is the widespread use of what's called
3 programmatic or automated ad buying which has
4 brought the problems, confusion, and fraud rampant
5 in the commercial ad tech ecosystem to political.
6 Our experience in this arena makes Spot-On
7 unconvinced that any of the disclosure schemes
8 that have been suggested by and to the Commission
9 or Congress will have their desired impact.

10 Our experience is that programmatic ad
11 tech firms who handle the bulk of all online
12 advertising treat political speech as another
13 brand silo to be trafficked as quickly as possible
14 with minimal costs and maximum profit. Oversight
15 is minimal and ignorance of the law is high.

16 We have difficulty seeing how badges,
17 written disclaimers, or other display requirements
18 will be enforced in this laissez-faire
19 environment. It's a porous system with multiple
20 points of entry. It's frequently compared to high
21 tech stock market of today. There's one big
22 difference. Wall Street has rules, lots of them.

1 Ad tech has none.

2 When it comes to direct buys or
3 placements on so-called walled gardens like
4 Facebook or Spotify, the environment is equally
5 troubling. Outlets of all types are creating
6 their own rules. They are defining what they
7 think is appropriate political speech. They're
8 often examining sources of website and ad funding
9 using subjective criteria without regard to the
10 law.

11 Few exceptions are permitted, and it's
12 often impossible to obtain clear written policies
13 or guidelines beyond, oh, we just don't do that.
14 Facebook's regulatory scheme imposed late last
15 month, a week before the California primary, is
16 high profile, very public example of this sort of
17 ad hoc rulemaking. Facebook has imposed a series
18 of rules separate and apart from those already
19 required by state laws like California's. This
20 has encouraged others to set their own rules, some
21 of which we've outlined in our written comments.

22 These decisions are somewhat

1 understandable. None of these publicly traded
2 corporations wish to endure the fallout from
3 trafficking in unseemly election-related behavior.
4 However, the brand-centric protection models
5 they've come up with are not accompanied by an
6 understanding of the nature and traditional legal
7 protections afforded political speech. In short,
8 we think a hodgepodge of often arbitrary rules is
9 creating a chilling effect that we think will only
10 snowball as we get to November.

11 Given this environment, Spot-On is
12 suggesting that the Commission, and, if necessary,
13 other appropriate agencies look not just at
14 disclosures and disclaimers, but at the behavior
15 of advertisers when considering how to structure
16 future rules. Most, no, almost all, political and
17 advocacy efforts trying to impact elections use
18 publicly available voter registration information
19 to help target ads. This is the one element all
20 political campaigns have in common, and it's the
21 one thing that sets them apart from brand
22 advertisers.

1 What if the Commission were to adopt a
2 scheme where the use of this sort of data required
3 publishers, ad buying and selling platforms, and
4 the walled gardens to segregate such advertisers
5 from other brand-related -- brand advertising
6 traffic? Once segregated it would be easier and
7 more effective to determine disclosure and
8 disclaimer requirements for speech intended by its
9 sponsors to be political in nature.

10 This action would move us away from
11 discussion about a regulatory scheme that, as my
12 Republican colleague on this panel put it so
13 eloquently in his remarks, puts form over
14 function. There are many ad formats on the web
15 with more to come. Function, however, remains
16 constant and can be easily monitored and tracked.
17 If you're after voters, there are some rules for
18 everybody.

19 Using voter targeting as a trigger for
20 special treatment by ad sellers would mean the
21 political advertisers could be treated as they are
22 when they purchase TV, or radio, or print ads.

1 These advertisers would talk with salespeople and
2 ad traffickers familiar with the rules and
3 obligations that accompany the sale and carriage
4 of these messages. This would certainly have a
5 clarifying effect on the programmatic ad-buying
6 platforms, and it would set some baseline rules
7 for others.

8 This is by no means a one size fits all
9 remedy, or even a solution for this very difficult
10 set of problems that are in front of us. Spot-On
11 sees this data trigger device as a starting point,
12 a framework, if you will, for a more thorough
13 conversation about the use and abuse of paid
14 political speech on the internet. We realize this
15 is a very different perspective than what's been
16 expressed by other panelists, but we feel it's
17 worthy of consideration within and outside the
18 Commission. Thank you for your time today. And I
19 look forward to your questions.

20 CHAIRWOMAN HUNTER: Thank you very much
21 to all three of you. Any questions? Madam Vice
22 Chair?

1 VICE CHAIR WEINTRAUB: Thank you to all
2 the panelists. Ms. Nolan, can you spell this out
3 a little bit more exactly what would this
4 regulation look like?

5 MS. NOLAN: Well, I'm not a lawyer,
6 constitutional or otherwise, but I could make a
7 few suggestions. When you go to purchase
8 advertising, many, and Mr. Hochberg can talk about
9 this, I think, in some more depth more practically
10 than I can, as a potential client, for example.
11 When you go to purchase online advertising, you
12 can do so in demographic buckets. This is what
13 Ms. Bannan is referring to when she talks about
14 micro-targeting.

15 And as a result of that, your ads are
16 directed to certain individuals. So for example,
17 I might be able to reach young women in their
18 thirties, living at Connecticut and Porter Street
19 who are registered Republicans and give money to
20 the ACLU just to give an example.

21 VICE CHAIR WEINTRAUB: I think that's a
22 small bucket but maybe I'm wrong.

1 MS. NOLAN: Nevertheless --

2 VICE CHAIR WEINTRAUB: That is
3 micro-targeting.

4 MS. NOLAN: So but when you do that, you
5 have to purchase that information, or you can
6 bring it to your ad-buying platform and what's
7 called first-party data. So from people, you
8 know, email lists you've collected. So the idea
9 is that as soon as you do that, as soon as your
10 ads start to be accompanied by that information,
11 which the ad platforms see, which a publisher
12 would see, which I, as a buying platform, would
13 see, you automatically aren't with the people
14 selling cars and soda and cigarettes. You're with
15 the folks who are trying to reach voters.

16 VICE CHAIR WEINTRAUB: Well, I'm not
17 sure about that, actually. I mean, I could
18 envision somebody using -- deciding that to use
19 car data as an example; people who buy Prius' are
20 --

21 MS. NOLAN: That's already being done.

22 VICE CHAIR WEINTRAUB: No, I know, but

1 my point is so how do you segregate -- if you're
2 trying to segregate out people who are targeting
3 -- advertisers who are trying to target folks for
4 political ads, how do you segregate out the
5 overtly, you know, somebody who buys a voter
6 registration database which, you know, that part
7 is easy from somebody who buys the database of
8 people who buy Priuses thinking that that is a
9 good proxy for a certain type of voter?

10 MS. NOLAN: Well, at one point in sort
11 of thinking about this, I talked with an election
12 lawyer, and I said, yeah, you're right. It's
13 possible that someone, you know, could just say,
14 oh, I'm not going to use voter data to target my
15 ads. And he looked at me and he said nobody's
16 going to do that. And I have to defer to the
17 Republican Party here, but I think the expression
18 on Mr. Hochberg's face kind of tells you what you
19 need to know. It is a fundamental tool.

20 And again, it is the one thing that
21 separates what I do as a political ad buyer from
22 the folks who are trafficking in Toyota Prius ads.

1 It's --

2 VICE CHAIR WEINTRAUB: Please?

3 MR. HOCHBERG: Since I was mentioned a
4 couple of times in that, yes, voter data is very
5 important in how we target, but consumer data as
6 well, as you mentioned, is part of how modern
7 political campaigns target voters still. I think
8 one of the issues that you're going to run into
9 with this is potentially how that data is mixed
10 together.

11 So a lot of times it's not just
12 uploading a universe of people who have rented a
13 Prius or bought a Prius in the past, and combine
14 that just, you know, and that's a separate
15 universe than people who have voted early in a
16 primary. Those numbers are going to be combined
17 together, and then segmented out based on other
18 factors.

19 And the question is how many different
20 segments do you go through until it's no longer
21 just voter data and consumer data, but this is a
22 hodgepodge of all different information types.

1 All different data gets put into a system and then
2 used as information, and I could see first-party
3 data she mentioned is when we own our own
4 information and we upload these people. When
5 we're buying, you know, there's people who will
6 buy lists and different segments and target it. I
7 could also envision ad platforms and sellers of
8 this information if this is the case in how you
9 would have to report it, you know, mixing up the
10 data and not reporting it as a, you know, voter
11 data but as a consumer-type data with voter
12 information and history somewhat in there.

13 What's the percentage of the use case
14 for me would be the issue, because it's not a very
15 -- it's not as clean as it sounds. It's not every
16 time, you know, it's not as clean as that sounds.

17 VICE CHAIR WEINTRAUB: But I'm inferring
18 that what Ms. Nolan is saying is that at some
19 point along the way, if you want to target voters,
20 you're going to need this voter data. So okay, so
21 we start with people who are using voter data who
22 acquire voter data, and then we do what?

1 MS. NOLAN: Well, I think the idea here
2 is to segregate out someone who has political
3 intent. And then I think you have, and I want to
4 associate myself very closely with the remarks
5 that were made yesterday by CDT and TechFreedom,
6 because all of us, I think, agree that what we
7 have in front of us is a series of problems that
8 are not going to be stopped or stymied or resolved
9 by badges and disclosures and disclaimers. And I
10 think someone went in to make fun of the arguments
11 about typeface and, you know, contrast, et cetera.
12 I'm totally with that.

13 What I'm trying to do is say the problem
14 isn't necessarily with disclosures and disclaimers
15 as much as it is with the ways in which
16 information flows on the web. And looking at how
17 information flows and its intent goes -- speaks
18 more to the heart of how the internet functions,
19 and how it delivers advertising to people than a
20 disclosure and a disclaimer.

21 Someone said yesterday afternoon that
22 maybe we need to reframe this does an internet ad

1 have a face? In other words, since it's a dynamic
2 set of code that goes to someone and sits on a
3 computer screen, what is the face of an internet
4 ad? And I thought that was a very interesting way
5 to start that conversation. So I'm not suggesting
6 that I have a solution.

7 I'm suggesting that there are problems
8 within the system that I don't think -- that I
9 think are being overlooked because we're looking
10 at -- we're doing what everybody wants to do which
11 is to say it has a screen, it must be a television
12 set. It has words on it and it's printed, it must
13 be a newspaper. In my experience, 20 years in
14 Silicon Valley, when people don't understand the
15 internet, they try to make it look like something
16 they already know, and I -- that's -- it's a
17 perfectly understandable way to go about things.
18 Everybody has to start someplace.

19 I, myself, did it when, you know, I was
20 first reporting in the Valley. But we've come a
21 bit past that, and so I'm looking for ways to even
22 the playing field if you will.

1 VICE CHAIR WEINTRAUB: I hear you and I
2 appreciate your innovative approach, but again,
3 what I'm trying to figure out is okay, so we
4 segregate out this group of ad buyers, and do
5 what? We create a database of them? We --

6 MS. NOLAN: Well, I think it makes --
7 when you say do what are you talking about how,
8 you know, promulgating rules or are you talking
9 about sort of practical applications that might
10 take place within the buying platforms? I mean, I
11 think that if --

12 VICE CHAIR WEINTRAUB: What can we do as
13 regulators in order to better inform voters, which
14 I think is the goal here, where this is about
15 disclaimers and disclosure because what we're
16 trying to do here is to figure out how to get
17 information to voters about who's behind the ads
18 that they're seeing, right? And that seems to be
19 a universally shared goal.

20 MS. NOLAN: Yes.

21 VICE CHAIR WEINTRAUB: Mr. Hochberg says
22 that's his goal. Ms. Bannan says that's her goal,

1 and most of the people we were talking to
2 yesterday said that's their goal. You know,
3 nobody, at least, is coming in here and saying we
4 want to hide who's behind the ads. They're not
5 telling us that if that's their goal, but, you
6 know, so I'm taking people at face value. Okay.
7 So now we've got this intriguing idea. We've got
8 this group of ad buyers that we know are targeting
9 voters because they have, at some point, acquired
10 voter data and they're using that in their
11 calculations. And now in order to better inform
12 voters about the ads that they're seeing, there's
13 a piece missing in there.

14 MS. NOLAN: I think that's when you say
15 here is what the disclosure rules are, and you can
16 -- and those rules can be -- they can be a badge
17 in the circumstance, it can be -- I myself favor
18 shorter disclosures because I do business -- a lot
19 of business in California. And the committee for
20 a really good -- a group of really great people
21 for a really good reason funded by a really lovely
22 man with lots of money, the disclaimer that goes

1 on forever and ever I think is useless. I think
2 the shorter but sweeter disclaimer is in order.

3 But the problem is that in our current
4 system, it is perfectly possible to place
5 political advertising on the internet with no
6 compliance to rules that have been promulgated at
7 the state level and no compliance to rules that
8 will be promulgated at the federal level, even if
9 with the disclosures that we're doing here. And
10 so I see a compliance issue and I see a situation
11 in which people will feel free to create their
12 reaction to that which is, oh, if you're, you
13 know, CNN, you don't take certain kinds of ads.
14 If you're Spotify, you don't take certain kinds of
15 ads. And I see -- that's my concern.

16 VICE CHAIR WEINTRAUB: So what -- just
17 one more and then I'll stop.

18 CHAIRWOMAN HUNTER: Okay.

19 VICE CHAIR WEINTRAUB: So is what you're
20 suggesting then that we take any ad that is run by
21 one of the segregated category of ad buyers and
22 put a badge on that that says --

1 MS. NOLAN: Yes.

2 VICE CHAIR WEINTRAUB: -- this is a
3 political ad?

4 MS. NOLAN: Yes.

5 VICE CHAIR WEINTRAUB: And identify who
6 it's coming from?

7 MS. NOLAN: I think, you know, I'm a
8 vendor, right? I will do whatever you tell me to
9 do in terms of disclosure, but, you know,
10 California has a perfectly fine system right now.
11 We have a badge on the ads that say who funded
12 this ad. And you are required to provide a
13 one-click for -- that, to me, is not a terribly
14 onerous situation.

15 And we ask clients to comply with that
16 law. The problem is that Facebook has set up its
17 own regulatory system that's different from that
18 because they lack guidance, I think.

