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Federal Trade Commission
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Good afternoon. Thank you for asking me here today to address what to expect from the Federal Trade Commission on privacy and security issues during the Trump Administration. Before I begin, I need to say that the views I express are my own and do not necessarily reflect the views of the Commission or any individual Commissioner.

As you know, President Trump recently selected Maureen Ohlhausen as Acting Chairman of the FTC. Acting Chairman Ohlhausen supports a free market approach to public policy. She is a practitioner of an approach to governing she describes as "regulatory humility" as well as being an ardent proponent of individual liberty.

Shortly after her selection, Acting Chairman Ohlhausen set forth her positive consumer protection agenda. Her agenda calls for the agency to focus its law enforcement work on addressing fraud and other unlawful conduct that causes concrete consumer injury. Further, it calls for more transparency as to how the agency operates and more clarity in standards for industry. Finally, her agenda calls for the agency to reduce undue and unnecessary burdens on industry, both through decreasing the burdens of FTC law enforcement investigations and decreasing the burdens of FTC regulations and orders.

Capitol Hill if the agency is not focused like a laser on attacking fraud and other conduct that causes concrete harm.

In addition to identifying and pursuing appropriate targets, we are considering measures to make our law enforcement work more efficient. Part of making FTC law enforcement more efficient is reducing unnecessary investigations. We are exploring ways to provide more and even better guidance to industry. Guidance ensures that companies who want to comply with the law can do so. Not only does this save companies money, but it conserves FTC resources as well. Issuing guidance is far less expensive than litigation for bring legitimate companies into compliance.

We also are considering ways to make FTC investigations more efficient. For example, the recent ABA Antitrust Section's Presidential Transition Report stated there had been a recent trend towards generic and overbroad requests for documents and information in FTC civil investigative demands. The report asserted that such requests impose large and unnecessary compliance costs on companies. We are evaluating our civil investigative demands to determine if we can do a better of job of obtaining what we need without imposing unnecessary or undue costs on recipients.

Privacy a

Finally, we will continue to investigate and challenge conduct which violates the specific data security and privacy statutes, such as the GLBA, COPPA, and the FCRA, the Commission enforces.

I would be remiss not to mention the FTC's vigorous and extensive program of research and policy development which always has informed our law enforcement work. Acting Chairman Ohlhausen has directed FTC staff to conduct further research on the economics of privacy. Among other things, we will examine consumer privacy preferences and the relationship between access to consumer information and innovation. While this research is in its embryonic stages, it is the sort of undertaking that may have a significant impact over the long term on how the FTC and others address privacy issues, including through law enforcement.

Business Outreach and Consumer Education on Data Security and Privacy

Consumer education is critical in our efforts to empower consumers to protect themselves.

and privacy materials specifically for them. In addition, in the coming months, we will expand our business outreach on data security issues, with a focus on helping businesses identify risks and develop data security plans.

Much of the Commission's business education efforts have emphasized reviewing FTC complaints and orders to understand what businesses should not do. While these materials provide valuable information, businesses would benefit from even greater transparency. We therefore are undertaking a project to disclose more information about the data security investigations we close. This will help illustrate how the FTC staff has applied the principles in its long-standing data security guidance materials to decide when not to take enforcement action. We hope this information will provide businesses with an even better idea of what they should do when it comes to data security. Moreover, we hope this information will be especially useful to smaller businesses that are more likely to be reliant on such FTC guidance materials.

Cooperation with Partners on Data Security and Privacy

FTC and FCC cooperation will continue to be an agency priority under Acting Chairman Ohlhausen's leadership. The Commission has a long history of successful cooperation with all of our state and federal partners, including the FCC. For example, the FCC and FTC cooperated extensively in the implementation of the National Do Not Call Registry. We also continue to

cooperate in enforcement of the Do Not Call rules under a Memorandum of Understanding. In addition, in 2015, the FCC and the FTC affirmed and formalized their ongoing cooperation and coordination on consumer protection matters generally, and privacy and data security particularly, by entering into a second Memorandum of Understanding.

Let me give you some practical examples of FTC and FCC cooperation. The FTC recently provided input to support the FCC-initiated and industry-led Robocall Strike Force, which is working to deliver comprehensive solutions to prevent, detect, and filter unwanted robocalls. In tandem with this effort, the FTC worked with a m53 0 Tf eon

consumers to collect federal government debts. In May 2016, the FCC issued a Notice of Proposed Rulemaking seeking public comment. In June 2016, FTC staff submitted a comment, urging caution with any expansion of permissible robocalling and recommending that the FCC create standards for collecting government debt consistent with the Fair Debt Collection Practices Act (FDCPA) and the Telemarketing Sales Rule (TSR). In August 2016, the FCC adopted several of the key recommendations made by FTC staff, including: (1) limiting covered calls to those directed at debtors; (2) prohibiting calls with advertising or marketing content; and (3) requiring callers to inform debtors of their right to request that calls stop.

The FTC's Jurisdiction over Common Carriers

One hot topic is the FCC and FTC's activities relating to broadband privacy. Before we get to the FCC's broadband privacy rule, it would be useful to provide a brief outline of the FTC's jurisdiction.

As I mentioned, the FTC has broad jurisdiction under the FTC Act to protect against unfair and deceptive practices. "Common carriers" subject to the Communications Act, however, are excepted from the FTC Act. The FTC has long called for Congress to repeal this exception, which dates from the time that phone companies engaged only in conduct that was common carriage.

Even with this exception, however, the FTC has jurisdiction over some

activities of common carriers under the FTC Act. The FTC and the FCC have for decades viewed the common carrier exception as "activity based," meaning the FTC *doesn't* have FTC Act jurisdiction over common carriers' provision of common carrier service ("the pipes") but *does* have FTC Act jurisdiction over their non-common carrier activities. Using this approach, the FTC has protected consumers from many activities of telecommunications common carriers. For example, we have challenged T-Mobile and AT&T's conduct in cramming charges on to the bills of consumers as well as challenged AT&T and TracFone's claims that they provide "unlimited data."

Reclassification of Broadband

As you know, in February 2015, the FCC adopted the Open Internet Order,

this goal is for the FTC to set standards for privacy and data security. I agree that the same privacy and data security rules of the road should apply regardless of whether companies provide broadband services, data analytics, social media, or other so-called edge services.

Some argue that the FTC's approach to privacy and data security is somehow "too soft" or will not lead to robust consumer protection. I disagree. We are the iron fist inside a velvet glove. Let me mention a few examples of how the FTC has achieved strong privacy protections for consumers without imposing unnecessary or undue burdens on industry.

First, the FTC has ensured strong protections for sensitive information. Children's information is a prime example. The Rule the FTC promulgated under the Children's Online Privacy Protection Act is robust, covering a broad range of personal information and a broad range of entities, including kid-directed websites, as well as apps and third parties that collect children's data through these websites and apps. It clearly requires parental consent before kid-directed entities can collect information from children under 13. Because, however, the FTC can only enforce the COPPA rule against entities for which it has jurisdiction under the FTC Act, ISPs are not subject to the COPPA Rule when they provide broadband service.

Second, the FTC has aggressively used its authority under the FTC Act to

Conclusion

American philosopher Yogi Berra once explained, "It is hard to make predictions . . . especially about the future." The future of the FTC on data security and privacy matters generally will bear the imprint of Acting Chairman Ohlhausen' s positive consumer protection agenda. Despite the perils of forecasting, I have given you my predictions of what I think the future holds. Thank you for having me here today. I am happy to take