



**TECHNET**  
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INNOVATION ECONOMY

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September 29, 2023

Federal Trade Commission  
Office of the Secretary  
600 Pennsylvania Avenue, NW  
Suite CC-5610 (Annex F)  
Washington, D.C. 20580

*Re: "Reviews and Testimonials NPRM, R311003"*

To Whom it May Concern:

TechNet appreciates the opportunity to provide comments on the Federal Trade Commission's ("Commission") proposed "Rule on the Use of Consumer Reviews and Testimonials" ("Proposed Rule"). We applaud the Commission for putting forward this proposal. Deceptive or unfair consumer reviews and endorsement practices can threaten the safety of consumers, hurt sellers, and disrupt marketplaces and should be stopped.

TechNet is the national, bipartisan network of technology CEOs and senior executives that promotes the growth of the innovation economy by advocating a targeted policy agenda at the federal and 50-state level. TechNet's diverse membership includes dynamic American businesses ranging from startups to the most iconic companies on the planet and represents over 4.5 million employees and countless customers in the fields of information technology, artificial intelligence, e-commerce, the sharing and gig economies, advanced energy, transportation, cybersecurity, venture capital, and finance.

Consumer reviews play an important role in the facilitation of commerce. Authentic and trustworthy reviews can help consumers make informed decisions about products and services. They can also draw attention to businesses, including small businesses and sellers, and their products in expansive and vibrant marketplaces. For decades, review features have provided forums for customers to share their thoughts and experiences within online communities.

Unfortunately, bad actors around the world seek to exploit these tools, including for profit, and, in doing so, expose consumers to unnecessary risks and disrupt marketplaces. These bad actors will deploy a variety of tactics to achieve their aims and mislead consumers. For example, "fake review brokers" solicit consumers to write fake reviews in exchange for money or free products. They are often able

to achieve their fraudulent aims with networks of hundreds of employees stationed around the world, including in China and the European Union. Their impact is significant, reaching thousands of customers across a variety of marketplaces.

TechNet's members have deployed significant measures and resources to stop the proliferation of faulty reviews. Several firms have implemented multiple safeguards, such as checkpoints and authentication protocols, which serve as a first line of defense for fake review submissions. Additionally, firms will use technologies, such as machine learning and artificial intelligence models, to sift through thousands of data points and spot and then remove fake reviews, even before they reach unsuspecting customers. Firms have also taken legal action, which has led to the successful dismantling of illicit networks and the removal of bad actors from marketplaces.

The private and public sector must partner to stop even more of these nefarious actors. The Proposed Rule is an important step, and we share the Commission's goal of improving consumer confidence in reviews and testimonials. However, **before the Proposed Rule is finalized, we strongly urge the Commission to reexamine the following provisions:**

- **Section 465.2.** This provision poses significant First Amendment challenges. In particular, we are concerned that imposing liability on a business that "procure[s]" or "disseminates" or cause[s] the dissemination of" a consumer review, despite those companies having no knowledge that those reviews or testimonials violated any law, would expose legitimate businesses to substantial risk. In particular, this section's application to reviews and testimonials that "materially misrepresent[] . . . the reviewer's or testimonialist's experience" is problematic because it places the onus on the business to have knowledge of the author's state of mind as to whether their actual experience was expressed in the review, an impossible task for anyone but the reviewer themselves. The risk of penalty for this liability is likely to compel businesses to drastically limit the consumer reviews or testimonials they seek out or even allow on their websites. To avoid this outcome and chilling this protected speech, the Commission should narrow this section by adopting an actual knowledge standard and create a safe harbor for review hosting when the company has reasonable processes in place to identify and remove fake reviews.
- **Section 465.3.** It is not clear whether this section on consumer reporting repurposing would prohibit the ability of companies to reuse feedback from multiple sellers for purposes of a product review, which is a current practice of some firms. We suggest clarifying the specific types of activities this provision intends to address.
- **Section 465.5.** This provision would prohibit a company's officers and managers from writing reviews or testimonials of its products or services without clearly disclosing their relationships and would prohibit businesses from

disseminating testimonials by insiders without clear disclosures of their relationships. We take issue with several aspects of this provision. First, the Proposed Rule poses concerns under the First Amendment by broadly prohibiting certain reviews or testimonials by “insiders” regardless of whether that speech is deceptive in context. The proposed rule is not narrowly tailored to a compelling state interest to provide for such a restriction. This section appears to impose liability on businesses for distributing the content of third parties, even when they had no knowledge that the content violated the proposed rule. Imposing liability in this scenario will also have a chilling effect on speech and is inconsistent with First Amendment principles. The Commission should narrow this section.

Additionally, the term “managers” is not defined in Section 465.1 or elsewhere in the Proposed Rule. It is not clear what level of employee would be captured by, and subject to, this section, which raises concerns about the number of a firms’ employees impacted and their privacy since the provision would require the disclosure of personally identifying information.

- **Section 465.7.** This provision also poses First Amendment concerns. By limiting companies’ right to judge which content should be left up and which should be taken down on their own websites to a short list of permissible reasons, the proposed rule is not narrowly tailored to a compelling state interest. As such, the Commission should revise this provision so that it makes clear this list is not intended to be exhaustive.

Further, there can be other legitimate reasons to suppress or remove reviews for the benefit of the customer that are not listed in the express carveouts in Section 465.7(b) for categories of review suppression which are not deemed deceptive. To prevent a business from being held liable for misrepresenting that it displays most of all of the reviews submitted on its website, the Proposed Rule implies a “gross feedback score” must be disclosed along with the “net feedback score,” which is the actual number of reviews viewable to a user. This could negatively impact a seller in a material manner from just an isolated event. One example would be a natural disaster, such as a snowstorm, obstructs the delivery of a package to a buyer who could claim failure to deliver on time. Even if a firm removes the negative feedback, their gross score would still reflect a difference between the displayed score, and users could infer gamesmanship in the marketplace. Failure to create more carveouts and requirements for a gross score creates opportunities to disparage the profiles of other sellers or competitors.

Finally, we are concerned that the Proposed Rule imposes liability on companies for the dissemination and/or display of fake reviews that clashes with Section 230 of the *Communications Decency Act*. Broadly, under Section 230, interactive computer services providers are not liable for content posted by a third party and allows them to moderate content on their websites in good faith. By imposing

liability on firms for engaging in non-deceptive review moderation practices, the Proposed Rule stands in direct conflict with Section 230, which is unacceptable. The Commission should narrow or remove liability obligations where this conflict is evident.

Thank you for your attention to our views. We stand ready to serve as a resource on this matter.

Sincerely,

A handwritten signature in black ink that reads "Meghan M. Pearce". The script is fluid and cursive, with the first letters of each word being capitalized and prominent.

Meghan Pearce  
Federal Policy Director