

Remarks of Commissioner Julie Brill

NAAG Winter Meeting

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Introduction

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

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

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

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

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

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

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

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

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

Coordinated Sweeps

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

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

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

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

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

State Co-plaintiffs or Coordinated State/FTC Actions

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

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

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

Privacy

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

And while we're on the topic of privacy, you may have heard that yesterday the FTC issued a long-awaited privacy report. Inside the Washington DC Beltway, this report, and the FTC's work on privacy, has been a major focus of attention. Outside the beltway, where you are doing the critically important work on bread and butter issues that directly impact consumers' lives in meaningful ways, the concerns surrounding privacy may seem a bit esoteric, even luxurious to contemplate. But privacy concerns relate to many of the efforts that you are engaged in:

- from protecting teens from predators and cyber bullies on social networks,
- to use of online information about consumers to create sucker lists for mortgage rescue and debt relief scam artists,
- to financial companies that gather information about consumers' online surfing and web-browsing activities to make decisions about whether — and on what terms — to extend credit, insurance, and other important financial benefits to these consumers.

So you can start to see the importance of privacy issues to the everyday lives of consumers, and the close relationship between privacy concerns and the critical work that you do.

Technology and business ingenuity have spawned a whole new online culture — email, IMs, apps and blogs — that many of our consumers greatly enjoy. We must help ensure that this growing, changing, thriving information marketplace is built on a framework that promotes privacy, transparency and consumer choice, while not stifling innovation. Outside the context of sector specific laws that protect financial and health care information, it has been up to industry itself, through self-regulation, to design the way it communicates to consumers about how their information — including their emails, their websurfing activity, and their location and other information gathered from their smart phones — is collected and used by advertisers and other companies. I believe industry's efforts to create effective notices and choices about these practices have been too slow, and up to now have failed to provide adequate and meaningful protection to consumers.

The FTC's report contains what some will call a new framework for thinking about privacy, to inform Congress and other policymakers as they develop policies and potential laws in this area. The report is also intended to guide and motivate industry as it develops more robust and effective best practices and self-regulation.

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

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

Competition

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

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

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

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

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

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

Consumer Education

Yesterday you heard Chuck Harwood talk about the wonderful consumer education materials we have: pamphlets, webpages, and videos. Our materials cover a broad range of consumer protection topics, and are all available in English and Spanish.

I would like to pick up on a point that many of you made during yesterday's roundtable. Please engage in creative thievery of our consumer education materials. You can order print versions in bulk right on our website. Or we can provide you with electronic versions for your own creative use. You can co-brand these materials with us, or steal them outright and put your own name and face on them. Most of all, what we want is to get the word out there. And we know that you are able to disseminate these materials widely to your constituents, and we will work with you to do whatever it takes to help educate consumers.

Consumer Sentinel

As all of you well know, fraud is a citizen of no one state or country. The person running a scam victimizing consumers in your state is just as likely to be on the other side of the world as he is to be in the basement of the donut shop across from your office. And many con artists operate out of several different locations — mail drops in one place, boiler rooms in another, business entities incorporated off-shore, and bank accounts opened online.

To strike at the roots of fraudulent enterprises, we need as much information as possible — to identify targets, to understand how a fraudulent enterprise is organized, and to grasp problems that warrant our immediate attention. The Consumer Sentinel database is one way we — and you — can get that information.

The Consumer Sentinel database is available only to law enforcement. It provides access to millions of complaints — some lodged directly with the FTC by consumers, and others contributed by organizations such as the Better Business Bureau and the National Fraud Information Center. Complaints run the gamut from identity theft to telemarketing scams to weight loss products to fake lotteries.

Access to Consumer Sentinel is free to any federal, state, or local law enforcement agency. It is based on the premise that sharing and free-flow of information can make law enforcement more effective.

All of you have access to the complaints in the database. However, right now, there are currently only three state AGs — Attorneys General Wasden, Hood, and Cooper — who are contributing complaints back to the database. A few more of you are about to start. But we need help from all of you. So I would like to make a special plea that seems appropriate for this time of year. Please consider a contribution — of your state complaints to Consumer Sentinel — so we can all work together to identify trends in consumer scams, determine the most egregious malefactors, and go after them.

Conclusion

I began my remarks with HL Menken, the iconic American cynic. I would like to end by quoting Henry Ford, the iconic American optimist. He said,

“Coming together is a beginning; keeping together is progress; working together is success.”

I am grateful for the work we have done together — and the success we have had thus far. I hope for more opportunities to work together — and more opportunities to succeed — in the coming years.

I agree with General Tom Miller’s remarks yesterday: federal-state cooperation has never been as good as it is now. It is also important to note that, even in the darkest days of federal state relationships, the Federal Trade Commission stood alone in its outreach to the states, and in its efforts to jointly prosecute consumer protection and competition law enforcement matters with the states.

America has never needed our cooperation more. Buffeted by ill economic winds and scarred by broken political promises, the American public deserves public servants who will put aside party loyalty and personal ambition to stand by them. We at the FTC look forward to filling that role in partnership with everyone here today.

Thank you.