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ENHANCING FTC CONSUMER PROTECTION IN FINANCIAL DEALINGS WITH TELEMARKETERS AND THE INTERNET

HEARING

BEFORE THE

SUBCOMMITTEE ON COMMERCE, TRADE, AND CONSUMER PROTECTION

OF THE

COMMITTEE ON ENERGY AND COMMERCE
HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

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ENHANCING FTC CONSUMER PROTECTION IN FINANCIAL DEALINGS WITH TELEMARKETERS AND THE INTERNET

TUESDAY, OCTOBER 23, 2007

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMERCE, TRADE,
AND CONSUMER PROTECTION,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The subcommittee met, pursuant to call, at 10:10 a.m., in room 2123, Rayburn House Office Building, Hon. Bobby L. Rush (chairman) presiding.

Present: Representatives Barrow, Ross, Hooley, Stearns, Pickering, Radanovich, Pitts, Terry, Burgess, Blackburn, and Barton.

Also present: Representative Doyle.

Staff present: Consuela Washington, Judith Bailey, Christian Fjeld, Peter Goodloe, Andrew Woelfling, Valerie Baron, Sharon Davis, Erin Bzymek, Megan Mann, Brian McCullough, William Carty, and Chad Grant.

OPENING STATEMENT OF HON. BOBBY L. RUSH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. RUSH. The subcommittee will come to order.

Today we are holding a legislative hearing on three consumer protection bills involving the Federal Trade Commission. As is the case with most of the business conducted in this subcommittee, each bill represents bipartisan cooperation in consultation with the germane expert regulatory agency, in this case the FTC.

Subsequent to today's hearing, we will immediately move to markup all three bills and, I hope, report them favorably to the subcommittee.

The first bill before us today is H.R. 2601, introduced by my friend, the distinguished ranking member of the subcommittee, Mr. Stearns, a bill to extend the authority of the Federal Trade Commission to collect fees, to administer and enforce the provisions relating to the National Do-Not-Call Registry.

In 2003, Congress passed the Do-Not-Call Implementation Act, which authorized the FTC to establish fees sufficient to implement the National Do-Not-Call Registry as originally authorized by the Telecommunications and Consumer Fraud and Abuse Prevention Act of 1994. I do not think it is hyperbole to say that this may quite possibly be one of the most popular laws and Government initiatives in recent history. Consumers have registered more than

146 million telephone numbers since the registry began in operation in 2003.

The FTC's authority to annually establish the appropriate level of fees to charge telemarketers for access to the registry expires in 2007, and Mr. Stearns' bill extends that authority through fiscal year 2012.

No doubt, if Members of Congress wish to avoid the wrath of millions of angry constituents who are being called by telemarketers, it is in our best interest to facilitate the continuing operation of the Do-Not-Call Registry. We are not dumb. We do know what we are doing, and we do not want to have the anger and angst of all our constituents breathing down our neck.

Second, the subcommittee will deliberate on H.R. 3461, the Safeguarding America's Families by Enhancing and Reorganizing New and Efficient Technologies Act of 2007, or the SAFER Net Act, introduced by my friend and colleague from Illinois, Congresswoman Melissa Bean.

The bill directs the FTC to carry out a nationwide public awareness campaign about Internet safety and directs the Commission to annually report to Congress on its activity to promote Internet safety. In addition, the bill authorizes $10 million for 1 year to carry out this public awareness campaign.

Finally, the last bill the subcommittee will take up is H.R. 3526, a bill to include all banking agencies within the existing regulatory authority under the Federal Trade Commission Act with respect to depository institutions. Chairman Barney Frank of the Financial Services Committee introduced the bill, and he has asked the Energy and Commerce Committee to expedite the exercise of its jurisdiction in order to facilitate its consideration on the House floor's suspension calendar. Today's hearing, followed by an immediate markup, is the first step in this expedited process.

Under section 5 of the FTC Act, banks are exempted from the Commission's broad enforcement authority to prevent unfair methods of competition and deceptive financial practices, and under section 18 of the Act it is the Federal Reserve that has the sole authority to write consumer protection bills affecting depository institutions.

Unfortunately, the Fed has been, quite frankly, asleep at the switch and negligent in its duties. Despite a joint letter from Chairman Dingell and Chairman Frank on May 11th, complaining about the lack of consumer protection rules, Federal regulators continue to lack even a strategy for better Federal protection of financial consumers. In response, H.R. 3526 will allow both the Comptroller of the Currency and the FDIC to write consumer protection rules governing depository institutions in addition to the Federal Reserve's existing authority.

The Financial Services Committee already held 2 days of hearings in July on consumer protection in the financial services industry, and it is my intent to hold further hearings on this matter next year in addition to the hearings we are conducting today.

I fully support Chairman Frank's bill, but as I have said, the lack of consumer protection at depository and other financial institutions is a problem, and I hope to effect closer scrutiny by Congress and this committee during the next session.

Lastly, I want to thank our witness today, Ms. Lydia Parnes, Director of the FTC's Bureau of Consumer Protection, who is no stranger to this subcommittee, appearing before us today, and I look forward to hearing her opinions and insights on these three consumer protection bills.

With that, I yield back the balance of my time, and I recognize the ranking member, Mr. Stearns of Florida.

OPENING STATEMENT OF HON. CLIFF STEARNS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. STEARNS. Good morning and thank you, Mr. Chairman.

I also want to thank Ms. Parnes for being here this morning.

These three bills, my colleagues, fall under our jurisdiction. The Federal Trade Commission is under our jurisdiction as well as the Consumer Protection Agency.

Now, the first bill reauthorizes, as the chairman mentioned, one of the most popular bills that we have ever enacted, the Do-Not-Call Act. I would stipulate that, if we could pass one of these bills every other month, the approval of Congress, Mr. Chairman, would rise significantly. So that is how popular this bill has been.

It has been clear that since the last inception that many Americans like having a means to make their home phone numbers free from telemarketing phone calls. The legislation I introduced with yourself, Chairman Dingell and Ranking Member Barton reauthorizes the Do-Not-Call Act. I have an amendment, Mr. Chairman, that I plan to offer, and will provide more detail on it when we go to markup.

The Do-Not-Call Registry implemented a list maintained by the FTC containing home phone numbers of consumers voluntarily placed on the list. Telemarketers then paid to access the list to know which numbers they cannot call under the Do-Not-Call Act. This is a straightforward program, and has benefited both the consumers and the telemarketers. The telemarketers, in this case, do not waste time calling households that are not interested in receiving unsolicited business offers over the phone, and consumers have a means to stop calls they do not want. I have heard some arguments for improvement to the list to make it more effective and to keep it current. I welcome our Director of the Bureau of Consumer Affairs at the FTC, and look forward to discussing the suggestions that we have with her.

My colleagues and Mr. Chairman, the other two pieces of legislation that we will discuss today are H.R. 3461, the SAFER Net bill, sponsored by our colleague from the Financial Services Committee, Ms. Bean, and H.R. 3526, sponsored by another of our Financial Services' colleagues, in fact, the chairman of the Financial Services, Mr. Frank, from Massachusetts, which addresses consumer protection regulation for financial institutions.

The first one, H.R. 3461, I support the intent of creating a well-informed consumer-base by raising awareness of the problems and dangers that await uninformed users on the Internet. A global communication network that permits anonymity, fake identities and criminal enterprises to exist and to gain access to anyone at any time is obviously a threat to everyone and anyone who interacts on the Internet. We should take this very seriously. We have seen

through our work on spyware by Mrs. Bono and Mr. Towns, that many criminals have Web sites disguised to hide their intent so they can take over a user's computer or can load malicious software on it to steal their identities.

Of course, the dangers that are inherent on the Internet do not stop with dangers to consumers' identities. The Internet is a serious danger for our young people if precautions are not taken. We learned through this consumer investigation and through this committee's investigation into online child pornography that the safety of one's home can be invaded through the Internet by predators using the tools to access our kids even when we think they are safe under the roofs of our very own homes. Because of this danger, parental supervision is necessary, and parents must be vigilant in educating and in communicating with their children about maintaining their guard. We do not require a license to surf the Internet nor should we. Whether a parent permits their child to access the Internet is their choice, but parents should be aware of the dangers of the Internet to their children and the tools that are available to combat these threats.

I look forward to hearing more from the FTC about their efforts to help educate the consumers on this front.

Finally, we are here to discuss H.R. 3526, a bill to include the Federal financial regulators within the authority of the FTC. While banks and most financial institutions are not within this committee's jurisdiction, direct jurisdiction, consumer protection is. I agree with the premise that banks and other financial institutions should be penalized for violating consumer trust if they engage in unfair, deceptive acts. We are watching the housing boom quickly deflate for many reasons, and there is much blame, obviously, to go around.

Among the stories coming out of the subsequent spike in foreclosures are examples of people trying unsuccessfully to speculate on homes in the hopes of a quick profit as well as many who bought homes they just could not afford. Well, I believe everyone has to take responsibility for their personal finances. I welcome the opportunity to discuss what regulations currently exist to protect these consumers at the Federal level and what regulations exist at the State level where many of the nondepository mortgage brokers are regulated outside the reach of the Federal banking regulators.

Just on a closing note, Mr. Chairman, and perhaps as a note of caution, we are moving on these last two bills very quickly, perhaps in a couple of days to the full committee, and it appears to me it might be a forced march to some people who want to have amendments. We have not had a chance to discuss them. I would suggest that we tell Mr. Dingell that perhaps we might need a little more time between a markup and going to full committee if there are others who want to contribute.

With that caution of mine, I am very pleased that we are having this hearing, and I thank you for the time.

Mr. RUSH. The Chair thanks the gentleman from Florida and now recognizes the gentlelady from Illinois, Ms. Schakowsky, for 5 minutes of opening statements.

OPENING STATEMENT OF HON. JAN SCHAKOWSKY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Ms. SCHAKOWSKY. Thank you, Chairman Rush and Ranking Member Stearns.

It would be hard to overstate just how important today's hearing is given that the issues that we are looking at today affect the lives of millions of Americans across the country. Politicians sometimes talk about kitchen table politics, and we should all remember that the National Do-Not-Call Registry has 145 million telephone numbers representing millions of Americans who do not want to be disturbed by telemarketers when they are at their kitchen tables, eating dinner.

Likewise, we have all heard the disturbing stories of predators using the Internet to lure children away from their homes, and as a grandmother of four, I am proud to be a cosponsor of H.R. 3461, the Safeguarding America's Families by Enhancing and Reorganizing New and Efficient Technologies Act of 2007, and the clever acronym, the SAFER Net Act. This legislation will, among other things, promote safe online activity among children, something that is so crucial as more and more of our children at earlier and earlier ages go online.

Finally, we are all distressed by the prevalent stories about predatory lending, subprime mortgages, hidden outlandish fees, and other deceptive and unfair practices that financial institutions can use to take advantage of consumers, especially with low and marginal incomes, who simply do not have access to the information they need to make informed decisions. The negative consequences to our entire economy are growing more obvious, and I am, therefore, glad that the subcommittee is acting today on Chairman Frank's legislation to include banking agencies under the Federal Trade Commission Act to ensure that depository institutions are regulated to prevent these unfair and deceptive financial practices from continuing.

I would like to welcome and look forward to hearing from our witness today, Lydia Parnes, the Director of the Bureau of Consumer Protection at the Federal Trade Commission.

I would like to underscore that I stand ready to work with my colleagues and with the Commission to ensure that you have the resources to fulfill your mission. I was particularly pleased to read in your testimony that the FTC has committed itself not to purge any telephone numbers from the Do-Not-Call Registry, pending any Congressional action, and I look forward to working with my colleagues, especially Representative Doyle, to ensure that, once someone registers his phone number with the registry, it stays on that list.

