

PREPARED STATEMENT OF
THE FEDERAL TRADE COMMISSION

Before the

COMMITTEE ON ENERGY AND COMMERCE
UNITED STATES HOUSE OF REPRESENTATIVES

on

“Combating Pretexting: H.R. 936, Prevention of Fraudulent
Access to Phone Records Act”

March 9, 2007

I. Introduction

Chairman Dingell, Ranking Member Barton, and members of the Committee, I am Lydia Parnes, Director of the Bureau of Consumer Protection at the Federal Trade Commission (“FTC” or “Commission”).¹ I appreciate the opportunity to discuss the practice of obtaining unauthorized access to consumers’ sensitive information through fraud, a practice known as “pretexting,” as well as the Commission’s significant work to protect the privacy and security of telephone records and other types of sensitive consumer information. I also appreciate the opportunity to comment on the proposed Prevention of Fraudulent Access to Phone Records Act, H.R. 936. The Committee’s work in this area has been important in protecting consumers.

Ensuring the privacy and security of consumers’ personal information is one of the Commission’s highest priorities. Individuals or companies that procure through pretexting or sell on the open market confidential consumer information without the consumer’s knowledge or consent not only violate the law, but they undermine consumers’ confidence in the marketplace and in the security of their sensitive data. Accordingly, the Commission has used its full arsenal of tools to attack the pretexters and the brokers who sell pretexted information. Since 2006, the Commission initiated a half dozen law enforcement actions against online data brokers and pretexters of confidential consumer telephone records. The Commission also has developed and disseminated a variety of new online and written materials to educate consumers about protecting their sensitive personal information in general and from pretexting in particular.

Today, I will first discuss the FTC’s efforts to protect consumers from the sale of phone

¹ The views expressed in this statement represent the views of the Commission. My oral testimony and responses to questions reflect my own views and do not necessarily represent the views of the Commission or any individual Commissioner.

records obtained through pretexting. Next, I will provide a brief history of the FTC's enforcement efforts in the area of pretexting for financial information. I will then address the provisions of H.R. 936.

II. FTC Enforcement Efforts Against Firms Selling Telephone Records

Aggressive law enforcement is at the center of the FTC's efforts to protect consumers' telephone call records from pretexting. The acquisition of such records by unauthorized third parties is a serious intrusion into consumers' privacy that presents a significant risk of harm. 1.00000 0.00000 0.0

² Several consumers whose phone records were obtained and sold by the defendants in one of the FTC's pending phone pretexting cases have submitted signed declarations, attesting that they have been stalked and physically threatened by, for example, a former co-worker, an ex-spouse, and an ex-boyfriend. In addition to the real threat posed to their safety, these consumers have spent significant time and hundreds of dollars changing phone numbers or service providers. *See Br. of Pl. FTC in Supp. of Mot. for Summ. J.* at 8-14, *FTC v. AccuSearch, Inc.*, No. 06-CV-0105 (D. Wyo. Jan. 22, 2007).

In addition, there have been media reports of other incidents of pretexting that led to harm. One data broker reportedly sold home phone numbers and addresses of Los Angeles Police Department detectives to suspected mobsters, who then used the information in an apparent attempt to intimidate the detectives and their families. *See, e.g.,* Peter Svensson, *Calling Records Sales Face New Scrutiny*, Wash. Post, Jan. 18, 2006, available at www.washingtonpost.com/wp-dyn/content/article/2006/01/18/AR2006011801659.html.

³ 15 U.S.C. § 45(a). An act or practice is unfair if it: (1) causes or is likely to cause consumers substantial injury; (2) the injury is not reasonably avoidable by consumers; and (3) the injury is not outweighed by countervailing benefits to consumers or competition. *Id.* at § 45(n). Under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), the Commission has the authority to file

telephone records without the consumer's knowledge or authorization.⁴ In each of these cases, the defendant advertised on its website that it could obtain confidential customer phone records from telecommunications carriers for fees ranging from \$65 to \$180. The complaints alleged that the defendants, or persons they hired, obtained this information by using false pretenses, including posing as the carrier's customer, to induce the carrier's employees to disclose the records.

To date, the Commission has settled two of these cases, obtaining permanent injunctions that bar the defendants from selling customer phone records or consumer personal information derived from such records.⁵ In addition, the settlements require the defendants to disgorge the profits they derived from the alleged illegal operations.⁶ The remaining three cases are still in active litigation.

The FTC's first wave of phone pretexting cases was the culmination of extensive investigations of this industry. Commission staff surfed the Internet for companies that offered

actions in federal district court to obtain injunctions and other equitable relief against those engaged in violations of Section 5.

⁴ *FTC v. Info. Search, Inc.*, No. 1:06-CV-01099-AMD (D. Md. filed May 1, 2006); *FTC v. AccuSearch, Inc.*, No. 06-CV-0105 (D. Wyo. filed May 1, 2006); *FTC v. CEO Group, Inc.*, No. 06-60602 (S.D. Fla. filed May 1, 2006); *FTC v. 77 Investigations, Inc.*, No. EDCV06-0439 VAP (C.D. Cal. filed May 1, 2006); *FTC v. Integrity Sec. and Investigation Servs., Inc.*, No. 2:06-CV-241-RGD-JEB (E.D. Va. filed May 1, 2006).

