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TESTIMONY OF

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Hearing on

"Consumer Protection Issues"

Before the

COMMITTEE ON APPROPRIATIONS, SUBCOMMITTEE ON FINANCIAL SERVICES AND GENERAL GOVERNMENT

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Good morning, Chairman Serrano, Ranking Member Regula, and other members of the Subcommittee. I am Janell Mayo Duncan, Senior Counsel for Consumers Union, non-profit publisher of *Consumer Reports*®.[1] Thank you for providing me the chance to come before you today to discuss consumer protection priorities, the resources available to the U.S. Consumer Product Safety Commission ("CPSC"), and the Federal Trade Commission ("FTC") (two agencies with vital consumer protection functions), and current, emerging, and long-term concerns that could add pressures to these agencies' responsibilities and resources in the coming years.

For the past 71 years, Consumers Union (CU) has been testing and reporting on products and services in order to arm consumers with the information they need to protect themselves in the marketplace. CU's mission is to work for a fair, just and safe marketplace for all consumers. We believe that the ultimate question before the Committee today is whether the CPSC and the FTC have the resources necessary to fulfill their missions. CU has serious concerns -- that without a significant increase in funding -- the answer is "no." In my testimony today, I will address areas of concern identified by CU as those of increasing challenge to the CPSC, and to the FTC, respectively. CU strongly urges members of this Subcommittee to increase its oversight to ensure that any additional resources are used by the agencies to proactively address the most serious threats facing consumers today, and to anticipate and respond aggressively to new and emerging challenges.

U.S. CONSUMER PRODUCT SAFETY COMMISSION

Every Congress that has reauthorized CPSC during the past 30 years has reaffirmed its clear and unmistakable purpose: the CPSC is charged with the mandate to reduce or eliminate unreasonable risks of injury and death to consumers from more than 15,000 types of products. However, the CPSC currently faces a crisis resulting from increasing challenges to its effectiveness, resulting from: (i) the failure of Congress to provide CPSC with needed regulatory and enforcement authority (and the failure of the CPSC to seek new regulatory and enforcement authority or to always aggressively use the authorities it possesses) resulting in reduced deterrent effects on industry; (ii) budget cuts resulting in a crippling loss of their most experienced and knowledgeable staff; (iii) increasing numbers of counterfeit, dangerous and violative imported products; (iv) new and emerging technologies in product production (e.g., nanotechnology); and (v) the changing demographics of the U.S. population. In addition, CU is concerned that the CPSC will not be able to adequately address areas that we consider to be of high priority, including: increasing the effectiveness of product recalls; decreasing

[1] Consumer Reports® is published by Consumers Union, an expert, independent nonprofit organization whose mission is to work for a fair, just, and safe marketplace for all consumers and to empower consumers to protect themselves. To achieve this mission, we test, inform, and protect. To maintain our independence and impartiality, Consumers Union accepts no outside advertising and no free test samples, and has no agenda other than the interests of consumers. Consumers Union supports itself through the sale of our information products and services, individual contributions, and a few noncommercial grants.

unreasonably dangerous imported products; improving ladder safety (*i.e.,* strength and stability); drowning prevention and pool safety, addressing non-complying pool alarms for in-ground pools; reducing deaths relating to CO poisoning from consumer use of portable electric generators; furniture safety (preventing deaths and injuries from tipping furniture, and glass furniture); removal of lead from all products intended for use by children (*e.g.*, jewelry, toys, and clothing); all terrain vehicle safety (increasing safe use of all-terrain vehicles by adults, and ending their use by children under 16 years old); and identifying dangers associated with products developed through the use of new technologies – particularly nanotechnolgy.

The CPSC must have the resources – and the will – needed to inform, and to protect the public from new and emerging hazards. CU strongly urges this Subcommittee to recommend significant increases in the CPSC's budget in order to enable the Commission to better protect consumers from unreasonably dangerous products. However, added resources will not be enough. We also strongly urge the Subcommittee to increase its oversight to ensure that the CPSC uses its resources appropriately to work proactively to fulfill its mission, relating to current and emerging hazards, in the near and far terms.