19 VICE CHAIR WEINTRAUB: I could go on
20 longer --

21 CHAIRWOMAN HUNTER: I know. I hear you.

22 VICE CHAIR WEINTRAUB: I've over time.

1 CHAIRWOMAN HUNTER: I hear you.

2 Commissioner Walther, you had your hand up. Do
3 you still have a question?

4 COMMISSIONER WALTHER: I think the
5 problem is, from our perspective, we're here to
6 try and figure out how to communicate, or
7 basically how to conceive of ways to communicate
8 in the future, but what you're telling us I'm not
9 sure resonates with what kinds of rules we would
10 implement in order just to -- in other words, our
11 jurisdiction is limited to the effect of providing
12 information on a very limited, three or four
13 sentences, and so I'm concerned about -- I'm not
14 so really concerned. I'm just asking. The
15 conversation to me is very interesting, but from
16 our perspective, how does it affect us?

17 MS. NOLAN: That may be. Again, I'm not
18 an attorney. I am really just kind of trying to
19 grapple with solutions to this problem. And as I
20 said in my testimony, this may not be a matter for
21 this Commission. This may be something, and I
22 think both CDT and TechFreedom mentioned the

1 Federal Trade Commission last night. This may be
2 something that has to take -- be legislated. I
3 don't know.

4 My goal here is to simply make sure that
5 the Commission understands that as someone who is
6 a vendor, regularly buying and selling adverti --
7 political advertising, and only political and
8 advocacy advertising, that we have run into
9 situations where I know I can get undisclosed ads
10 up on the web with little or no friction simply by
11 following a few short steps. I am not the only
12 person in politics who knows this and that is my
13 concern.

14 COMMISSIONER WALTHER: In this
15 particular case, though, where it's not like
16 there's a pre-enforcement step that's taken. We
17 don't try and inhibit anybody from doing whatever
18 happens on TV or on the internet if that's what
19 you're getting at --

20 MS. NOLAN: No, that's --

21 COMMISSIONER WALTHER: -- because what
22 people decide to do is up to them, and the

1 consequences are -- or actually us, but that's --

2 MS. NOLAN: No.

3 COMMISSIONER WALTHER: -- how it works
4 for us. So that -- and usually it is we react to
5 complaints that come in and say there weren't -- a
6 certain disclosure wasn't made and then we, you
7 know, consider the issue at that point. One of my
8 concerns is how do we deal with the very
9 transitory message where somebody pops up and says
10 vote for Fred. And they're gone, and we have no
11 way of knowing, and we get a complaint saying
12 we've got this, you know, this advertisement vote
13 for Fred and there wasn't any disclaimer. But
14 it's gone anyway, and perhaps not preserved. And
15 I'm just wondering if we should have a provision
16 that whatever is a political ad, has to retain an
17 electronic, you know, position where they save it
18 for a certain period of time so that at least
19 enforceability becomes possible.

20 MS. NOLAN: I thought --

21 COMMISSIONER WALTHER: I address this to
22 anybody --

1 MS. NOLAN: Yeah, no I thought --

2 COMMISSONER WALTHER: -- maybe you just
3 didn't answer my question.

4 MS. NOLAN: -- your suggestion yesterday
5 about a watch, you were talking I think --

6 COMMISSIONER WALTHER: Yeah, I'm big on
7 watches right now. This is our work.

8 MS. NOLAN: No, no, everybody is.
9 They're kind of cool. But you said, oh, I think
10 you were referencing the Mondale!

11 COMMISSIONER WALTHER: Right.

12 MS. NOLAN: Yeah, and you said -- and
13 then you said well, maybe it could just stream
14 through and have a second screen that said paid
15 for by Walter Mondale for Congress or vice
16 president or whatever. That's a perfectly
17 acceptable idea I think.

18 I mean, in essence what you're saying is
19 that, you know, the -- in this piece -- in this
20 case it's probably a piece of HTML-5 code, but
21 what you're saying is that code has to render two
22 images, one Mondale! and two, paid for by

1 whomever, you know. And that's -- you can embed
2 the disclosure in the code as it streams through
3 is what I'm basically saying.

4 COMMISSONER WALTHER: Is what? I'm
5 sorry.

6 MS. NOLAN: You can embed the disclaimer
7 in the code that renders the image, the computer
8 code that renders the image. And that seems to me
9 within the purview, again, not being an attorney,
10 that may well be within the purview of the
11 Commission.

12 COMMISSIONER WALTHER: To require a
13 retention of that?

14 MS. NOLAN: Yeah.

15 COMMISSIONER WALTHER: I see. Well, I
16 think we haven't really talked too much about that
17 aspect of how we're going to deal with a very in
18 and out message, and I'm not too sure how we would
19 do this in the case where we got a complaint. And
20 so where is it? Thanks. And I welcome a comment
21 from everybody on something like that.

22 CHAIRWOMAN HUNTER: Thank you.

1 COMMISSONER WALTHER: Thank you.

2 CHAIRWOMAN HUNTER: Thank you. I have a
3 couple of questions for Mr. Hochberg. Thank you
4 for coming today and you note in your comment that
5 the RNC has placed hundreds of thousands of
6 digital ads. And I think you mentioned in the
7 hallway that you're one of the largest ad buyers
8 working in politics now; is that correct?

9 MR. HOCHBERG: Yes, between -- yeah, the
10 RNC as well as basically our joint fundraising
11 committee. Those are pretty much have to be in
12 the past cycle and a half some of the largest ad
13 buyers.

14 CHAIRWOMAN HUNTER: We really appreciate
15 your coming in, because obviously you have a
16 specific amount of expertise that we're really
17 looking for today. So thank you.

18 A couple of quick questions, one, you
19 mentioned on the bottom of page 4 of your comments
20 in alternative B, and I appreciate your comment
21 about bright-line rules, no time for an AO, all
22 that kind of stuff. I have the same goals. And

1 you talk about in alternative B, while we tried to
2 make that more objective and clear, I completely
3 agree with you that it's still confusing, and the
4 comment that you talk about was if it does exceed
5 ten percent and if it doesn't and all this kind of
6 stuff, what we were trying to do in the part that
7 you reference there is our colleagues were raising
8 concerns about our proposal. And they said well,
9 what if someone tries to put a ten percent
10 disclaimer on there, and they want to game the
11 system?

12 So instead of keeping it at 10 percent
13 they intentionally try to mess with the system and
14 make it a 12 percent disclaimer? And therefore,
15 they would be allowed to go to a truncated -- an
16 alternative disclaimer or an indicator. So we put
17 that in there to avoid that, and we thought, well,
18 gee, we fixed that. But I agree with you. On the
19 other end, that makes it even more confusing to
20 implement and you have to get through a lot of
21 different barriers.

22 So thanks for bringing that up. We were

1 trying to make it cleaner, but it may have made it
2 less administrable in the meantime.

3 With respect to the indicators stuff
4 that we've been talking about, on page 4 of your
5 comment you mention your ad choices, the DAA's
6 icon that we talked a lot about yesterday. You
7 mention that. Do you think that that's the best
8 indicator to put on an ad, or do you think the FEC
9 should just sort of leave it as requiring an
10 indicator and let the market sort of decide what
11 the best indicator is for the ads?

12 MR. HOCHBERG: I would lean towards just
13 requiring an indicator, not specifying which one.
14 For instance, I don't believe Facebook actually
15 has the your ad choice disclaimer available on
16 their ads. They have a different button that they
17 just rolled out that you'll click on and it
18 reveals who published the ad. They have their
19 full database that's now searchable.

20 And then there could be another group
21 that comes up that doesn't that, you know, your ad
22 label that they want to use that. Leaving the

1 options up to the companies that are actually
2 displaying the ads is usually the best way to do
3 that. As I said before, there's going to be ad
4 types, there's going to be companies that we buy
5 through. There's going to be new social networks
6 that we don't deal with today.

7 And to force some sort of tech onto them
8 could cause, you know, a stifling of free sp -- of
9 political speech at that point where maybe a
10 company says, you know what, that -- the your ad
11 choice disclaimer, that button, I really don't
12 like how that looks on our page. We're just not
13 going to do political ads anymore.

14 And a whole market segment could be
15 unavailable to us, or it could be -- they easily
16 could say we -- there's certain things that are
17 just become too onerous for our group, for our
18 website. We don't want to do that. It's become
19 too much of a headache for us and, you know, we're
20 just going to say on this type of ad that we're
21 servicing, we're not going to have a political
22 version of it because it's too difficult for us to

1 make sure we're compliant with the specific piece.

2 And that's the part that does scare me
3 regularly on those is that there's going to be a
4 very popular ad type that is unavailable to use
5 because of a rule that was very specific towards
6 something that I think a broader scope that
7 accomplishes the same goal would allow us to do.

8 CHAIRWOMAN HUNTER: Do you think that
9 requiring an indicator would prevent you from
10 buying any kind of ad, at least to your knowledge
11 at this point?

12 MR. HOCHBERG: I don't think any -- if
13 we said any indicator, I don't know of any
14 company, you know, I can't speak for Google or
15 Facebook that -- or some of the other ones that
16 would put it on there. But that's also why I was
17 leaning towards just any one click away because
18 most of our ads do go to a landing page. Our ads
19 go to that and our landing pages have our
20 disclaimers, you know.

21 CHAIRWOMAN HUNTER: Most of your ads go
22 to -- have a click-through to the landing page?

1 MR. HOCHBERG: Yes.

2 CHAIRWOMAN HUNTER: Okay. So there's
3 already some kind of -- may not be an indicator
4 like the ones we're talking about now, but there's
5 already something on there that allows you to get
6 to the full disclaimer?

7 MR. HOCHBERG: Yes, yeah, and that's
8 something that I think is lost. The majority of
9 our ads -- our goal is actually to get people to a
10 landing page to sign up for something, to find out
11 how to vote.

12 CHAIRWOMAN HUNTER: Right.

13 MR. HOCHBERG: That is our end goal on a
14 lot of those. So to the FEC rules, we do have a
15 full disclaimer on the bottom of our landings
16 pages, and that's something that we would
17 encourage as part of the ruling to allow us to
18 continue to do that because people will then know,
19 you know, when you click through our ads are meant
20 to be interactive, that they end up at a page that
21 has our full disclaimer on it.

22 CHAIRWOMAN HUNTER: Okay. One of the --

1 a couple of -- two of the different panelists
2 yesterday signed on to a proposed rule text that
3 AFP proposed. One of the groups is TechFreedom
4 the one that Ms. Nolan mentioned. They support
5 the proposed rule and they added -- I'd have to go
6 back and listen to the tape, but I think he said
7 adding smart disclosure to it. So I want to get
8 to that in a minute. But that proposal allows the
9 advertiser to put the name or an indicator.

10 So if a platform didn't allow you to
11 have an indicator because for whatever reason they
12 don't like that or the option is still there for a
13 name. So I think that solves the -- obviously,
14 Facebook could change their policy, but right now
15 they require the name at the top and the
16 wraparound type of thing.

17 MR. HOCHBERG: Yeah.

18 CHAIRWOMAN HUNTER: So even if Facebook
19 doesn't now have an ability to put a disclaimer
20 within the text or the video, it would satisfy
21 that rule because you have the name at the top?

22 MR. HOCHBERG: Yes, and that's to our

1 full point on this is that there's going to be,
2 and as I said in the next five to ten years, so
3 many different ways to display, you know, who
4 bought an ad. And to allow, you know, for the
5 buyers to say, well as long as I fulfill this
6 requirement somewhere in the ad that I'm buying,
7 that it's at least just one click away from the
8 user. That they can either hover over, there's an
9 indicator on the ad itself, or, you know, and the
10 purpose of the ad is to lead to a landing page
11 that that landing page has the full disclaimer of
12 who bought it. Those pieces satisfy, to us, the
13 need for supplying sufficient information to any
14 consumer, any voter.

15 CHAIRWOMAN HUNTER: Okay. And one last
16 question for you. A lot of -- mostly the press
17 has been asking about the time line of this rule,
18 pretty much all they've been asking. And so if we
19 were able to come up with something, I don't want
20 to get ahead of ourselves here, but if we were
21 able to get --

22 VICE CHAIR WEINTRAUB: You're very

1 optimistic here.

2 CHAIRWOMAN HUNTER: I know, I know.

3 Don't get -- don't read this the wrong way, but if
4 we were able to come up with something, you know,
5 in short order and put out a proposed rule this
6 summer maybe, OGC is going to pass out, but if
7 that were possible, would it be something -- how
8 burdensome would it be for the RNC, let's just say
9 that the rule is the one that we're talking about
10 which allows you to have the name or an indicator?
11 Would that be burden --

12 MR. HOCHBERG: I'll say depending on the
13 ruling, it could be a lot of trouble for us.

14 CHAIRWOMAN HUNTER: Okay. What if it's
15 the indicator?

16 MR. HOCHBERG: The indicator, as I said,
17 if it's already worked within platforms and
18 platforms are ready for it, of if it's, you know,
19 a one click away or all those pieces --

20 CHAIRWOMAN HUNTER: But what are you
21 using now? You're using the link?

22 MR. HOCHBERG: We're using the link

1 right now. So either a link or a disclaimer in
2 the ad depending on which ad we're running as I
3 said.

4 CHAIRWOMAN HUNTER: Right, okay. So if
5 we -- if an indicator -- I wonder if it could be
6 indicator or a link, but if it were that, then you
7 would have --

8 MR. HOCHBERG: It would satisfy -- yeah.
9 That would probably be fine for us.

10 CHAIRWOMAN HUNTER: That wouldn't be
11 burdensome because you're already doing that, but
12 what if -- let's just assume for a minute that we
13 didn't provide -- allow for a link?

14 MR. HOCHBERG: Yeah.

15 CHAIRWOMAN HUNTER: I don't see that
16 happening, but just say -- let's just say it just
17 says you can have an indicator. You're saying
18 that may be --

19 MR. HOCHBERG: It may be. I'd have to
20 take a look to see exactly how all the platforms
21 react to it is kind of the issue that we would run
22 into. I get always worried about any changes late

1 toward an election.

