Before the
FEDERAL TRADE COMMISSION AND ANTITRUST DIVISION
OF THE DEPARTMENT OF JUSTICE
Washington, DC 20580

In the Matter of	)
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	) **Docket No.**
Request for Comment on Commercial Surveillance	) **FTC-2022-0053**
ANPR; R111004	)
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COMMENTS OF THE NATIONAL HISPANIC MEDIA COALITION

November 21, 2022

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Submitted via Regulations.gov

The National Hispanic Media Coalition (NHMC) is pleased to see that the rapid and harmful expansion of commercial surveillance has come to the attention of the Federal Trade Commission (Commission) and we are hopeful that the Commission will produce a final rule that restores civil rights, reduces harms to consumers, promotes competition, and protects our democracy.

NHMC is a 36-year-old nonprofit organization that advocates for civil rights and eliminating hate, racism, and discrimination against the Latine community. NHMC utilizes education, policy work, and media advocacy to achieve these goals. In 2022, our world is overwhelmingly digital. Our community's success, sustainability, and prosperity are directly associated with our ability to safely and meaningfully access the internet, technology, and digital opportunities. This is why NHMC's 2022 policy priorities are centered around the belief that digital rights are civil and human rights. We cannot increase equity for Latine in the U.S. without codifying our right to keep our data secure, protect our privacy, and be free from algorithmic–or otherwise technology-empowered–discrimination. Therefore, we are pleased to provide these comments to the Federal Trade Commission (FTC) on the prevalence of commercial surveillance and data security practices that harm consumers. For more on our work, please visit our website at https://www.nhmc.org/.

I. INTRODUCTION

NHMC believes that digital privacy is a civil right that should be guaranteed to all individuals. Unfortunately, abuses of this civil right are prevalent and disproportionately affect minority communities, including the Latine community. In fact, these abuses are an extension of historical, systemic discrimination against minority groups. Unjust practices such as redlining, predatory lending, employment discrimination, voter suppression, healthcare discrimination, and over-policing are not new to Latine communities, yet they are being amplified and given new life by the unsafe and biased digital practices of commercial surveillance online.

In order to adequately address the questions for comment presented by the Commission, it is important to dig deeper into the historical context of discrimination of the Latine community, and its proliferation online in recent years. First, historically, redlining was a process by which the government classified neighborhoods with a majority of Black and Brown residents as more

"risky," thereby denying them access to housing loans.[1] Now, online redlining continues to perpetuate this housing discrimination as mortgage brokers use personal data collected via online platforms to show ads offering higher interest rates to Black and Latine communities and biased algorithms avoid showing minority communities any housing ads at all.[2] Similarly, predatory lending is a historic issue for Latine communities who are targeted for high interest loans because they are often considered "too risky" for prime loans.[3] With increased commercial surveillance, Latine communities continue to be targeted online by companies marketing payday loans and high-interest, private student loans.[4] Further, employment discrimination against Latine (based in racism and xenophobia) has long been a systemic problem in the U.S., and now, mass collection of personal data on platforms, like Facebook, has caused Latine candidates to see less job advertisements than white users.[5] Commercial surveillance has also aided in voter suppression of Latine communities, which is now exacerbated through the use of disinformation microtargeting via the use of personal data collected on social media.[6]

The use of data collected online has also been used in predatory ways to threaten the lives of Latine and other historically and intentionally marginalized people. Healthcare discrimination facilitated by lack of in-language healthcare services has also been perpetuated by microtargeting. For example, during the COVID-19 Pandemic the FTC found that advertisers on Facebook were targeting Spanish-speaking communities with fake products and services

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[1] Candace Jackson, *What is Redlining?*, THE NEW YORK TIME□, Aug. 7, 2021, https://www.nytimes.com/2021/08/17/realestate/what-is-redlining.html.

[2] Samantha Lai and Brooke Tanner, *Examining the intersection of data privacy and civil rights*, TechTank, Brookings (July 18, 2022) https://www.brookings.edu/blog/techtank/2022/07/18/examining-the-intersection-of-data-privacy-and-civil-rights/

[3] 2021 State of Hispanic Homeownership Report, at 7, National Association of Hispanic Real Estate Professionals (2022), https://nahrep.org/downloads/2021-state-of-hispanic-homeownership-report.pdf ("Hispanics 81% more likely to be denied mortgages than their non-Latino counterparts").