The areas identified by CU as specific areas of increasing challenge to the CPSC, and its effectiveness are discussed in detail below.

1. Budget Cuts Resulting in a Crippling Loss of Staff and Functions

The CPSC is critically under funded and understaffed. According to CU's review of staffing levels, the staffing level at the CPSC has been steadily dwindling, and has resulted in the "brain drain" of too many of the most experienced and knowledgeable staff at the Commission. The budget for fiscal 2007 culminated a two-year reduction in full-time positions from 471 to 420 -- a total loss of 51 employees. This dismal trend will continue if the CPSC's budget is increased only at the proposed level of $880,000 for 2008. If mandatory salary increases are taken into account, the Commission stands to lose an additional 19 employees in 2008, dropping staff levels to 401.

Limited resources and funding will force scaling back of important areas of the CPSC's work. The CPSC already has acknowledged in its budget document that it will not be able to continue to focus on a past strategic goal of great importance to CU – reducing child drowning deaths. Further under-budgeting and staffing cutbacks will clearly result in reduced enforcement. Without adequate policing, unsafe products can continue to more easily infiltrate the marketplace.

Offers for sale of violative imported products, such as "Kinder Eggs,"[2] a product monitored by CU appear, to be increasing. In addition, the presence of counterfeit products in the U.S. marketplace has increased. We believe that part of these increases results from fewer CPSC representatives present at border points of entry. In

[2] Hollow chocolate eggs (made by Italy's Ferrero Group) containing "surprise" toys, banned in the United States since 1997, when the CPSC warned that the toys could pose a choking hazard to children under 3.

addition, the CPSC has been forced to reduce the number of field investigators that normally would lead investigations and follow up on product-related injuries and deaths. CU is concerned that the CPSC's inadequate budget is preventing it from having the critically needed staff and resources to properly police the marketplace. We believe that the CPSC must have the resources it needs to monitor imported consumer products that may pose safety hazards, and take whatever actions are needed to keep unreasonably dangerous products off the market. Further, CPSC must be able to work more collaboratively with U.S. Customs to prevent dangerous and violative products from crossing the borders into this country.

2. CU Priority Safety Areas for CPSC Focus

CU is concerned that, due to shortfalls in its budget, the CPSC will not be able to adequately address areas that we consider to be of high priority, including: product safety issues impacting children (e.g., toy hazards, lead in children's jewelry, and pool safety); reinitiating its efforts to reduce incidents of consumer injury and death from cooking fires (there are 80 deaths, 2,440 injuries, and over 47,000 residential range top fire annually) and other product-related fires (e.g., products powered by lithium-ion batteries); decreasing all-terrain vehicle accidents and deaths; carbon monoxide poisonings relating to use of portable electric generators[3]; identifying and addressing potentially unreasonable risks posed to consumers through the use of or exposure to products created through nanotechnology, using nanoparticles.

3. Trends and Factors Exacerbating the Impact of CPSC'S Lack of Adequate Funding

CU is concerned that a number of trends are presenting the CPSC with great challenges to their efforts to reduce the number of unreasonably dangerous products on the market. These trends (discussed more in detail below) include: (i) the increasing number of counterfeit, dangerous, and violative products on the market, (ii) new and emerging technologies (e.g., nanotechnology), and (iii) the changing demographic of the U.S. consumer. CU also is concerned, that in addition to the above trends, the CPSC also is hampered by other factors beyond the lack of adequate resources. These factors, discussed in detail below, include: (i) the lack of a permanent chairman and lack of a quorum, (ii) lack of manufacturer focus on safety and insufficient deterrents available in the form of strong civil penalty authority, and (iii) inadequate laboratory facilities.

[3] CU commends the CPSC for initiating a rulemaking proceeding to examine regulatory approaches that could be used to reduce portable generator-related deaths and injuries, particularly those related to carbon monoxide poisoning (71 Fed. Reg. 74472, December 12, 2006). CU also commends the Commission for its swift work to issue a new portable generator mandatory labeling rule, approved by the Commission on January 4, 2007. See http://www.cpsc.gov/cpscpub/prerel/prhtml07/07074.html.