2 CHAIRWOMAN HUNTER: Yeah, I totally
3 understand, believe me, that's not something we
4 want to do is do something that messes up people's
5 plans right before an election. I just wanted to
6 get a sense of --

7 MR. HOCHBERG: And I'll be honest. For
8 the RNC, like, we have resources, and we've been
9 able to adapt. I have a full team thankfully that
10 can figure out things and we can work within the
11 system. What worries me, and this is what we kind
12 of saw a little bit with some of the new ad
13 platforms that were rolled out on Facebook
14 recently is that if the smaller state committees,
15 the state parties, smaller committees are running
16 federal that would fall under this -- under your
17 purview at least that are running federal election
18 ads, that they may have more trouble than we
19 would.

20 CHAIRWOMAN HUNTER: Okay.

21 MR. HOCHBERG: I'd have to -- you know,
22 you'd have to ask some of them on that, but we're

1 usually pretty adaptable quickly. It worries me
2 smaller groups that it's maybe, you know, one
3 person who's physically placing the ad. They
4 don't have -- they're not paying a vendor. They
5 don't have the expertise that I'm very fortunate
6 to have on my team of people who are able to
7 handle that type of stuff. And that close to an
8 election day would worry me a little bit.

9 CHAIRWOMAN HUNTER: Got it.

10 MR. HOCHBERG: But again, it would
11 always just depend on what the ruling is for
12 there.

13 CHAIRWOMAN HUNTER: Okay, thank you.
14 One quick question and then I'll turn it over to
15 Commissioner Petersen for Ms. Bannan. You have in
16 your comments the one percent click-through and I
17 just took a quick look at the article. It looks
18 like a very small limited sample base --
19 U.S.-based word stream clients' account
20 representing 553,000 in aggregate Facebook
21 spending. So can you speak to that? It seems
22 like a very small study to -- we haven't had

1 anybody else that gave a one percent number.

2 MS. BANNAN: Sure, yeah, I just included
3 that to sort of to use Facebook as an example, but
4 I've done more research since then and there are
5 two people on the panel who could probably speak
6 better to the percentages than I can, but looking
7 up, like, Google's -- like the average Google
8 display benchmark across all units and formats is
9 a half of a percent.

10 So I think it can vary but it's a very
11 low percentage of the people that are clicking and
12 I know that is their goal, but --

13 CHAIRWOMAN HUNTER: Do you have a
14 comment on that?

15 MR. HOCHBERG: Sure. I think to that
16 point I've heard that a few times, you know, we're
17 -- I won't say what our click-through rate is for
18 it. It is low when you look at a percentage I'm
19 sure. But to that point, I think when we look at
20 it, I hate to make a comparison to direct mail and
21 online ads, but a direct mail piece has a
22 disclaimer usually on the back in the last page at

1 the bottom. It's not -- you don't fault the
2 mailer for not putting a disclaimer on the front
3 of a direct mail piece.

4 And for us it's a very similar thing.
5 Online ad for us is meant to be clicked on. It's
6 meant to be interacted with. You're meant to get
7 to the end of it. And if the end of it is a
8 landing page, then for us that would satisfy that
9 same requirement that you don't have to put a
10 disclaimer on the front of a direct mail piece.
11 If somebody throws away their mail on their way
12 from the mailbox to the door without flipping it
13 over, you don't penalize the person who sent the
14 mail.

15 CHAIRWOMAN HUNTER: Right. And there's
16 -- we talked about this yesterday. There's not, I
17 don't think, any studies that show whether or not
18 people are actually looking at the ad. So if they
19 don't click through that doesn't mean that they
20 read it and decided not to click through. It may
21 just mean that they scrolled right past it, but
22 anyway, Commissioner Petersen?

1 MS. BANNAN: I think --

2 CHAIRWOMAN HUNTER: Oh, I'm sorry were
3 you -- oh, sorry.

4 MS. BANNAN: Yeah, no, my point with
5 that was just that I think the paid for by and the
6 name of the pack or the campaign is important to
7 have alongside the indicator. So there's at least
8 some information that doesn't require you to
9 navigate to a different page. So that's where I
10 was going with that.

11 CHAIRWOMAN HUNTER: Okay. Thank you.
12 Commissioner Petersen?

13 COMMISSION PETERSEN: Thank you, Madam
14 Chair. Got questions for each of you. Let me
15 start with you, Mr. Hochberg. You're the chief
16 digital officer. You're familiar with the
17 technology. You don't have to be in the world of
18 11 CFR and 52 USC all the time like we are. And
19 one of the issues that we've been trying to gain a
20 better understanding on and that maybe you can
21 speak to this, and the others may want to weigh in
22 as well, is for online users, how comfortable and

1 savvy are they when they are interacting with an
2 ad?

3 And as you said, this is a different
4 medium than static ads that we see in television,
5 radio, print media, that when they're looking at
6 something that they'll know that they can click
7 through to get more information, that if there are
8 icons that they can know that they can click on it
9 to maybe find out more information about that
10 particular ad, who bought it, what further
11 information that they might be able to glean from
12 that particular advertiser. Because, you know,
13 one of the con -- as I have stated on several
14 occasions yesterday, we want to comply with the
15 statute. We must comply with the statute which
16 requires certain information be included with
17 certain communications.

18 Whether it be express advocacy from
19 political committees, so forth, but we also don't
20 want to discourage innovation in terms of internet
21 advertising, and we don't want to cut off avenues,
22 especially low-cost avenues, for individuals,

1 candidates, and committees to be able to
2 communicate through a medium that allows them to
3 reach a larger audience than they would if they
4 had to rely exclusively on traditional media.

5 So what is your experience and what is
6 your understanding of how, you know, a typical
7 user would understand what information they can
8 glean from an online ad?

9 MR. HOCHBERG: I think there's two
10 pieces to this. One are the indicators. So that
11 we've been talking about various types of
12 indicators that can appear on ads that as we said
13 Facebook or the your ad choices disclaimers that
14 -- or indicators that have been popping up. I
15 think that depends how they look on the ad itself.

16 I would refer to any of those people and
17 how many clicks they get for it. But in general I
18 give internet users a lot more credit on knowing
19 what's going on on their pages than most. Most of
20 our ads, they end with a click here to go to it,
21 because, as I said, our goal is to get people to a
22 landing page. And it all depends on what platform

1 the ad is running on. But in general, I would
2 give people a little bit more credit that they
3 know if it's a, you know, Google banner ad that's
4 on a random website that they see on the sidebar
5 that they actually do know that they can click
6 that. And that if they click that they'll arrive
7 at a page that is presumably paid for by the
8 person who ran the ad, or affiliated with the
9 person who ran the ad, and that if it's an
10 election ad, they can go see the disclaimer at the
11 bottom of that page.

12 For us that's kind of the main point of
13 it is that people on the internet are smarter than
14 I think we give them credit for. And they know,
15 for the most part, that if they see an I in the
16 corner that there's an info button there and they
17 can get a little bit more facts about something.

18 COMMISSIONER PETERSEN: Okay, because
19 it's been brought up by Ms. Bannan and others that
20 the click-through rates are quite low. I'd
21 imagine that's the case with almost all ads, and
22 I'm trying to draw what is the significance of

1 that. Is it that because people don't know that
2 they click on it for more information, or is it
3 that, you know, and this issue isn't just
4 exclusive to online media, but television, radio
5 ads or print media, I imagine a lot of people turn
6 the channel when they see a, you know, a campaign
7 commercial before the disclaimer comes up because
8 they don't really care about what's being said.
9 Or the same thing with radio may change the
10 station.

11 You mentioned about how many might just
12 throw away the mail before they even get to the
13 last page where the disclaimer is. And so I'm
14 still puzzling over what significance we can draw
15 from the fact that many ads aren't clicked on.

16 MR. HOCHBERG: Sure, I mean, the truth
17 of the matter is click-through rates are low, but
18 so are viewing rates. So is the rate of somebody
19 who makes it through an entire ad if the ad's more
20 than six seconds long, the odds of somebody making
21 it through to a 30-second ad at the end is not the
22 highest. And that contributes to the

1 click-through rate, but also the fact that if we
2 have a 30-second ad that you can click through,
3 you don't have to make it the whole time until you
4 see the disclaimer. I think that gives a user a
5 little bit more control over finding out they
6 don't have to wait the entire time. They can
7 click out to the page that we're going to. For us
8 it's all about user control at that point.

9 You know, they control their own
10 destiny. If they want to pause and read a static
11 banner ad for ten minutes and dissect every piece
12 that we put out there, they can do that. If they
13 want to scroll through it in their newsfeed and
14 basically never see it, they can do that as well.
15 It's really more the user themselves than anything
16 else on it. But I would just point to the fact
17 that even though click-through rates are low, you
18 know, the number of people who actually see an ad
19 compared to how many times we run a variant is
20 actually low as well. So they can be -- they kind
21 of go hand in hand.

22 COMMISSONER PETERSEN: Okay.

1 MS. NOLAN: I'd like to interject.

2 COMMISSONER PETERSEN: If I could ask of
3 you, I mean, you obviously -- Silicon Valley.
4 You've been involved with online ad buying.
5 What's been your perspective on this issue?

6 MS. NOLAN: Two things. One, political
7 is unusual in that the sole metric that is
8 generally used is a click-through rate to measure
9 an ad's efficiency and effectiveness. Other brand
10 advertisers have a range of data points that they
11 are happy to trot out for you and which mean
12 nothing unless someone who's gone to the website
13 to look at.

14 Political is unique in that and most of
15 our clients are heavily interested in
16 click-through rates because, as Mr. Hochberg has
17 said, that's how we collect information and get
18 funding, et cetera. So the point one -- as a
19 company our floor is a.1 percent which is lower
20 than Google's overall, and I believe that.5 that
21 Google's referencing includes video and some other
22 types of advertising.

1 We work very, very hard to up
2 click-through rates through a process called
3 optimization. And what -- I'm sure you guys do
4 it, too. And what that means is that we are
5 constantly looking at dashboards that tell us how
6 people are interacting with advertising. And we
7 are constantly looking to up those click-through
8 rates. We are starting to see mobile
9 click-through rates that are one, two, and three
10 percent which is -- we're blown -- we're deep --
11 we get -- we're excited. We're past excited when
12 we see that.

13 And we, you know, and so those sorts of
14 metrics are there. The other thing I would say is
15 most people are interacting with the internet on a
16 commercial basis for shopping or whatever these
17 days. And I think by now most people know that if
18 they see a pretty pair of shoes they can hit click
19 and those shoes will be at their door by sundown
20 tomorrow. So I worry less about that.

21 The other thing is I just wanted to
22 interject on the indicator conversation that we

1 were having earlier. There is a danger here that
2 an indicator is going to be used by certain
3 publishers to turn away political advertising. It
4 would be the first clear marketing that would
5 occur on the ad platforms. Assuming, in other
6 words, right now political advertising is not in
7 any way distinguished from anything else. There's
8 no icon or badge.

9 If you are to put an icon or badge on
10 those ads as they run through Google -- a
11 double-click bid manager which is the Google
12 network or Trade Desk or AppNexus which is now
13 being bought by AT&T, there is a chance that those
14 adds will be turned down when they reach
15 publishers. I think that chance -- and I think
16 Mr. Hochberg is right to be concerned about it. I
17 think there is a very good chance that some
18 publishers are going to say political, not
19 interested, and block those ads.

20 The net effect will be that people now
21 how have to go more directly to publishers, but
22 again, that gets you into the -- my concerns about

1 walled gardens and people setting their own rules.

2 MS. BANNAN: Can I say something?

3 COMMISSONER PETERSEN: Yes, go right
4 ahead.

5 MS. BANNAN: I just wanted to say that
6 of course, like, I agree it's true that with
7 traditional media people aren't always going to
8 see the disclaimers. But I think the difference
9 is that when you're watching a TV ad if you -- if
10 the user -- the viewer doesn't do anything, like,
11 the default is for them to see the ad. Like, they
12 take the affirmative step to turn it off or change
13 the channel, whereas if you need to click, the
14 affirmative -- it's like the reverse, like, the
15 affirmative step is needed to actually see the
16 disclaimer if you just have an indicator. So
17 that's the difference I think.

18 COMMISSIONER PETERSEN: Okay, and that
19 goes to the, you know, the question, you know, is
20 advertising, video advertising, for example, on
21 the internet the same thing, and should we view it
22 through the same lens that we do television

1 advertising because of the interactive ability.
2 And so that's one of the questions that we're
3 having to puzzle through.

4 One quick question, during your opening
5 remarks, Ms. Bannan, you mentioned that there
6 were certain elements of the proposals that might
7 discourage innovation. Could you flesh out what
8 your concerns were?

9 MS. BANNAN: Sure. So my concern was
10 with -- it was just with the exception in
11 alternative B that allowed some advertisers to not
12 use an indicator or the full disclaimer. So it
13 was sort of --

14 COMMISSIONER PETERSEN: The application
15 if the small items are impractical?

16 MS. BANNAN: Right.

17 COMMISSIONER PETERSEN: Okay.

18 MS. BANNAN: Yeah, so that's just what I
19 was referring to that small part that -- and I
20 think that's been with the IAB yesterday and
21 today, I think now people have seemed to come to
22 an agreement that there should be some way to get

1 to a disclaimer. So it was just to the narrow
2 part of alternative B that would allow some small
3 ads to not include any form of indicator was what
4 I was referring to.

5 VICE CHAIR WEINTRAUB: Just to clarify,
6 the small items and impracticable is not in
7 alternative B. Alternative B has a new exception.
8 So if you know --

9 MS. BANNAN: Oh, right.

10 VICE CHAIR WEINTRAUB: -- about the
11 exception in alternative -- so just because I
12 think we're not as in the weeds on this stuff as
13 we are, what we put it on federal register notice
14 so I just wanted to make sure the record --

15 COMMISSONER PETERSEN: Yeah.

16 VICE CHAIR WEINTRAUB: -- was clear on
17 what we were talking about.

18 COMMISSIONER PETERSEN: And finally, I
19 just want to just briefly mention that I certainly
20 understand the concern that has been expressed by
21 Ms. Bannan and Ms. Nolan about users wanting to
22 know why they're being targeted for political, you

1 know, for what demographic characteristics are
2 political campaigns and parties finding
3 interesting about them, and why are they being
4 targeted for particular ads.

5 And I think that that's, you know, I
6 think that raises issues that are much larger than
7 just politics, but in general about how
8 information is collected about us and what
9 implications it has for personal privacy and so
10 forth. As I'm thinking about it, just off the top
11 of my head, the concern I have is I'm not sure
12 what statutory hook that we would have to collect
13 that sort of information.