[4] Robert Bartlett, et al., *Consumer-Lending Discrimination in the FinTech Era* (Nov. 2019), *available at* http://faculty.haas.berkeley.edu/morse/research/papers/discrim.pdf?_ga=2.248089863.1407995962.1668628405-694664783.1668628405.

[5] Ryan Zamarripa, *Closing Latino Labor Market Gap Requires Targeted Policies To End Discrimination*, Center for American Progress (Oct. 21, 2021), https://www.americanprogress.org/article/closing-latino-labor-market-gap-requires-targeted-policies-end-discrimination/; Jinyan Zang, *Solving the problem of racially discriminatory advertising on Facebook*, Brookings (rel. Oct. 19, 202), https://www.brookings.edu/research/solving-the-problem-of-racially-discriminatory-advertising-on-facebook/ ; https://www.upturn.org/work/help-wanted/.

[6] Digital Disinformation and Vote Suppression, Report, Brennan Center (rel. Sept. 2, 2020), https://www.brennancenter.org/our-work/research-reports/digital-disinformation-and-vote-suppression; Samantha Lai, *Data misuse and disinformation: Technology and the 2022 elections*, TechTank, Brookings (June 21, 2022), https://www.brookings.edu/blog/techtank/2022/06/21/data-misuse-and-disinformation-technology-and-the-2022-elections/.

claiming to cure COVID-19.[7] Finally, over-policing of Latine communities–especially those in immigrant communities and participating in activism and organizing efforts–remains a significant issue that is propelled by facial recognition and other surveillance technologies aided by data collection by companies, like Youtube and Apple, which often lead to the misidentification of people of color.[8]

As these examples illustrate, the current online platform practice of collection and use of data to track, gatekeeping, influence, and discriminate against communities of color creates a myriad of harms. These practices also systematically and disproportionately harm Black and brown communities by restricting opportunity and access, raising prices, and increasing surveillance and law enforcement. This is a symptom of a larger, systemic problem affecting Latine and all minority communities.

II.   LATINE ARE DISPROPORTIONATELY VULNERABLE TO HARMFUL DATA PRACTICES ONLINE, PARTICULARLY BY SOCIAL MEDIA PLATFORMS.

The Commission requests commentary concerning whether it should consider a special focus on preventing commercial surveillance harms to protected classes, like Latines.[9] NHMC believes there is a significant need to focus on Latines, people of color, and other protected classes to address the impact of harmful and deceitful data practices in an equitable manner.

Latines are particularly susceptible to damaging data practices by social media platforms, because of their widespread, frequent use of social media; Latine spend more time on social media compared to the general population.[10] These social media platforms allow Latines to connect with family and friends, leading them to have an overwhelming sense of trust and

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[7] *Serving Communities of Color: A Staff Report on the Federal Trade Commission's Efforts to Address Fraud and Consumer Issues Affecting Communities of Color*, Federal Trade Commi□□ion, Oct. 2021,
https://www.ftc.gov/system/files/documents/reports/serving-communities-color-staff-report-federal-trade-commissions-efforts-address-fraud-consumer/ftc-communities-color-report_oct_2021-508-v2.pdf.

[8] Nicol Turner Lee and Caitlin Chin, Police surveillance and facial recognition: Why data privacy is imperative for communities of color, Report, Brookings (rel. Apr. 12, 2022),
https://www.brookings.edu/research/police-surveillance-and-facial-recognition-why-data-privacy-is-an-imperative-for-communities-of-color/ (citing Kashmir Hill, "The Secretive Company That Might End Privacy as We Know It," The New York Time□, January 18, 2020,
https://www.nytimes.com/2020/01/18/technology/clearview-privacy-facial-recognition.html)).

[9] Trade Regulation Rule on Commercial Surveillance and Data Security, Notice of Proposed Rulemaking, Federal Trade Commi□□ion, at question 68, https://www.regulations.gov/document/FTC-2022-0053-0001 ("NPRM").

