

**Before the
FEDERAL TRADE COMMISSION
Washington, D.C. 20580**

In the Matter of)
)
FACTA Identity Theft Rule) Matter No. R411011
)
_____)

SPRINT COMMENTS

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June 15, 2004

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SPRINT COMMENTS

Sprint Corporation, on behalf of its local, long distance and wireless divisions (“Sprint”), submits comments on the Commission’s Notice of Proposed Rulemaking.¹

The Commission seeks comment on proposed rules under the Fair and Accurate Credit Transactions Act (“FACT Act”) regarding, among other things, further definition of the term “identity theft report” and the appropriate proof of identity needed by consumers for blocking fraudulent trade lines in their consumer reports, placing or removing fraud and active duty alerts or obtaining a file disclosure containing a truncated social security number. Sprint is concerned that the broad definition of “identity theft report,” without the filing of a specific police report, creates a substantial risk that the FACT Act will be misused, while shifting the obligation to verify the legitimacy of identity theft reports from law enforcement agencies, where Sprint believes the obligation belongs, to information furnishers and consumer reporting agencies. The Commission should at least provide information furnishers and consumer reporting agencies with immunity for good

¹ See Federal Trade Commission, *Related Identity Theft Definitions, Duration of Active Duty Alerts, and Appropriate Proof of Identity Under the Federal Credit Reporting Act*, Matter No. R411011, 69 Fed. Reg. 23370 (April 28, 2004)(“FACT Act NPRM”).

faith determinations about the legitimacy of a report, and it should also establish expedited review procedures if a consumer disagrees with the determination. Sprint is also concerned that requirements for appropriate proof of identity may be unworkable if providers are required to provide a “full match,” which would lead to systems problems, manual resolution, significant delays and the imposition of sizable costs. Sprint supports an adjustable level of identity verification.

I DEFINITION OF IDENTITY THEFT REPORT

The Commission proposes to define “identity theft report” to include filings of allegations made with federal law enforcement agencies – notably the FTC – in a wholly automated manner. Section 111 of the FACT Act defines “identity theft report” to mean “at minimum, a report –

- (A) that alleges identity theft;
- (B) (that is a copy of an official valid report filed by the consumer with an appropriate Federal, State, or local law enforcement agency, including the United States Postal Inspection Service, or such other government agency as deemed appropriate by the Commission; and
- (C) the filing of which subjects the person filing the report to criminal penalties relating to the filing of false information, if in fact, the information in the report is false.”

As the Commission correctly notes, the potential for abuse of the credit report system through these identity theft reports “is significant”:

[An identity theft report] could provide a powerful tool for misuse, allowing persons to engage in illegal activities in an effort to remove or block accurate, but negative information in their consumer reports.²

The Commission proposes that consumers using automated filing systems must allege the nature of the identity theft with specificity as a deterrent to filing unlawful re-

² FACT Act NPRM, 69 Fed. Reg. at 23371 and 23372.

ports.³ Under the proposal, the investigative burden would shift from law enforcement and administrative agencies to information furnishers and consumer reporting agencies. Under the proposal, information furnishers and consumer reporting agencies would be authorized to ask the consumer to submit additional information and documentation and make an independent determination whether or not to decline or rescind a block request.⁴

The proposal imposes a new obligation on information furnishers and consumer reporting agencies. Even the staffs of larger information furnishers like Sprint could be strained to investigate the number of identity theft reports that may be filed. In 2003 alone, Sprint confirmed about 75,000 unique reports of identity theft. While Sprint recognizes the serious and growing problem of identity theft, information furnishers could be overwhelmed if required to investigate unverified identity theft reports made to law enforcement and administrative agencies through automated systems.

Sprint submits that two components should be added to the proposed procedures. First, the Commission should establish expedited review procedures – to the Commission – where an identity theft report is investigated and rejected by an information furnisher or consumer reporting agency and the consumer challenges this finding. The procedures proposed by the Commission will not be workable unless there exists a fair and efficient dispute resolution mechanism.

Second, information furnishers and consumer reporting agencies should be provided immunity for rejecting or accepting identity theft reports in good faith pursuant to Commission rules, including those alleged with specificity as well as those that require investigation where specificity is lacking. As the rules are currently proposed, informa-

³ See *id.* at 23372; Proposed Rule 603.3(a)(1).

tion furnishers may be subject to legal exposure if they determine in good faith pursuant to Commission rules, but incorrectly, that an identity theft report is legitimate or not.

In summary, Sprint supports the Commission's proposed identify theft report procedure, but only so long as the Commission adopts an efficient dispute resolution procedure and provides a level of protection for information furnishers that act in good faith.

II. APPROPRIATE PROOF OF IDENTITY

Sprint supports the Commission's proposed rule to require consumer reporting agencies to develop reasonable requirements to identify consumers in accordance with the risk of harm that may arise from a misidentification, but sufficient to match consumers with their files.⁵ The Commission gives the following example of what might constitute a reasonable requirement:

(i) Consumer file match: The identification of the victim including his or he full name (first, middle, initial, last, suffix), any other or previously used names, full address (street number and name, apt. no., city, state, zip code), full 9 digits of Social Security Number, and/or date of birth.⁶

The Commission should make clear that when a file match process is used, it is not requiring that there be a "full match." For example, a consumer may provide his address as 143rd, yet other records may identify the address as 143rd Street or Terrace. Similar variances or even keystroke errors can occur with street numbers and customer names. If a 100 percent match were required, a high percentage of requests would likely be rejected by automated systems and fall out for manual processing, which would entail length delays and add significant costs. The Commission should make clear that it is not

⁴ See *id.* at 23371-72; Proposed Rule 603.3(a)(3).

⁵ See FACT Act NPRM, 69 Fed. Reg. at 23373-74.

⁶ *Ibid*; Proposed Rule 614.1(b)(1).

requiring reporting agencies and information furnishers to use, build or modify systems requiring a 100 percent match with no variance allowed, if they use a file match process.

CONCLUSION

For the above-stated reasons, Sprint requests that the Commission hold that information furnishers and consumer reporting agencies have immunity from lawsuit and enforcement actions for decisions they make to verify identity theft reports pursuant to Commission Rules. Sprint further requests that the Commission create and administer a resolution process for consumer disputes regarding an information furnisher's rejection of an identity theft report in accordance with the Commission's rules. Finally, Sprint supports the Commission's rule to require consumer reporting agencies to develop reasonable requirements to identify consumers in accordance with the risk of harm that may arise from a misidentification. However, Sprint requests that the Commission clarify that

a consumer reporting agency is not required to achieve a 100% match between the proof of identity provided by a consumer and the agency's files with no variance allowed, if the agency uses a file match process.

Respectfully submitted,

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