14 Our law says ads have to contain
15 information about who paid for it and whether it
16 was or was not authorized by a federal candidate.
17 A requirement to then require these ad buyers to
18 also disclose the demographic information
19 underlying those decisions, I don't see how we
20 could do that statutorily. And I could also see a
21 potential even freedom of association issue that
22 could arise from that. I know that, for example,

1 when we conduct enforcement investigations of
2 campaigns or parties or so forth, we can't
3 disclose the file at the end of that disclosing
4 what the strategic goals and research of that
5 committee were.

6 For the agency to be prying in and
7 demanding that, that we receive strategic
8 information from parties and candidates, I could
9 see that that could start running into issues
10 regarding freedom of association even though I
11 certainly understand the concerns of citizens
12 about how their information, about information
13 about their buying habits, about how they vote and
14 so on and so forth are being used by political
15 candidates, parties, and so forth to target them.
16 So I just point that out as a potential issue, but
17 you look like you wanted to respond to that.

18 MS. NOLAN: Well, I agree. I think this
19 -- and one of the things that I have found
20 interesting about the entire debate about
21 political ad disclosures and what happened in the
22 2016 election is that it's serving as a sort of

1 concentration of all the conversations taking
2 place in the ad exec side of the house where you
3 have people doing targeting of consumers for
4 consumer good reasons that -- and then going and
5 losing the data and having it spread out hither
6 and yon that people are starting to get very
7 concerned about.

8 And so from my way of thinking, a lot of
9 what we're discussing is problems in how people
10 are approached on the internet for commercial
11 purposes. We're using political language because
12 it is a thing that is the most sensitive to us. I
13 mean, whether I buy a pair of shoes or not is not
14 of great concern to society at large, but whether
15 or not my vote is influenced in an unscrupulous
16 manner certainly is.

17 So we're having the same set of
18 conversations, we're just using different kinds of
19 language. And I do think that some -- there seems
20 to be an interest in some sort of statutory or
21 legislative solution. What that is is well above
22 my paygrade as the former vice president liked to

1 say so.

2 COMMISSONER PETERSEN: Thank you.

3 CHAIRWOMAN HUNTER: Thank you. Any
4 other questions? Madam Vice Chair?

5 VICE CHAIR WEINTRAUB: Thank you. I
6 want to go back to a question that we were trying
7 to explore with some of the witnesses yesterday.
8 I'm not sure we still have a good answer for it,
9 but it's kind of key to what we're doing. There
10 was kind of general consensus that if it is
11 feasible, and however we define that, to put the
12 full disclaimer on the ad, then that should
13 happen. And then at some point --

14 CHAIRWOMAN HUNTER: Where was that? Was
15 that from yesterday that --

16 VICE CHAIR WEINTRAUB: Yeah, yeah, from
17 yesterday.

18 CHAIRWOMAN HUNTER: Oh, okay.

19 VICE CHAIR WEINTRAUB: I mean, both
20 proposals start from the premise that if you can
21 get the full disclaimer on the ad then that's the
22 first thing that one would do. And then it is

1 only at some point, and that's the key question,
2 what that point is. At some point it is not
3 feasible, and I'm using the word feasible which is
4 not a word in either proposal just as a proxy for
5 there is some point along the way where it doesn't
6 seem to make sense. It's not practical, it's not
7 feasible. We can't fit it.

8 It's, you know, more than ten percent,
9 whatever metric we're using. At some point, we
10 would go to an adapted disclaimer and there seemed
11 to be general consensus that it was appropriate to
12 do that under some circumstances. A little bit of
13 discrepancy on some people like Ms. Bannan said
14 really important to get the name of, at least on
15 the face of the ad, of the sponsor, and then the
16 rest of the information can be at a one-click
17 place.

18 Other people said just put a little
19 indicator on it and people will click through, but
20 the question of what is the trigger from going
21 from the full disclaimer to some lesser amount of
22 information on the face of the ad, and then the

1 availability of it at a one-step remove, that is
2 kind of a key question that I think we've been
3 trying to grapple with. What's the trigger point?
4 So I would be -- I would welcome any advice, and I
5 realize this goes in a slightly different
6 direction from what Ms. Nolan is suggesting, but
7 it's -- if we proceed down the road that we
8 started out on on this rulemaking it's a decision
9 we're going to have to come to at some point. Any
10 advice you could give us on what kind of metric
11 would be appropriate to use for that decision
12 point?

13 MR. HOCHBERG: I'll start, and I
14 understand that this is probably the hardest
15 question to answer on it because anything we say
16 is fairly arbitrary for it. And that's why we've
17 been advocating for the one click away is because
18 of this fact is that whether it's 10 percent, I
19 heard somebody mention 40 percent which scares me
20 no extent at that point.

21 MS. NOLAN: Me, too.

22 MR. HOCHBERG: But it's going to be an

1 arbitrary number whatever gets thrown out there,
2 and the difference between 9 percent and 11
3 percent is nothing on an ad. And that's the
4 difficulties that we run into and that's why being
5 able to fall back on having a one click away, and
6 that's why I will harp on that forever, is because
7 it gives us that clear bright-line of we know no
8 matter what ad we run, no matter what platform
9 it's on, no matter what indicators the preferred
10 method on that platform, that we will be able to
11 be compliant with the FEC.

12 And that I can turn to our legal team
13 and say we are good, that we feel safe in running
14 these ads, and that consumers will know who ran
15 the ad. And that, for me, is the biggest piece of
16 it, is just knowing beforehand that we're safe.
17 And I can --

18 VICE CHAIR WEINTRAUB: Well, fewer
19 consumers will know if all of -- if all of your
20 disclaimers are one click away then fewer viewers
21 are going to get to that one-click point and see
22 that. That's point one, but -- than if it were on

1 the face of the ad or some version of the name
2 were on -- I mean, RNC is really short.

3 It's hard for me to imagine there are a
4 lot of places where you can't fit three letters.
5 And another point that I think is important to
6 note is that you seem to have a different notion
7 of what the one-click rule means than some of the
8 witnesses that we had yesterday who said when we
9 say one click, we mean one click and there's the
10 disclaimer right there, not one click, and you get
11 to more, depending on who you're talking to,
12 persuasive information or propaganda from the
13 advertiser that you have to scroll through in
14 order to then find the disclaimer somewhere at the
15 end of whatever amount of information.

16 So there seems to be a little bit of a
17 discrepancy on even what one click means. Ms.
18 Bannan, did you want to weigh in on this?

19 MS. BANNAN: Yeah. I'll just say I
20 think it is really difficult for the FEC to draw
21 the line with -- I mean, I think everyone's really
22 calling for a technology neutral standard so that

1 you're not in this position again in a few years.
2 And I think everyone wants to avoid that, right?

3 VICE CHAIR WEINTRAUB: I don't know. A
4 few years is a lifetime in technology. Who knows
5 what we'll be looking at in a few years.

6 MS. BANNAN: Right. So our position is
7 that having the paid for by RNC with an indicator
8 is the best -- is just like the best option. I
9 think that that extra information alongside the
10 indicator is the best compromise, and to get the
11 full disclaimer you can click. We can maybe have
12 a -- argue about what one click away means, but I
13 think that at a minimum there needs to be some
14 text on the face of the ad or in the wraparound
15 box on the social media.

16 CHAIRWOMAN HUNTER: Can I just respond
17 to something? So I agree with you that when we
18 started yesterday that was sort of the threshold
19 question is how do we figure out how to get from
20 the full disclaimer or an adaptive disclaimer to
21 an indicator and what's the standard. I
22 completely agree that's where I started yesterday.

1 But I think we have a little bit of a
2 different take that to me, after yesterday,
3 because we -- I didn't think anybody had any good,
4 you know, proposals for a trigger standard that we
5 had yesterday. Somebody said if it's not
6 impossible, I mean, it didn't -- nothing jumped
7 out at me as here's the solution that you and I
8 weren't able to find. And we worked on this quite
9 a lot with the Office of General Counsel, I mean,
10 the proposals that we put out took a lot of time
11 and attention from those of us who are very
12 familiar with these issues. We didn't just throw
13 out the first thing that we thought of. And so
14 those trigger mechanisms didn't really work for a
15 lot of the commenters on both sides.

16 And as I say, I don't think we heard
17 anything yesterday that sort of solved the puzzle.
18 And because of that, it seemed to me that people
19 were moving in the direction of at least
20 considering having just the indicator on the face
21 of the ad with, you know, the full disclaimer
22 available at the landing page. That's what I took

1 out of it, and --

2 VICE CHAIR WEINTRAUB: Well, some people
3 were -- some people came in with that perspective
4 such as Mr. Hochberg.

5 CHAIRWOMAN HUNTER: Right.

6 VICE CHAIR WEINTRAUB: I'm not sure that
7 anybody yesterday said oh, I was thinking it would
8 be better to have the full disclaimer, but you're
9 right, as long as you have an indicator you could
10 have no --

11 CHAIRWOMAN HUNTER: Well, I do think
12 there -- I'd have to go back to my notes, but I do
13 think that there were a couple of panelists who
14 came in with you've got to have the full
15 disclaimer no matter what. And it seemed to me
16 that they were a little bit more, as the day went
17 on, more receptive to the notion that maybe you
18 could have an abbreviation of the name, or maybe
19 you could shorten the name. I agree with you that
20 not everybody said oh, just go with the disclaimer
21 and you'll be fine. But I do think that there was
22 some --

1 VICE CHAIR WEINTRAUB: The indicator.

2 CHAIRWOMAN HUNTER: Oh, yeah, sorry,
3 just go with the indicator and you'll be fine. I
4 do think there was some movement away from the
5 rigidity of having the full disclaimer on the face
6 of the ad. But I do think that there were a
7 number of panelists who moved -- who seemed to
8 move in that direction, and a couple who
9 specifically endorsed it in their comments after
10 seeing two different proposals.

11 But I do think your question about the
12 one click you asked about what's the landing page,
13 and I've thought about this a lot. And I think
14 that yes, there are a few bad actors, and a couple
15 of people mentioned them yesterday where if you
16 link it goes to some unknown, you know, crazy
17 webpage. But putting that aside, because I think
18 it's a pretty small percentage of bad actors, if
19 you click on the RNC's link, you're going -- I
20 think you go to the RNC homepage which they're not
21 hiding who they are.

22 I mean it's very clear of what they are

1 --

2 VICE CHAIR WEINTRAUB: I'm not worried
3 about the RNC.

4 CHAIRWOMAN HUNTER: No, okay. Or any --

5 MR. HOCHBERG: Thank you.

6 CHAIRWOMAN HUNTER: -- of these other
7 political committees and it's going to tell you
8 right upfront who they are, which candidates
9 they're supporting, what their issues are, that
10 sort of thing. Whereas if you link to some, you
11 know, box there that says paid for by the RNC 310
12 First Street and here's our website and here's our
13 phone number, I mean, I just don't think that --
14 and I do think we've heard this from some people
15 yesterday. That disclaimer information, in and of
16 itself, doesn't really give all that much
17 information.

18 Mom and Pop apple pie or whatever it was
19 that someone said yesterday and the street address
20 just isn't doing it for me.

21 VICE CHAIR WEINTRAUB: I agree with you
22 but that's what the statute requires. I would

1 like it if the statute said you had to provide
2 more information. I think that if Mom and Pop
3 apple pie PAC are appropriately filing their
4 reports, then somebody who is really curious can
5 go and find out who their donors are and get a
6 better sense of who's behind the organization.

7 But that's a -- we're dealing with the
8 statutory framework that we have which requires
9 certain language on a disclaimer and this -- the
10 issue that was raised was is it really -- it is
11 one click if it, like I said, I don't think
12 anybody's confused about who the RNC is. That's
13 not a big problem I think. And I don't think that
14 you're trying to hide who you are, but there's two
15 separate issues. One is the malicious actors who
16 are actually trying to hide who they are, and the
17 other is just how easy is it for voters to access
18 the information. And if we say you get to it in
19 one click, do we mean you get in one click there's
20 the information that the statute requires, or one
21 lick and now you can start hunting for the
22 information that the statute requires. Those are

1 just two different -- I just want it to surface
2 that there are two different --

3 CHAIRWOMAN HUNTER: Yeah, I hear you.

4 VICE CHAIR WEINTRAUB: -- ideas about
5 what the means.

6 MR. HOCHBERG: Thank you for our name ID
7 being so high and no concerns on our ads lately.
8 But and to that point I think it was mentioned
9 that there would be no problem with, you know,
10 there's space to put paid for by the RNC on an ad,
11 and some people may know what that means. I think
12 there's a lot of other groups that have acronyms
13 that they would love to be able to put on ad as
14 they're paid for that shows a trace of who they
15 are. And I don't think it provides any extra step
16 for the consumer that would -- any extra guidance
17 that actually may be more confusing than just
18 allowing for a one-click away because somebody's
19 acronym may have no association to who they are.

20 But if you click on an indicator or go
21 to their website you see at least the disclaimer
22 with at least their full FEC registered name. So

1 that's one of the points I would like to make on
2 that.

3 VICE CHAIR WEINTRAUB: Now let me ask
4 you, Ms. Nolan, because you are from California.
5 So maybe you --

6 MS. NOLAN: I'm actually from here but
7 that's okay.

8 VICE CHAIR WEINTRAUB: Oh, okay, well,
9 you're working in California though, right?

10 MS. NOLAN: Yes, ma'am.

11 VICE CHAIR WEINTRAUB: I'm glad you're
12 from here. This is a great place to be from.

13 MS. NOLAN: Eastern Shore.

14 VICE CHAIR WEINTRAUB: The great state
15 of Maryland. One question that I asked yesterday,
16 and the person that I asked had no really
17 information on it is under the California system,
18 it's my understanding that there are, particularly
19 with -- maybe it's with SMS technology, or there
20 are certain kinds of ads where you put the ID
21 number of the committee, and then people can go to
22 the FPPC, California Fair Political Practice

1 Commission, page for that committee ID number and
2 find out all sorts of information including who
3 the donors and all that are.

