

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Lina M. Khan, Chair**
 Rebecca Kelly Slaughter
 Alvaro M. Bedoya

**ORDER DENYING PETITION OF RANDALL DAVID MARKS FOR A RULEMAKING
REGARDING SOCIAL MEDIA CUSTOMER SERVICE
Matter No. R207004**

November 13, 2023

This Order resolves a Petition, filed by Randall David Marks (“Petitioner”) on November 22, 2021, before the Federal Trade Commission, which requests that the Commission issue a notice of proposed rulemaking to determine the need for a Trade Regulation Rule requiring certain large social-media companies to acknowledge receipt of customer-service complaints within 72 hours and respond substantively to those inquiries within 30 days. The Petition proposes that “customer service complaints” be defined broadly to include problems accessing accounts, harassment by other users, removal of postings and comments, the closing down of groups or pages, payment issues, advertising issues, and anything otherwise affecting access to content. On December 9, 2021, the Commission published a Notice in the *Federal Register* requesting comments on this petition.¹ The Commission received twelve comments in response to its request. Having reviewed the contents of the Petition and the comments, the Commission, for the reasons that follow, hereby DENIES the Petition.

I. Contents of Petition

The Petition requests that the Federal Trade Commission undertake a rulemaking to

¹ See Fed. Trade Comm’n, Notice of Pet. for Rulemaking of Randall David Marks, 86 Fed. Reg. 70062 (Dec. 9, 2021).

create a Trade Regulation Rule that would require certain large social-media companies to “(a) acknowledge customer service complaints within 72 hours and (b) provide a substantive response within 30 days.”² Specifically, the Petition proposes that such a rule would declare “non-responsiveness” by these social-media companies an unfair act or practice under Section 5 of the Federal Trade Commission Act.³ The Petition suggests that potentially permanent loss of access to data stored on social-media accounts, inability to use social-media accounts, and deletion of content that violates platforms’ community standards all substantially injure consumers when these platforms do not “answer questions and fix errors.”⁴ It further contends that these injuries are not reasonably avoidable because the data to which consumers might lose access are stored only with the social-media platforms and users have no viable alternative to these large companies given network effects.

Finally, the Petition asserts that social-media companies’ lack of responsiveness is without any countervailing benefit. The Petition suggests that indirect costs to consumers will be of no concern because social-media companies “are profitable” and should be able to use their innovative capacity to provide improved customer service. It states that there is a need for this rule, because, first, two people contacted the Petitioner about their frustrated efforts to regain access to their Facebook accounts and, second, a former FTC employee informed the Petitioner “that the problem is widespread.”⁵

The remainder of the Petition details the Petitioner’s efforts to regain access to his own

² Pet. for Rulemaking of Randall David Marks Regarding Soc. Media Customer Serv. (“Pet.”), at 1 (Nov. 22, 2021), https://www.ftc.gov/system/files/attachments/other-applications-petitions-requests/r207004_-_petition_for_rule_regarding_social_media_customer_service_0.pdf. See also Fed. Trade Comm’n, *Pet. for Rulemaking of Randall David Marks Regarding Soc. Media Customer Serv.*, 86 Fed. Reg. 70062 (Dec. 9, 2021), <https://www.regulations.gov/document/FTC-2021-0066-0001>.

³ Pet. at 1. The Petition cites to “16 USC §45(n) [sic],” likely meaning 15 U.S.C. § 45(n).

⁴ Pet. at 1.

⁵ *Id.*

Facebook account after it was hacked. The Petitioner provides screenshots of numerous automatically generated emails from Facebook that failed to reestablish access to his account. He also includes a screenshot of an email he wrote to several Facebook-affiliated email addresses and states that “no human being from Facebook responded.”⁶ A month after his account was hacked, Petitioner received an email from Facebook that restored access to his account. He points out that not having access for a month could provide difficulties especially for businesses who rely on social media for advertising. The Petition does not cite data, consumer surveys, enforcement cases, or the like, in support of its proposal.

II. Substance of Comments

The Petition received twelve comments, all in support of the proposed rulemaking, mostly short and none referencing studies or other empirical bases for further action.

Two commenters briefly share their own or their relative’s experience of being unable to access their social-media accounts and their perception of a lack of responsive or meaningful customer service available to them.⁷ One commenter also notes the importance and necessity of Facebook to “interpersonal and light commercial use.”⁸

To highlight the need for the proposed rulemaking, two commenters raise concerns about the risk of “loss of function or identity theft issues” that social-media users may face.⁹

At least four commenters voice their support for a rule requiring that social-media companies respond via human customer-service agents and not via automated or AI-generated

⁶ Pet. at 2.