A. Trends Exacerbating the Impact of CPSC'S Lack of Adequate Funding:

(i) Increasing Numbers of Counterfeit, Dangerous, and Violative Products

We are very concerned that current trends are increasing the risk that unsafe products will make their way to the marketplace -- and too many remain on the market even after safety hazards are uncovered.

As the world's large, powerful retailers squeeze manufacturers to reduce prices, we have seen evidence that quality and safety can also be reduced. Today, more than ever, pressure from major retailers has created a "speed to market" mantra that can leave little time and few resources for the product safety testing and quality assurance process. Off-shore design and manufacturing is too often conducted by companies who have inadequate knowledge of U.S. voluntary and mandatory safety standards. In addition, sometimes foreign manufacturers lack an understanding of how consumers will use the products they produce because use of the product is not prevalent in the country. For example, the manufacture of gas grills is moving rapidly from the U.S. to China where the concept of grilling food on a gas heated cooking grid is unfamiliar. We believe that a recent result is the manufacture of substandard and sometimes dangerous gas grills; since 2004, there have been one dozen or more product safety recalls on gas grills -- in all cases the defective products or components were made outside of the U.S. Over a similar two-year period just 10 years ago, when most gas grills were U.S. made, there were no recalls.

Also of concern to CU is the widespread lack of compliance with voluntary safety standards. The March 2006 issue of *Consumer Reports* features an article on furniture tipover, a problem that results in 8,000 to 10,000 serious injuries each year, mostly to young children. Although ASTM-International publishes a safety standard to prevent furniture tipover injuries, many of the products CU tested do not comply. In fact, since the CPSC requested that ASTM develop an industry safety standard, the numbers of annual fatalities associated with falling furniture have actually <u>increased</u> by 50 percent. In today's highly competitive marketplace, there is often little incentive for manufacturers to meet voluntary safety standards.

(ii) New and Emerging Technologies in Product Manufacturing and Production

CU is very concerned that the "brain drain" impacting the Commission may prevent the CPSC from aggressively investigating safety issues relating to new and emerging technologies – particularly those relating to the manufacture of consumer products through nanotechnology, using nanoparticles. In fact, the CPSC's, sole mention of nanotechnology in its 2008 Performance Budget request is, as follows:

Nanomaterials represent a wide range of compounds that may vary significantly in their structure, physical and chemical properties, and potentially in their behavior in the environment and in the human body. CPSC staff will continue to participate in interagency activities for nanotechnology. Goal: Staff will use the information gained from its participation in interagency activities, along with other information collected on the use of nanomaterials in consumer products, to identify issues and projects for future consideration. Staff will prepare a draft status report of this effort.[4]

We believe that the CPSC must be much more proactive in arming itself with a detailed understanding the dangers posed to consumers by cutting-edge products, especially those created through nanoengineering. We urge this Subcommittee to ensure that the CPSC has the laboratory facilities and resources needed to assess any unreasonable risks to consumers, and the will to follow through.

Lithium-Ion Batteries

An additional area of concern is fire and burn related dangers relating to lithium-ion batteries. On August 16, 2006 the CPSC announced a sweeping recall involving batteries, manufactured by Sony, which came with 33 different computers sold April 1, 2004 through July 18, 2006. The recall involved 4 million rechargeable lithium-ion batteries (sold separately and as replacement parts) for dozens of Dell laptop computers, due to the danger that they could overheat and catch fire. Of the 4.1 million suspected batteries, 2.7 million were distributed in the U.S. At the time of the recall, Scott Wolfson, public affairs spokesman for the CPSC, stated to *Consumer Reports* that the hazards stem from quality-control issues at battery manufacturing facilities in Japan and China.