4 But the ID number itself is not terribly
5 informative to somebody who doesn't go to the
6 trouble of doing that. So I just wanted to see
7 what your reaction is to that kind of a system in
8 terms of what -- in terms of whether it's
9 effective in getting useful information to voters.

10 MS. NOLAN: As vendors, our concern is
11 first that the ads are displayed in a way that
12 helps our clients. So the FPPC has promulgated a
13 couple of different rules. I am not familiar with
14 the exact one that you're referencing.

15 VICE CHAIR WEINTRAUB: Okay.

16 MS. NOLAN: I can tell you that what
17 they have historically asked us to do is make sure
18 that the words paid for by appear on every ad. It
19 is a legacy brought over from the mail -- the
20 rules for direct mail. We have not found their
21 process to be terribly onerous.

22 What we do have problems with is paid

1 for by, a long disclaimer including primary funder
2 disclaimers that go on at great length, and which
3 we joke and say the really good people doing
4 really good things for a really great reason paid
5 for by a really great guy with lots of money. So
6 the FPPC has, in fact, and has required us to put
7 numbers on stuff for mail.

8 Right now what we're doing in California
9 is we have to have a banner on the ad that says
10 who funded this ad. And the use of the word
11 funded is kind of interesting because you don't
12 really ask if Amazon funded the ad that says
13 Amazon on it. You don't ask if Coca-Cola funded
14 the ad that says Coca-Cola on it. So I think the
15 who funded this ad is a trigger to say oh, it's
16 political. That said, again, we're vendors and
17 our concern is about, you know, the efficacy of
18 the advertising. It's not necessarily about what
19 disclosure and disclaimer is required of us.

20 We're going to obey the law. I just
21 wanted to circle back a little bit where you were
22 talking about mischievous web developers and

1 people. Most of those --

2 VICE CHAIR WEINTRAUB: I'm sure that's
3 not you.

4 MS. NOLAN: No, no, actually, it isn't.
5 One of my board members likes to joke that we are
6 the only com -- the only ad tech firm in the
7 entire country that never took any money from
8 anybody outside the U.S. and it's true. So but to
9 the mischievous actors, voter targeting was very
10 much a part of the outrageous activity that took
11 place in 2016, and the use of voter files was
12 certainly part of that.

13 So I would just suggest that people who
14 are concerned that bad guys aren't going to put
15 disclaimers on ads, we could take a step back and
16 look at it from that lens, and sort of say, well,
17 if you're a bad guy and you're using voter data
18 then perhaps we can get you as you're coming in
19 the door as opposed to after the horses -- well,
20 that's mixing metaphors. I'll stop there.

21 VICE CHAIR WEINTRAUB: I appreciate that
22 point, but I want to circle back and just confirm

1 or, you know, put an exclamation point on
2 something that you said before which is that as
3 somebody who's got a lot of experience in this
4 field you don't find it onerous to have a
5 requirement that says paid for by with some
6 version of the name on it?

7 MS. NOLAN: No, I do not and we -- that
8 is -- honestly that's the requirement that Pandora
9 makes. It's the requirement that most people who
10 are unfamiliar with either federal or state law
11 will ask us to include in ads. We do business
12 mostly on a direct basis.

13 So we often have to go through standards
14 and practices at places like the "New York Times",
15 the "Washington Post", and the "Los Angeles
16 Times". Our concern is that in absence of guid --
17 as I said earlier, in absence of guidance these
18 folks are making up their own rules, and they're
19 trying to out-Facebook Facebook, if you will. But
20 one of the minimal requirements is paid for by.
21 And we can generally default to paid for by and we
22 have also used mouse-over hover ads as well for

1 the lengthier disclaimers. We would hate to see
2 that option go away. It is one that we find
3 useful.

4 CHAIRWOMAN HUNTER: If everybody has
5 another couple of minutes, I'd like --
6 Commissioner Walther has a question.

7 COMMISSONER WALTHER: I just have one
8 question of Ms. Bannan. That was you said
9 something that's a lot more stronger because we're
10 micro-targeting, because of the micro-targeting.
11 But how does that affect us because --

12 MS. BANNAN: Sure.

13 COMMISSONER WALTHER: -- it's the
14 question of micro -- excuse me, the
15 micro-targeting, and I feel like I've been
16 micro-targeted a lot lately. One article that I
17 was interested in and I hovered in this one, you
18 know, electronic store and it keeps coming back to
19 me now for every time I open up my computer. But
20 you said why would micro-targeting make a
21 difference. In other words, does it make any
22 difference to us whether that message was sent to

1 Fred or George or somebody that likes a Prius or
2 somebody that likes something else?

3 MS. BANNAN: So I think -- so the reason
4 I emphasize that is that the rationale for having
5 these disclaimers, in my mind, is a lot stronger
6 because of the micro-targeting, to know who paid
7 for it, and because you know if you're seeing an
8 ad online, it was targeted at you for some
9 demographic -- some sort of information about you.
10 And to know who paid for it is even more important
11 than if you just turned on the TV and everyone in
12 your area is getting -- being served the same ad.
13 So just the rationale for having the disclaimer, I
14 think, is stronger than it even is for traditional
15 media.

16 COMMISSIONER WALTHER: Right, but that
17 doesn't affect our decision as to whether or not
18 to have it because we have to have it.

19 MS. BANNAN: Right.

20 COMMISSIONER WALTHER: So what
21 difference that makes --

22 MS. BANNAN: Yeah, one other thing is

1 just that like when we -- when there is an
2 indicator and a landing page, I mean, this may
3 fall outside of your statutory hook for this, but
4 that that same mechanism is also the place where
5 you get the full disclaimer and you also get that
6 demographic information. And that's, I mean,
7 that's similar to the ad choices system.

8 COMMISSIONER WALTHER: Thank you.

9 CHAIRWOMAN HUNTER: Thank you very much.
10 Thank you very much to all three of you. I think
11 we, once again, could keep talking for another
12 while but this was incredibly helpful. Thank you
13 so much. And we'll start the next panel at 11:05,
14 just five minutes late. Thank you very much.

15 (Recess)

16 CHAIRWOMAN HUNTER: All righty, good
17 afternoon. Thank you for being here for our fifth
18 and final panel.

19 VICE CHAIR WEINTRAUB: It's still
20 morning. It just feels like it's afternoon.

21 CHAIRWOMAN HUNTER: Did I say -- it does
22 feel like afternoon. You're right, sorry, good

1 morning. On this panel we have Theodore Peterson,
2 digital director of the National Republican
3 Congressional Committee. We have Thomas Reiker,
4 deputy digital director National Republican Senate
5 Committee. We have Carmen Scurato, vice president
6 and general counsel National Hispanic Media
7 Coalition on behalf also of Asian-Americans
8 Advancing Justice and Color of Change. Thank you
9 very much.

10 As you may have heard, we're -- each
11 witness is permitted to give a five-minute opening
12 statement. The yellow light will come on when you
13 have one minute left, and then the red light will
14 come on when it's time to wrap up your comments.
15 We'll go alphabetically so we'll start off with
16 Mr. Peterson.

17 MR. PETERSON: Good morning.

18 CHAIRWOMAN HUNTER: Good morning.

19 MR. PETERSON: And thank you for the
20 opportunity to participate in this hearing. Each
21 of us serves in the digital departments of our
22 respective national party committees and devotes

1 substantial time and resources to digital
2 communications. And we're happy to offer this
3 statement jointly today.

4 The issue raised in the rulemaking are
5 issues that we have seen firsthand. Our two
6 committees' lawyers have submitted written
7 comments and told you what they think the law
8 requires and allows. We are here today to address
9 some of the more practical considerations before
10 you, and we want to emphasize how important it is
11 that you pay as much attention to the practical
12 issues as you do to the legal issues.

13 For practical reasons both of our
14 committees believe strongly that the overriding
15 consideration for any internet disclaimer rule
16 needs to be flexibility. Flexibility encourages
17 compliance, and flexibility ensures that we can
18 continue speaking as we see fit.

19 MR. REIKER: To this end, we want to
20 emphasize three points. First, the proposals in
21 the rulemaking are efforts to apply old law to new
22 technology. As you know, technology seems to

1 evolve at the speed of light, and that is
2 certainly true in the digital communication space.
3 The disclaimer rules in the statute are from the
4 early 2000s, and they were written with TV and
5 radio ads in mind.

6 The internet rule from 2006 was written
7 primarily with graphic website advertisements in
8 mind. The proposals currently under consideration
9 are responses to social media and applications
10 typically used on handheld devices and tablets.
11 But Facebook is not the last digital platform you
12 will see, and iPhones are not the last devices
13 that will be connected to the internet. Any new
14 disclaimer rule you adopt now will become obsolete
15 sooner or later, and the only way to avoid having
16 to repeat this exercise in a few years is to be
17 flexible now.

18 Second, the FEC should not adopt a new
19 rule if there is uncertainty about whether these
20 proposals offer improvements over the existing
21 rule. The existing rule has been and can continue
22 to be applied flexibly. Our committees have never

1 been under the impression that new media digital
2 advertising is exempt from the disclaimer
3 requirements, and we don't do ads without
4 disclaimers. If we can't put the disclaimer on
5 the face of the ad, we use the click-through
6 approach. We're not aware of committees out there
7 that have a different view. Among regularly
8 reporting committees, we don't think there's a
9 disclaimer problem.

10 Third, there are some proposed
11 requirements in this rulemaking that would render
12 certain advertising formats obsolete. If the
13 practical effect of a disclaimer requirement is to
14 kill off a type of messaging, it's bad policy.
15 It's one thing if Congress mandates this, but
16 another thing altogether for the Commission to
17 choose it where other options exist.

18 One example is the proposal to stand the
19 stand by your ad requirements to online videos.
20 This requirement is not compatible with the
21 six-second online bumper ad which has proven to be
22 an effective way to capture people's attention and

1 drive efficiency. If we have to devote four
2 seconds to the disclaimer message, we simply won't
3 run six-second ads. This is just one example, and
4 we raise it with the hope that the Commission will
5 pay special attention to how these rules will
6 apply in the real world outside the book of
7 regulations. Thank you.

8 CHAIRWOMAN HUNTER: Thank you. Ms.
9 Scurato?

10 MS. SCURATO: Thank you. Today online
11 communications provide valuable opportunities to
12 engage in the electoral process and allow
13 disenfranchised voices to be heard in innovative
14 and powerful ways. Technology has evolved
15 exponentially since 2006, and online platforms now
16 have sophisticated methods of tracking users.

17 Advertisers are provided information to
18 target specific audiences through detailed
19 profiles of their preferences and habits, and can
20 tailor as to exploit weaknesses and biases. When
21 used for political advertising, these technologies
22 pose a threat to our democracy. Because of these

1 tactics, voters are susceptible to deceptive
2 campaign practices that attempt to spread
3 confusion, discourage voters, and disseminate
4 false information.

5 Effective disclosures can alleviate
6 these harms. The 2016 election exposed social
7 media as the wild west of online communications
8 where some advertisers targeted online
9 communications to inflame racial hatred and divide
10 the voting public. That is why the Commission's
11 proceeding to eliminate the loopholes left by the
12 2006-era political advertising rules could not be
13 more critical and more urgent for communities of
14 color.

15 Without disclosure requirements that
16 bring transparency to all online political
17 communications, campaigns will continue to exploit
18 communities of color through voter suppression
19 tactics. People of color are particularly harmed
20 by the lack of comprehensive and effective online
21 disclosures because they are more likely to depend
22 on smartphones to access information about

1 elections and political campaigns.

2 A peer research study found that
3 Hispanics and African-Americans are 155 percent
4 and 67 percent respectively more likely to depend
5 entirely on a smartphone to access the internet
6 than white individuals. Southeast-Asian and
7 Pacific-Islander Americans have some of the
8 highest rates of poverty among all racial and
9 ethnic groups, and even lower levels of broadband
10 adoption. But Asian-Americans who are connected
11 led the U.S. population in the use of the
12 internet, mobile digital devices, and social
13 media.

14 91 percent of English-speaking
15 Asian-Americans own a smartphone compared to 66
16 percent of white individuals. But the
17 Commission's current rules do not require that
18 every political ad these individuals see on their
19 smartphones have a disclosure. Inadequate
20 disclosures fuel misinformation campaigns and
21 contribute to voter suppression tactics targeted
22 towards people of color. That is why it is

1 critical that the Commission move forward to
2 provide clear rules for online political ad
3 disclosures or risk further disenfranchising
4 already marginalized communities.

5 One place to start is a definition of
6 public communication. As the Commission
7 suggested, the definition should be revised. We
8 agree. But the rules will be ineffective if they
9 are not written to capture the dynamic online
10 space. That is why we propose additional language
11 so that the final rule reads "communications
12 placed or promoted for a fee on another person's
13 website or internet-enabled device, application,
14 or services." The promoted for a fee language
15 would capture influencers who are paid to share
16 content created by others where no payments are
17 made to the platforms.

18 Or services language would apply to the
19 entire online ecosystem. For example, Netflix or
20 an online video game might be better understood as
21 online services than a website or application. As
22 for the alternatives, we generally support

1 alternative A and support the creation of an
2 adapted disclosure exception, but the Commission
3 must make clear that the political advertisers can
4 only use this adapted disclosure when complete
5 disclosure on the face of the ad is simply not
6 possible.

7 An adapted disclosure will only be
8 effective if it is a uniform indicator with a
9 message that clearly signals that it can be used
10 to access a full disclosure. The full disclosure
11 should not be accessible in no more than one step,
12 and it should include -- it should not include any
13 other information than the disclosure itself.

14 For the indicator we suggest paid
15 political ad, but we encourage the Commission to
16 select or support an indicator that meets the same
17 standard of effectiveness as the ad itself. An
18 indicator would not be effective if it were just a
19 website URL. Additionally, the Commission should
20 extend the clear and conspicuous requirements to
21 online disclosures. Rules for printed medium
22 require a reasonable degree of contrast and

1 sufficient size to be readable.

2 The Commission should also clarify that
3 for a disclosure to be clear and conspicuous, it
4 must be in the same language as the ad. As stated
5 earlier, people of color are clear targets of
6 deceptive practices that attempt to spread
7 confusion and discourage voters. This proceeding
8 is about having an informed electorate in the
9 digital age.