I thank you, Mr. Chairman, and I yield back my time.

Mr. RUSH. The Chair thanks the gentlelady.

The Chair now recognizes the ranking member of the full committee, the gentleman from Texas, Mr. Barton, for 5 minutes of opening statements.

OPENING STATEMENT OF HON. JOE BARTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. BARTON. Thank you, Mr. Chairman.

I am glad we are having a legislative hearing on these three bills. They all seem to be bills that address a need. It is a little unusual to do three at one time, but I guess people in Chicago are just more efficient, so I look forward to hearing from the witnesses and in working together on follow-up in terms of moving the legislation.

Mr. RUSH. The Chair thanks the ranking member.

The Chair now recognizes the gentleman from Georgia, Mr. Barrow, for 5 minutes.

OPENING STATEMENT OF HON. JOHN BARROW, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA

Mr. BARROW. Thank you, Mr. Chairman. I want to thank you and the ranking member for your expeditious action on these three bills, and I have a special word on the subject of H.R. 3526, the financial services consumer protection legislation, the spectacle of a Federal regulator that has the monopoly on regulatory authority basically objecting to the States as they move into the void created by the Feds doing nothing. Basically, you cannot regulate in this area. Only we can regulate in this area, and then not regulate in that area or protecting anybody brings to mind Aesop's fable of the dog in the manger. You know, he is the fellow who made his bed in the straw, and in the manger. He would snap and snarl at the animals that could eat the hay, but he could not eat it himself. But he was going to make sure nobody else could enjoy it though.

Coming right from where I come from down in bird hunting country, it brings to mind a more homely metaphor. It is, you know, working with a Federal agency that does not know its authority, does not care about its authority, is not going to exercise its authority. It is a little bit like going bird hunting and having to tote the dog.

Well, the object of this legislation about a couple of other Federal regulators with current responsibility to move, to get into the act and to see what they can do, I think, is a message to the Federal Reserve. The message is very simple: Lead, follow or get out of the way. We need some protection in this area, and if you are going to stop those who are trying to do the right thing by the consumers, we are going to try and open up the playing field to some folks who will.

With that, I yield back the balance of my time, but I thank you for allowing us to move quickly on this legislation. I yield back.

Mr. RUSH. The Chair thanks the gentleman.

The Chair now recognizes the gentleman from Pennsylvania, Mr. Pitts, for 5 minutes.

Mr. PITTS. Thank you, Mr. Chairman.

I would just like to say thank you for holding this hearing on this important legislation to discuss these important issues.

As a cosponsor of H.R. 2601, I strongly believe we must protect the privacy of our constituents, and I appreciate your urgency in addressing these issues.

I yield back.

Mr. RUSH. The Chair thanks the gentleman.

Now the Chair recognizes the gentlelady from Oregon, Ms. Hooley, for 5 minutes.

OPENING STATEMENT OF HON. DARLENE HOOLEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON

Ms. HOOLEY. Thank you, Mr. Chairman, for holding this important hearing, and thank you, Ms. Parnes, for being here today and for providing your testimony.

The Do-Not-Call program, Internet safety and giving select financial regulatory agencies rulemaking authority are three timely and important issues that I am glad we are taking up today.

The National Do-Not-Call Registry has been very successful. The registry now includes over 145 million telephone numbers and has prevented unwanted telemarketing calls to the grateful millions who have signed up for it. Reauthorizing the Do-Not-Call Implementation Act is the right thing to do and will ensure that millions of consumers who have signed up for the registry will remain protected from unwanted calls.

Directing and funding the FTC to implement a national education campaign on Internet safety is also important. H.R. 3461 will expand the scope in educating computer users of basic but important computer security. The FTC is currently working to educate consumers with their OnGuardOnline program, and this bill will help immensely in those efforts by giving them the additional funds they need.

Lastly, expanding the number of bank regulatory agencies that may issue rules will strengthen Federal level consumer protections and enforcement. The two primary changes proposed in H.R. 3526 will strengthen Federal level consumer protections by allowing agencies to work together in developing meaningful strategies to improve consumer protections.

I support these three bipartisan bills and look forward to their passage on the House floor.

Thank you, Mr. Chairman.

Mr. RUSH. The Chair thanks the gentlelady.

The Chair now recognizes the gentleman from Nebraska, Mr. Terry, for 5 minutes for an opening statement.

OPENING STATEMENT OF HON. LEE TERRY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEBRASKA

Mr. TERRY. Thank you, Mr. Chairman.

I think this could, actually, be a more interesting discussion than some anticipate, especially on 3461 and 3526.

In regard to the Do-Not-Call list, let me admit that I am one of the Do-Not-Call eight—those are the eight people who voted against this program in the first place—and I did so on philosophical grounds of creating a new Federal program where the market, through devices, was already blocking phone calls or, through caller ID, you have an option of not answering when it comes up "out of area" or "private." I have an unlisted number, and I just dial star 82 before I call several of my friends so it will be unblocked and so they will know who is calling them. I still feel that way, but as my colleagues have all professed, rightfully so, it is now ingrained into the consumer's mind, and so the issue then is whether there are ways to improve the efficiencies of this program, and those are some of the issues I have dealt with, which is in the timing of the information and the costs of having to implement that.

In Omaha, we are the telemarketing capital of the world. The shift has already occurred. The small mom and pop organizations just could not keep up, so the Wests, the Cytels, the biggies, that can keep up with the monthly requirements now have whatever outbound telemarketing is left, of which there is very little.

So, in H.R. 3526, let me just say before I yield back that I respect and appreciate the arguments by my friends in criticizing the Feds for not implementing some consumer protections. Let me just say that, as I understand the Fed, the philosophy of the Fed under both Greenspan and Bernanke has been to not regulate financial institutions. They have had a hands-off philosophy, so there is a difference of opinion on the impact of regulations as opposed to just being remiss. Please keep in mind that the focus of the Fed is monetary policy, so maybe there should be a discussion of whether or not they should have the consumer protection rights. So I will stand up or at least defend those who I do not even know, but I do appreciate their less regulation stance in the past.

With that, I yield back.

Mr. RUSH. The Chair thanks the gentleman.

The Chair now recognizes the gentleman from Texas, Mr. Burgess, for 5 minutes of opening statements.

OPENING STATEMENT OF HON. MICHAEL C. BURGESS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. BURGESS. Thank you, Mr. Chairman. I appreciate the consideration, and I want to thank you for bringing these bills to us today.

We are here to discuss three important pieces of legislation that concern the Federal Trade Commission. I must admit that is not my favorite Federal agency, but I am glad to be here doing this today.

Along with Chairman Dingell and Chairman Rush and Ranking Member Barton, I am an original cosponsor of the bill originally introduced by Ranking Member Stearns, H.R. 2601. This bill will extend the Federal Trade Commission's authority to collect fees and to administer and to enforce the Do-Not-Call Registry. While I firmly believe in a free market society and that businesses should be able to formulate their own business practices and plans, I also firmly believe that Americans have a right to privacy.

As Director Lydia Parnes so eloquently stated in her written testimony, the Do-Not-Call Registry helps to restore the sanctity of the American dinner hour. People should be able to have the option of whether or not they want to receive phone calls from telemarketers in the privacy of their own homes. I should know, parenthetically, that politicians are excluded, and thanks to the Do-Not-Call Registry, consumers can sign up and are afforded that decision. In fact, since the creation of the registry, 146 million telephone numbers have been registered. However, the authority for the Do-Not-Call Registry was only authorized for 5 years time; therefore, it is imperative that we act swiftly to pass this important legislation and to further extend the protection and privacy for Americans.

Two other bills are before us today, H.R. 3526, a bill to include all banking agencies within the existing regulatory authority under

the Federal Trade Commission Act with respect to depository institutions. In a time of widespread allegation regarding unfair and deceptive financial practices in the field of mortgage lending, I agree with some of my colleagues that banking agencies should have this authority, and I must admit that I was a little surprised to learn that they did not have this authority. I, actually, look forward to discussing that with Director Parnes today.

While I do realize that the House Financial Services Committee has held hearings on this issue, I do support Chairman Rush's intent of holding a more extensive hearing on this matter in the near future.

Finally, today we will be discussing H.R. 3461, the SAFER Net Act. Last year, on our Oversight Investigations Subcommittee. We had extensive investigation into one of the most disturbing topics, I think, I have ever encountered in my life—child exploitation over the Internet—and I will never forget the story of Masha Allen, who sat right here at our witness table. She was a brave, little girl who told about the evils and the exploitations encountered at both the hands of here adoptive father and the Internet. Her story was heartbreaking, and we must never let another child go through the same type of horror. It is crucial for the safety of our children for all of us to know about these evils so we can help end this abuse of a dangerous practice. Pedophiles are our enemy—they are our biggest enemy—but so also is lack of information, and I support the intent of this legislation.

Mr. Chairman, I want to thank you for holding this hearing and for responding in such a bipartisan manner. This committee does do its best work when we function in a bipartisan manner. Last week and, really, in the last 2 weeks, we have seen Congress at its worst, and unfortunately, because of the political impasse we have been unable to pass sensible reauthorization of the State Children's Health Insurance Program.

Mr. Chairman, this committee has some of the greatest intellectual firepower of any committee in the free world, and when we do not respect the committee process, when we take a bill through like we took the SCHIP bill through, that violates the whole sanctity of this committee. Mr. Chairman, I hope you will speak with your leadership and will let us get back to the table to renegotiate on the area of children's health insurance because it is too important a program to be left only to the political consideration.

With that, Mr. Chairman, I will yield back the balance of my time.

Mr. RUSH. The Chair thanks the gentleman for his remarks.

Now the Chair recognizes the gentlelady from Tennessee, Mrs. Blackburn, for 5 minutes of opening statements.

OPENING STATEMENT OF HON. MARSHA BLACKBURN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TENNESSEE

Mrs. BLACKBURN. Thank you, Mr. Chairman.

I want to thank you for holding the hearing today and want to thank you for the bipartisan work that we have had on these bills.

Ms. Parnes, I want to welcome you. I want to thank you for your very well-done and very well-presented testimony. We are looking

forward to hearing from you after we return from votes, so we do welcome you.

I am pleased that we are taking up the bills. I am particularly interested, Mr. Chairman, in the SAFER Act. I find this to be imperative, and for the sake of brevity, I am going to submit my full statement for the record. I do want to make a couple of comments primarily about the SAFER Act.

We all know that there is a plethora of new technologies and new platforms that are available for our constituents and for their families, and we are familiar that many individuals who do not seek to do good are availing themselves of these platforms, and that is of concern to us for the sake of our children and for our families, and we have all seen the work on the fake check scam that is out there and the Web site that is now attached to that. We have heard about it.

Mr. Chairman, I think I would like to submit this article for the record if I may. It is in today's Washington Post. It is about some of the Internet security ads that are being run.

Ms. Parnes, I will talk with you as we get into Q&A about that.

It is about some of the work that is there to help protect our families and our children, and I was particularly touched, and I think this is something that we have to pay very close attention to. People are very concerned about how to get this out of their homes and how to keep it from inside the four walls of their homes. Mr. Chairman, I do thank you for the work on this bill that will help address that. Ms. Parnes, I am looking forward to working with you more about that.

I yield back the balance of my time.

Mr. RUSH. Does the gentlelady seek unanimous consent to enter her documents into the record?

Mrs. BLACKBURN. Mr. Chairman, I do. I ask unanimous consent to enter into the record the Washington Post article today.

Mr. RUSH. Without objection, so ordered.

Mr. DOYLE. Mr. Chairman.