[10] Nicole Acevedo, *Latinos more likely to get, consume and share online misinformation, fake news*, NBC New□, Oct. 6, 2021,
https://www.nbcnews.com/news/latino/latinos-likely-get-consume-share-online-misinformation-fake-news-rcna262.

intimacy in the apps.[11] This sense of trust is then taken advantage of by social media applications surveilling Latines' data without fully educated consent, stemming from platforms' overly convoluted user agreements and users' lack of comprehension.[12]

In addition, Latines have a strong mistrust of government and authority. As shown during the COVID-19 pandemic, Latines have little trust in what the government says and instead prefer to rely on information from their peers and loved ones.[13] This not only leads to further reliance on social media as it connects them to their personal network, but causes distrust for helpful policies put forward by the government. The FTC must consider this inherent distrust as the agency creates rules to protect online users, ensuring that they don't alienate Latines in the process.

Finally, harmful data practices can be hard to discern, often disguising themselves under confusing legal or technical language when hidden in user agreements to consumers. This can present difficulties for users that lack the appropriate knowledge of how data collection and surveillance works, proving especially difficult for the Latine community due to the prevalent lack of digital literacy.[14] This stems from the fact that some Latines have little to no internet access, with 25% of Latines only having internet access through their smartphones.[15] This lack of adequate access to the internet (the digital divide) leads to fragmented knowledge on how to navigate the digital landscape. For example, some Latines may know how to send messages and videos over Whatsapp, but then may lack the knowledge and skills to protect their private data.

To prevent this unethical collection of data, NHMC urges the FTC to ensure all consumers, including Latine consumers, have the necessary tools to make an informed decision,

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[11] Inclusion, Information, and Intersection the Truth About Connecting With U.S. Latinos, Nielsen (Sept. 2021), at 11, https://www.nielsen.com/wp-content/uploads/sites/2/2021/09/nielsen-2021-hispanic-diverse-insights-report-210682-D9.pdf.

[12] Is it Time to Rethink Notice and Choice as a Fair Information Privacy Practice?, Cyber Law Monitor, https://www.cyberlawmonitor.com/2019/02/13/is-it-time-to-rethink-notice-and-choice-as-a-fair-information-privacy-practice/&sa=D&source=docs&ust=1669063099276464&usg=AOvVaw1AExWR8-KVld4-8gpBelu-.

[13] David Klepper, Adrian Sainz and Regina Garcia Cano, *Distrust of authority fuels virus misinformation for Latinos*, AP New□, Aug. 13, 2020, https://apnews.com/article/virus-outbreak-ap-top-news-health-ap-fact-check-immigration-c35625b68fbbddbfd99683 2ec30adccb.

[14] Applying a racial equity lens to digital literacy, Digital Skills Series, National Skills Coalition, at 2, https://nationalskillscoalition.org/wp-content/uploads/2020/12/Digital-Skills-Racial-Equity-Final.pdf ("Latino workers (who may be of any race) are 14 percent of overall workers, but represent a full 35 percent of workers with no digital skills, and 20 percent of those with limited skills.").

[15] Mobile Technology and Home Broadband 2019, Pew Re□earch Center (June 13, 2019), https://www.pewresearch.org/internet/2019/06/13/mobile-technology-and-home-broadband-2019/.

rooted in a clear understanding of data terms and practices, regardless of digital literacy or skill level via explicit, simple, common knowledge terms. Thus, the FTC should establish stricter rules surrounding meaningful consent to use of their data and clearer pathways for rebuking that consent on the consumers' terms.

III.　SURVEILLANCE TECHNOLOGIES CONTRIBUTE TO VIOLENCE IN LATINE COMMUNITIES.

The Commission also requests comment on how commercial surveillance technologies increase the harms for consumers across all demographics. As is the case with other historically and intentionally marginalized communities, commercial surveillance technology harms become heightened when these surveillance practices are applied to the systemic and institutional discrimination and racism facing the Latine community.[16] Latines face an increased risk of unjust discrimination and violence from law enforcement, and the power of data surveillance only increases this risk.