10 It is about ensuring the predatory
11 online ads are not weaponized to sow division and
12 hate in our society further disenfranchising
13 already marginalized communities. It is about
14 securing the integrity of our electoral process.
15 It is about protecting our democracy. Thank you
16 for the opportunity to be here today and I look
17 forward to your questions.

18 CHAIRWOMAN HUNTER: Thank you very much,
19 appreciate it. Any questions? I'm going to start
20 with Commissioner Walther or Commissioner
21 Petersen? Commissioner Petersen?

22 COMMISSIONER PETERSEN: Thank you, Madam

1 Chair. The question that I've asked of other
2 panels up to this point is what can we expect an
3 online viewer of ads to be savvy about in terms of
4 when they're interacting with online ads? I think
5 that across the board and the Vice Chair brought
6 this up in the last panel, we agree that there is,
7 at some point -- at a minimum there is some point
8 where there are online ad format s that just can't
9 accommodate the traditional disclaimers that we
10 see on radio, television, mail, newspaper ads.
11 And when we reach that point, and we've struggled
12 to find a trigger where we'd go from the full to
13 the -- to more of a truncated and adapted
14 disclaimer, or an indicator, but I think there's
15 general agreement that at some point that there
16 are some ads that ju -- ad formats that are
17 valuable to committees, to candidates, to
18 individuals to be able to reach audiences at low
19 cost that we don't want to discourage that would
20 require an indicator.

21 And so what can we expect of the average
22 -- how familiar, from your experience, are users

1 with interacting with ads, understanding that
2 there may be click-through capabilities that there
3 are icons that can inform them about additional
4 information, because if it's the case that viewers
5 are relatively knowledgeable that they can get the
6 information that they -- that is required in the
7 statute through a simple, you know, either a
8 hover, rollover, click-through, click on an icon,
9 then that would allow kind of the best of both
10 worlds where the actual content of the speech is
11 not impeded by a -- or overwhelmed by the
12 disclaimer and that the disclaimer doesn't get
13 cluttered up by the speech, and that each element
14 that is necessary for an effective communication
15 is there.

16 And so I'll just start with Mr. Peterson
17 and just ask each of you if you could respond to
18 help educate us on this particular concern.

19 MR PETERSON: Absolutely, thank you for
20 the question. I think it's a common understanding
21 that regardless if it's a political ad or ad for
22 merchandise or what it might be that a click of

1 that ad will lead to more information. A click
2 will lead to a website which will lead to more
3 information.

4 We've heard a lot about the indicator
5 from previous panels. I think my biggest issue,
6 and something to consider about this indicator, is
7 that can it be platform-agnostic? Can it be
8 screen-agnostic? I mean, we're talking about
9 we've heard a lot about Facebook and Google and
10 Twitter, but not a whole about Snapchat or Hulu or
11 Vivo or Amazon or Pandora or Spotify or Apple TV
12 or Xbox or -- and I could go on and on, right? I
13 mean, there are so many different formats and
14 platforms and ways that people are connecting to
15 the internet and getting these ads. Can that
16 indicator be agnostic to all of these different
17 types of formats?

18 COMMISSIONER PETERSEN: Okay. Mr.
19 Reiker?

20 MR. REIKER: I think your question
21 implicates the need for flexibility in the
22 approach to this problem, because the real answer

1 is it completely -- our ability to serve a full
2 disclaimer versus an adapted disclaimer versus,
3 you know, whatever indicator you all might be
4 considering is completely dependent upon the
5 platform itself, and not only the platform, but
6 the ad type. And so I think there's almost a
7 limitless number.

8 The only limit to the different types of
9 ads that can be served on the internet is the
10 limit to Silicon Valley's innovation, right? So I
11 don't feel that I can predict all the different
12 units that are going to be available in the next
13 five to ten years. And I certainly don't think
14 that that's a thing that could be codified into
15 regulation. So there needs to be flexibility to
16 speak to the fact that there are constantly new
17 ways that people are interacting with the
18 internet.

19 However, I will also say that I know for
20 both of our committees we disclaim on any
21 advertisement that we run on the internet,
22 everything goes through legal approval. We do our

1 absolute best to incorporate a full disclaimer
2 where we can, and if it needs to be adapted, we do
3 our best to make sure that it is very clear that
4 we're the ones that are speaking. So it's not
5 really an issue in our sphere. We disclaim on
6 every ad that we run, and if we can't get to a
7 place with both our legal counsel and the ad
8 network where we are able to serve a meaningful
9 disclaimer then we won't run that ad. So I just
10 -- I have struggled to foresee a situation in
11 which someone receiving one of our ads wouldn't
12 know that we're the speaker because we go out of
13 our way to disclaim.

14 COMMISSONER PETERSEN: All right, Ms.
15 Scurato.

16 MS. SCURATO: Thank you. So I do agree
17 that we need flexibility, but I think that's, for
18 me, that's when we talk about the platform itself
19 and the new types of digital media that will be
20 available in the future. We just can't
21 potentially see what that would be. So that's why
22 we really think that that or services language is

1 necessary to capture that. For example, a service
2 could be a video game or what you were talking
3 about Xbox, or Hulu, or Netflix, other ways, other
4 means that people are receiving these ads. And
5 that's why it's important to include that
6 language.

7 And I also think that you mentioned the
8 click over or the hover over feature. And I
9 really want to emphasize that we have to think of
10 solutions that are also available on mobile
11 devices especially when we're talking about people
12 of color who over index on mobile, because that is
13 not -- you don't have the rollover hover feature
14 on a smartphone. And I think that would then
15 preclude that disclosure from ever popping up if
16 you're looking at it. And I think that's an
17 important thing that we need to consider.

18 One of the things that we also did in
19 our comments is that we actually proposed some
20 language that may capture these new technologies.
21 So we think that it should be a digital public
22 communication with text or graphic, and this is

1 when we're talking about the adapted disclosure,
2 but without any video or audio components that due
3 to the character or space intrinsic to the
4 technological medium cannot include the required
5 disclaimer. So we think that, again, captures
6 that forward-looking -- and is a forward-looking
7 approach that is needed to understand that this is
8 important across all platforms.

9 COMMISSONER PETERSEN: Okay. You
10 brought up in the discussion on public
11 communications that you would like the definition
12 to include advertisements that are placed or
13 promoted for a fee. I don't know when it
14 happened, but at some point in the last few years
15 I've gone from being, I thought, a relatively with
16 it and in the mainstream to being kind of over the
17 hill as my kids constantly remind me.

18 So I'm aware of promoted tweets and
19 promoted posts and so forth. I see them, you
20 know, in a Twitter timeline or on a Facebook feed.
21 But I'm not at all knowledgeable about how that
22 process takes place. You mentioned -- I would

1 have just assumed that there was a payment that
2 would have been made to Twitter, made to Facebook,
3 and I understand that it can be as inexpensive as
4 a dollar. You could do it for \$20 or however
5 much.

6 Walk me through a little bit more about
7 how the promotional process takes place so that I
8 can better understand how that would even work in
9 terms of the disclaimer requirement?

10 MS. SCURATO: Sure. So with this
11 promoted for a fee language what we were trying to
12 capture is when individuals are being paid to
13 promote content. So you're talking about
14 influencers, you're talking about other agents.
15 And so what we thought this was important is that
16 if you don't have this language and someone is
17 being, again, paid to promote content, you're just
18 having a surrogate, right?

19 COMMISSIONER PETERSEN: And how do you
20 arrange -- how does one, you know, recruit an army
21 of influencers and make a payment for them to
22 promote a particular post, a particular news

1 article or what have you?

2 MS. SCURATO: I will be honest I am not
3 familiar with that process.

4 COMMISSIONER PETERSEN: Okay.

5 MS. SCURATO: But --

6 COMMISSIONER PETERSEN: Not to put you
7 on the spot. It's just something --

8 MS. SCURATO: No, no, no, but --

9 COMMISSIONER PETERSEN: -- that's come
10 up a few times that I hadn't really thought about
11 and that I'm just trying to gain a little more
12 understanding on.

13 MS. SCURATO: But I think it's important
14 to look at the Federal Trade Commission's guidance
15 on this, because they require that bloggers,
16 reviewers, and influencers who will get
17 compensated to promote a specific product actually
18 disclose that they were paid to do that. And
19 that's very important because people do rely on
20 these individuals and they do trust them. And it
21 is very -- it needs to be clear when they are
22 being paid to show that product or else it could

1 just be, for example, I could say I really like
2 this Coach bag, right, but if I'm being paid by
3 Coach to say that, that is a very different
4 understanding especially when you're viewing it as
5 a consumer.

6 COMMISSIONER PETERSEN: Okay. And
7 finally, I'll start with you, Ms. Scurato, you
8 mentioned in your opening statement that you would
9 want any indicator to be uniform across platforms.
10 And I guess one of the questions would be, because
11 I think some concerns have been raised by other
12 panels about that we should put the requirement
13 for an indicator or signifier or a logo or an icon
14 of some sort, but not be overly prescriptive about
15 what that looks like, what it says to allow
16 innovations, and allow some flexibility for that
17 process to develop. But I just wanted to give you
18 a chance to explain a little further why you think
19 that should be uniform rather than allow there to
20 be a few different modes by which an indicator
21 could be provided depending on the platform.

22 MS. SCURATO: So in our comments we

1 actually said we support paid political ad as the
2 indicator. But there's been, I know, throughout
3 this hearing there's been variations of that. But
4 we think paid is a very important part of that.
5 And I think the reason that we want something that
6 is clear, straightforward, and consistent is that
7 that helps inform the electorate, right? If we
8 have variations on the same thing, and you were
9 talking earlier about the need of an individual to
10 understand can they click on this and what
11 information they will get.

12 And I think having something, again,
13 that is consistent across platforms, whatever that
14 indicator may be, is very important to that
15 process.

16 COMMISSIONER PETERSEN: Okay. Do either
17 of you have anything to add either on the issue of
18 educating us on promoted posts or promotes tweets,
19 or on the issue of indicators and the uniformity,
20 or the need for some flexibility in that realm?

21 MR. REIKER: I mean, I would just
22 reiterate that on the actual advertisement itself

1 we disclaim on any advertisement that we run on
2 the internet. In some potentially foreseeable
3 instance in which that wasn't possible on that ad,
4 maybe we'd rely on click-through which I think is
5 also a decent disclaimer and speaks to the mobile
6 experience as well. But we disclaim on every ad
7 so this would be additional -- an additional
8 disclaimer for us.

9 And I would also -- I also would just
10 note that it's one thing to talk about language
11 that's uniform across all platforms. But to talk
12 about an actual in-prompt or some other form of
13 like marking that is uniform across all platforms
14 is just not technologically feasible so.

15 MR. PETERSON: I'll start with
16 commenting about the influencer disclaimer. It's
17 not something that we've -- you know, that I'm
18 familiar with, but I would say that any time there
19 is a new ad format, any time we have a new way of
20 trying to communicate to voters, there is a very
21 rigorous process at both of our committees where
22 we go through our legal department and they're

1 making sure that we are complying with the FEC
2 rules.

3 And that would be the case for this
4 influencer situation, too. Again, I'm not sure
5 how that transaction works, but we would be going
6 through a rigorous process to make sure that we're
7 following the rules.

8 COMMISSIONER PETERSEN: Okay.

9 MR. PETERSON: Secondly, on the
10 indicator, Ms. Scurato mentioned the mobile
11 device, and I think this indicator is certainly
12 some -- like I think the way you're thinking about
13 it is it's a hover over, right, or something you
14 click on, but again, on a mobile device, that's
15 not the same user experience as on a computer.
16 And we have people on smart TVs or Roku or Apple
17 TV who are trying -- who are seeing these ads and,
18 again, those are not situations where you can
19 necessarily hover over. I'm not sure if you're
20 familiar with the ways to access those types of
21 smart TV consoles or Apple TV, you know, it's like
22 a clicker. So you're not able to hover over that.

1 So I guess the point I'd make is it
2 needs to be flexible for all these different types
3 of ways that people are accessing the internet.

4 COMMISSIONER PETERSEN: Okay. Thanks.
5 That's all I have for right now.

6 MS. SCURATO: Can I address just one
7 thing real quick? You said it's not
8 technologically feasible to have something, and I
9 think that is something that the platforms are
10 more equipped to really under -- you know, to
11 really speak to at this point, because the way
12 that I understand it, especially when it comes to
13 these platforms, and again, the language that we
14 proposed about the disclaimer being intrinsic to
15 the technological platform would not compel these
16 companies to require that, but it would
17 incentivize them to create some technological
18 mechanisms in order to accommodate political ads.

19 CHAIRWOMAN HUNTER: Commissioner
20 Walther, do you have any questions or --

21 COMMISSIONER WALTHER: Not at the
22 moment.

1 CHAIRWOMAN HUNTER: Okay.

2 COMMISSIONER WALTHER: I got the
3 impression though that the gentleman from the
4 party before indicated that there was
5 click-throughs that you've used.

6 CHAIRWOMAN HUNTER: I think --

7 COMMISSIONER WALTHER: Am I missing
8 that?

9 CHAIRWOMAN HUNTER: Some of the -- the
10 gentleman who was here from the RNC mentioned that
11 he -- if he didn't put the full disclaimer he
12 sometimes had the link to click through to the RNC
13 webpage; is that what you mean, Commissioner
14 Walther?

15 COMMISSIONER WALTHER: Right. But then
16 from the conversation today I didn't get the
17 impression that you were using them.

18 MR. PETERSON: Oh, again, we're -- any
19 time we're using -- the point that I was trying to
20 make about the Apple TV not being able to hover
21 over, or the point I'm trying to make is that we
22 just need to be flexible in how this is

1 implemented because there's so many different
2 types of ways people are accessing the internet.
3 If it becomes something that is limiting our
4 ability to use the other types of advertising
5 platforms, then in my mind, you know, it's
6 limiting our ability to get our message out.

7 COMMISSIONER WALTHER: What are some of
8 those be now that you're referring to?

9 MR. PETERSON: Well, so OTT, over the
10 top advertising is a new type of digital
11 advertising where there's ad inventory available
12 through an Apple TV app, an Xbox app, a Roku app,
13 right? And this is -- these are ads that are --
14 could be playing on a TV. They could be playing
15 on a smaller screen. But these are the types of
16 technological advances that, in my mind, requires
17 the disclaimer rule to be flexible for us to try
18 to comply as best as possible with the rules.