Mr. RUSH. The Chair understands that there is a vote going on on the floor. We have got 4 minutes before the vote is concluded. The Chair will recess the subcommittee, and we will return for the participation of Mr. Doyle, the full participation of Mr. Doyle, in these hearings.

[Recess.]

Mr. RUSH. The hearing will come to order again. The Chair seeks unanimous consent at this moment to allow the gentleman from Pennsylvania, Mr. Doyle, to participate fully in this subcommittee's hearing.

Without objection, the Chair now recognizes Mr. Doyle for 5 minutes of opening statements.

OPENING STATEMENT OF HON. MIKE DOYLE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. DOYLE. Yes. Mr. Chairman, thank you very much and thank you to Ranking Member Stearns for your unanimous consent. I really appreciate your letting me speak today. My friend and colleague, Mr. Chip Pickering, with whom I have introduced H.R. 3541, I thought initially would be unable to join us. He is a mem-

ber of the committee, and I do understand that he is finally on the ground and making his way over here. And hopefully he will be here in time to participate in the hearing and markup. But I appreciate your allowing me to ask a few questions and make a brief opening unanimous consent.

Mr. Chairman, as you have said, the Do-Not-Call list is one of the most popular consumer protections ever created. It is so popular frankly because it works. It is easy to sign up your number and stop telemarketers from calling your home day and night. That is why after all the success of the program many of us in Congress were surprised to learn that the 132 million numbers on the list expire after 5 years and that the first 52 million numbers will expire before September 30, 2008.

Now, the people who own those numbers, Mr. Chairman, will first need to be aware that their numbers expire, and that is no easy task to notify these 52 million people, and then they have to resubmit their numbers.

So picture millions of numbers expiring right around Labor Day next year, and that is not only the time the 2008 election will heat up, but it is also in the middle of the digital television transition. That will minimize the television time available to broadcast the message that consumers need to sign up again.

Mr. Chairman, no matter how many articles are written and stories broadcast, I suspect that millions won't know that they need to act to stay on the Do-Not-Call list. That is why I am glad to be joined by my friend and colleague, Chip Pickering, and dozens of cosponsors on H.R. 3541, which will make the numbers on the Do-Not-Call list permanent.

I have been working closely with committee staff on both sides of the aisle, as well as the FTC, and I am grateful for their hard work on seeing that this language is enacted at the end of the day.

I am also proud to tell you that the bill has the complete support of the AARP, Consumers Union and Consumers Federation of America. I am hopeful that negotiations with other interested parties prove fruitful and the bill will move quickly.

Mr. Chairman, once you go through that process of calling up or going on-line and putting your number on the Do-Not-Call list, saying I do not wish to hear from telemarketers, you shouldn't have to re-up every 5 years. I think once is plenty.

I think this is a good improvement to the law. I thank you for letting me participate in this hearing and I yield back my time.

Mr. RUSH. The Chair thanks the gentleman from Pennsylvania.

Other statements for the record will be accepted at this time.

[The prepared statement of Mr. Butterfield follows:]

PREPARED STATEMENT OF HON. G.K. BUTTERFIELD, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA

Thank you Chairman Rush and Ranking Member Stearns for holding this important hearing on "Enhancing FTC Consumer Protection in Financial Dealings with Telemarketers, and on the Internet." I commend this committee's leadership in assembling this timely hearing.

I would like to welcome Lydia Parnes who serves as Director of the Bureau of Consumer Protection at the Federal Trade Commission. I look forward to her testimony and appreciate the work she and the Commission are doing in order to safeguard Americans from predatory consumer practices.

The National Do Not Call registry has been widely successful and I was encouraged to learn that over 90 percent of American adults had heard of the registry and that over 75 percent had signed up for the free service. I am also pleased to learn that the enforcement mechanism has not gone overlooked. I commend the Commission in initiating nearly 30 cases where there have been near $9 million in damages awarded.

The FTC has also stepped up efforts to educate Americans about online computer safety. They have established a Web site called *onguardonline.gov* which includes tips, articles, quizzes, and videos which aim to educate consumers about spam and scam practices. Over 4 million people have visited the Web site in the past 2 years. I thank Ms. Parnes and her staff as well as the FTC as a whole for the work they do for the betterment of all Americans.

We will also have the opportunity to mark up three important legislative items which will expand the authority of the Federal Trade Commission. They seek to (1) protect consumers against unfair and deceptive financial practices, (2) continue to implement the National Do Not Call Registry, and (3) continue to educate Americans about the potential dangers online. I support the three bills we are considering today and look forward to this subcommittee discharging them favorably.

Chairman Rush, I thank you for your work on this issue and look forward to working with you and the other members of the committee as these issues progress. I yield back the balance of my time.

Mr. RUSH. And now the Chair welcomes the witness for this hearing, Ms. Lydia Parnes, who is the Director of the Bureau of Consumer Protection for the U.S. Federal Trade Commission. Ms. Parnes will discuss ongoing efforts by the Federal Trade Commission under section 5 of the Federal Trade Commission Act and other applicable laws to protect consumers with reference to the three bills that we will consider today.

Again, Ms. Parnes, we welcome you to this committee hearing and we recognize you now for 5 minutes of opening statements.

STATEMENT OF LYDIA B. PARNES, DIRECTOR, BUREAU OF CONSUMER PROTECTION, FEDERAL TRADE COMMISSION

Ms. PARNES. Thank you, Chairman Rush and Ranking Member Stearns. I appreciate the opportunity to appear before you today to present the Commission's view on these three bills.

As Congress considers legislation to reauthorize the Do-Not-Call Registry and also to make consumers' Do-Not-Call registrations permanent, let me assure the subcommittee that the Commission's support for Do-Not-Call has not wavered one bit since 2002, when the Do-Not-Call list was first proposed. We will implement any legislative measures to strengthen consumers' Do-Not-Call rights with the same skill and dedication that have made Do-Not-Call such an unqualified success for the American public.

The first bill I understand you are considering on the issue is H.R. 2601, which would reauthorize the Do-Not-Call Implementation Act of 2003. The FTC appreciates Ranking Member Stearns' and Chairman Rush's introduction of this bill. Reauthorizing the DNCIA demonstrates Congress' continued commitment to protecting consumers from unwanted intrusions into their homes.

The Commissions does believe that the bill can be strengthened by statutorily setting the fees charged to telemarketers accessing the registry at an amount sufficient to enable the Commission to maintain the registry and enforce the telemarketing sales rules. A congressional amendment setting the fee would provide the Commission with a stable funding source for its telemarketing rule en-

forcement activities. A stable fee structure also would benefit telemarketers, sellers and service providers who access the registry.

Congress also is considering H.R. 3541, which would make Do-Not-Call registration permanent. In the 2003 rulemaking that establishes the registry, the Commission believed that a 5-year reregistration mechanism, coupled with periodic purging was necessary to maintain the accuracy of the list. Since 2003, several changes have taken place, including the increased popularity of telephone number portability, more clarity in the legal landscape and an explosion of public support for the registry.

As a result of these changes, the Commission now commits that it will not drop any telephone numbers from the registry based on the 5-year expiration period, pending final congressional or agency action on whether to make registration permanent. In any event, the Commission will continue its robust efforts to maintain the registry's accuracy and ensure the continued success of the Do-Not-Call program.

The second bill on which the Commission is submitting its views is H.R. 3461, which would direct the Commission to implement a new national education campaign on Internet safety. As you know, the Commission has extensive expertise in educating consumers and businesses on a variety of issues, including Internet safety. We appreciate the sponsors of H.R. 3461 who have the confidence in the FTC to entrust it with launching a new educational campaign and we support the legislation.

Finally, H.R. 3526 would allow two additional banking agencies, the FDIC and the OCC, the power to issue rules under section 18 of the Federal Trade Commission Act with respect to the depository institutions they regulate. They would have this authority along with the existing authority that the Federal Reserve Board, the Office of Thrift Supervision, and the National Credit Union Administration have under section 18.

The FTC supports amending section 18 in this manner, but recommends two modifications. First, these agencies should be required to consult with the Commission in any rulemaking they undertake under section 18 of the FTC Act, as the FTC is the expert agency responsible for ensuring appropriate and consistent interpretation of the Federal Trade Commission Act.

Second, the FTC suggests that the bill be modified so that whenever the Federal banking agencies and the NCUA commence rulemaking under the FTC Act for the entities they regulate the Commission has the option to promulgate consistent and comparable rules for the entities it regulates.

The bill also should state that in such rulemaking the FTC should be able to use the relatively streamlined and expedited notice and comment procedures of the APA that are used by the other agencies, rather than the more lengthy rulemaking procedures set forth in section 18 of the FTC Act.

The Commission has proposed language that I have with me here that would make these changes, and we look forward to working with the subcommittee on this issue, as well as the other legislative initiatives being considered at this hearing.

Thank you very much, and I would be pleased to answer any questions that you have.

[The prepared statement of Ms. Parnes follows:]

Prepared Statement of

The Federal Trade Commission

"Enhancing FTC Consumer Protection in Financial Dealings, with Telemarketers, and on the Internet"

Before the

Committee on Energy and Commerce
Subcommittee on Commerce, Trade, and Consumer Protection
United States House of Representatives

Washington, D.C.
October 23, 2007

Chairman Rush, Ranking Member Stearns, and members of the committee, I am Lydia Parnes, 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 talk about the Commission's Do Not Call program, its activities to promote Internet safety, and its views on proposed legislation that would give certain financial regulatory agencies rulemaking authority under the FTC Act.

I. The Do Not Call Program

An important component of the FTC's program to protect consumers from telemarketing abuse is the National Do Not Call Registry, which protects the privacy of Americans who have expressed their wish not to receive telemarketing calls by entering their numbers in the Registry. Simply put, the Commission is enormously pleased with the effectiveness of the Do Not Call program and how it has helped restore the sanctity of the American dinner hour, and remains committed to strongly sanctioning those who have failed to abide by the Do Not Call rules.

In 2003, the Commission amended its Telemarketing Sales Rule ("TSR") to, among other things, establish the National Do Not Call Registry.[2] The Registry currently includes 145 million telephone numbers and has been tremendously successful in protecting consumers'

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[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.

[2] The FTC promulgated the Do Not Call provisions and other substantial amendments to the TSR under the express authority granted to the Commission by the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §§ 6101-6108. Specifically, the Telemarketing Act mandated that the rule – now known as the TSR -- include prohibitions against any pattern of unsolicited telemarketing calls "which the reasonable consumer would consider coercive or abusive of such consumer's right to privacy," as well as restrictions on the hours unsolicited telephone calls may be made to consumers.

privacy from unwanted telemarketing calls. A Harris Interactive® Survey released in January 2006 showed that 94% of American adults have heard of the Registry and 76% have signed up for it.[3] Ninety-two percent of those polled reported receiving fewer telemarketing calls.[4] Similarly, an independent survey by the Customer Care Alliance[5] demonstrates that the National Registry has been an effective means for consumers to limit unwanted telemarketing calls.[6]

This section of the testimony discusses the mechanics of operating the Do Not Call Registry. It then describes the FTC's enforcement program related to the Do Not Call Registry. Next, it discusses the fee structure for operating the Registry. Finally, it discusses the five-year re-registration requirement imposed by the Commission in 2003.

A. The Mechanics of the Registry

The National Registry is a comprehensive, automated system used by consumers, telemarketers, and law enforcement agencies. The Registry was built to accomplish four primary tasks:

(1) To allow consumers to register their preference not to receive telemarketing calls at registered telephone numbers;

(2) To allow telemarketers and sellers to access the telephone numbers included in

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[3] *See* http://www.harrisinteractive.com/harris_poll/index.asp?PID=627.