Additional recalls were conducted of Sony laptop batteries, eventually bringing the total number of Sony's recalled laptop batteries to about 9.4 million. Overheating problems affecting rechargeable lithium-ion batteries have been an ongoing issue, because lithium-ion batteries pack high amounts of energy into a small package and, subsequently, can produce a lot of heat. Despite the wide-spread attention given to batteries in laptops, the dangers are not limited to these products. The CPSC has logged 339 incident reports between 2003 and 2005 involving potentially faulty laptop computer batteries as well as cell phone batteries. The incidents ranged from smoking and charring, to batteries bursting into flames and skin burns. Cell phone batteries have been associated with more serious burn injuries because of the close proximity between the telephone and the user's head and face.

[4] U.S. Consumer Product Safety Commission, "2008 Performance Budget Request, *Saving Lives and Keeping Families Safe,*" Submitted to the Congress, February 2007. http//:www.cpsc.gov/CPSCPUB/PUBS/REPORTS/2008plan.pdf

Issues relating to lithium-ion batteries require research, investigation, and market surveillance to ensure that unsafe electronic products do not present an unreasonable risk to consumers. We encourage the CPSC to continue to urge the development of safety standards for these batteries, and to strongly encourage manufacturers to focus more attention on quality control. In addition, we urge the Subcommittee to follow the CPSC's activities in this area closely.

(iii) Changing Demographics of the U.S. Population

The CPSC itself has identified a disturbing trend, and has documented that from 1991 to 2002, the number of older adults (75 and older) treated in US hospital emergency rooms for products-related injuries increased 73%. This increase is almost three times the group's increase in population. Many of the injuries were related to common household products such as yard and garden equipment, ladders, step stools, and personal use items. As the population ages, it is even more important that the CPSC work with manufacturers to reverse this recent trend by making products that are not defective and unreasonably dangerous when used by the elderly.

B. Legal and Regulatory Factors Exacerbating the Impact of CPSC'S Lack of Adequate Funding:

(i) Lack of a Permanent Chairman and Quorum at the Commission

The above-mentioned problems can only be exacerbated due to the lack of a permanent Chairman at the Commission. After the departure of Chairman Hal Stratton in July of 2006, the CPSC began working with only two commissioners. Under the law, the CPSC can only operate without a quorum for six months. As a result, beginning January 15, 2007, the CPSC has effectively been stripped of very important enforcement and deterrent powers. Until a new chairman is confirmed, although it can conduct recalls, the CPSC cannot vote to approve new safety rules, pursue legal action to require a recall, or assess civil penalties against firms that have failed to report defective or hazardous products.

In the last weeks before the quorum expired, the Commission hastened to complete a number of actions — including approving a new warning label for portable electric generators — before its powers were curbed by the no-quorum rule. Regardless, a number of important safety rules are now in limbo until there are enough commissioners for a vote. These include rules to restrict lead content in children's jewelry, new safety standards to reduce fire hazards from upholstered furniture, and proposals to redesign portable generators to reduce carbon monoxide poisoning. The Commission will also be limited in taking actions that could make all-terrain vehicles safer.

(ii) Lack of Adequate Manufacturer Focus on Safety and Insufficient Deterrents Available to CPSC In Form of Strong Civil Penalty Authority

According to the July 28, 2006 *CPSC Nursery Product-Related Injuries and Deaths to Children under age 5* Annual Memorandum, an estimated 59,800 children under age five were treated in hospital emergency rooms for injuries associated with nursery products in 2005. According to the CPSC report, an average of 61 children die annually in such incidents. We believe the number of injuries and deaths from using such products is far too high and that most are preventable.

These numbers reflect an irresponsible practice of putting unreasonably dangerous products into the stream of commerce that must be recalled later. A disturbing example of this inadequate attention to safety by manufacturers *before* products enter the stream of commerce is reflected in the fact that the number of products recalled last year was at its highest level than in the preceding 10 years. Adding to our concern is the lack of success of most product recalls, as only 10-30% of product recalls are effective (*i.e.*, the recalled product is successfully repaired, replaced, refunded and/or destroyed). These ineffective recalls create a recipe for extreme danger, especially to children -- our most vulnerable consumers.

