

Remarks of Commissioner Julie Brill

NAAG Winter Meeting
Fort Lauderdale, FL
Dec. 2, 2010

Introduction

Thank you so much for inviting me to speak today. It is good to see so many here with whom I have personally worked closely in the past. And congratulations to those of you just elected; I look forward to meeting you and working with your offices soon. Chairman Leibowitz asked me to tell you how much he looks forward to meeting all of you at a NAAG meeting in the very near future.

This election season was not an easy one for those of us in public service — and I am sure it was even more difficult for those of you who just finished running for office. All it seemed voters could agree on was how angry they were at government. Day after day, the airways were filled with ads that depicted politicians as bloated, wasteful, and paralyzed by partisanship. At the end of the voting, we knew who the winners were; we could argue all day over who would be the eventual losers; there was no doubt that it was the public's good opinion of government that took the fiercest shellacking.

If asked today what they thought of the elections, most Americans would probably agree with H.L. Mencken, who said: "Under democracy, one party always devotes its chief energies to trying to prove that the other party is unfit to rule — and but commonly succeed, and are right."

There is a temptation for those of us working at the Federal Trade Commission to think ourselves above this condemnation. After all, the FTC's leadership is bipartisan by law and our decisions are often bipartisan by choice. We are the nation's only agency that focuses exclusively on consumer protection and antitrust issues. We fight for cheated consumers, scammed seniors, threatened children, harassed donors. We even run the "do-not-call" list, which Dave Barry calls the most popular government program since the Elvis stamp.

But as proud as we are of this record, we should not rely on it to avoid the concerns expressed by the public in this election cycle. Indeed, the public's dismay with their government is all the more reason we need to continue to work on cases and projects that demonstrate government officials can put aside party and regional differences to stand with the American family.

And that brings me to the message I would deliver today: Thank you. And help.

Thank you for assisting us in investigations, sitting with us in sweeps, and acting as co-plaintiffs when we go to trial. Together, we have protected consumers regardless of race, creed, color or economic status, and pursued scammers and cheats regardless of state borders.

And help us continue and expand our nonpartisan, effective collaboration. We want you to use our resources — and we want to use yours — as we partner to protect American consumers.

Our focused efforts are more important now than ever. As Americans lose jobs, homes, and hope, we see thieves, con men, and petty opportunists multiply, waiting to turn the desperation of others into easy dollars. Together, we have a good chance of stopping them. And by stopping them, we have a good chance of restoring some of the public's faith in public service.

Coordinated Sweeps

Coordinated sweeps demonstrate clearly the power of partnerships, allowing us to target specific areas of financial fraud and to communicate clearly that we will not tolerate those practices.

Yesterday we heard Assistant Attorney General Lanny Breuer talk about last year's Operation Stolen Hope, where federal and state agencies, including the FTC and many of you, announced 118 different enforcement actions as targeted scams across the country involving false promises to help consumers burdened by mortgages they could not pay. Sometimes these "mortgage relief" scams cost victims thousands of dollars they can ill-afford to lose.

In February 2010, we announced Operation Bottom Dollar, involving 7 FTC cases, 43 criminal actions by DOJ, and 18 actions by state AGs that went after bogus job placement and work at home opportunities.

In August of this year, the FTC and 24 states announced Operation Healthcare Hustle — a total of 54 lawsuits and regulatory actions against the sellers of phoney "medical discount plans" that masqueraded as health insurance.

More sweeps such as these are in the works, and we look forward to working on them closely with all of you.

State Co-plaintiffs or Coordinated State/FTC Actions

Sometimes we have focused more intently on a single target through joint lawsuits aimed at fraudsters who perpetrate financial scams, as well as those who enable them. For example, in 2009, the FTC and Attorneys General Koster, Swanson and Cooper brought a joint enforcement action against the operators of a massive "government grant" scam. That case is ongoing.

And just last month, the FTC and Attorney General Madigan, Miller, Masto, Cooper, Stenehjem, Cordray, and Sorrell announced a final settlement in the Your Money Access case, a years' long enforcement effort against a payment processor responsible for funneling tens of millions of dollars from consumers into the coffers of hundreds of scam artists.

When the FTC and the states bring lawsuits together — either in a single action or in separate lawsuits — we have more bargaining power and can negotiate better results for our consumers. Legitimate companies that will continue operating after litigation often hesitate to settle state actions until they can be assured that a federal order will apply uniform rules to their conduct across the country.

Privacy

The states and the FTC have also partnered in privacy cases. Take, for example, the Lifelock case. Lifelock's advertising claims involving its identity theft protection product led to the largest multistate-FTC settlement in the private area — 35 states and the FTC were able to secure \$11 million in consumer redress, with an additional \$1 million going directly to the states.

Among the many recommendations in the report, the FTC calls on companies to provide consumers with choices about data practices in a simpler and streamlined manner than in the past. Choices should be clear and concise, made at a time and in a context in which the consumer is making a decision about data. With respect to advertising that uses consumers' online behavior to target ads to particular consumers, the FTC believes we need to develop a meaningful and robust "Do Not Track" mechanism, allowing consumers some choice about whether and how information about their online searching and browsing activities can be collected and used.

Now is a critical time in the privacy debate in Washington. Decisions about how to best protect privacy, and how to balance these protections with freedom to innovate, will be discussed in depth over the coming months. We are seeking comments on the report we issued yesterday. I hope you and your staffs will provide us with your thoughts about these issues.

Competition

We have a solid record of working with states on consumer protection issues. We are also proud of our Bureau of Competition's longstanding and effective program to share information and pool investigative resources with various state enforcers — with some of the cases ending up as joint enforcement actions. At any given time, our competition attorneys are cooperating with one or more state AG offices. That sort of collaboration is particularly helpful in cases with local or regional competitive impact — for example, in the hospital and retail markets.

Last year, we announced a consent decree that maintains competition in the market for road salt in Maine and Connecticut. We worked very closely with the offices of Attorneys General Blumenthal, Mills, Coakley and Cuccinelli in this investigation. State and local governments were the primary consumers that would have suffered higher prices if the merger had not been modified through our joint efforts.

We also have worked closely with many of you to protect competition in the health care arena. Last month, we announced a consent decree that maintains competition in local markets for acute inpatient psychiatric services. The consent decree required divestiture of psychiatric facilities in Delaware, Puerto Rico, and Las Vegas, Nevada. We worked very closely with Attorneys General Masto, Biden and Cumber in this investigation. The relief we jointly obtained protects consumers in this important health care market by preserving price competition and incentives to improve services.

Competition issues can seem a bit difficult at times — the law is technically complex and the cases require a fair amount of resources. As many of you are only able to devote one or two staffers to antitrust. But competition issues are incredibly important to many of your constituents. Mergers causing high concentration in a market, and other unfair methods of competition, can all lead to higher prices and stifled innovation. And in turn, this can hurt consumers, businesses, and state and local government. It will continue to be important to work together on these competition matters to protect these important constituencies.

And because I have dealt with the difficulties you face in dealing with competition concerns in your states, some of you have called me over the past few months to talk over

competition matters. I invite each and every one of you to please call me if you want to talk through a competition issue or a consumer protection issue you are facing.

Consumer Education

Yesterday you heard Chuck Harwood talk about the wonderful consumer education materials we have: pamphlets, webpages, videos. Our materials cover a broad range of consumer protection topics, and D .0Bll m]TJ 185745 0 TD .0Tc -.0016 Tw [(available in) English and D

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Conclusion

I began my remarks with HL Menken, the iconic American cynic. I would like to end by