[4] *Id.* Discussing the effectiveness of Do Not Call just one year after the inception of the program, the chairman of Harris Interactive Humphrey Taylor stated, "In my experience, these results are remarkable. It is rare to find so many people benefit so quickly from a relatively inexpensive government program." http://www.ftc.gov/opa/2004/02/dncstats0204.shtm.

[5] Customer Care Alliance is a consortium of companies involved in customer service, dispute resolution, and related activities. *See* www.ccareall.org.

[6] *See National Do Not Call Study Preliminary Findings*, Customer Care Alliance, June 2004.

the National Registry in order to remove those numbers from their call lists, and to pay the applicable fees for such access;

(3) To gather consumer complaint information concerning alleged do not call violations automatically over the telephone and the Internet; and

(4) To allow FTC, state, and other law enforcement personnel access to consumer registration information, telemarketer access information, and complaint information maintained in the Registry.

Consumers can register their telephone numbers through two methods: by calling a toll-free number from the telephone number they wish to register, or over the Internet. The process is fully automated, takes only a few minutes, and requires consumers to provide minimal personally identifying information.[7]

Telemarketers and sellers can access registered telephone numbers, and pay the applicable fee for that access, if any, through an Internet website dedicated to that purpose. The only information about consumers that companies receive from the National Registry is the registered telephone number with no name attached. Those numbers are sorted and available for download by area code. Companies may also check a small number of telephone numbers at a time via interactive Internet pages.

Consumers who receive unwanted telemarketing calls can register a complaint via either a toll-free telephone number or the Internet. To conduct investigations, law enforcement officials also can access data in the National Registry, including consumer registration information, telemarketer access information, and consumer complaints. Such access is

[7] In the case of registration by telephone, the only personal information provided is the telephone number to be registered. In the case of Internet registration, a consumer must provide, in addition to the telephone number(s) to be registered, a valid e-mail address to which a confirmation e-mail message is sent. Once the confirmation is complete, however, the e-mail address is hashed and made unusable. Thus, only consumers' telephone numbers, without names or other identifying information, are maintained in the database.

provided through Consumer Sentinel, a secure Internet website maintained by the FTC, to the law enforcement community throughout the United States, Canada, and Australia.

B. Do Not Call Enforcement

While the Commission appreciates the high rate of compliance with the Do Not Call provisions of the TSR, it vigorously enforces compliance to ensure the program's ongoing effectiveness. Violating Do Not Call provisions subjects telemarketers to civil penalties of up to $11,000 per violation. The Commission has initiated 27 cases alleging Do Not Call violations, which have resulted in orders totaling $8.8 million in civil penalties and $8.6 million in redress or disgorgement.

A recent case against The Broadcast Team illustrates the enforcement of the TSR's Do Not Call provisions.[8] The case targeted a telemarketer that allegedly used "voice broadcasting" to make tens of millions of illegal automated telemarketing calls, often to numbers on the National Do Not Call Registry. The complaint alleged that The Broadcast Team used an automated phone dialing service to call and deliver pre-recorded telemarketing messages. When a live person picked up the phone, The Broadcast Team allegedly hung up immediately or, in other instances, played a recording. Either course of conduct violates the TSR's restriction on "abandoning calls" – that is, failing to connect a consumer to a live sales representative within two seconds after the consumer says "hello."[9] The Broadcast Team agreed to pay a $1 million civil penalty to settle the charges.[10]

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[8] *United States v. The Broadcast Team, Inc.*, No. 6:05-cv-01920-PCF-JGG (M.D. Fla. 2005).

[9] 16 C.F.R. § 310.4(b)(1)(iv).

[10] *See* Press Release at http://www.ftc.gov/opa/2007/02/broadcastteam.shtm.

In the largest Do Not Call case to date, the Commission challenged satellite television subscription seller DirecTV and a number of companies that telemarketed on behalf of DirecTV. DirecTV paid over $5.3 million to settle Do Not Call and call abandonment charges.[11] Through this case, the Commission obtained one of the largest civil penalties in any case enforcing a consumer protection law.

C. The Do Not Call Fee Structure

The Do Not Call Implementation Act ("DNCIA"), passed by Congress in 2003, gave the Commission the specific authority to "promulgate regulations establishing fees sufficient to implement and enforce the provisions relating to the 'Do-Not-Call' Registry of the TSR." It also provided that "[n]o amounts shall be collected as fees pursuant to this section for such fiscal years except to the extent provided in advance in appropriations Acts. Such amounts shall be available . . . to offset the costs of activities and services related to the implementation and enforcement of the [TSR], and other activities resulting from such implementation and enforcement." Pursuant to the DNCIA and the appropriations Acts, the Commission has conducted annual rulemaking proceedings to establish the appropriate level of fees to charge telemarketers for access to the Registry.

The fees collected are intended to offset costs in three areas. First, funds are required for direct operation of the Registry. As described above, the development and ongoing operation of the DNC Registry involves significant resources and effort.

Second, funds are required for law enforcement efforts, including identifying targets, coordinating domestic and international initiatives, challenging alleged violators, and engaging

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[11] *United States v. DirecTV*, Civ. No. SACV05 1211 (C.D. Cal. Dec. 12, 2005). *See also* http://www.ftc.gov/opa/2005/12/directv.shtm.

in consumer and business education efforts, which are critical to securing compliance with the TSR. The agency coordinates with its state partners and DOJ, thereby leveraging resources and maximizing the deterrent effect. Further, given the fact that various telemarketing operations are moving offshore, international coordination is especially important. These law enforcement efforts entail significant costs.

The Commission considers consumer and business education efforts to be important complements to enforcement in securing compliance with the TSR. Because the amendments to the TSR were substantial, and the National Registry was an entirely new feature, educating consumers and businesses has helped to reduce confusion, enhance consumers' privacy, and ensure the overall effectiveness of the system. Based on the Commission's experience, this substantial outreach effort has been necessary, constructive, and effective in ensuring the success of the program.

Third, funds are required to cover ongoing agency infrastructure and administration costs associated with the operation and enforcement of the Registry, including information technology structural supports and distributed mission overhead support costs for staff and non-personnel expenses such as office space, utilities, and supplies. In this regard, the FTC has made substantial investments in technology and infrastructure in response to the significantly increased capacity required by the National Registry.

Under the current fee structure, telemarketers are charged $62 per area code of data, starting with the sixth area code, up to a maximum of $17,050 for the entire Registry.[12]

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[12] The Commission set the initial fees at $25 per area code of data with a maximum annual fee of $7,375. *See* 68 Fed. Reg. 45134 (July 31, 2003). The fees have increased each year to their current level. *See* 69 Fed. Reg. 45580 (July 30, 2004); 70 Fed. Reg. 43273 (July 27, 2005); and 71 Fed. Reg. 43048 (July 31, 2006).

Telemarketers are prohibited from entering into fee-sharing arrangements, including any arrangement with any telemarketer or service provider to divide the fees amongst its various clients.

Telemarketers receive the first five area codes of data at no cost. The Commission allowed such free access in order to limit the burden placed on small businesses that only require access to a small portion of the Registry. The National Registry also allows organizations exempt from the Registry requirements to access the Registry at no cost.[13] While these entities are not required by law to access the Registry, many do so voluntarily in order to avoid calling consumers who have expressed their preference not to receive telemarketing calls. The Commission determined that such entities should not be charged access fees when they are under no legal obligation to comply with the "Do Not Call" requirements of the TSR because it may make them less likely to obtain access to the Registry, which would result in an increase in the number of unwanted, albeit legal, calls to consumers.

The Commission believes that reauthorizing the DNCIA will demonstrate Congress' continued commitment to protecting consumers from unwanted intrusions into the privacy of their homes, and appreciates Ranking Member Stearns' and Chairman Rush's proposed reauthorizing legislation. The Commission believes that the bill can be strengthened by statutorily setting the fees charged to telemarketers accessing the National Registry in an amount sufficient to enable the Commission to enforce the TSR. The Commission believes that such an

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[13] Such exempt organizations include entities that engage in outbound telephone calls to consumers to induce charitable contributions, for political fund raising, or to conduct surveys. They also include entities engaged solely in calls to persons with whom they have an established business relationship or from whom they have obtained express written agreement to call, as defined by the Rule, and who do not access the National Registry for any other purpose.

amendment to the DNCIA would ensure the continued success of the National Registry by providing the Commission with a stable funding source for its TSR enforcement activities. The Commission also believes a stable fee structure would benefit telemarketers, sellers, and service providers who access the Registry. The Commission looks forward to working with you on this matter.

D. The Re-Registration Requirement

As this testimony highlights, the Commission has a strong record on Do Not Call implementation, management, and enforcement. It has implemented a process for registration that is simple, quick, and effective for consumers. The Commission wants to continue to make it as easy as possible for consumers to enjoy the benefits of the Registry.

In connection with the Commission's 2003 rulemaking proceeding that established the Do Not Call Registry, the Commission adopted a five-year re-registration mechanism and stated that the Registry would be periodically purged of numbers that have been disconnected or reassigned. At that time, a number of public commenters in the rulemaking proceeding informed the Commission that 16 percent of all telephone numbers change each year and that 20 percent of all Americans move each year.[14] The Commission determined that, unless the Registry

[14] 68 Fed. Reg. 4580, 4640 (Jan. 29, 2003). Four commenters cited these figures. Both the Direct Marketing Association and Nextel Communications, Inc. stated that 16 percent of all telephone numbers change each year. SBC Communications, Inc. cited the Federal Communication Commission's ("FCC") 1992 rulemaking record to implement the Telephone Consumer Protection Act, in which the FCC stated that approximately 20 percent of all telephone numbers change hands each year. Finally, Household Finance Corporation cited figures from the U.S. Census Bureau and the U.S. Postal Service that 15 to 20 percent of all consumers move each year. Note, however, that according to a March 2000 report of the Census Bureau, 56.2% of people who had moved in the previous year moved within the same county and another 19.4% moved within the same state – some likely within the same area code. Population Profile of the United States: 2000 (Internet Release), at 3-1 (Figure 3-1). As a result of the Telecommunications Act of 1996 and the implementing regulations issued by the FCC, telephone numbers are now portable, so these consumers should have had the option to keep

included a process to counteract this effect, over a period of time, the Registry would include more and more numbers that had been disconnected and then reassigned to other line subscribers even though those new line subscribers might not object to receiving telemarketing calls.[15] In light of the general constitutional directive to limit restrictions on speech to the extent practicable consistent with the underlying privacy goals, the Commission concluded that a combination of automatic scrubbing and re-registration every five years would adequately balance the privacy and commercial speech interests. The Commission also noted that 13 state registries had re-registration requirements ranging from one to five years, while 14 states had no re-registration requirement.[16]

Based on this record, the Commission concluded that a five-year registration period, coupled with the periodic purging of disconnected telephone numbers from the Registry adequately balanced the need to maintain a high level of accuracy in the Registry with the imposition on consumers to periodically re-register their telephone numbers.[17]

The Commission adopted the five-year re-registration requirement based on the information it had in 2003. Since then, several changes have taken place. First, changes in the marketplace, including increased usage of cell phones and increased popularity of telephone number portability, may have had an impact on data underlying the 2003 rulemaking proceeding. Second, the legal landscape has become clearer because we have more information about how

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their telephone numbers after they moved.

[15] *Id.*

[16] 68 Fed. Reg. at 4640 nn.711, 712.

[17] *Id.* at 4640.

courts view consumers' privacy in this context.[18] Third, the Registry has been implemented successfully for nearly 5 years, and has included a scrubbing program through which telephone numbers that have been disconnected and reassigned are purged from the Registry on a monthly basis.[19] Fourth, the Registry has enjoyed unprecedented popularity and helped enhance the privacy of the American public in a tangible way.

