



Office of Commissioner
Rohit Chopra

UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

STATEMENT OF COMMISSIONER ROHIT CHOPRA

*In the Matter of Vivint Smart Home
Commission File No. 192 3060
April 29, 2021*

Corporate executives will often go to great lengths to boost sales – often unsustainably – to drive up a company’s valuation in advance of selling itself to a new buyer or before going public. By incentivizing aggressive sales tactics, this can create the conditions for fraud.

Today, the Federal Trade Commission is seeking to sanction Vivint Smart Home (NYSE: VVNT) for a multi-year scam involving running credit checks on unsuspecting individuals to close sales to prospective customers. I agree that Vivint engaged in flagrant violations of law as alleged in the complaint, and I believe that Vivint must redress and help its victims. The matter is an important reminder that agencies must do more to address the incentives that drive aggressive sales tactics and fraud.

A Pre-SPAC Scam to Pump Up Valuation

Vivint offers smart home devices and services. Vivint’s products are expensive, so Vivint created a financing program where qualifying customers can make payments over time. Vivint uses a seasonal door-to-door sales force, which provides compensation only when employees make sales. In other words, if employees don’t sell, they don’t get paid.

In 2012, a private equity fund operated by the Blackstone Group took a controlling stake in Vivint Smart Home for roughly \$2 billion.¹ A few years later, Vivint apparently began to position itself to be sold or to go public. Last year, the company went public through a special purpose acquisition vehicle (SPAC). At the time, the transaction was one of the largest SPAC mergers, with an enterprise value of \$4.2 billion.²

What occurred in the interim period between Blackstone’s takeover and going public was a disturbing pattern of pervasive fraud that Vivint’s leadership did little to stop, which the Commission alleges occurred between approximately 2016 and 2019.³ According to the Commission’s complaint, when a prospective customer failed to qualify for Vivint’s financing, Vivint engaged in a host of fraudulent tactics to help close sales. For example, employees would use a tactic called “white paging,” where they would identify another individual with a similar

¹ Michael Wursthorn, *Blackstone to Buy Vivint in \$2 Billion Deal*, THE WALL STREET J. (Sept. 18, 2012), <https://www.wsj.com/articles/SB10000872396390443816804578004762456374942>.

² Bailey Lipschultz, *Vivint Smart Home Stock Surges After Subtle Public Debut*, BLOOMBERG (Jan. 30, 2020), <https://www.bloomberg.com/news/articles/2020-01-30/utah-jazz-arena-namesake-surges-after-subtle-public-debut>.

³ Compl., Fed. Trade Comm’n v. Vivint Smart Home, Inc. (Apr. 29, 2021).

name to that of the prospective customer. The employees would then take that individual's address and list it as a "previous address" of the prospective customer, with the hopes that the unsuspecting consumer's credit report would be pulled and then approved. This is identity theft. The salesperson would then close the sale and financing to the customer who initially did not qualify for credit.⁴

Vivint sold or assigned this credit to debt buyers and collectors. These entities would then pursue payments from individuals who had no idea their consumer credit file had been used to open an account.

Like in the Wells Fargo fake accounts scheme,⁵ Vivint knew about the alleged fraud but did little to address the problem. It appears that that management turned a blind eye to the scam, because the company could pump up its sales figures in ways that would help score a higher valuation when going public.

Vivint's Victims Need Help

Vivint's misconduct harmed its actual customers and the unsuspecting individuals whose identities were stolen. They need help fixing their credit reports, fending off debt buyers and debt collectors seeking payments for debt they don't owe, and obtaining compensation for these financial harms.

The Commission has requested that the Attorney General charge Vivint with violating the Fair Credit Reporting Act and for selling fake debts. I believe the Commission should have also alleged that the company violated the FTC Act's prohibitions on deceptive practices by falsifying credit applications.⁶ I also believe that Vivint turned a blind eye to obvious compliance failures by its sales force, which violated the FTC Act's prohibition on unfair practices.⁷

The Commission has also proposed a settlement where Vivint must pay \$20 million, with \$5 million going directly to Vivint's victims. Vivint must also take steps to help victims who have been harmed.⁸ I am pleased to see that this proposal requires actual help, as it is a departure from the FTC's approach in many matters.⁹

⁴ The sales representatives also utilized another tactic where they would add a co-signer to the credit application, even though this co-signer did not give any consent to apply for credit. *See* Compl., *Id.*

⁵ Emily Flitter, *The Price of Wells Fargo's Fake Account Scandal Grows by \$3 Billion*, N.Y. Times (Feb. 21, 2020), <https://www.nytimes.com/2020/02/21/business/wells-fargo-settlement.html>.

