

ALASKA LEGISLATURE

2485

HOUSE and SENATE FINANCE COMMITTEE FILES, 2003-2004



Alaska Commission on Aging

Resolution 2003 - 01

FFR 2 5 2003

“ In support of passage of HB 15: Telemarketers No-Call Lists

Whereas, computer generated telephone lists for solicitation for a wide variety of services has become increasingly common, and

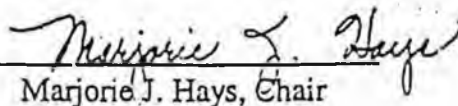
Whereas, telemarketing solicitation has become a nuisance for many Alaskans, and

Whereas, seniors are particularly vulnerable to telemarketing schemes, many of which have been determined to be fraudulent in nature, and

Whereas, there currently exists no mechanism to protect seniors from unwanted telephone solicitations,

Therefore, be it resolved, that the Alaska Commission on Aging supports the passage of HB15 creating a “do not call” list which would allow individuals to register as participants voluntarily so that they would no longer receive unwanted telephone solicitations.

Adopted this 28th day of January 2003.


Marjorie J. Hays, Chair

Q&A: The FTC's Changes to the Telemarketing Sales Rule

Federal Trade Commission ■ Bureau of Consumer Protection ■ Office of Consumer and Business Education

1. How do I sign up for the national "do not call" registry?

You will be able to sign up for free online or by calling a toll-free number. The web address and phone number for registration will be available at www.ftc.gov/donotcall. If you want to register by phone, you will have to call from the telephone line that you wish to register. If you register online, you may need to provide limited personal information for confirmation. The only identifying information that will be kept in the registry will be the phone number you register. Signing up will take only a few minutes. You can expect fewer calls within three months of the date you sign up for the registry.

2. What is it going to cost to sign up for the national "do not call" registry?

Registration is free. Consumers can register over the Internet or by calling a toll-free telephone number.

3. When will I be able to sign up?

- In July, consumers may begin registering for free online or by calling a toll-free number. To better manage the anticipated volume of registrations, initial sign-up by phone for the national "do not call" registry will be phased in, region-by-region, over an eight-week period. Online registration will be available nation-wide in July.
- In September, telemarketers and other sellers will have access to the registry. They will be required to scrub their call lists against the national "do not call" registry at least once every 90 days.
- In October, the FTC and the States will start to enforce the national "do not call" registry provisions of the Amended Telemarketing Sales Rule. Violators are subject to a fine of up to \$11,000 per violation. At this point, consumers on the registry should start to get fewer telemarketing calls.

The FTC's implementation schedule for the national "do not call" registry will be updated at www.ftc.gov/donotcall.

4. How will the national "do not call" registry work?

You will be able to register for free online or by calling a toll-free number. Once your number is in the FTC's national "do not call" registry database, telemarketers will be on notice that you do not want telemarketing calls. The Telemarketing Sales Rule ("TSR" or "Rule") requires them to download the registry database and drop all registered numbers from their call lists. Telemarketers are required to do this at least quarterly.

After the law takes effect, if you register and yet still receive telemarketing calls, you'll be able to file a complaint with the FTC online or by calling a toll-free number. A telemarketer who calls a number on the registry could be fined up to \$11,000 for each call.

Your number will stay on the registry for five years or until you take your number off the registry or change phone numbers. After five years, you will be able to renew your registration.

5. If I register my number on the national "do not call" registry, will it stop all telemarketing calls?

No. Placing your number on the national "do not call" registry will stop most, but not all, telemarketing calls. Some businesses are exempt from the TSR and can still call you even if you place your number on the registry. These include common carriers (such as long-distance phone companies and airlines), banks and credit unions, and insurance companies operating under state regulations. However, most telemarketing calls are placed by professional telemarketing companies on behalf of other companies whose goods or services are

being sold, and even if the company whose goods or services are being sold is exempt from the TSR, the telemarketing company is covered and must comply.

The FCC has initiated a rulemaking proceeding that would extend the "do not call" registry to many of the businesses that are exempt from FTC coverage. That FCC proceeding is ongoing.

6. Because so many kinds of companies are exempt from the TSR, won't this new national "do not call" registry have a lot of holes?

No. All professional telemarketing companies must comply with the TSR, even if they are making sales calls on behalf of a company that is not covered. Failing to comply may subject the telemarketing company to a fine of \$11,000 for each call that is not in compliance with the Rule.

7. What about telemarketers calling from overseas? Are they covered? Won't you have difficulty enforcing your national "do not call" registry outside the U.S.?

Telemarketers calling U.S. consumers are covered, regardless of where they are calling from. Enforcement outside the U.S. is not as easy as it is at home, but it is not unusual for the FTC to take law enforcement action — and to prevail — against telemarketers calling from outside the U.S. Moreover, if a company within the U.S. solicits sales through an overseas professional telemarketer, that U.S. company is liable for any TSR violations of the telemarketer. Initiating enforcement action against such companies is not a problem for the FTC.

8. Won't this new national "do not call" registry cover less than the state "do not call" laws?

Coverage of the TSR is generally broader than state laws. The FTC's "do not call" registry requirements are at least as stringent as most state laws. It is true that the TSR covers only telemarketing across state lines, while state laws also cover any telemarketing that is confined within the state's borders. Because most unwanted telemarketing calls are part of nationwide, interstate selling campaigns, they will be covered by the FTC's "do not call" registry. At any rate, the states can continue to enforce their laws, which will not be affected by the FTC's national "do not call" registry.