As a result of these changes, the Commission now commits that it will not drop any telephone numbers from the Registry based on the five-year expiration period pending final Congressional or agency action on whether to make registration permanent. The Commission will continue its robust efforts to maintain the Registry's accuracy and ensuring the continued success of the Do Not Call program.

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[18] The Commission prevailed in two constitutional challenges to the National Registry. *See Nat'l Fed'n of the Blind v. FTC,* 420 F.3d 331 (3rd Cir. 2005); *Mainstream Mktg. Services v. FTC*, 358 F.3d 1228 (10th Cir. 2004). One overarching theme of the Commission's argument in response to those challenges involved the care the Commission put forth in ensuring that the Registry included only the telephone numbers of consumers who had indicated a preference not to receive telemarketing calls. However, the Commission did not directly present, nor did the courts address, the issue of the five-year re-registration requirement in those cases.

[19] The Registry contractor subcontracts the process of purging obsolete numbers from the Registry to a list broker that provides consumer information to a host of large clients. The list broker states that it obtains information on every number in the North American Dialing Plan that is updated ten times per day. It acquires from Local Exchange Carriers ("LECs") daily updates of subscriber data, including disconnect and reconnect data and the dates these events occurred. To the best of the list broker's knowledge, it receives data from every LEC and the accuracy of the data it receives is consistent with the accuracy of the LEC's billing records. Once a month, the Registry contractor compares the Registry against the database maintained by the list broker to remove those telephone numbers that have been coded as disconnected and subsequently reassigned. At our request, the contractor takes a conservative approach in purging numbers from the Registry. Rather than purging a number from the Registry because it has been disconnected, the contractor purges a number only after it has been disconnected and reassigned. Removing telephone numbers based on the LEC's disconnect code alone would result in a significant number of consumers being removed from the Registry mistakenly. For example, a temporary disruption in service for vacation or failure to pay for services may be coded as a disconnect.

II. Internet Safety

The FTC has also been very active in educating consumers about Internet safety. The FTC's current computer security education campaign is built around an innovative multimedia website, OnGuardOnline.gov. The FTC teamed with other federal agencies, consumer advocates, and the technology industry to create OnGuardOnline.gov in September 2005 to help computer users guard against Internet fraud, secure their computers, and protect their personal information.

The content at OnGuardOnline.gov includes tips, articles, quizzes, and videos. It tells consumers where to report spam or a scam, and how to sign up for periodic computer security alerts. OnGuard Online's interactive quizzes help users figure out how savvy they are about computer safety. OnGuard Online has information on various technologies; it also emphasizes behavioral changes that computer users can make to stay safe online – for example "protect your personal information," and "know who you're dealing with." These tips remain relevant even as technology evolves. Since the Commission unveiled the site, it has added content on additional computer security topics, including tips on using social networking safely, investing online, protecting home wireless networks, and keeping laptops from being stolen.

OnGuardOnline.gov is popular; it has logged more than 4 million unique visitors in its first two years. It currently attracts 200,000-300,000 unique visits each month. More than 700,000 OnGuard Online paper bookmarks also have been distributed.

OnGuard Online is branded independently of the FTC, so other organizations can make the site and the information their own. The FTC encourages companies and other organizations to help fight Internet fraud, scams, and identity theft by sharing the tips at OnGuardOnline.gov with their employees, customers, members and constituents. OnGuard Online materials also are

available in Spanish, at AlertaenLinea.gov.

The FTC maintains OnGuardOnline.gov with significant content and marketing assistance from partners including: the U.S. Department of Justice, Office of Justice Programs, the Department of Homeland Security, the United States Postal Inspection Service, the Department of Commerce, Technology Administration, the Securities and Exchange Commission, the Internet Education Foundation, the National Cyber Security Alliance, the Anti-Phishing Working Group, TRUSTe, i-SAFE, AARP, the Direct Marketing Association, WiredSafety.org, the SANS Institute, the National Consumers League, the Better Business Bureaus, and others.

H.R. 3461 would direct the Commission to implement a national education campaign on Internet safety, and authorize funding for such a campaign. If H.R. 3461 were passed, the FTC would expand efforts it already has underway to educate novice and intermediate home computer users about basic computer security. In addition, the FTC would expand the scope of topics beyond those covered by OnGuard Online. The bill defines Internet safety to include "threats to juveniles, including cyber-predators and material that is inappropriate for minors." Such threats to children constitute criminal activity beyond the FTC's authority. However, the Commission recognizes the value in having all of the federal government's Internet safety information under one umbrella. To fulfill this directive, the FTC would partner with government agencies active in protecting children from cyber-crime, such as the Federal Bureau of Investigation and the U.S. Postal Inspection Service, and with prominent non-governmental organizations, such as the National Center for Missing and Exploited Children.

III. Proposed Amendment to the FTC Act

Chairman Frank of the House Financial Services Committee has proposed legislation that

would expand the number of bank regulatory agencies that could issue rules under the FTC Act. The FTC has a particular interest in this area, both because of its expertise on interpretation of the FTC Act, and because of its broad interest in consumer protection in the financial services area. Financial issues affect all consumers – whether they are purchasing homes, trying to establish credit and improve their credit ratings, or managing rising debt. The FTC has been very active in protecting consumers in the financial services marketplace. For example, the FTC has targeted deceptive or unfair practices in mortgage lending – from advertising and marketing through loan servicing. In the past decade, the Commission has brought 21 such actions, focusing in particular on the subprime market.[20] As a result of these actions, courts collectively have ordered more than $320 million to be returned to consumers. Currently, the Commission is engaged in several ongoing non-public investigations involving mortgage lending practices.

Pursuant to Section 18(a)(1)(B) of the FTC Act, the Commission also has the authority to issue rules prohibiting unfair or deceptive acts or practices by financial services providers,

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[20] *FTC v. Mortgages Para Hispanos.Com Corp.*, No. 06-00019 (E.D. Tex. 2006); *FTC v. Ranney*, No. 04-1065 (D. Colo. 2004); *FTC v. Chase Fin. Funding*, No. 04-549 (C.D. Cal. 2004); *United States v. Fairbanks Capital Corp.*, No. 03-12219 (D. Mass. 2003); *FTC v. Diamond*, No. 02-5078 (N.D. Ill. 2002); *United States v. Mercantile Mortgage Co.*, No. 02-5079 (N.D. Ill. 2002); *FTC v. Associates First Capital Corp.*, No. 01-00606 (N.D. Ga. 2001); *FTC v. First Alliance Mortgage Co.*, No. 00-964 (C.D. Cal. 2000); *United States v. Action Loan Co.*, No. 00-511 (W.D. Ky. 2000); *FTC v. NuWest, Inc.*, No. 00-1197 (W.D. Wash. 2000); *United States v. Delta Funding Corp.*, No. 00-1872 (E.D.N.Y. 2000); *FTC v. Barry Cooper Prop.*, No. 99-07782 (C.D. Cal. 1999); *FTC v. Capitol Mortgage Corp.*, No. 99-580 (D. Utah 1999); *FTC v. CLS Fin. Serv., Inc.*, No. 99-1215 (W.D. Wash. 1999); *FTC v. Granite Mortgage, LLC*, No. 99-289 (E.D. Ky. 1999); *FTC v. Interstate Res. Corp.*, No. 99-5988 (S.D.N.Y. 1999); *FTC v. LAP Fin. Serv., Inc.*, No. 99-496 (W.D. Ky. 1999); *FTC v. Wasatch Credit Corp.*, No. 99-579 (D. Utah 1999); *In re First Plus Fin. Group, Inc.*, FTC Docket No. C-3984 (2000); *In re Fleet Fin., Inc.*, FTC Docket No. C-3899 (1999); *FTC v. Capital City Mortgage Corp.*, No. 98-00237 (D.D.C. 1998).

except for banks, thrifts, and federal credit unions.[21] In promulgating such rules, the FTC must use the rulemaking procedures set forth in Section 18 of the FTC Act, which are much more cumbersome and time-consuming than the Administrative Procedure Act ("APA") rulemaking procedures.

Pursuant to Section 18(f) of the FTC Act, the Federal Reserve Board ("Board"), the Office of Thrift Supervision ("OTS"), and the National Credit Union Administration ("NCUA") may issue rules prohibiting unfair or deceptive acts or practices by banks, thrifts, and federal credit unions, respectively.[22] In promulgating such rules, the Board, OTS, and NCUA use their ordinary rulemaking procedures, that is, the standard notice and comment rulemaking procedures under the APA.[23]

H.R. 3526 proposes two primary changes to the framework under Section 18 of the FTC Act relating to the acts and practices of financial services providers. First, the bill would give "each federal banking agency," as defined in the Federal Deposit Insurance Act,[24] the authority to promulgate rules prohibiting unfair or deceptive acts or practices for depository institutions within its jurisdiction. This amendment would give the Federal Deposit Insurance Corporation ("FDIC") and the Office of the Comptroller of the Currency ("OCC") the power to issue rules under Section 18 of the FTC Act with respect to the depository institutions they regulate, along

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[21] 45 U.S.C. § 57a(a)(1)(B).

[22] 15 U.S.C. § 57a(f)(1). This provision also requires that the Board, OTS, and NCUA promulgate substantially similar regulations whenever the FTC promulgates a rule defining unfair or deceptive practices under subsection 18(a)(1)(B) of the FTC Act, unless certain exceptions are met. *Id.*

[23] 5 U.S.C. § 553.

[24] 12 U.S.C. § 1813.

with the Board, OTS, and NCUA. Second, the bill would require that all regulations the federal banking agencies issue "be prescribed jointly by such agencies to the extent practicable."[25]

The FTC supports amending Section 18 of the FTC Act to give the FDIC and the OCC authority to issue rules prohibiting lenders from engaging in unfair or deceptive acts or practices, but recommends two modifications. First, the federal banking agencies and the NCUA should be required to consult with the Commission in any rulemaking they undertake under Section 18 of the FTC Act. The FTC is the expert agency responsible for ensuring appropriate and consistent interpretation and application, in accordance with a substantial body of jurisprudence, of the prohibition against unfair and deceptive practices in the FTC Act – across nearly all industries in the United States. While recognizing that regulators of depository institutions have specialized expertise as to the entities they regulate, it is also essential that regulations for depository institutions be in harmony with the broad principles of the statute and its implementation by the Commission. The Commission therefore should have a consultive role.

Second, the FTC suggests that the bill be modified so that whenever the federal banking agencies and NCUA commence rulemaking under the FTC Act for the entities they regulate, the Commission has the option to promulgate consistent and comparable rules for the entities that it regulates, using APA rulemaking procedures. In other words, the FTC should be able to use the relatively streamlined and expedited notice and comment procedures of the APA that are used by the other agencies, rather than the more onerous and lengthy rulemaking procedures set forth in Section 18 of the FTC Act.[26] Differences in rulemaking procedures may result in different

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[25] H.R. 3526, Section 1(a)(2).

[26] Without a change to the FTC Act, the Commission would have to satisfy considerable procedural hurdles before promulgating a rule under Section 5. 15 U.S.C. § 57a(b-e); 16 C.F.R. §§ 1.9-1.14. For example, the FTC must publish an advance notice of proposed

regulatory requirements for financial service providers selling the same goods. To avoid the application of inconsistent standards, to improve interagency coordination on rulemakings, and to ensure that any FTC rulemaking does not lag years behind other financial regulators, the FTC recommends that the bill be amended to allow the FTC to use notice and comment rulemaking under the APA to promulgate rules whenever the banking agencies and NCUA commence rulemaking under the FTC Act.

