



THE CHAIRMAN

FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

December 13, 2005

The Honorable Edward J. Markey
United States House of Representatives
Washington, DC 20515-2107

Dear Representative Markey:

Thank you for your letter of November 7, 2005, regarding websites offering consumer telephone information for sale. Maintaining the privacy and security of consumers' personal information is one of the Commission's highest priorities. Although I cannot discuss publicly any specific investigations that Commission staff currently may be undertaking, the Commission has investigated and brought cases against companies that offer to procure and sell sensitive consumer information to third parties and will continue to do so in the future.

Through our investigations, we have learned that some individuals and firms use the practice of "pretexting" to obtain sensitive consumer information for sale to third parties. Typically, the pretexter impersonates the consumer in communicating with the business holding the consumer's information, to convince the business to turn over that information. As you may know, Section 521 of the Gramm-Leach-Bliley Act ("GLB"), 15 U.S.C. § 6821, prohibits any person from obtaining customer information of a financial institution by making fictitious or fraudulent statements. As part of "Operation Detect Pretext," an enforcement sweep of pretexters of financial information, the Commission reviewed over 1,000 websites and 500 print advertisements of firms that offered to sell or obtain consumers' financial account information. The Commission sent approximately 200 warning letters to these companies and in several instances brought federal district court actions to permanently enjoin the illegal conduct.¹ Because Section 521 also has criminal penalties, the Commission also may refer pretexters to the Department of Justice for criminal prosecution as appropriate; one such individual recently pled guilty to one count of pretexting under GLB.²

¹ For more information about the cases the Commission has brought under GLB Section 521, please see the Commission's web page at: http://www.ftc.gov/privacy/privacyinitiatives/pretexting_enf.html. Since GLB's passage in 1999, the FTC has brought over a dozen cases alleging violations of Section 521 in various contexts.

² United States v. Easton, No. 05 CR 0797 (S.D.N.Y).

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Although consumer telephone records are not generally covered by GLB, the Commission may still bring a law enforcement action against a pretexter of telephone records if it has reason to believe that the pretexter's activities constitute unfair or deceptive practices under Section 5 of the FTC Act.

Because this area involves information principally held by telephone companies under the jurisdiction of the Federal Communications Commission, FTC staff are working with their counterparts at the FCC to share information and coordinate strategies, as we have done successfully with the enforcement of the "Do Not Call" legislation.³

Should you have questions or require additional information, Commission staff would be happy to meet with you or representatives from your office to discuss this further. Please contact Anna Davis, Director of Congressional Relations, at (202) 326-3680, for assistance.

Sincerely,



Deborah Platt Majoras
Chairman

³ As you note in your letter, consumer telephone records are considered "customer proprietary network information" under the Telecommunications Act of 1996 and accordingly are afforded privacy protections by the regulations under that Act. The Act imposes obligations on common carriers, but does not prohibit pretexters from obtaining phone records. Common carriers are regulated by the Federal Communications Commission.