19 COMMISSIONER WALTHER: So how would it
20 work? So that anybody that clicks on -- so you
21 have a handheld and along comes a message. So
22 you're saying to click through with your computer

1 you can do that and automatically get to the, you
2 know, another page is that the idea? And it would
3 be just one page that says -- or first of all,
4 let's clarify. Do you do that at all? Because I
5 got the impression that everything you did was --

6 MR. REIKER: Almost every form of online
7 advertising is clickable through to some sort of
8 landing page. That's the nature of online
9 advertising. It is to incentivize an interaction
10 with the viewer. But we disclaim on the
11 front-facing ad on any advertising that we run,
12 and on platforms where that needs to be truncated
13 in any way at all, we work with both the platform
14 and our legal counsel to make sure that it's still
15 abundantly clear that we are the ones who are
16 speaking.

17 COMMISSIONER WALTHER: All right, so you
18 modify the language but you don't have a
19 click-through?

20 MR. REIKER: It would be both. It would
21 have -- anything we do has a disclaimer, and most
22 things we do are likely clickable through to a

1 website that also has our full disclaimer and our
2 name on it. It's a belt and suspenders approach.

3 COMMISSIONER WALTHER: So that would be
4 an add-on, but do you have anywhere you just have
5 an ad, and you have a little message or an icon or
6 something you click, and then you get the
7 information about who paid for it?

8 MR. REIKER: Typically for us it would
9 click through to a landing page, but so to a
10 standalone webpage that has our disclaimer on it,
11 in addition to whatever other information. But
12 the actual front-facing ad would have our
13 disclaimer, and then I believe what you're talking
14 about is clicking, like, clicking some sort of
15 icon or in-prompter and then having a pop-up that
16 says this ad was paid for by whoever.

17 Facebook and Google are both currently
18 working through at a technological level what they
19 want that to look like, but that's a thing that
20 the networks are already tackling right now.

21 COMMISSIONER WALTHER: Okay. So if I
22 understand it then, in every case you've got, and

1 when you see the message, you also have the full
2 text of the required language or a modification of
3 it, but you don't provide that somewhere else?

4 MR. REIKER: We do both. If you -- it's
5 on the ad and then also if you clicked the ad then
6 it would be on that page, but we -- I cannot think
7 of a time in my time at the committee that we have
8 ever run any online advertising that did not, on
9 its front-facing creative have a disclaimer
10 letting people know that we're the ones who are --

11 COMMISSIONER WALTHER: Well, we had a
12 discussion with a gentleman --

13 CHAIRWOMAN HUNTER: But wait, Steve, I'm
14 sorry to interject. I think when he says
15 disclaimer he doesn't mean the full disclaimer.
16 So I just want to -- that's what I think there's a
17 bit of a dis --

18 COMMISSIONER WALTHER: That's okay. I'm
19 good, thanks.

20 CHAIRWOMAN HUNTER: No, no, no, go
21 ahead.

22 COMMISSIONER WALTHER: No, I think I

1 have enough information.

2 CHAIRWOMAN HUNTER: Steve, I'm sorry. I
3 was just trying to --

4 COMMISSIONER WALTHER: I'm good.

5 CHAIRWOMAN HUNTER: Okay. I was trying
6 to clarify when Mr., sorry, Reiker was saying that
7 we disclaim on every ad, I just want to make sure
8 that you're not saying you put the full disclaimer
9 on every ad. I think what you're saying is do you
10 to the extent you can, but if you can't fit the
11 full disclaimer, you might have a shortened
12 version of it, and but I think you said you always
13 link to your homepage?

14 MR. REIKER: That's correct, and as far
15 as the linking, I was just saying that's the
16 nature of online ads. Like, the networks
17 incentivize you to have an ad pull through to a
18 page because it's an interactive experience. So
19 that's -- yes, that is a thing we do to disclaim,
20 but it's also just a thing we do because it's an
21 online advertising best practice if we're going to
22 serve an ad, it should be clickable and drive to a

1 website where you can take further action to
2 engage in the political process.

3 CHAIRWOMAN HUNTER: Do you have some
4 instances where you have just your website, you
5 click on the website and get to -- and obviously,
6 your website would probably have NRSC in it. But
7 do you ever have that link where you can get to
8 your homepage?

9 MR. REIKER: I cannot think of an
10 example of the top of mind where we don't have
11 additional disclaimer language.

12 CHAIRWOMAN HUNTER: Okay.

13 MR. REIKER: Like, I can't think of an
14 example where we just have our website, so.

15 CHAIRWOMAN HUNTER: Okay. Madam Vice
16 Chair?

17 VICE CHAIR WEINTRAUB: Thank you, Madam
18 Chair. So in the ads that you are currently
19 running, when someone views them on mobile
20 devices, do you have ads where you can see the
21 full disclaimer on the mobile device?

22 MR. REIKER: Yes, we do.

1 VICE CHAIR WEINTRAUB: Okay. So that's
2 good. So that plainly means that it is possible
3 to do that because you're doing it.

4 MR. REIKER: With respect, it's so
5 specific to the actual advertising experience
6 itself, so not every mobile ad is the same. So
7 just because there are some mobile ads that are
8 sized large enough that you could legibly and
9 without interfering with the ad experience serve a
10 full disclaimer does not mean that something
11 that's 120 pixels by 120 pixels and is a banner ad
12 at the top is the same viewing experience.

13 That being said, we still work with the
14 networks and our legal counsel on those ads to
15 make sure that there is still a disclaimer, and
16 again, it would almost always -- I cannot think of
17 an instance in which it wouldn't also click
18 through to a website with our full disclaimer.

19 VICE CHAIR WEINTRAUB: Okay. So just
20 want to make sure I've got this right. So on the
21 ads that you're currently running, when people
22 look at them on their mobile phones, some of them

1 they get a full disclaimer when they're looking at
2 it. Some of them you -- there's some information
3 and you click through to the full disclaimer on a
4 landing page. Is that an accurate depiction?

5 MR. REIKER: Yes, I believe so.

6 VICE CHAIR WEINTRAUB: Good. I want to
7 make sure I got my facts straight. And I should
8 have said at the beginning, thank you again, all
9 of you, for coming. We really appreciate your
10 technical expertise. And, Ms. Scurato, I
11 particularly appreciate your being here because
12 you are providing a perspective that none of the
13 other witnesses are providing, and one that I
14 think is really important for us to be cognizant
15 of how what we're doing affects voters at large,
16 but also voters in different populations.

17 And your written comment was really very
18 helpful to me in trying to sort through some of
19 those issues. How important -- now you've
20 indicated a preference for alternative A, and
21 you've said that you think the full disclaimer
22 should be there unless it's really impossible to

1 have it on the face of the ad. How important do
2 you think it is, particularly for the people who
3 are going to be viewing the ad on a mobile device,
4 and let me just say that I do almost everything on
5 my mobile device.

6 I have laptops but I don't know, I just
7 always end up looking at things on my phone. How
8 important do you think it is to have the full
9 disclaimer with all the legal requirements versus
10 having paid for by with the name of the sponsor
11 and then a click-through or some other way of
12 getting to the full legal language?

13 MS. SCURATO: So I think that depends,
14 again, on the medium even on the cellphone, right?
15 Because there are different platforms, different
16 apps, and you view them very differently. Some
17 people even have bigger iPhones or bigger
18 smartphones and smaller ones, right?

19 VICE CHAIR WEINTRAUB: Yep. Go for one
20 of the smaller ones.

21 MS. SCURATO: So I think again it really
22 just depends on that, and I think we would lean on

1 having the full disclosure whenever possible
2 unless, again, it's just that medium does not
3 provide enough space or enough characters for that
4 disclosure.

5 So that's why we really think that's the
6 most important thing to have the informed
7 electorate, and especially when you're talking
8 about, and I know this was brought up, I believe
9 it was yesterday, about having ads travel across
10 the internet ecosystem. And when you have ads
11 travel across the internet, having the disclosure
12 on its face is very important versus that
13 click-through feature or that adapted disclosure.

14 VICE CHAIR WEINTRAUB: And when you talk
15 about the promoted, capturing the ads where the
16 payment is for promoting it, I mean right now when
17 I look at ads, I will sometimes see in my Twitter
18 feed, for example, the word promoted is up there
19 in the corner of the ad. Are you thinking about
20 something like that or are you thinking about
21 promoted by X person, or paid promoted by -- what
22 -- can you spell out exactly how you envision this

1 would look?

2 MS. SCURATO: So this would be, again,
3 for payments that are not made directly to the
4 platforms. It's payments that are made to
5 individuals to promote that particular content.
6 So I believe the disclosure would have to say paid
7 for by very similar to what you would have on any
8 other political ad online.

9 VICE CHAIR WEINTRAUB: I think I must be
10 getting tired. I think I'm running out of
11 questions, although, well, let me ask this
12 question.

13 CHAIRWOMAN HUNTER: I was going to say
14 that's hard to believe.

15 VICE CHAIR WEINTRAUB: I know it is
16 hard, okay, one more. I'll ask the same question
17 that I ask everybody, because I do think this is
18 really one of the key questions that we're going
19 to have to come up with some answer for. And
20 because many of our witnesses, I don't want to
21 categorize, I think most, but certainly many of
22 our witnesses have expressed a preference like Ms.

1 Scurato for having the full disclaimer
2 information. But most of them have also
3 acknowledged that there would be some
4 circumstances in which that might not be possible,
5 and at that point, we would have to have some kind
6 of an adapted disclaimer in order to get the
7 information to the voters.

8 So one of the key questions that we have
9 been trying to grapple with over the last couple
10 of days is what's the trigger point? At what
11 point do we say okay, that's, you know, I'm -- if
12 I'm looking at the ad on my screen and the entire
13 screen is now filled up with disclaimer, is that
14 too much? Is that the point where you have to
15 say, well, an adapted disclaimer would have worked
16 better in that circumstance, but at what point do
17 we move to the adapted disclaimer and move off of
18 the full disclaimer? What do you think the
19 optimal rule for that would be?

20 MS. SCURATO: Again, I think it depends
21 on the platform. And that's why we wanted to
22 include that language that it has to be intrinsic

1 to the technological medium that is being used.
2 But I do want to emphasis that I believe a
3 percentage trigger is not the right solution only
4 because I think it would lead to some absurd
5 results when we talk about a candidate's name, for
6 example.

7 Like if I use my full legal name Carmen
8 Elisa DeStefano Scurato, maybe that allows me to
9 have --

10 VICE CHAIR WEINTRAUB: That's a great
11 name.

12 MS. SCURATO: -- right, an adapted
13 disclosure. But John Doe, as in your examples, he
14 would not, right? And so I think we have to
15 consider that. And also just even changes in
16 language.

17 I think the example that we use in our
18 comments if you said paid by Color of Change that
19 may not require an adapted disclosure, but if we
20 said paid for by Color of Change, depending on the
21 medium that may trigger that. So I think we just
22 really have to consider where are these ads being

1 placed and then go backwards from there. And that
2 allows, I think, for that flexibility and when
3 we're talking about the advances in technology
4 that we'll see in the future.

5 VICE CHAIR WEINTRAUB: And I think
6 that's that concern that, you know, some people
7 that mischievous actors might come up with a long
8 name of their committee just so they would avoid
9 ever having to do the full disclaimer or they
10 might choose larger typeface in order to fill up
11 more than ten percent. I think the difficulties
12 using a percentage-based calculation and the
13 problems with, well, you know, why you have one
14 answer for 9 percent, and a different for 11
15 percent, even if you could, you know, figure it --
16 parse it all out that way have been pointed out.

17 But again, we -- if we're not going to
18 use a percentage base, then what's -- what are we
19 going to use? I think there needs -- I think we
20 need some kind of a metric for that, but I would
21 be open to any suggestions.

22 MR. PETERSON: I would just add that we

1 don't think there's a problem. We are --

2 VICE CHAIR WEINTRAUB: Good.

3 MR. PETERSON: -- putting disclaimers on
4 everything that we put out on the internet for a
5 fee, and any -- the burdens of any new requirement
6 are going to be -- are going to fall on those of
7 us that are already following the rules. And the
8 bad actors, if they're out there, they're still
9 not following the rules. So we're the ones that
10 are going to be affected by this, and we're the
11 ones that are already following the rules, and we
12 do not believe there is a problem.

13 CHAIRWOMAN HUNTER: And that leads to
14 something that I wanted to ask. Thank you for
15 saying -- for reminding us that there are current
16 rules right now. A lot of people seem to think
17 that there aren't, and I think that's something
18 that Ms. Scurato said at your opening statement.
19 I think you said that there aren't rules now on
20 the internet, correct me if I'm wrong, but I got
21 that impression from what you said and --

22 MS. SCURATO: So that's not what I

1 meant. I meant that they don't cover all forms of
2 ads across the internet ecosystem.

3 CHAIRWOMAN HUNTER: Well, I think they
4 do. I think we have a disclaimer requirement for
5 all internet ads, and that's in our regulations.
6 We had a recent AO that reiterated that. We do
7 have an AO that was promulgated a few years ago,
8 the Google AO, which provides for an ability to
9 use a link, and we've talked about that a couple
10 of different times today.

11 So I don't think that our rules, current
12 rules, have anything to do with which platform
13 you're using. And your suggestion that it depends
14 on which platform with respect to what disclaimer
15 and what standard we use, a lot of other
16 commenters and panels -- panelists have said
17 that's not workable for them because they often
18 create an ad and they don't create it for a
19 specific platform. They create something that
20 they then want to place in a lot of different
21 areas. And so the notion that they're going to
22 have to create something and, you know, run

1 through the traps of, you know, ten different
2 platforms' rules, or our rules for ten different
3 platforms just isn't workable for them.

4 So I just want to let you know that
5 that's something that we heard. But there are
6 rules and it's good to know that you guys are
7 following them. One of the other things I wanted
8 to -- do you want to comment on that?

9 VICE CHAIR WEINTRAUB: But I can wait.

10 CHAIRWOMAN HUNTER: Go ahead.

11 VICE CHAIR WEINTRAUB: Thank you. I
12 think that perhaps -- I'm glad we all agree there
13 are rules. So that's good. That are currently in
14 effect. I think perhaps what some of the
15 witnesses have highlighted is that there may not
16 be perfect compliance with the rules right now.