The Commission looks forward to working with the Subcommittee on all of these legislative initiatives.

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rulemaking and seek public comment before publishing its notice of proposed rulemaking, and must provide an opportunity for a hearing before a presiding officer at which interested parties are accorded certain cross-examination rights. 15 U.S.C. § 57a(b); 16 C.F.R. §§ 1.10-1.13. It is likely that it would take the FTC much longer to issue rules covering financial services entities under its jurisdiction than it would take federal banking agencies without a change in the law.

Mr. RUSH. The Chair thanks the witness and the Chair recognizes himself for 5 minutes of questioning.

Ms. Parnes, the FTC has been very active in protecting consumers from unfair and deceptive acts and practices. In your opinion, what is the track record of the Federal Reserve Board and the other bank regulators in likewise protecting consumers?

Ms. PARNES. Mr. Chairman, it is really very difficult for me to assess the track record of the bank regulatory agencies in this area. They are addressing issues that are very, very different from the kinds of institutions that the FTC deals with.

As you know, the institutions that they regulate, they are dealing with both consumer issues and also safety and soundness issues, and I think it is just very hard for me to express a view on that.

Mr. RUSH. I can appreciate your remarks. Please provide details how the FTC's usual rulemaking procedures under section 18 are more cumbersome than APA rulemaking procedures.

Do I understand correctly that when the FTC coordinated with the banking agencies on the Gramm-Leach-Bliley rulemaking that it could do a more streamlined, APA-like rulemaking?

Ms. PARNES. Yes, sir, in fact Congress has given the Commission authority under Gramm-Leach-Bliley, under the FACT Act, where we are working closely with the bank regulatory agencies. The telemarketing sales rule, we were given APA rulemaking authority. The CAN-SPAM Act. There are any number of areas where we have been given specific authority to use APA rulemaking. It is a much more expedited process.

Magnuson Moss rulemaking, as it is called, under section 18 has many, many more procedural hoops that the Commission needs to comply with.

Mr. RUSH. Ms. Parnes, your testimony as it relates to the Do-Not-Call Registry states that the DNC Registry contains 145 million telephone numbers. Now what percentage of existing residential phone numbers in the U.S. is that, approximately what percentage?

Ms. PARNES. I don't believe that we have that information. We simply take telephone numbers. We don't screen those numbers, so we just know how many telephone numbers are on the registry.

Mr. RUSH. Are you familiar with the Harris poll survey that shows widespread consumer satisfaction with the DNC Registry that dates back to January 2006; are you familiar with that?

Ms. PARNES. We are extremely familiar with that survey and very proud.

Mr. RUSH. Very proud.

Ms. PARNES. Of how successful the program has been.

Mr. RUSH. Does the FTC have any plans to update that survey in the future?

Ms. PARNES. The Harris survey was not an FTC-initiated survey, it was a survey that Harris Interactive did on its own and at this moment we don't have plans to update the survey. We think right now there is widespread understanding of Do-Not-Call and widespread consumer satisfaction. And really when you consider the number of consumers on the registry, there are comparatively very few complaints about the way in which it is working.

Mr. RUSH. We are up against a deadline in terms of the reauthorization of the DNC. Is it correct that the FTC's new position is that it will not drop any phone numbers at the end of the 5 years on the registry while you wait for Congress to act to make the registry permanent? At this point would you caution that consumers not be concerned or worried about re-registering?

Ms. PARNES. Absolutely, Mr. Chairman. The Commission will not drop any numbers off of the registry pending final action by Congress or by the agency itself on whether to make the registration permanent.

Mr. RUSH. Lastly, I have about 25 seconds remaining in my time, can you be more specific about the Internet safety programs that the Federal Trade Commission could launch with the added funds proposed by H.R. 3461?

Ms. PARNES. Right now the Commission has several really excellent consumer education campaigns and business education campaigns as well on Internet issues. OnGuardOnline is the number of one of our key Internet safety programs.

There are a couple of things that we would do if this bill is enacted. First of all, there are issues that you mentioned, child safety, exploiting children, child pornography that don't come within the FTC's jurisdiction and they are not issues that we necessarily have the best expertise on. And what we would do at the outset is reach out to the partners that we have already worked with to get the best information on our Web sites. That is No. 1.

The second thing that we would do that we have had a lot of success with is creating what we call a tool kit. We have done this in the identity theft area where we are basically putting together a consumer or a business education campaign in a package. You can ask for this package if you are a member of a civic group, if you have a business, and you can put on your own consumer education program essentially. It has PowerPoint presentations, speech, consumer education material that can be distributed. So it is really a way of putting together a program and then pushing it out very effectively to what we hope are millions of consumers.

Mr. RUSH. My time is up.

The Chair recognizes the gentleman from Florida, Mr. Stearns for 5 minutes.

Mr. STEARNS. Thank you, Mr. Chairman.

Ms. Parnes, I never got a solicitation over my cell phone. Is it illegal to solicit over the cell phone?

Ms. PARNES. It is——

Mr. STEARNS. Just yes or no.

Ms. PARNES. Oh, that is so hard.

Mr. STEARNS. Is it yes or no?

Ms. PARNES. It is not illegal specifically to solicit over the cell phone, but it is illegal to use a predictive dialer.

Mr. STEARNS. Computerized?

Ms. PARNES. Yes.

Mr. STEARNS. I think the FTC advertises that you can put your cell phone in the list.

Ms. PARNES. No, we don't. We say that you don't have to because you are not likely to get telemarketing calls, but that you can put your cell phone number on the registry.

Mr. STEARNS. So you tell them they can if they want, but cell phones generally, if you do it through a computerized telemarketing, it is illegal.

Ms. PARNES. Under a FCC rule.

Mr. STEARNS. Does the FCC check the Do-Not-Call Registry for invalid numbers on a regular basis?

Ms. PARNES. We purge the registry on a monthly basis, a contractor that we work with——

Mr. STEARNS. A subcontractor goes out and you say run this against a database and see if there are invalid numbers. How about you check numbers reassigned, you have Joe Smith and suddenly you find out it is not Joe Smith anymore, it is John Doe?

Ms. PARNES. We purge numbers that have been disconnected and reassigned. Our contractor gets this information from what they tell us are all of the Local Exchange Carriers throughout the country, and when numbers are disconnected and then reassigned they are purged from the registry.

Mr. STEARNS. Mr. Doyle has talked about his bill. The question I have is if you have to keep these numbers indefinitely, over a period of years, is it possible that almost every phone number 20 years, 30 years, every phone number will be in there? Well, let me ask you how you feel about that, that when John Doe puts his number in it remains permanently, in perpetuity, how do you feel about that?

Ms. PARNES. Well, the accuracy of the registry is something that has been key for the Commission since it enacted the registry. The 5-year re-registration requirement, as I mentioned, along with purging were the two mechanisms that the Commission relied on to ensure accuracy. And we will be vigilant working with our contractor to make sure that disconnected and——

Mr. STEARNS. Do you think you need legislation? Do you think you need a stipulation that John Doe, once he registers with you, remains there in definitely, forever?

Ms. PARNES. Well, I think that we would need either legislation or some agency act——

Mr. STEARNS. Do you think it is a good idea?

Ms. PARNES. Registry permanent?

Mr. STEARNS. As it stands now it is every 5 years?

Ms. PARNES. Every 5 years.

Mr. STEARNS. So every 5 years you would notify John Doe or John Doe's number would be gone and he or she would have to reenter it, right.

Ms. PARNES. We don't notify John Doe specifically. What we would do more generally is tell the public that the 5-year re-registration——

Mr. STEARNS. But John Doe and his family don't keep track, they don't know. The first time they would know is if after 5 years they would start to get solicited calls and they would call you again. But I am just trying to see, wouldn't this be a pretty big database after 20 years if all the numbers are just kept there? Is there another way to do this other than making a permanent John Doe forever?

Ms. PARNES. Well, I think that—kind of three things. First, John Doe can always unregister his telephone number.

Mr. STEARNS. But he's not going to do that probably, OK.

Ms. PARNES. The second thing is that the list is pretty big now.

Mr. STEARNS. It is 145 million.

Ms. PARNES. That is right. I don't know that we expected that when we first rolled this out.

Mr. STEARNS. No, no.

Ms. PARNES. We will work to make this manageable and continue to purge the list.

The third thing is we will be happy to work with the subcommittee to address any concerns about accuracy.

Mr. STEARNS. So do you think it is necessary or wise to pass legislation that John Doe's name be put in there in perpetuity, forever? Just yes or no, I need your opinion.

Ms. PARNES. Well, I think that I absolutely understand——

Mr. STEARNS. I know you understand, but can you make a position on this, because we are going to probably mark this bill up in 2 days. The amendment sounds good. And my question is, is there another way do it through this cross-check that you mentioned earlier through the subcontractors? You run the databases to check Do-Not-Call for invalid numbers, one, and, two, people who have been reassigned—is that enough so that if John Doe puts his name in there forever you just leave it there? Here is your chance to tell us what you think.

Ms. PARNES. I think that it will be enough and I think that we will continue. None of this is static. The technology is constantly changing concerning the phones and I think we will keep on top of this.

Mr. STEARNS. I am taking your opinion to say you support keeping it in there forever.

Ms. PARNES. Yes. What I think I see the legislation doing is making registration permanent, but still giving consumers choice.

Mr. STEARNS. Thank you, Mr. Chairman.

Mr. RUSH. The Chair now recognizes the gentlelady from Illinois, Ms. Schakowsky, for 5 minutes.

Ms. SCHAKOWSKY. Thank you, Ms. Parnes. Your testimony said that the FTC has been very active in protecting consumers in the financial services marketplace and that 21 actions against bad actors were taken in the past decade; is that right?

Ms. PARNES. Yes.

Ms. SCHAKOWSKY. So that is about two a year. And so if that is active, do you feel that is sufficiently active?

Ms. PARNES. The context that I would put this in, while this is a very high priority for the FTC, these are actions that—it is a part of what we do in the consumer protection area.

Ms. SCHAKOWSKY. In the financial services marketplace, because that is what you are referring to that you have been active there.

Ms. PARNES. Well, right. I do think that we have been active in that area. I think that we have done, in financial services generally—I believe we have brought more, that doesn't include, for example, debt collection cases that we have brought, it doesn't include cases involving credit cards that are marketed to consumers, advance fee loan credit cards. I think it is focusing on a very specific segment in the financial sector.

Ms. SCHAKOWSKY. What resources do you need that you don't currently have to do it and then even more?

Ms. PARNES. Well, I am really not prepared to talk about what resources, additional resources that we need in this area. I would say that we are pretty flexible in terms of the Bureau of Consumer Protection and we are adding resources to our financial practices division on a regular basis, because it is an important area for us.

Ms. SCHAKOWSKY. Thank you. I yield back.

Mr. RUSH. The Chair thanks the gentlelady.

The Chair now recognizes the gentleman from Pennsylvania, Mr. Pitts, for 5 minutes.

Mr. PITTS. Thank you, Mr. Chairman.

Ms. Parnes, are cell phone numbers included in the registry?

Ms. PARNES. Cell phone numbers can be registered, yes, they can, although under FCC rules you can't use the typical computer technology. Telemarketers are prohibited from using that technology to call cell phones.

Mr. PITTS. So there are other laws that govern telemarketing practices with regard to cell phone numbers?

Ms. PARNES. That is correct.

Mr. PITTS. Of the 145 million numbers in the registry, how many are cell phone numbers?

Ms. PARNES. We do not know. We don't ask consumers who are registering to indicate whether it is a cell phone or a land line.