<u>Inadequacy of Civil Penalties</u>

The use of civil penalties to penalize suppliers for selling or failing to report unsafe products is often an ineffective deterrent. The $750,000 civil penalty levied against Wal-Mart in 2003 for failing to report safety hazards with fitness machines cost the company an equivalent of the sales rung up in only 1 minute and 33 seconds. For large retailers and manufacturers, paying civil fines are a small cost of doing business.

The Consumer Product Safety Act's Section 15 (b) requires that manufacturers, distributors, and retailers who learn that their product either: (1) fails to comply with an applicable consumer product safety rule or with a voluntary consumer product safety standard; (2) or contains a defect that could create an unreasonable risk of serious injury or death (*i.e.*, a "substantial product hazard") must immediately notify the CPSC – unless the company knows the CPSC has already been informed.[5] The history, however, of manufacturers' failure to report in a timely manner under this section is all too well known. Especially of concern are manufacturers' failures to report children's products known by them to have caused injury or death. Included among companies failing to report are Wal-Mart and General Electric (GE) -- two of the wealthiest corporations in America. We believe the cap on the fines CPSC can levy for failure to report known hazards weakens the power of the reporting statute. Current total fines may not exceed $1,850,000 for any related series of violations. This amount is too small to be an effective deterrent for large corporations. CU strongly believes that these

[5] <u>See</u> 15 U.S.C. § 2064(b).

fines fail to serve as an adequate incentive for companies to report product safety hazards.

(iii) Inadequacy of CPSC Laboratories

CU understands that the effectiveness of the CPSC in fulfilling its mission is seriously impaired by a lack of capital investment. This failure to equip CPSC staff with state-of-the-art laboratory resources is disturbing. The CPSC must be given the resources needed to keep abreast of advancing science and technology. Without these resources, the Commission is handicapped -- and is little able to investigate products developed with new technologies, such as nanotechnology.

U.S. FEDERAL TRADE COMMISSION

The FTC also faces new, emerging, and quickly evolving challenges to its mission to maintain a competitive marketplace and to prevent unfair methods of competition in commerce. Increasing commerce on the Internet, in particular, presents the FTC with new threats to consumers in the areas of identity theft, malicious computer-related activity, fraudulent and illegal financial practices (especially impacting low-income consumers), and protecting competition in residential broadband and online content and services. CU asks this Subcommittee to ensure that the FTC's funding level, dedicated to its consumer protection mission, is adequate for the FTC to fulfill its consumer protection mission. Below, we identify major issues trends and factors likely to impact the FTC's ability to protect consumers.

1. Resource-Intensive Nature of Combating Spam and Spyware

Indeed, the fast-paced and changing nature of the on-line environment hinders the FTC's ability to anticipate the scope of new challenges and threats likely to face consumers, even in the near-term. Examples of quickly evolving threats relate to Spam and spyware – threats of global proportions. Spam increasingly is more targeted and malicious, where a perpetrator's goal is to gain access to passwords and personal information. Finally, individuals have exploited the ability to send e-mails anonymously, making it difficult for law enforcement to track down the origin of the offending e-mail, and making it difficult to stop these practices. To combat these threats, the FTC must have sufficient resources and tools to stay ahead of the curve and coordinate with counterparts overseas.

2. FTC and Financial Institutions -- Issues Impacting Low-Income Consumers

The FTC has enforcement authority under Truth in Lending for non-depository institutions that extend credit to consumers, including payday lenders, car title lenders, installment loan companies, tax preparers who sell refund anticipation loans. Low-income, and other vulnerable consumers are more likely to be served by non-bank financial services companies that are subject to the FTC's jurisdiction on a range of credit laws and the FTC Act ban on unfair and deceptive practices. Current practices negatively impacting these consumers include check cashing, payday lending, and refund anticipation loans.

