

**Oral Statement of Commissioner Jon Leibowitz**  
before the  
House Committee on Energy and Commerce  
on  
“Phone Records for Sale:  
Why Aren’t Phone Records Safe from Pretexting?”  
February 1, 2006

Good Afternoon Mr. Chairman, Mr. Dingell, and Members of the Committee:

I appreciate the Committee’s invitation to appear today to discuss the important topic of the privacy and security of telephone records. I ask that the Commission’s written statement be made part of the record. Of course, my oral testimony and responses to questions reflect my own views and not necessarily the views of the Commission or any other Commissioner.

**I. Introduction**

Let me start by making this absolutely clear: for the past several months, the FTC has been vigorously investigating companies that engage in the disturbing practice of selling consumer telephone records.

Maintaining the privacy and security of consumers’ sensitive personal information is one of the Commission’s highest priorities. It has been a mainstay of our consumer protection mission in recent years, as we have wrestled with issues ranging from spam to spyware to identity theft.

I’d like to spend a minute describing the FTC’s past efforts to protect consumers from pretexters generally. Then I will address the Commission’s efforts to investigate pretexting for telephone records specifically.

**II. FTC Efforts to Protect Consumers From Pretexters**

The Commission filed its first pretexting suit in 1999 against Touch Tone Information, which offered to provide consumers’ bank or brokerage account numbers and balances to anybody for a fee. The FTC alleged that Touch Tone obtained these records from financial institutions by posing as the customers whose records it was seeking. Under Section 5 of the FTC Act, which prohibits “unfair or deceptive acts or practices,” the Commission charged that using such false pretenses was deceptive, and that the sale of such information was unfair.

Later that year, Congress enacted the Gramm-Leach-Bliley Act, which this Committee was instrumental in authoring. As you know, the Act expressly prohibits pretexting for financial records.

Shortly thereafter, the Commission launched “Operation Detect Pretext.” FTC staff sent warning letters to 200 firms that sold asset information to third parties. We also released a consumer alert.

And, we filed a trio of actions against information brokers who, posing as customers, called banks to obtain private account information. Since Gramm-Leach-Bliley’s passage, the FTC has brought more than a dozen financial pretexting cases in various contexts.

The Commission has also challenged business practices that unreasonably expose consumer data to theft and misuse. In fact, just last week we announced a record-breaking \$15 million settlement against ChoicePoint, a data broker, which requires the company to implement tougher security procedures. The ChoicePoint settlement sends a strong signal that industry must do a better job of safeguarding sensitive consumer information.

### **III. Protecting Consumers’ Telephone Records**

Now, let me turn to telephone records. Disturbingly, a cottage industry of companies is peddling cell phone and land line records. Recent news stories report the easy purchase of phone logs of prominent figures such as General Wesley Clark.

Although the acquisition of telephone records does not threaten immediate economic harm, in some ways the consequences could nevertheless be dire. Consider, for example, an abusive ex-husband trying to track down his estranged ex-wife. Or an ex-con trying to track down the law enforcement officer who put him in jail.

But for most people – like the 202+ million cell phone users in the United States – the basic issue is this: it is an intrusion into their personal privacy. They just don’t want their private call records available to the public.

Moreover, it’s far too easy to obtain this type of information. Here’s what one website offers (*it’s just one out of dozens*): If you provide them with a cell phone number, they will provide you with a list of all outgoing calls. And they’ll do it in as little as an hour. They’ll also provide the owner’s name, billing address, and home phone number.

The Commission has been actively investigating companies that appear to obtain such information by pretexting. Commission investigators started by surfing Internet websites for data brokers who sell consumers’ phone records. Next they identified appropriate targets for investigation and made undercover purchases. Commission attorneys are currently evaluating the evidence. Stay tuned.

As you know, Gramm-Leach-Bliley does not prohibit pretexting for telephone records. But the Commission may bring an action against a telephone pretexter for unfair or deceptive practices, as we did in the Touch Tone case. What we can’t generally do under the FTC Act,

though, is seek civil penalties. Nor do we have jurisdiction over phone companies if they have inadequate safeguards.

Having said that, we are working closely with the FCC, which has jurisdiction over telecommunications carriers. Our two agencies are committed to coordinating our work here, as we have done successfully with enforcement of the “Do Not Call” program.

#### **IV. Conclusion**

Again, thank you for letting me testify. We look forward to working with the Committee and its staff on this very important issue.