The United States has a long history of unwarranted surveillance on Latine and other communities of color. In the early 1900s, the Federal Bureau of Investigation targeted Ida B. Wells and Marcus Garvey because of their civil rights activism, or for being "race agitators," and had law enforcement physically track them.[17] Under the Bush Administration, fingerprints from Latine communities were shared from local law enforcement agencies to the U.S. Immigration and Customs Enforcement (ICE), which then evolved into tracking biometrics and mobile fingerprint scanners in the field (which leads to an increase in harmful racial profiling) under the Obama Administration. In 2017, facial recognition and Stingrays became frequently used technologies to track immigrants.[18] Stingrays simulate cell towers in order to use cell phone signals to track location and personal information of any phones nearby.[19] These devices

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[16] NPRM at question 4.

[17] Nusrat Choudhury and Malkia Cyril, *The FBI Won't Hand Over Its Surveillance Records on 'Black Identity Extremists,' so We're Suing*, ACLU, Mar. 21, 2019, https://www.aclu.org/news/racial-justice/fbi-wont-hand-over-its-surveillance-records-black; *See generally,* Michel duCille, BLACK MOSES, RED SCARE, Wᴀ☐ʜɪɴɢᴛᴏɴ Pᴏ☐ᴛ, Feb. 12, 1997, *available at* https://www.washingtonpost.com/archive/1997/02/12/black-moses-red-scare/8a6aff0a-6f38-4b50-8c45-77ba7eb5d714/?utm_term=.6d5d55a5728c.

[18] Alejandra Martinez, *Surveillance Tech Designed for Terrorists Is Being Used on Immigrants*, Lᴀᴛɪɴᴏ USA, Aug. 25, 2017, https://www.latinousa.org/2017/08/25/surveillance-tech-designed-terrorists-used-immigrants/.

[19] *Stingray Tracking Devices: Who's Got Them?*, ACLU, Nov. 2018), https://www.aclu.org/issues/privacy-technology/surveillance-technologies/stingray-tracking-devices-whos-got-them.

previously used to track terrorists in the War on Terror became common tools to track Latine immigrants, most of which had not committed violent crimes.[20]

Online data collection (and the assumptions and targeting made based on that data) escalates and empowers these surveillance practices. Ring cameras are an example of unchecked visual surveillance that can be particularly harmful towards Latines. Technologies, like Amazon's Ring, produce visual data that can be shared with police departments, immigration authorities, and more without a consumer's consent.[21] Beyond being proven largely ineffective, video surveillance technologies reinforce racial stereotypes, and put unchecked power into the hands of bad actors.[22]

This is already an issue with police across the United States, as Latines are killed by police at nearly double the rate as White Americans.[23] From 2015-2021, an estimated 2,600 Latines were killed by police–a likely undercounted figure as Latines are often misidentified and grouped into "white" or "other" categories.[24] With the already rampant amount of prejudice facing Latines in this country, commercial surveillance technologies that empower overpolicing only create more opportunities for unjust violence against the Latine community and presents an undue threat to undocumented immigrants.

Commercial surveillance and its harms also go beyond visual footage. Social media monitoring and data tracking has become incredibly commonplace, and most users do not know that their social media data is not as private as they are led to believe it is. A survey conducted in 2017 by the International Association of Chiefs of Police showed that 70% of police departments

[20] Martinez, supra note 18.

[21] Sara Morrison, *Amazon's Ring privacy problem is back*, Vox, July 13, 2022, https://www.vox.com/recode/23207072/amazon-ring-privacy-police-footage (Ring is owned by Amazon who has partnered with law enforcement agencies to give them access to user data. There are 2,161 police departments in this partnership).

[22] What's Wrong With Public Video Surveillance?, ACLU, Mar. 2022, https://www.aclu.org/other/whats-wrong-public-video-surveillance.

[23] Silvia Foster-Frau, *Latinos are disproportionately killed by police but often left out of the debate about brutality, some advocates say*, Wᴀꟲʜɪɴɢᴛᴏɴ Poꟲᴛ, June 2, 2021, https://www.washingtonpost.com/national/police-killings-latinos/2021/05/31/657bb7be-b4d4-11eb-a980-a60af976ed44_story.html.