⁷ John Utz, Cmt. on Pet. for Rulemaking of Randall David Marks Regarding Soc. Media Customer Serv. (Jan. 6, 2022), <https://www.regulations.gov/comment/FTC-2021-0066-0009> [hereinafter “Utz Cmt.”]; James Katona, Jr., Cmt. on Pet. For Rulemaking of Randall David Marks Regarding Soc. Media Customer Serv. (Jan. 6, 2022), <https://www.regulations.gov/comment/FTC-2021-0066-0005> [hereinafter “Katona, Jr. Cmt.”].

⁸ Stacey Barnes, Cmt. on Pet. for Rulemaking of Randall David Marks Regarding Soc. Media Customer Serv. (Jan. 6, 2022), <https://www.regulations.gov/comment/FTC-2021-0066-0007> [hereinafter “Barnes Cmt.”].

⁹ Barnes Cmt.; Sarah Urban-Jackson, Cmt. on Pet. for Rulemaking of Randall David Marks Regarding Soc. Media Customer Serv. (Jan. 6, 2022), <https://www.regulations.gov/comment/FTC-2021-0066-0012>.

responses.¹⁰ This suggestion was not included in the Petition.

Several commenters propose additional requirements related to social-media companies' customer-service practices beyond those proposed by the Petition. For example, one commenter suggests that companies should be required to provide public sites where customers' concerns are published and through which customers can take collective action against these companies.¹¹ Another commenter proposes that social-media companies should be required to document the number of customer inquiries received and response times to those inquiries and further that customer service should be accessible to all social-media users.¹²

One commenter, who identifies himself as a former FTC employee, argues that requiring companies "to respond, in a reasonable amount of time, to basic consumer complaints about their service (or lack thereof)" is analogous to, and less burdensome for companies than, the requirement under the Fair Credit Reporting Act that consumer reporting agencies correct inaccurate information in consumer credit reports.¹³

Three comments are simple one- or two-sentence statements of general support for the proposed rulemaking.¹⁴

¹⁰ Barnes Cmt.; Anonymous, Cmt. on Pet. for Rulemaking of Randall David Marks Regarding Soc. Media Customer Serv. (Jan. 6, 2022), <https://www.regulations.gov/comment/FTC-2021-0066-0006>; Rb Nugen, Cmt. on Pet. for Rulemaking of Randall David Marks Regarding Soc. Media Customer Serv. (Jan. 10, 2022), <https://www.regulations.gov/comment/FTC-2021-0066-0011>; see Katona, Jr. Cmt. ("[I] have been frustrated by not being able to find the help I need through the options offered in *automated* customer service systems." (Emphasis added)).

¹¹ Robert Powell, Cmt. on Pet. for Rulemaking of Randall David Marks Regarding Soc. Media Customer Serv. (Jan. 6, 2022), <https://www.regulations.gov/comment/FTC-2021-0066-0008>.

¹² Gordon Nechama, Cmt. on Pet. for Rulemaking of Randall David Marks Regarding Soc. Media Customer Serv. (Dec. 13, 2021), <https://www.regulations.gov/comment/FTC-2021-0066-00003>.

¹³ David Frankel, Cmt. on Pet. for Rulemaking of Randall David Marks Regarding Soc. Media Customer Serv. (Jan. 10, 2022), <https://www.regulations.gov/comment/FTC-2021-0066-0013>.

¹⁴ David Morganstein, Cmt. on Pet. for Rulemaking of Randall David Marks Regarding Soc. Media Customer Serv. (Jan. 6, 2022), <https://www.regulations.gov/comment/FTC-2021-0066-0004>; Dieon S., Cmt. on Pet. for Rulemaking of Randall David Marks Regarding Soc. Media Customer Serv. (Jan. 12, 2022), <https://www.regulations.gov/comment/FTC-2021-0066-0014>; Jim Lovestar, Cmt. on Pet. for Rulemaking of Randall David Marks Regarding Soc. Media Customer Serv. (Jan. 6, 2022), <https://www.regulations.gov/comment/FTC-2021-0066-0010>.