Mr. PITTS. Does the FTC advertise on their Web site that consumers can register their cell phone number?

Ms. PARNES. We don't, we simply say you can register a telephone number on the registry.

Mr. PITTS. With cell phones replacing land lines more and more, are you seeing a decline in the percentage of the land lines registered? Will the registry be necessary in 20 years?

Ms. PARNES. We actually don't have information on whether the numbers that are registered are cell phone lines or land lines so we really can't make that judgment about whether the percentage of land lines are going down and the percentage of cell phones is going up.

Mr. PITTS. Do you keep any type of database specifically for cell phones?

Ms. PARNES. We do not. We have the Do-Not-Call Registry and we only keep telephone numbers that are registered. We don't separate it out by cell phone or landline.

Mr. PITTS. So you don't take any steps to remove cell phone numbers from the registry?

Ms. PARNES. No, we do not.

Mr. PITTS. Should the Commission do that?

Ms. PARNES. I am actually not certain about that. Initially when consumers were told kind of periodically there will be maybe something that goes around on-line or people hear that some cell phone registry will be published and telemarketers will get cell phones and they will be able to call their cell phones. We typically respond by issuing some kind of consumer education release assuring them that that will not happen, but that if they are concerned they can register their cell phones.

So that while I believe that now consumers have nothing to be concerned about with respect to cell phones, I would hate to drop cell phones from our registry and then find that telemarketers have

developed some way of reaching these numbers through some other system that is permitted. I just think that we need to know more about how cell phones may be reached.

Mr. PITTS. The FTC is currently not obligated by law to purge disconnected or invalid numbers from the database; is that correct?

Do you believe that the law should mandate this? If so, why or why not?

Ms. PARNES. We are not currently required to do so. We do it. I don't think that we would object to a requirement that we purge numbers, but we are certainly committed to purging numbers. Our contract that we just entered into, a 5-year contract, calls for monthly purging of the registry.

Mr. PITTS. So you believe the law should mandate that?

Ms. PARNES. I think it could. I don't necessarily think that it has to, but I don't see that we would object to that.

Mr. PITTS. Thank you, Mr. Chairman.

Mr. RUSH. The Chair thanks the gentleman.

The Chair now recognizes the gentlelady from Oregon, Ms. Hooley, for 5 minutes of questioning.

Ms. HOOLEY. Thank you, Mr. Chairman.

Ms. Parnes, how frequently does the FTC currently scrub or check for accuracy in the numbers on the Do-Not-Call Registry?

Ms. PARNES. We do it on a monthly basis.

Ms. HOOLEY. How accurate would you say the registry is?

Ms. PARNES. We understand that we use the best contractor in the country to do purging. So we think it is probably as accurate as it can be.

Ms. HOOLEY. And you have to renew every 5 years?

Ms. PARNES. As the law stands right now, you do have to renew every 5 years, but the Commission today is stating that it will not drop any individual off the registry pending a final congressional or agency decision on whether to make the registry permanent.

Ms. HOOLEY. Because I think a lot of people when they sign up don't realize that they have to renew and my next question was going to be, how do you let people know that they have to renew if in fact you don't do something different with the rules where they can stay on the registry?

Ms. PARNES. I think if no change were made we would do a very aggressive consumer education campaign. As it stands right now, we will put something on our Web site just telling consumers not to worry about this, that no number will be taken off the registry.

Ms. HOOLEY. On the Internet safety question, what department in the FTC will be spending authorized funds?

Ms. PARNES. It will be a division within the Bureau of Consumer Protection.

Ms. HOOLEY. What is their current annual budget and how many employees do they have currently?

Ms. PARNES. Our Division of Consumer and Business Education has about somewhere between 16 and 18 employees. And I do not know the budget numbers specifically. We would have to get you that.

Ms. HOOLEY. And in this process where they are trying to educate people, how are they intending to spend the money?

Ms. PARNES. Well, I would say that the people in our Division of Consumer and Business Education are among the most creative people around. We spend the money in a variety of ways. We spend a lot of it simply on printing material that gets out to civic organizations, and senior organizations. We do a tremendous amount of outreach and partnering with consumer advocates, with businesses.

Ms. HOOLEY. So you try to go through organizations mostly of some sort?

Ms. PARNES. Absolutely, we do a lot of partnering.

Ms. HOOLEY. Do you have any idea how effective your efforts are in educating consumers? Are we really reaching the numbers that we need to reach and are we being effective?

Ms. PARNES. I think that the consumer and business education material that we put out is praised very highly. It is award winning material.

Does it reach every consumer? Absolutely not. We really do our best to try and push it out whenever we can. But I think that consumer and business education certainly is not, even on consumer issues, it is not the sole property of the Federal Trade Commission. We encourage others to take this information and use it as their own. We work very closely with States, for example, on doing consumer education on a more retail level.

Ms. HOOLEY. OK. If I wanted to send something out to the people in my district, do you have a perfect piece of information to send out?

Ms. PARNES. Well, we actually work very closely with Members of Congress as well linking to our Web sites. So I think we would have good information for you to send out to your constituents, absolutely.

Ms. HOOLEY. Thank you. I have no more questions.

Mr. RUSH. The Chair recognizes the gentleman from Nebraska, Mr. Terry, for 5 minutes.

Mr. TERRY. Thank you, Mr. Chairman.

Ms. Parnes, are you aware whether the FCC has programs that educates the constituents and folks and businesses on threats to juveniles, cyber predators and materials that are inappropriate for minors?

Ms. PARNES. We do not. These are issues that fall outside of the FTC's jurisdiction.

Mr. TERRY. The question was FCC. Are you aware whether they have programs, FCC?

Ms. PARNES. The FCC?

Mr. TERRY. I know it is outside of your jurisdiction.

Ms. PARNES. Right. I don't know. We can certainly get that information.

Mr. TERRY. I do know they do. And so my follow-up question of whether you know how duplicative the suggested programs would be is meaningless. So I will go on.

The gentlelady from Oregon asked a good question about the FTC's current program of being effective. I am not sure you answered that directly, but obviously the authors of this bill is assuming that you have not been effective and need further guidance as well as more money. Do you agree with that assumption?

Ms. PARNES. I think we have been effective in this area and I would like to think that the authors are looking to us because they think that we would use this money wisely and effectively.

Mr. TERRY. I missed the answer to the gentlelady from Oregon's question about how much does the FTC spends on communicating to people right now.

Ms. PARNES. I don't know the exact number. We would have to get that for the subcommittee.

Mr. TERRY. Do you have any clue, is it $10 million like this bill authorizes? Do you already spend that much money?

Ms. PARNES. I just hesitate to guess at the number.

Mr. TERRY. Would you identify within the FTC the group who would be in charge of identifying, promoting and encouraging best practices for Internet safety?

Ms. PARNES. It would be a division within the Bureau of Consumer Protection.

Mr. TERRY. Best practices is something that you already do?

Ms. PARNES. Yes, we do, in terms of Internet security.

Mr. TERRY. What is the already established best practice for encouraging, for identifying best practices for Internet safety? Would you run those down for me?

Ms. PARNES. Well, I cannot run down all of the best practices. We have a Web site that deals—it is called *onguardonline.gov* and it has just dozens and dozens of tips for consumers and business on Internet security.

Mr. TERRY. OK, very good.

Mr. RUSH. Would you please submit that list for the record, please?

Ms. PARNES. Absolutely.

Mr. TERRY. You are already able to carry out a national outreach and education campaign using various media and Internet, you already do that?

Ms. PARNES. We do it on the Internet and we work very closely with partners in other Federal agencies, industry members, State and local governments.

Mr. TERRY. All right. I want to go back to jurisdiction then. Does the FTC have current jurisdiction to establish best practices for Internet safety for cyber predators? In regard to cyber predators, that is something that already exists in your jurisdiction?

Ms. PARNES. No. As we were discussing, it is outside of the FTC's jurisdiction. And if we were charged with doing a consumer education campaign in this area, we would certainly look to our partners who have the expertise in this area, the FBI being one of them.

Mr. TERRY. All right. So since it is not in your jurisdiction today, you don't have best practices established regarding safety from cyber predators?

Ms. PARNES. That is correct.

Mr. TERRY. I was confused on the extent of the established programs.

How about determining material that is inappropriate for minors; is that already established within your jurisdiction?

Ms. PARNES. No, our——

Mr. TERRY. I am over my time, appreciate your answer, and I am not sure I am comfortable with expanding the FTC's jurisdiction here, especially when the FCC already has jurisdiction over these matters.

Mr. RUSH. The gentleman's time is up.

The Chair recognizes the gentleman from Georgia, Mr. Barrow, for 5 minutes.

Mr. BARROW. No questions.

Mr. RUSH. The Chair now recognizes the gentleman from Texas, Mr. Burgess, for 5 minutes.

Mr. BURGESS. I thank the chairman and thank you for being here today. We are reauthorizing this bill that was previously authorized for 5 years. What would be the effect of just indefinitely reauthorizing this program and not revisiting it from time to time? Is there value in revisiting from time to time?

Ms. PARNES. Well, it is my understanding that most reauthorization is time limited and certainly if Congress wanted to do a permanent reauthorization, I don't think the FTC would have an objection.

Mr. BURGESS. We were talking an awful lot about cell phones a moment ago. I guess I didn't really understand. What prohibits a computer from calling cell phones? Is it technology or is there actually a FCC violation involved there?

Ms. PARNES. The FCC has a rule that says that you can't use the computerized technology, predictive dialers, automated dialers to call cell phones. And since predictive dialers, automated dialers are the standards in the telemarketing industry for placing calls, in effect it is prohibiting those calls to cell phones.

Mr. BURGESS. I will tell you it doesn't happen with every carrier I have used, but I have received telemarketing calls on my cell phone as well as telemarketing text messages just like you receive spam on your computer. I guess the system is not perfect, but I did not ever register that number on the Do-Not-Call list.

What about the newer stuff? I even forget what the technology is called, but Vonage where you use your computer as your telephone.

Ms. PARNES. The Voice over Internet Protocol?

Mr. BURGESS. That is it.

Ms. PARNES. I believe that that would not be covered by the registry.

Mr. BURGESS. It would not be covered by the registry; it would be bound by the same rules that the FCC has for cell phones?

Ms. PARNES. I am not certain. I think that this truly is a different technology. Certainly from the FTC's perspective it wasn't something envisioned when the registry was adopted.

Mr. BURGESS. So in actuality the Voice over Internet Protocol could be under the radar screen as far as the Do-Not-Call list is concerned and those families would not be protected under the Do-Not-Call?

Ms. PARNES. It could be, it could be. I think we certainly haven't gotten complaints yet from users of VoIP about telemarketing calls.

Mr. BURGESS. What would happen if someone tried to put their number on a Do-Not-Call list who used Voice over Internet Protocol?

Ms. PARNES. We don't screen any telephone numbers, if you want to register a number with us, you can.

Mr. BURGESS. I think the question was asked a minute ago about enforcement. What is the enforcement if someone violates the Do-Not-Call list?

Ms. PARNES. We have a very aggressive enforcement program. The details of it are in the Commission's full testimony, but, for example, since the Do-Not-Call Registry was passed I believe we brought over 27 or 28 cases that would be since 2003, cases that include Do-Not-Call violations. Our highest civil penalty has been over $5.3 million against DirecTV for violating the Do-Not-Call rule.

Mr. BURGESS. Oh, they were the ones that called me on my cell phone.

Ms. PARNES. Oops.

Mr. BURGESS. What do you do if a company has outsourced its telemarketing to Bombay or Shanghai?

Ms. PARNES. Our position is that the company in the U.S., the seller, is responsible regardless of where the telemarketing calls are coming from.