[24] Special Advance Fact Sheet: Deaths of People of Color By Law Enforcement Are Severely Under-Counted, UnidosUS (rel. May 27, 2021), at 3, https://www.unidosus.org/publications/2164-special-advance-fact-sheet-deaths-of-people-of-color-by-law-enforcement-are-severely-under-counted/?sequence=4; Nicole Chavez, *An estimated 2,600 Latinos were killed by police or in custody in the past six years, preliminary report says*, CNN, June 21, 2022, https://www.cnn.com/2021/05/28/us/latinos-police-brutality-report.

use social media to track and collect online data.[25] Most recently, DHS purchased cell phone location data through data brokers without the knowledge of the device users.[26] ICE has also used Facebook data to track immigrants, with the express purpose of locating and deporting undocumented immigrants, approximately half of which were from Mexico and other Latin American countries.[27] Without the watchful eye of journalists and nonprofits, these actions might have gone unnoticed and are a severe violation of data privacy and security. These examples demonstrate that in order for consumers to have more control over their data, more transparency is needed from companies who harvest and profit off of individual data.

Software has made that easier for those looking to methodically track users' data across platforms to create a large, intruding collection of data on each person. One of the prominent softwares, ShadowDragon, tracks data across social media networks including Instagram, LinkedIn, Facebook, Tumblr, and YouTube to provide police departments with data on consumers.[28] These softwares perpetuate racial discrimination and disproportionately impact historically and intentionally marginalized communities, like Latines and those who are undocumented. Users are unaware of these data collection methods, and the FTC must regulate how much data can be collected by third parties and ensure users are given explicit notice of this surveillance.

Overall, social media surveillance is impeding on people's right to assemble. The notable story in 2020 of a protester being identified by tracking her information through Etsy, Instagram, Poshmark, and LinkedIn poses serious concerns for other people considering protesting in the future, especially Latines who are already often scared to protest because of the fear of increased police violence. [29] The FTC must take steps to provide necessary oversight to police's use of users' private data and businesses' security measures regarding that data. If not, this undue

[25] Rachel Levinson-Waldman and Ángel Díaz, *How to reform police monitoring of social media*, Brookings, July 9, 2020, https://www.brookings.edu/techstream/how-to-reform-police-monitoring-of-social-media/.

[26] Shreya Tewari and Fikayo Walter-Johnson, *New Records Detail DHS Purchase and Use of Vast Quantities of Cell Phone Location Data*, ACLU, July 18, 2022, https://www.aclu.org/news/privacy-technology/new-records-detail-dhs-purchase-and-use-of-vast-quantities-of-cell-phone-location-data.

[27] Abby Budiman, et al., Facts on U.S. immigrants, 2018, PEW RESEARCH CENTER, Aug. 20, 2020, https://www.pewresearch.org/hispanic/2020/08/20/facts-on-u-s-immigrants/#fb-key-charts-origin; https://uproxx.com/culture/ice-uses-facebook-data-track-immigrants/

[28] Lee Fang, *ICE Uses Facebook Data To Find And Track Immigrants, Internal Emails Show*, THE INTERCEPT, Mar. 26, 2018, https://theintercept.com/2021/09/21/surveillance-social-media-police-microsoft-shadowdragon-kaseware/.

[29] Lisa Eadicicco, *The FBI said it used Instagram, Etsy, and LinkedIn to track down a protester in Philadelphia accused of setting a police car on fire*, BUSINESS INSIDER, June 18, 2020, https://www.businessinsider.com/fbi-uses-instagram-etsy-linkedin-to-find-george-floyd-protester-2020-6.

surveillance can impact Latines' First Amendment freedoms.

IV. LATINE SHOULD HAVE MORE MEANINGFUL CONTROL OVER THEIR DATA.

As the Commission acknowledges, the monetization of surveillance is concerning for all consumers.[30] Companies collect valuable information from individuals that they can turn into real profits through advertising and/or selling that data to other companies. Consumers have little to no say in this process, nor do they see any concrete dividends, even though it is their personal information that makes the money. As NHMC has argued, historically and intentionally marginalized communities, like Latines, bear the brunt of the most dangerous outcomes of this monetization process. Whatsmore, due to systemic inequities in digital education and access, these communities often have the highest concentrations of individuals who do not realize or understand the extent to which this monetization process is harming them. Therefore, it is imperative that the FTC advocate for clear consumer control of their personal data and transparency in companies' data usage, especially for Latine communities and all minority groups who are being exploited and sold to the highest bidder.