Check cashing stores charge a percentage of the face value of checks to turn paper checks into cash for consumers who either do not have their own bank account or who cannot wait for a deposited check to clear if deposited into their own bank account. As of 2005 there were an estimated 13,000 check cashing stores, more than double the number five years earlier. The average check casher charges 2.44 percent to cash Social Security checks. On average it costs $24.45 to cash a $1,002 Social Security check. A blue-collar worker using check cashing outlets to cash their paycheck pays an average $19.66 every week to cash a $478.41 check.[6]

Payday Lending exceeds $28 billion in loan volume per year at a cost of almost $5 billion a year for cash-strapped families who pay around 400% APR for single payment loans secured by a personal check.[7] This form of predatory lending is authorized or not prohibited in 39 states, while 11 states have refused to carve payday lenders out of their usury or small loan laws. (www.paydayloaninfo.org) The industry estimates that around 23,000 outlets make these loans.[8] "Internet payday lending" -- a practice that brings together privacy and security risks, predatory loan terms, and coercive collection tactics for loans made to vulnerable consumers -- is a financial and security disaster waiting to happen. According to a 2004 study by Consumer Federation of America,[9] consumers who go online to borrow a few hundred dollars to tide them over until payday pay high rates. Unknown lenders are given electronic access to the borrower's bank account for loan proceeds to be electronically deposited and payment electronically withdrawn on the next payday.

Tax preparers market bank refund anticipation loans ("RALs") to consumers during tax season. Based on a recent report by the National Consumer Law Center ("NCLC") and CFA,[10] over 9.6 million taxpayers paid over $1 billion in loan fees in 2005, just to borrow against their expected tax refunds. The annual interest rates for these loans range from 40% to over 500% APR; and, if all fees associated with RALs are included, the cost ranges from 57% to over 1,100% APR. Consumers pay around $100 to borrow against tax refunds that could be direct deposited into their bank accounts in two weeks or less without paying to borrow.

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[6] Consumer Federation of America, "Cashed Out: Consumers Pay Steep Premium to 'Bank' at Check Cashing Outlets," November 2006, at 3.
[7] Center for Responsible Lending, "Financial Quicksand: Payday Lending Sinks Borrowers in Debt with $4.2 Billion in Predatory Fees Every Year," November 30, 2006, at 2.
[8] Center for Responsible Lending Id., quoting Stephens Inc., at 21.
[9] Consumer Federation of America, "Internet Payday Lending: How High-Priced Lenders Use the Internet to Mire Borrowers in Debt and Evade State Consumer Protections."
[10] National Consumer Law Center and Consumer Federation of America, "One Step Forward, One Step Back: Progress Seen in Efforts Against High-Priced Refund Anticipation Loans, but Even More Abusive Products Introduced," February 5, 2007.

3. The FTC Should Broaden Identity Theft and Data Security Consumer Education Activities to Include Information on Rights Provided Under State Laws

CU strongly believes that the FTC, and other federal agencies who undertake to educate consumers about identity theft and data security, should inform consumers of their state – in addition to -- their federal, consumer rights. This includes information about the state right to place a security freeze restricting access to consumer reporting files. Twenty six states have enacted laws giving consumers the right, and the choice, to place a "security freeze" on the their consumer reporting file at each major consumer reporting agency. These states contain far more than half the U.S. population. Twenty-one of the state security freeze laws make the choice to place a freeze available to all consumers, while the remaining handful restrict the use of the freeze to identity theft victims.

A security freeze lets the consumer stop anyone from looking at his or her credit reporting file for purposes of granting credit -- and in most cases, opening other new accounts -- unless the consumer chooses to let the particular business view the consumer's information. When the consumer is not seeking to open a new account, the security freeze effectively prevents anyone else from doing so. Thus, in our view, the security freeze provides a much stronger preventative tool than the federal fraud alert process. CU regularly converses with consumers who think he or she has obtained a state "security freeze" when, in fact, they have obtained only a federal "fraud alert." We believe that the absence of information about state security freezes on the FTC's otherwise fairly comprehensive ID theft information pages may allow these misconceptions to continue.[11]

Businesses and universities that have experienced breaches of stored personally identifiable information have been known to send consumers to the FTC for additional information. However, as stated above, the information will remain incomplete for many consumers if the site lacks information about the state security freeze. Despite the fact that a state security freeze has related costs for many consumers, it is our view that balanced information about what the freeze is, how it works, how it differs from other mechanisms, and the pros and cons of choosing to place a security freeze would be of great value to consumers. In summary, we strongly urge that when the FTC provides information and/or assistance on identity theft, it should present consumers with complete information about the steps that they can take, including the state security freeze.