⁵ *FTC v. Integrity Sec. and Investigation Servs., Inc.*, *supra* note 4 (final judgment entered Oct. 30, 2006) available at www.ftc.gov/os/caselist/pretextingsweep/061005isisstipfinalord.pdf; and *FTC v. Info. Search, Inc.*, *supra* note 4 (final judgment entered Feb. 22, 2007).

⁶ The FTC does not have authority to obtain civil penalties in these cases, and therefore is limited to the equitable remedy of disgorgement. As currently drafted, H.R. 936 would authorize the Commission to seek civil penalties.

⁷ Consumer telephone records are considered “customer proprietary network information” under the Telecommunications Act of 1996 (“Telecommunications Act”), which amended the Communications Act, and accordingly are afforded privacy protections by the regulations under that Act. *See* 42 U.S.C. § 222; 47 C.F.R. §§ 64.2001- 64.2009. The Telecommunications Act requires telecommunications carriers to secure the data, but does not specifically address pretexting to obtain telephone records. The FTC’s governing statute exempts from Commission jurisdiction common carrier activities that are subject to the Communications Act. 15 U.S.C. § 46(a). The Commission recommended that Congress remove jurisdiction over broadband Internet access service before the Senate Judiciary Committee in June 2006. *See* <http://www.ftc.gov/os/2003/06/030611reauthhr.htm>; <http://www.ftc.gov/os/2003/06/030611reauthsenate.htm>; *see also* <http://www.ftc.gov/os/2003/06/030611learysenate.htm>; <http://www.ftc.gov/os/2002/07/sfareauthtest.htm>; <http://www.ftc.gov/os/2006/06/p052103CommissionTestimonyReBroadbandInternetAccessServices06142006Senate.pdf>.

⁸ *FTC v. Action Research Group, Inc.*

subject of federal and state criminal actions in California, stemming from the well-publicized phone records pretexting of Hewlett-Packard board members and journalists. *See, e.g.*, Matt Richtel, *With a Little Stealth, Just About Anyone Can Get Phone Records*, NY Times, Sep. 7, 2006, available at <http://www.nytimes.com/2006/09/07/technology/07phone.html?ex=1158465600&en=2f20498c7fcc7e5b&ei=5070>.

⁹ *FTC v. JaF11400 TD/F23 12.0006*,

¹⁰ 15 U.S.C. §§ 6821-6827

¹¹ *Id.* at § 6821.

¹² FTC press release, “As Part of Operation Detect Pretext, FTC Sues to Halt Pretexting” (Apr. 18, 2001), *available at* <http://www.ftc.gov/opa/2001/04/pretext.htm>.

¹³ FTC press release, “FTC Kicks Off Operation Detect Pretext” (Jan. 31, 2001), *available at* <http://www.ftc.gov/opa/2001/01/pretexting.htm>. In conjunction with the warning letters, the Commission released a consumer alert, *Pretexting: Your Personal Information Revealed*, describing how pretexters operate and advising consumers on how to avoid having their information obtained through pretexting, *available at* <http://www.ftc.gov/bcp/online/pubs/cred>

¹⁴ *FTC v. Victor L. Guzzetta*, No. CV-01-2335 (E.D.N.Y. final judgment entered Feb. 25, 2002); *FTC v. Info. Search, Inc.*, No. AMD-01-1121 (D. Md. final judgment entered Mar. 15, 2002); *FTC v. Paula L. Garrett*, No. H 01-1255 (S.D. Tex. final judgment entered Mar. 25, 2002).

¹⁵ See www.ftc.gov/opa/2002/03/pretextingsettlements.htm.

¹⁶ See www.ftc.gov/privacy

IV. FTC Education and Outreach

In addition to its law enforcement efforts, the Commission has an extensive program to teach consumers and businesses better ways to protect sensitive data. For example, in February 2006, the Commission released a consumer alert, *Pretexting: Your Personal Information Revealed*, describing how pretexters operate and advising consumers on how to avoid having their information obtained through pretexting.

The FTC also recently launched a nationwide identity theft education program, “Avoid ID Theft: Deter, Detect, Defend,” which broadly advises consumers on how to avoid becoming victims of identity theft. The message for consumers is that they can (1) deter identity thieves by safeguarding their personal information; (icRv TD(pspiciouersvicvntity)Tj23248.4400 0.0000 TDby thrextelity

¹⁸ See www.onguardonline.gov.

important exemption for law enforcement agencies in connection with their official duties.

In addition to the Phone Records Act, two recently passed statutes will assist in the fight against phone pretexting. First, in December 2006, Congress passed and the President signed the “US SAFE WEB Act” into law.²¹ This Act allows greater cooperation and information sharing between law enforcers in the United States and their counterparts in other countries. In
n law enfo

²¹ The Undertaking Spam, Spyware, and Fraudulent Enforcement with Enforcers Across Borders Act of 2006, Pub. L. No. 109-455, 120 Stat. 3372.

²² Telephone Records and Privacy Protection Act, Pub. L. No: 109-476.

to safeguard consumer information and is committed to continuing its work in this area. The Commission looks forward to continuing to work with this Committee to protect the privacy and security of sensitive consumer information.