Data is the new currency in an evolving digital world, and the continued exclusion of Latine and other communities of color from decision making around their personal data is the latest example of historical and systemic barriers to building wealth. In the U.S., there are still large wealth gaps between white and Black and Latine households. According to the Federal Reserve, "the average Black and Hispanic or Latino households earn about half as much as the average [w]hite household and own only about 15 to 20 percent as much net wealth."[31] There are a myriad of systemic issues that perpetuate these gaps, but in this report, the Federal Reserve found that racial inequality is a significant roadblock to building wealth for Black and Latine households. In fact, when adding a racial equality counterfactual, their study showed a 92%

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[30] Fact Sheet on the FTC's Commercial Surveillance and Data Security Rulemaking, FEDERAL TRADE COMMI☐☐ION, at 1-2, https://www.ftc.gov/system/files/ftc_gov/pdf/Commercial%20Surveillance%20and%20Data%20Security%20Rulemaking%20Fact%20Sheet_1.pdf ("Monetization: The FTC is concerned that companies monetize surveillance in a wide variety of ways. Companies may use some of the information they collect to provide products and services, but they can also use it to make money. For example, they may sell the information through the massive, opaque market for consumer data, use it to place behavioral ads, or leverage it to sell more products.").
[31] Wealth Inequality and the Racial Wealth Gap, THE FEDERAL RE☐ERVE, Oct. 22, 2021, https://www.federalreserve.gov/econres/notes/feds-notes/wealth-inequality-and-the-racial-wealth-gap-20211022.html.

increase in wealth for Latine households.[32] Unfortunately, the commercial surveillance economy is only contributing to racial inequality in this country by facilitating the profits of large companies who use consumer data to perpetuate discrimination against minority communities in the form of digital redlining, predatory lending, employment discrimination, voter suppression, healthcare discrimination, over-policing, and more. Though data privacy protections will not close these wealth gaps, nor solve racial inequality in the U.S., ensuring that historically and intentionally marginalized communities can exercise meaningful control of their data can help to prevent some of these discriminatory practices and place the power back in the hands of consumers.

The Latine community remains on average 15 to 20 percentage points below the poverty level of white households.[33] Due to an additional need for access to government services, many individuals in marginalized communities often have to provide more personal information than more privileged individuals to apply for government benefits or manage their immigration status.[34] This personal information and all personal data that is held by companies is the asset of the individual consumer, and it should be treated as such.

One of the major contributors to this continued poverty is a lack of meaningful representation of the diverse Latine population in all aspects of American economy and society.[35] This includes representation at the highest levels in technology companies, and even the U.S. government, which are controlling and profiting off of Latines' personal data. These companies have very little concern for or understanding of minority communities who are not reflected in their leadership, and since consumers have little recourse when it comes to limiting surveillance, these communities are essentially left out of decision making all together. This data is an asset that is currently being exploited by companies with few benefits to marginalized communities like Latine, which have the least amount of control over their own data, yet suffer the most severe consequences of its use and sale.

V. CONCLUSION

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[32] *Id*.

[33] Dedrick Asante-Muhammad, et al., *Racial Wealth Snapshot: Latino Americans*, National Community Reinvestment Coalition, Sept. 17, 2021, https://ncrc.org/racial-wealth-snapshot-latino-americans/.

[34] Michele E. Gilman, The Class Differential in Privacy Law, 77 Brook. L. Rev. (2012), https://brooklynworks.brooklaw.edu/cgi/viewcontent.cgi?article=1140&context=blr.

[35] Scott Astrada and Gwyn Hicks, Achieving Latino Mobility, Aspen Institute (2018), at 19, https://www.aspeninstitute.org/wp-content/uploads/2018/10/LAS-white-paper-2018-1.pdf.

The National Hispanic Media Coalition (NHMC) commends the Commission for initiating this rulemaking, and urges the agency to consider the Latine community when combating harmful and deceptive practices in data collection for consumers of today and tomorrow. The Commission has the authority and expertise to adequately and equitably protect consumers in the U.S., as well as empower a new era of accountability, transparency, and justice.