17 The RNC, I'm sure, is complying with
18 rules and putting disclaimers on everything. But
19 there may be other groups out there that are not
20 complying. And the -- you know, you mentioned the
21 Google AO. The Google AO is, of course, one where
22 we agreed that what was happening under the

1 specific circumstances using the specific ad
2 platform that Google was -- I think it was ad
3 words that Google was using subject to the
4 technological limitations and abilities of that
5 tech platform at the time, what they were doing
6 was okay. That's really what that AO said.

7 It didn't say and everybody under all
8 circumstances can always use a click-through as a
9 substitute for putting disclaimer on it. It just
10 -- it doesn't say that.

11 CHAIRWOMAN HUNTER: I'm sorry, it
12 doesn't say what was all that?

13 VICE CHAIR WEINTRAUB: It does not say
14 that everybody under all circumstances --

15 CHAIRWOMAN HUNTER: Oh, no.

16 VICE CHAIR WEINTRAUB: -- can use a
17 click-through in order to avoid putting a full
18 disclaimer on it. So you know, so that's good
19 that we have agreement on that, but I think it's
20 more of a compliance problem than a requirement
21 problem which is -- which I want to give you an
22 opportunity because I can see you want to say

1 something about that. But I also want to, at some
2 point, ask the witnesses if they have suggestions
3 for us as to how we could promote better
4 compliance, and promote better understanding that
5 really these are the rules and everybody has to
6 comply with them.

7 CHAIRWOMAN HUNTER: Well, I'm glad you
8 brought up the compliance issue because that's
9 something a number of people on the panels
10 yesterday, Paul Ryan, Brendan Fischer, and
11 Professor Kim all talked about that. And I asked
12 Professor Kim several questions about this because
13 the first panelists referred to her work, and then
14 we had an opportunity to talk to her directly.
15 And I asked her to supplement the record because I
16 haven't seen yet any ads.

17 Maybe she has them appended to her study
18 and I wasn't able to pull them, that show that a
19 political, you know, somebody who's governed by
20 our rules of paying for a political ad with
21 express advocacy didn't include a disclaimer. And
22 I'm sure there are people. And I told you last

1 season that there's a guy right down my street who
2 has a big billboard at his diner. And he said
3 Vote for Hillary Clinton with no disclaimer on his
4 billboard.

5 So I'm sure we could find yard signs,
6 billboards, all kinds of examples of people who
7 aren't complying with our disclaimer rules. That
8 wouldn't surprise me, but I think the number of
9 people who are doing that is incredibly small, and
10 I think the notion that we're building up this
11 premise that here's all these people who aren't
12 complying with our rules, and therefore we have to
13 change everything, really is not on firm
14 foundation. And that's something that I was
15 trying to tease out with the witnesses yesterday.

16 And when I asked one of them what
17 specific -- which ad specifically can you show me,
18 he wasn't able to offer a specific example. He
19 said speak to Professor Kim. And so she,
20 hopefully, will supplement the record with the
21 kinds of ads you're talking about. But I think,
22 again, the notion that, A, there are no rules

1 which we've just dispelled there are rules, and,
2 B, the notion that there's all of these people out
3 there who are taking advantage of it just, again,
4 is on faulty foundation. And that also the issue
5 we talked about briefly yesterday, the notion that
6 the Russians are taking advantage of all of this.

7 Ms. Scurato, did I say it right,
8 referenced the "USA Today" article on page 10 of
9 her comments that the Russian-based internet
10 research agency placed 3,500 Facebook ads. And
11 that's based on information that was released by
12 the House intelligence committee. But what's not
13 included in your comments is that "USA Today" took
14 a look at those 3,500 ads and only 100 of them,
15 was it 100 or -- yeah, I think it was 100 of them
16 referenced either federal candidate.

17 And of those 100, I'm not even sure, I
18 haven't looked at them myself, but I'd be
19 surprised if it's -- if all 100 of them contained
20 express advocacy. My guess is that most of them
21 did not. So you're talking about a very small
22 number of ads, and I think a letter we received

1 from Senator Klobuchar yesterday references that
2 the Russians paid \$100,000 for ads placed on the
3 internet. And again, I don't know how many of
4 those contained express advocacy.

5 But we're talking about how much did the
6 party committees spend in the last cycle? I mean,
7 \$100,000 is a miniscule amount of ads.

8 MR. REIKER: As a competitive U.S.
9 Senate race in a state of 1.3 million people, I
10 spent \$2.3 million in online advertising so.

11 CHAIRWOMAN HUNTER: Can you say that
12 again, please?

13 MR. REIKER: As a competitive U.S.
14 Senate race in a state of 1.3 million people, I
15 spent \$2.3 million in online advertising, so I --

16 CHAIRWOMAN HUNTER: Just in online?

17 MR. REIKER: Yeah. So I can't speak to
18 --

19 CHAIRWOMAN HUNTER: That's in one United
20 States Senate race you spent --

21 MR. REIKER: Yes.

22 CHAIRWOMAN HUNTER: -- 2.3 million and a

1 United States Senator is writing us about Russians
2 spending \$100,000 on online ads. I don't have a
3 calculator but that's an incredibly small
4 percentage.

5 VICE CHAIR WEINTRAUB: I think we also
6 have information that the Russians were spending
7 millions of dollars on trying to influence the
8 election.

9 CHAIRWOMAN HUNTER: On things that --
10 but on the issue ads that we have no jurisdiction
11 over.

12 VICE CHAIR WEINTRAUB: Well, I think
13 that's somewhat debatable over whether we have
14 jurisdiction over ads that are placed for the
15 purpose of influencing an election by a foreign
16 government. But that is not --

17 CHAIRWOMAN HUNTER: What we're talking
18 about here.

19 VICE CHAIR WEINTRAUB: -- that is
20 definitely not what is within the jurisdiction of
21 this rulemaking which is -- was from the start
22 crafted to be very narrow and I was thankful to be

1 able to get anything to this point in the process.
2 So that was the tradeoff that we're doing
3 something that's very narrow.

4 But I think what happened in the last
5 couple of years is because of the publicity over
6 this, people became very sensitized to the notion
7 that they are not necessarily knowing where the
8 information is coming from that they're seeing
9 online. I think it is not an accident that the
10 first couple of times we put the notion of fixing
11 our internet disclaimer regulations out for public
12 comment, we got six comments, and seven comments.

13 And when we did it last year, we got
14 150,000 comments. I mean, people are just more
15 concerned now about where the information is
16 coming from that they're seeing, and they want to
17 make sure that, to the best of our ability, we are
18 providing that -- requiring that information. So
19 I think that is part of the concern that is
20 underlying this, and --

21 CHAIRWOMAN HUNTER: I agree with you
22 that there is additional concern. However, I

1 think part of that is because people, you know,
2 and I think the press plays a role in this.
3 People are putting out information that's just not
4 true. We do have rules on internet advertising.
5 And a lot -- most people are complying. So I
6 think if, again, if you come -- if you start out
7 with the wrong foundation, you could understand
8 why people are concerned.

9 VICE CHAIR WEINTRAUB: Well, I'm not
10 sure about the wrong information part, but I will
11 go back to my question to the panel which is how
12 can, you know, if you have any suggestions for us
13 as to how we could not only better inform the
14 public about where their -- the information is
15 coming from that they are seeing on their phones,
16 and on their tablets and laptops, but also how do
17 we better inform the folks that are placing the
18 ads about the requirements and making sure that,
19 you know, as we all agree here, so that's great.
20 People say we never agree at the FEC. We all
21 agree there are currently rules that require
22 disclaimers on digital ads.

1 So that's great. How do we get that --
2 is there -- do you have suggestions for how we
3 could better get that message out and make sure
4 people understand those rules? Because
5 particularly for people like you at the RNC, I
6 would think, you know, you are complying with the
7 rules. You know what the rules are, and you're
8 complying with them. I would think you would want
9 everybody else to be complying with them so that
10 you are not at some kind of competitive
11 disadvantage.

12 MR. REIKER: I just want to clarify
13 because it's happened a couple of times, neither
14 of us work for the RNC.

15 CHAIRWOMAN HUNTER: Yeah.

16 VICE CHAIR WEINTRAUB: Oh, I'm sorry.
17 I'm sorry.

18 MR. REIKER: But you're right, like, for
19 both of our committees we can say we are doing
20 everything we can -- not doing everything we can.
21 We disclaim on every online ad that we run.

22 I would look at what the networks are

1 doing, particularly Facebook and Google. I mean,
2 they're both -- Facebook has already rolled out
3 its reporting tool which will no doubt go through
4 a variety of changes. Google is in the process of
5 rolling out theirs which will no doubt go through
6 a variety of changes, which I think implicates the
7 need for flexibility in whatever rule is set here.

8 But the networks are already taking the
9 lead on this and I think right now today you can
10 go to a link on Facebook and look up any actor who
11 is governed in the political sphere, and who is
12 meeting disclosure -- not even meeting the FEC's
13 disclaimer requirements, but who just lists their
14 own name on their Facebook page, and you can find
15 whatever ads they are currently running paid.

16 So the networks are tackling this
17 problem. They are no doubt going to impose their
18 own requirements regardless of what this panel
19 does, and we would urge flexibility for that
20 reason among others.

21 MS. SCURATO: So one of the things I
22 wanted to go back to is what we support is having

1 that full disclosure. And that would alleviate
2 some of the concerns that you raise about having a
3 different ad depending on the platform. By far
4 that is our approach is that we do believe that
5 the full disclosure should be on the face of the
6 ad.

7 Again, if it travels across the internet
8 ecosystem, which ads tend to do, that would
9 alleviate any of the concerns of the adapted
10 disclosure being also intrinsic to that medium.
11 And also just the fact that we do think that it
12 should be -- when you do have that adapted
13 disclosure it should be clear. It should be
14 straightforward. And it should really trigger for
15 individuals the importance of that adapted
16 disclosure that you will get further information
17 about who paid for this ad and why you are seeing
18 it.

19 So one of the things that was mentioned
20 yesterday was from CDT. That they support studies
21 that maybe that's where we need to go in terms of
22 the adapted disclosures, like what is that right

1 symbol, what is that right thing that we need to
2 put -- embed in these ads that need the adapted
3 disclosure. That is something that we do agree
4 with and maybe that is where we need to go to get
5 to the right solution.

6 VICE CHAIR WEINTRAUB: I also think it's
7 worth pointing out that one of the things that
8 both proposals had suggested was some modification
9 of the language in the public communication
10 definition which right now only address web --
11 paid advertising on websites. So arguably,
12 somebody could make the argument that it doesn't
13 apply if it doesn't show up on a website but only
14 shows up on an app or on some other -- in some
15 other digital format. So I think that actually
16 would be a helpful improvement to the rule.

17 CHAIRWOMAN HUNTER: Okay. Any other
18 questions for the panel, Commissioner Walther?

19 COMMISSIONER WALTHER: I'm doing good.

20 CHAIRWOMAN HUNTER: You're doing good?
21 Commissioner Petersen? I think that brings us to
22 the end of our hearing. Thank you very much.

1 That was very helpful information and
2 conversation.

3 Thank you to all of the FEC staff who
4 have helped us throughout this hearing, the Office
5 of General Counsel, Lisa Stevenson, Erin Chlopak,
6 Jessica Selinkoff, Neven Stipanovic. Thank you
7 particularly to the four of you. You've done a
8 lot of work and it'll be fun working with you over
9 the next few weeks and months to hopefully come up
10 with a final rule.

11 Thank you to those of you who helped
12 bring people up from the lobby and greeted them
13 with warm faces. Thank you to Laura Sinram who
14 helped up facilitate the whole meeting, and thank
15 you to our IT division who have been here both all
16 day yesterday and all day today, and there's other
17 from your division listening. Mr. Palmer
18 recommended having you guys available because a
19 lot of this technical stuff that were -- we may be
20 a little bit harder for us to grapple with, these
21 guys know what they're doing, and they can help
22 confer with us afterward on how to craft some of

1 this stuff.

2 VICE CHAIR WEINTRAUB: And Jim Jones who
3 has --

4 CHAIRWOMAN HUNTER: And Jim Jones. I
5 was just --

6 VICE CHAIR WEINTRAUB: -- kept this up
7 on YouTube and people can -- who want to, you
8 know, sort of chew through this some more can go
9 to YouTube and go to our website and find a link
10 to that to listen to the whole thing all over
11 again.

12 CHAIRWOMAN HUNTER: That's right.

13 VICE CHAIR WEINTRAUB: And also believe
14 it or not, there were leftovers from lunch
15 yesterday. So I want to invite everyone in the
16 room and anybody in the building until the
17 sandwiches run out to join us in the conference
18 room next door.

19 MS. CHLOPAK: And did you want to
20 reiterate that the record's going to remain open?

21 CHAIRWOMAN HUNTER: Oh, yes, thank you
22 very much. For -- do we have -- should we say a

1 specific amount of time? The records are going to
2 remain open if anybody wants to supplement the
3 record for --

4 MS. CHLOPAK: From witnesses.

5 CHAIRWOMAN HUNTER: -- from witnesses

6 only? From witnesses for the next two weeks.

7 Does that sound good? Three weeks? Two or three
8 weeks.

9 VICE CHAIR WEINTRAUB: Although if
10 anybody who is not a witness wants to weigh in,
11 feel free to send it. It'll be an ex parte
12 contact. We'll read it.

13 CHAIRWOMAN HUNTER: And also to the --
14 to our offices, all four of our offices who have
15 helped throughout this process, and I think in
16 particular to Amy Rothstein and Tom Moore who have
17 sort of been the leaders on our side.

18 VICE CHAIR WEINTRAUB: Ditto.

19 CHAIRWOMAN HUNTER: On this, but that
20 doesn't mean that all EAs haven't been fabulous
21 and we appreciate all of their hard work. So
22 thank you to all of you, appreciate it.

1 VICE CHAIR WEINTRAUB: Do you want to
2 bang the gavel and adjourn the meeting?

3 CHAIRWOMAN HUNTER: Oh, sure, let me
4 bang the gavel. There we go.

5 (Whereupon, at 12:03 p.m., the
6 HEARING was adjourned.)

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