

Some Cybersecurity Every Day Will Keep The FTC Away

By Michael Macagnone

Law360, New York (October 10, 2017, 4:00 PM EDT) -- Businesses that take cybersecurity seriously and reasonable steps to protect their computer networks and other information may not be subject to additional regulation or agency action even if they get hacked, acting Federal Trade Commission Chairman Maureen Ohlhausen said Tuesday.

The FTC will not take action when businesses have taken such reasonable steps to prevent a breach, Ohlhausen said at a National Cybersecurity Awareness Month event hosted by the National Rural Electric Cooperative Association. She said that the agency has dropped investigations without enforcement actions and that it wants to partner with businesses who will make efforts to keep data secure.

“We only require reasonable security, not perfect security. So just because there is a breach doesn’t mean there will be an enforcement action,” Ohlhausen said. “Sometimes there will be an investigation and find that a company had reasonable security measures and protection in place and they will close the investigation.”

Ohlhausen, a Republican commissioner who was named acting chair by President Donald Trump, said that such reasonable security measures include taking steps to address known security vulnerabilities and being honest about their statements to consumers on data security. She spotlighted the agency’s settlement with Uber Technologies Inc. during the summer over allegations that the company did not properly protect consumers’ information.

In announcing the nonmonetary settlement in August, the agency alleged that Uber misrepresented the level of access that employees had to consumers’ information and the level of security it provided that data when it was collected.

Ohlhausen said Tuesday that the agency has numerous resources, along with other government agencies, to address security issues and help businesses protect themselves. She emphasized that the agency would not step in if the business community is able to collectively take action on cybersecurity.

“We want to find ways to get this done without imposing unnecessary and undue costs and burdens on businesses,” Ohlhausen said.

Ohlhausen said a step-by-step online guide published by the agency to its response to the Equifax breach was viewed more than 2 million times. She declined to talk about that breach following Tuesday’s speech, saying that it was still an open matter before the agency.

Ohlhausen has long advocated the agency’s current rule-of-reason approach to cybersecurity responsibility.

Under the prior administration, she had spoken out against the Federal Communications Commission’s attempts to write a different cybersecurity standard. She had said that it would result in duplicated, confusing rules and potentially leave the most personal information —

location tracking, payment information and medical records — with the same amount of security as the most trivial information.

Ohlhausen has repeatedly said that the FTC primarily pursues the “low-hanging fruit” of firms that had lax security in the wake of data breaches.