⁶ The Commission unanimously voted to bring deception and unfairness charges in a 2018 case involving falsified applications. Compl., *Fed. Trade Comm'n v. Tate's Auto Center et al.*, 3:18-cv-08176-DJH (D. Ariz. July 31, 2018), https://www.ftc.gov/system/files/documents/cases/tates_automotive_complaint.pdf

⁷ The Commission routinely charges entities with violating the FTC Act's prohibition on unfair practices when they had knowledge of and profited from egregious fraud, but failed to take steps to prevent it from festering.

⁸ Stipulated Order for Permanent Injunction and Civil Penalty Judgment, *Fed. Trade Comm'n v. Vivint Smart Home, Inc.* (Apr. 29, 2021).

⁹ For example, in a recent matter involving fraudulent debt collection practices, the FTC's approach to settlement resulted in victims receiving almost no help at all. *See* Statement of Commissioner Rohit Chopra regarding Midwest Recovery Systems, LLC, Fed. Trade Comm'n File No. 1923042 (Nov. 25, 2020), <https://www.ftc.gov/public-statements/2020/11/statement-commissioner-rohit-chopra-regarding-midwest-recovery-systems-llc>. In another recent matter involving shoddy tenant screening practices, the FTC's resolution failed to provide harmed renters

However, I am more skeptical of other settlement terms, such as requiring independent assessments and the appointment of a chief compliance officer. While in some circumstances, these measures can be useful, in this matter, they will simply generate paperwork rather than correct the management deficiencies that led to the fraud.¹⁰

Other remedial approaches are likely to be more effective and lead to more meaningful change. Clawing back executive compensation and requiring changes to incentive compensation for the sales force are also well suited to shift leadership incentives to guard against fraud. In many cases, other changes to corporate governance are appropriate. For example, to address Wells Fargo's failures in its fake accounts scandal, financial regulators sought and obtained dismissals of senior managers who allowed the fraud to fester.¹¹

Enhancing Enforcement Credibility

The FTC is currently battling its most serious credibility crisis in decades. Too many of the agency's enforcement actions provide no help whatsoever and do nothing to deter misconduct. This action is a step in the right direction, as victims will actually receive help.

Across the agency's work, Commissioners must do more to address the financial incentives that fuel wrongdoing, particularly when it comes to misuse and abuse of personal data. The Commission's status quo approach to data protection enforcement is not working,¹² and Commissioners will need to continuously examine ways to work with partners to better detect, deter, and prevent abuse by bad actors.

with help. *See* Dissenting Statement of Commissioner Rohit Chopra Regarding AppFolio, Fed. Trade Comm'n File No. 1923016 (Dec. 8, 2020), <https://www.ftc.gov/public-statements/2020/12/dissenting-statement-commissioner-rohit-chopra-regarding-appfolio>.

¹⁰ The Commission should commit to making much of this paperwork public, consistent with applicable law.

¹¹ Press Release, Office of the Comptroller of the Currency, OCC Issues Notice of Charges Against Five Former Senior Wells Fargo Bank Executives, Announces Settlement With Others (Jan. 23, 2020), <https://www.occ.gov/news-issuances/news-releases/2020/nr-occ-2020-6.html>; Press Release, Bd. of Governors of the Fed. Reserve Sys., Responding to widespread consumer abuses and compliance breakdowns by Wells Fargo, Federal Reserve restricts Wells' growth until firm improves governance and controls. Concurrent with Fed action, Wells to replace three directors by April, one by year end (Feb. 2, 2018), <https://www.federalreserve.gov/newsevents/pressreleases/enforcement20180202a.htm>.

¹² Despite the Commission's track record, Commissioners can and should implement a series of corrective actions to make the agency's privacy and data protection enforcement more credible. *See* Statement of Commissioner Rohit Chopra Regarding the Report to Congress on the FTC's Use of Its Authorities to Protect Consumer Privacy and Security, Fed. Trade Comm'n File No. P065404 (June 18, 2020), <https://www.ftc.gov/public-statements/2020/06/statement-commissioner-rohit-chopra-regarding-report-congress-ftcs-use-its>.