4. The FTC Must Protect Competition in Residential Broadband and Online Content and Services

Among the many emerging issues facing the FTC in light of the convergence of telecommunications and media technologies is the growing potential for discrimination

[11] See e.g. The FTC's "Deter-Detect-Defend" brochure: http://www.ftc.gov/bcp/edu/microsites/idtheft/consumers/deter-detect-defend.html

against online content, services and applications providers by incumbent broadband network owners — largely the dominant cable and telephone companies.

Discrimination would produce significant anti-consumer and anticompetitive impacts. Today, in addition to offering consumers dramatically greater retail options and a vast array of diverse content, broadband- and Internet-based technologies and services have given consumers a wide-range of new competitive telecommunications options otherwise unavailable to them, including, but not limited to, low-cost voice-over-Internet-Protocol ("VOIP") telephone services delivered not by the regional phone monopoly but by independent technology companies and online and downloadable music and video services offered by entrepreneurs unaffiliated with the local cable monopoly. Until recent court and regulatory decisions reclassified broadband services as information services, exempting dominant incumbent broadband providers from the non-discrimination principles of the 1934 Telecommunications Act, broadband providers were prohibited from favoring some content and applications providers (including their own or affiliated content and services) over others. This fostered innovation and competition in online content and services. Now, with those rules dismantled for broadband, consumers face the prospect of an Internet that looks vastly different than before — an Internet where broadband network owners like Verizon, AT&T and Time Warner act as the Internet's gatekeepers fully able to legally discriminate against their competitors, creating an Internet where network owners determine the winners and losers in the online marketplace.

These concerns have led to calls from CU and others for reinstatement of network neutrality protections that prevent the dominant cable and phone companies from using their market power to discriminate. Last year, Chairman Majoras appointed a Task Force to evaluate broadband access and connectivity issues, including network neutrality. However, CU and many other public interest advocates are concerned that the Commission may presume, despite strong evidence to the contrary, that competition and consumer choice in the broadband market are sufficient to deter anticompetitive practices. As the Subcommittee considers a myriad of issues related to the FTC's work, we urge you to help ensure that the agency thoroughly and impartially evaluates the state of competition in broadband and *online* markets.

The FTC must evaluate whether consumers have any meaningful choice among broadband providers and whether, if that choice exists, it is sufficient to remedy the anticompetitive harms of network discrimination. Available data show that, at best, most consumers have two broadband choices in the marketplace — their cable provider or their telephone company. There is no viable third-platform competitor now, nor will there be for the foreseeable future. And if both providers in a market discriminate, consumers have no meaningful choice in the face of that discrimination. Further, it is questionable whether discrimination as to online content and service providers would induce subscribers to switch broadband providers rather than merely change which online services they use over their existing connection. And even if discrimination induces a desire to switch providers and consumers have that option available, consumers face significant barriers to changing providers including high switching costs and contractual restrictions. Therefore, the Commission must evaluate not just how network discrimination may influence consumer selection of broadband providers and the degree of competition in broadband markets, but also how discrimination is likely to influence consumer selection of online content and service providers and the ramifications of that behavior for online providers that face discrimination by network providers.

Thus, we urge the Subcommittee to encourage the FTC to carefully review the data regarding broadband competition and test consumer behavior in the face of network discrimination before concluding that disclosure, competition and ex post antitrust enforcement is sufficient to protect competition in the now vibrant online marketplace.

In conclusion, CU strongly urges members of this Subcommittee to increase funding to the CPSC and the FTC, while also increasing its oversight to ensure that any additional resources are used proactively by these agencies to address the most serious threats facing consumers today, discussed herein, and to anticipate and respond aggressively to new and emerging challenges.

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I thank the Chairman and other members of the Subcommittee for the opportunity to testify, and I look forward to answering any questions you have.