Mr. BURGESS. But if it was a true overseas or multinational corporation, they may be outside the reaching grasp of the Commission?

Ms. PARNES. I don't know that we have ever had that question posed to us.

Mr. BURGESS. Well, what would happen?

Ms. PARNES. I would imagine——

Mr. BURGESS. Well, you know, down in Texas we used to have radios that violated—the FCC would broadcast these mega stations across the border at night. What would you do if you had a corporation that set up shop specifically to market to Do-Not-Call numbers and was exclusively overseas?

Ms. PARNES. If we weren't applying the Do-Not-Call Registry, and we might because these are calls made to U.S. Consumers. So I think we would need to certainly research this and I would be happy to get back to you. But if we couldn't reach that seller, we would certainly rely on new authority that Congress gave us under the U.S. SAFE Web Act to work with colleagues in other countries to try and address that issue.

Mr. BURGESS. Mr. Terry asked the question about funding on the SAFE Internet Act. Could you provide the committee at some later date, perhaps, Mr. Chairman, before we go to full committee markup on this bill exactly how the allocations there run, what amount of money you are spending now on these types of programs, how is a $5 million or $10 million authorization going to change things for you, will we simply be moving dollars around in your baseline budget, are we identifying real dollars going into real work, which is the intent, the congressional intent, of the bill?

I yield back, Mr. Chairman.

Ms. PARNES. Absolutely, absolutely.

Mr. RUSH. The Chair recognizes the gentlelady from Tennessee for 5 minutes.

Mrs. BLACKBURN. Thank you.

Ms. Parnes, on the Do-Not-Call Registry Mr. Burgess mentioned to you the VoIP, Voice over Internet Protocol. One of the things we talked about many times in the Telecom Subcommittee is looking at end use. And as we look at expanded platforms and look at new uses, new technologies and as more of our constituents move to VoIP, I would highlight with you that there may be a need for you all to consider that and to focus more on the end use and less on a specific technology.

To the Internet SAFER bill and Internet safety, how many individuals and how much of your budget is spent on chasing down these scams; do you know? How many people do you have that are investigators?

Ms. PARNES. How many resources do we devote towards Internet scams?

Mrs. BLACKBURN. Right.

Ms. PARNES. A considerable amount.

Mrs. BLACKBURN. Can you give me a number of people or the amount of your budget dollar-wise what you are spending?

Ms. PARNES. I would need to get back to you on that.

Mrs. BLACKBURN. That is fine, I think that that would be helpful as we look at legislation that would change the funding mechanism. Many of us, we hear about this especially from our moms and teachers, and those that are working with young people, and those that are working with families, many times about the intrusion of Internet scams into the homes, into family lives, et cetera. So I would really like an answer if you could help provide us with that.

Just a couple of quick points. In your testimony on page 13 you talk about the organizations that you all work with *onguardonline.gov*. And the FCC is not listed as one of these. As we look at the Internet and as we look at some of the scams that are coming in there and they already have some items that are in place and as you all look at working on the best practices, which you do not have available for us, I would recommend some shared resources or shared information.

Ms. PARNES. To the extent, yes, we can absolutely do that and certainly to the extent that we have overlapped with the FCC we do work closely with them.

Mrs. BLACKBURN. OK. That is great.

And then just for clarification for me, you said that your national education campaign as is designated in the legislation would be done by the Consumer Protection Division; is that correct?

Ms. PARNES. It would be a division within the Bureau of Consumer Protection.

Mrs. BLACKBURN. I think that is all that I have at this point.

Mr. BURGESS. Will the gentlelady yield?

Mrs. BLACKBURN. I will be happy to yield to the gentleman.

Mr. BURGESS. I just had a general knowledge question, I think is probably something I should know but I don't. How come we are exempt from this? How come political calls, robo-calls, do not fall under the Do-Not-Call jurisdiction?

Ms. PARNES. Well, the Do-Not-Call list applies to telemarketing. It was a provision in the Telemarketing Sales Act and it applies

only to telemarketing, which is a call that is made to induce the purchase of a product or service.

Mr. BURGESS. Do you ever get complaints from consumers who receive robo-calls and political calls and have to explain that to them because I get it when I go to Town Halls, and they say how come you call me and I was on a Do-Not-Call list?

Ms. PARNES. I don't know that calls come to us complaining about political calls.

Mr. BURGESS. Do you make it apparent in the literature that you provide instructional material? As you said, you have some good materials available. Do you provide that material that this will not stop MoveOn.org from calling you nightly?

Ms. PARNES. We don't say what it won't do, we say what it will do. We explain that it will stop telemarketing calls, it will stop calls that are selling you something.

Mr. BURGESS. Thank you, Mr. Chairman.

Mr. RUSH. The Chair now recognizes the gentleman from Mississippi, Mr. Pickering, for 5 minutes.

Mr. PICKERING. Thank you, Mr. Chairman. I thank you for having this hearing. This is one of the most successful pieces of legislation that we have done since I have been here. It is very popular, as indicated by 146 million people, I believe, that have signed up for the Do-Not-Call Registry.

I want to thank Congressman Stearns for his work and leadership on the legislation that we are having a hearing on, and I especially want to thank my friend and colleague from Pennsylvania, Mr. Doyle, for his good work and allowing me to join him on a simple straightforward shot to extend and end a 5-year expiration date that is before us.

That was not in the original legislation, but I believe it was adopted by regulation and we do not want to have all the disruption of having that expire without prior warning and prior information to individuals that they would have to re-up and extend their Do-Not-Call status.

My question to you is, if that were to occur, if we were not to move quickly on legislation, what does the FTC have in place to notify individuals that the Do-Not-Call regulation is expiring and their status as far as being on a list that would no longer protect them from calls?

Ms. PARNES. Well, as of today the Commission has said that it will not take any number off the list pending final congressional or agency action on whether to make the registry permanent.

Mr. PICKERING. Currently as I understand it, you all clean or scrub lists and update approximately every 30 days; is that correct?

Ms. PARNES. Yes, we do.

Mr. PICKERING. Is there a way you can do that more quickly?

Ms. PARNES. We could. We could do it on a basis that is more regular than 30 days. Scrubbing the list more frequently would cost more money. So that is really the only factor that we would need to weigh.

Mr. PICKERING. What would increase the cost, additional staff or resources?

Ms. PARNES. We use a contractor to scrub the lists. So we would need to go back to the contractor and find out how much more it

would cost. I am certain it would depend on how frequently the scrubbing was done.

Mr. PICKERING. If you were to do it every 15 days, would that create a significant cost increase?

Ms. PARNES. We would need to talk to the contractor about what the cost increase would be.

Mr. PICKERING. OK. If we were to address this issue of more regular cleaning or scrubbing or other proper term, would you advocate us simply working with you to find the appropriate timetable of being able to do that?

Ms. PARNES. Absolutely, absolutely. We can get information from the contractor and work with the subcommittee staff so that everybody has all of the information in terms of cost and frequency and can make the best decision.

Mr. RUSH. Would the gentleman yield for a moment?

Would you get us a copy of the estimate from the contractor to the committee, please?

Ms. PARNES. Absolutely, Mr. Chairman, yes.

Mr. RUSH. OK.

Mr. PICKERING. Mr. Chairman, I have no further questions other than to say I look forward to working with you and Mr. Doyle and Mr. Stearns so that as we move through the subcommittee to the full committee that we find the right vehicle to move it as quickly as possible.

Mr. RUSH. The Chair thanks the gentleman. The Chair now recognizes the gentleman from Pennsylvania for 5 minutes.

Mr. DOYLE. Thank you, Mr. Chairman.

Ms. Parnes, first of all, I want to praise you for committing not to purge numbers from the Do-Not-Call list pending congressional action. That is a really smart consumer friendly move, and I am glad you are doing it.

When I first introduced the Do-Not-Call List Improvement Act with my good friend Chip Pickering, we heard some concern from people and I think the ranking member expressed the same concern that this list would become something like the Do-Not-Call roach motel. Numbers go in, but they don't come out.

And I think it is important that we clear the record on this. The only numbers that would stay there permanently are those numbers of individuals who, A, it is their telephone number and, B, they want to be there permanently. Numbers that are no longer John Doe's number will be scrubbed from the list. And any number that isn't currently somebody's telephone number, and if somebody wants to go back on the list because they want to start getting telemarketing calls at dinner time, they just have to call the Do-Not-Call Registry and say, we want to take our number from the list. So it will not be an accumulation of a bunch of numbers that are not valid numbers anymore, because you have a contractor scrubbing those lists.

Is that correct?

Ms. PARNES. Yes, it is. The only caveat that I would add is that the agreement that we have with our contractor calls for scrubbing telephone numbers that have been disconnected and reassigned, and we have taken a very cautious approach there. Not simply saying scrub numbers that have been disconnected, because sometimes

numbers are disconnected when consumers, for example, go on vacation for a month. They may disconnect their number, or if they have been delinquent in a bill, their number may be recorded by the LEC as disconnected. And we didn't want consumers to drop off the registry in those circumstances.

Mr. DOYLE. Right. That is the only one contention here, that the list isn't scrubbed until the number is reassigned so you have a bunch of numbers that sit on that list that have maybe been abandoned or maybe some of the instances that you just suggested, and those numbers aren't purged until they are reassigned to somebody else; is that correct?

Ms. PARNES. That is correct.

Mr. DOYLE. I think that is something maybe we can look at or maybe the Commission can look at. We are not trying to create a situation where telemarketers don't have access to numbers that don't want to be on the list. But I think it is very important that once you go through the process of going on-line or picking up a phone and saying, you know, I don't want to get these calls in my home, that that should be respected.

Let me ask you about the cell phones. It is against the law for telemarketers to use auto dialers to call cell phones. What you were saying is in a practical sense most people won't get telemarketing calls on their cell phones because the telemarketers all use auto dialing technology. So it is not absolutely necessary, but technically a telemarketer could call a cell phone if they are not using that technology; is that correct?

Ms. PARNES. That is exactly right.

Mr. DOYLE. And so people can register their cell phones on the Do-Not-Call list?

Ms. PARNES. Yes, they can.

Mr. DOYLE. I think Mr. Pitts brought up an interesting point that more and more people are using cell phones exclusively, especially younger people. I have four children and none of them have land lines in their homes. They just have cell phones. So we encourage people to register their cell phones as well as their land lines on the Do-Not-Call list because, like you said, there may be something else come down the line that we don't foresee right now and telemarketers might be able to access those calls.

Just for the record, Mr. Chairman, this is not a list that will grow simply because someone puts their number on the list. The monthly purging of numbers will take care of any John Does that no longer have that number. They will come off the list. If not, they will not be on there permanently if our amendment is adopted, because that is what the scrubbing is about each month and there seems to be a willingness on the part of the Commission to work with the contractor to maybe even scrub that list more frequently, if the costs allow it, more than 30 days. So we are keeping a list that is current and numbers that are no longer people's numbers are being taken off that list, and so it won't grow into millions. But the people who don't want to get these calls, I think once they do that, that should be respected and that is why we introduced the legislation and I just want to get those points on the record.

Ms. Parnes, I thank you for your consumer friendly move on behalf of the people to keep that intact until we act one way or the other.

Thank you, Mr. Chairman. Thank you for your courtesy and, Ranking Member Stearns, thank you for your courtesy also.

I yield back.

Mr. RUSH. The Chair thanks the gentleman. This concludes the hearing for this morning and the Chair will recess now for 10 minutes and we will reconvene at 12:15 for the markup. The subcommittee's hearing is adjourned.

[Whereupon, at 12:05 p.m., the subcommittee was adjourned.]