

Prepared Statement of

Chairman DeSantis, Ranking Member Lynch, Chairman Meadows, Ranking Member Connolly, and members of the Subcommittees, I am Andrew Smith, Director of the Bureau of Consumer Protection at the Federal Trade Commission (“Commission” or “FTC”).¹ I appreciate the opportunity to appear before you today to tell you about the Commission’s law enforcement program to fight consumer fraud and the Commission’s actions against payment processors that facilitate this fraud.

I. Consumer Protection Mission

As the nation’s primary consumer protection agency, the FTC has a broad mandate to protect consumers from unfair, deceptive, or fraudulent practices in the marketplace. It does this by, among other things, pursuing law enforcement actions to stop unlawful practices, and educating consumers and businesses about their rights and responsibilities. The FTC targets its efforts to achieve maximum benefits for consumers, which includes working closely with federal, state, international, and private sector partners on joint initiatives. Among other issues, the FTC addresses fraud, combats illegal robocalls, protects privacy and data security, and helps ensure that advertising claims to consumers are truthful and not misleading.

Fighting fraud is a major focus of the FTC’s law enforcement. The Commission’s anti-fraud program stops some of the most egregious scams that prey on U.S. consumers—often, the most vulnerable Americans who can least afford to lose money. For example, the FTC brings actions against fraudsters who pose as imposter government agents (including the IRS and even the FTC), family members, or well-known companies in order to trick consumers into sending

¹ While the views expressed in this statement represent the views of the Commission, my oral presentation and responses to questions are my own and do not necessarily reflect the views of the Commission or any individual Commissioner.

them money. Fraudsters also target small businesses, sometimes cold-calling businesses to “collect” on invoices they do not owe.

During the past year, the FTC joined federal, state, and international law enforcement partners in announcing “Operation Tech Trap,” a nationwide and international crackdown on tech

of the increase in robocalls is attributable to relatively recent technological developments, the FTC has taken steps to spur the marketplace to develop technological solutions. For instance, the FTC led four public challenges to incentivize innovators to help tackle the unlawful robocalls that plague consumers.⁶ The FTC's challenges contributed to a shift in the development and availability of technological solutions in this area, particularly call-blocking and call-filtering products.⁷ In addition, the FTC regularly works with its state, federal, and international partners to combat illegal robocalls, including co-hosting a Joint Policy Forum on Illegal Robocalls with the Federal Communications Commission, as well as a public expo featuring new technologies, devices, and applications to minimize or eliminate the number of illegal robocalls consumers receive.⁸

payment processors generally arise out of fraudulent conduct the FTC has challenged in a prior or pending FTC action. On some occasions, we have observed the same processor providing services for multiple different entities that were defendants in FTC,⁹ SEC, or state cases.

Processors control access to the financial system and unscrupulous processors can allow the underlying frauds to inflict harm on thousands of consumers. Where appropriate, challenging processors is a critical component of the FTC's efforts to fight fraud and illegal robocalls while halting hundreds of millions of dollars of consumer injury. Payment processors engaged in illegal conduct harm not only consumers; they harm legitimate industry players and undermine confidence in the financial system. This testimony will briefly summarize how the payments system works, explain the bases of the FTC's legal authority, and describe a few representative enforcement actions the Commission has filed against payment processors.

To accept credit card payments from consumers, a merchant must establish an account with an acquiring bank ("the acquirer") because acquiring banks have direct access to the credit

⁹ See, e.g. *FTC v. Landmark Clearing, LLC*, No. 11-cv-00826 (E.D. Tex. Dec. 29, 2011) (Stip. Perm. Inj.), <https://www.ftc.gov/enforcement/cases-proceedings/1123117/landmark-clearing-inc-larry-wubbena-eric-loehr> (allegedly processed payments for defendants in at least two FTC law enforcement actions); *FTC v. Edebitpay LLC*, No. 07-cv-4880 (C.D. Cal. Jan. 17, 2008) (Stip. Perm. Inj.) (online marketers charged with deceptive sales of reloadable debit cards and unauthorized debiting of consumers' accounts); *FTC v. Direct Benefits Group*, No. 11-cv-01186 (M.D. Fla. Aug. 12, 2013) (Final Judgment) (found liable for debiting consumers' bank accounts without consent and failing to adequately disclose that financial information from payday loan applications would also be used to charge consumers for enrollment in unrelated products and services); *FTC v. Automated Electronic Checking*, No. 13-cv-0056 (D. Nev. Mar. 11, 2013) (Stip. Perm. Inj.), <https://www.ftc.gov/enforcement/cases-proceedings/122-3102/automated-electronic-checking-et-al> (allegedly processed payments for Edebitpay defendants just weeks after Edebitpay entered into a stipulated permanent injunction with the FTC and proces

card networks, such as MasterCard and VISA.¹⁰ Acquirers commonly enter into contracts with

telemarketing.¹² In these cases, the FTC uses the TSR's prohibitions on "assisting and facilitating" and "credit card laundering." Payment processors violate the TSR's "assisting and facilitating" provision when they provide substantial assistance to an entity while knowing or consciously avoiding knowledge that the entity is engaged in specified violations of the Rule.¹³ Payment processors are liable for "credit card laundering" when they cause a transaction to be submitted to the credit card networks when the transaction is not the result of a transaction between the cardholder and the actual merchant.vio9.25

up-front fees.¹⁹ Here too, following discovery, the Commission amended the complaint to charge payment processors Newtek (a division of Universal Processing of Wisconsin, LLC (“UPS”)), its then-president, Derek DePuydt, and sales agent, Hal Smith, with violating the TSR. The payment processors opened and approved TYS for a merchant account without performing customary