III. The Commission's Resolution of the Petition

The Commission has authority under Section 18 of the FTC Act to commence a rulemaking to prescribe “rules which define with specificity acts or practices which are unfair or deceptive acts or practices in or affecting commerce.”¹⁵ In determining whether to conduct such a rulemaking, the Commission considers not only the nature of the practices at issue¹⁶ and the prevalence of those practices¹⁷ but also the extent of the harm caused by those practices and the likely reduction of harm should the proposed rulemaking advance.¹⁸ The Commission may also consider its resource limitations and whether other contemplated rulemakings (or other approaches such as law enforcement, market research, and consumer education) may be a better use of its scarce resources.¹⁹

The Petition does not make a sufficient showing that the contemplated rulemaking would significantly reduce a prevalent consumer injury. The Petition focuses on the Petitioner's personal experience, refers to statements by two unidentified persons, and cites a statement attributed to a former FTC employe that “the problem is widespread.”²⁰ The comments in response to the Petition detail two additional instances in which individuals were unable to

¹⁵ 15 U.S.C. § 57a(a)(1)(B). The FTC's substantive rulemaking authority was codified in 1975 by the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act, Pub. L. No. 93-637, 88 Stat. 2183, 2193 (1975), which added Section 18 to the FTC Act.

¹⁶ Specifically, the Commission considers if an act or practice is unfair under 15 U.S.C. § 45(a). Acts or practices are unfair if they cause or are likely to cause substantial injury to consumers that is not reasonably avoidable by consumers themselves and that is not outweighed by countervailing benefits to consumers or competition. 15 U.S.C. § 45(n).

¹⁷ See 15 U.S.C. § 57a(b)(3) (the Commission can make a finding of prevalence “only if—(A) it has issued cease and desist orders regarding such acts or practices, or (B) any other information available to the Commission indicates a widespread pattern of unfair or deceptive acts or practices”).

¹⁸ Administrative agencies have broad discretion in determining whether to proceed by rulemaking or administrative adjudication. See *NLRB v. Bell Aerospace Co.*, 416 U.S. 267, 292–94 (1974); *SEC v. Chenery Corp.*, 332 U.S. 194, 203 (*Chenery II*), *reh'g denied*, 332 U.S. 783 (1947).

¹⁹ See, e.g., *Massachusetts v. EPA*, 549 U.S. 497, 527 (2007) (“[A]n agency has broad discretion to choose how best to marshal its limited resources and personnel to carry out its delegated responsibilities.”). See also *Compassion Over Killing v. FDA*, 849 F.3d 849, 854, 856 (9th Cir. 2017) (explaining that the FTC reasonably denied plaintiffs' petition for rulemaking given the broad discretion the agency has in choosing how to expend its limited resources).

²⁰ Pet. at 2.

regain access to content stored on their social-media accounts because of the perceived ineffectiveness of social-media customer service, specifically Facebook’s customer service.²¹

Customer-service failures may rise to the level of being unfair or deceptive acts or practices. But the Petition does not establish that social-media companies’ failures to acknowledge customer-service complaints within 72 hours or failures to issue substantive responses within 30 days are prevalent.²² For its part, the Commission has not issued cease-or-desist orders regarding such failures.²³ Nor do the comments submitted in response to the Petition indicate that there is a widespread pattern of these acts or practices. Thus, the Commission cannot on this record conclude that such failures are prevalent or that they are worthy of a significant investment of the Commission’s resources toward a rulemaking proceeding.

Further, it is not clear whether the rulemaking sought would reduce the harm identified in the Petition.²⁴ While the range of issues the Petition seeks to address is sweeping, the Petition garnered twelve public comments, many of which address problems that would not be solved by the rulemaking proposed in the petition. For example, several commenters stressed the need for human-generated as opposed to automated customer-service responses, which would not resolve content-access problems and does not match the Petition’s central request for a rule requiring substantive responses within a certain timeframe.

²¹ Utz Cmt.; Katona, Jr. Cmt.

²² The Petition, in lieu of providing evidence of prevalence, encourages the Commission to “examine the prevalence of the problem and Facebook’s response to it.” Pet. at 2.

²³ See 15 U.S.C. § 57a(b)(3)(A).

²⁴ The Petitioner seeks a “notice of propose rule-making [sic],” Pet. at 1, but under Section 18 of the FTC Act the first step in any such rulemaking is an Advance Notice of Proposed Rulemaking. See 15 U.S.C. § 57a(b)(2)(A).

The Commission thanks the Petitioner for bringing these practices to the Commission's attention and remains interested in tracking developments in this area.

For the foregoing reasons, the petition is DENIED.

By the Commission.

April J. Tabor
Secretary