9. Doesn't the Direct Marketing Association already run a free "do not call" program?

For a number of years the Direct Marketing Association has operated the "Telephone Preference Service" (TPS). The TPS is strictly a voluntary system, and only members of DMA — many telemarketers are not members — face a mild sanction for calling consumers who have signed up for the TPS. The FTC's national "do not call" registry will provide consumers with greater control over what telemarketing calls they receive.

10. I get lots of calls soliciting money for political organizations or for charities — will the national "do not call" registry stop those types of calls?

Political solicitations are not covered by the TSR. Telemarketers calling to solicit charitable contributions are not required to drop registered numbers from their call lists, but if you make a request to a specific organization that they not call you, they are required to honor your request. If they subsequently call you again, they may be subject to a fine of \$11,000.

11. What about callers that claim to be taking a survey?

If the call is really for the sole purpose of conducting a survey, it is not covered by the TSR. Only *telemarketing* calls are covered — that is, calls that solicit sales of goods or services. Callers purporting to take a survey, but also offering to sell goods or services, must comply with the TSR.

12. I'm happy that I can get rid of calls I don't want, but there are some telemarketing calls I don't mind receiving. Is there a way to allow only certain companies to call?

Yes. If you give a company your written permission to call you, they may do so even if you have placed your number on the national "do not call" registry.

Also, even if you put your number on the national "do not call" registry, the Rule allows companies with

which you have an established business relationship to call you for up to 18 months after your last purchase or delivery from it, or your last payment to it, unless you ask the company not to call again. (In that case, the Rule requires the company to honor your request, and if they subsequently call you again, they may be subject to a fine of \$11,000.) Also, if you make an inquiry to a company or submit an application to it, for three months afterwards the company can call you. If you make a specific request to that company not to call you, however, then the company may not call you, even if you have an established business relationship with that company.

If you do not want to put your number on the national registry, you can still prohibit individual telemarketers, one by one, from calling by asking them to put you on their company's "do not call" list.

13. I'm already on my state "do not call" list. What should I do?

The FTC is setting up a system to accept state lists into the national registry at no cost to the state. If a state is able to transfer its list to the FTC, you do not need to do anything to register on the national list — we will get your information from the state, but it may take a year or longer. Some state laws will not permit this transfer of information right away. In those cases, you may want to register on the national "do not call" registry as well as your state list. We will have more detailed information about each individual state as the time of consumer registration approaches. Keep checking www.ftc.gov/donotcall for information.

14. Does the FTC's decision mean that state "do not call" laws are no longer in effect?

No. State "do not call" laws remain in effect.

15. A friend of mine won a lawsuit against a telemarketer that wouldn't stop calling and collected \$500. Does this new FTC decision prevent suits like that in the future?

No. The Telephone Consumer Protection Act (TCPA) allows consumers to sue companies that fail to honor requests not to call.

16. Doesn't the Federal Communications Commission (FCC) have some "do not call" regulations also? How does this new FTC "do not call" program fit in with that?

The FCC has regulations that require each company to maintain its own "do not call" list. Generally, a company may not call a consumer that has asked to be placed on that company's "do not call" list. The FCC regulations do not conflict with the FTC's national "do not call" registry. The FCC is currently reviewing its telemarketing regulations pursuant to the Telephone Consumer Protection Act. Its comment period closes January 8, 2003.

17. Do I register just once? Or will I need to renew my registration after a while?

Your telephone number will stay on the registry for five years, unless you decide to take it off the registry or change phone numbers. After five years, you will be able to renew your registration.

18. Can businesses sign up for the "do not call" registry?

No. The "do not call" provisions of the amended TSR do not apply to business-to-business calls. As a result, businesses have no reason to register their telephone numbers.

19. I have two telephone lines. Are they both covered?

Yes. You will need to register each telephone line separately.

20. Can I register my cell phone number?

Yes.

21. I've noticed that when telemarketers call, my caller ID says "number not available" or something like that. Are you doing anything about that?

When the amended TSR goes into effect, telemarketers will be required to transmit their telephone number, and if possible, their name, to your Caller ID service. While it is technologically possible to transmit callers' numbers nearly everywhere now, transmission of callers' names may not be available everywhere

yet. Transmission of callers' ID information will enable you to know who is calling. This provision will take effect one year after the release of the Rule.

22. I've noticed that when telemarketers call, there's often a long pause before anyone comes on the line. This annoys me. Can't you do anything about that?

The amended TSR will greatly reduce the number of "dead air" or hang-up calls you receive from telemarketers. "Dead air" or hang-ups result from telemarketers' use of automatic dialing equipment that sometimes calls too many numbers for the number of sales representatives the telemarketer has available to handle the calls. When this happens, you rush to answer the phone, only to find no one there. The TSR has new provisions that will greatly decrease this practice. In the few instances when the telemarketer does not have an operator ready, it must play a recorded message letting you know who they are and their telephone number — but a sales pitch is prohibited by law. Also, to give you time to answer the phone, the telemarketer must let the your phone ring for at least 15 seconds or four rings before hanging up.

23. What other protections are there against unwanted telemarketing calls?

The TSR protects you from unwanted late-night telemarketing calls — calling times are restricted to the hours between 8 a.m. and 9 p.m. In addition the TSR requires telemarketers who call you to promptly tell you the identity of the seller or charitable organization and that the call is a sales call or charitable solicitation call before they make their pitch. Having this information "up front" enables you to decide quickly whether you are interested in hearing more or would rather terminate the call. Also, the TSR requires telemarketers, whether they call you or you call them, to disclose all material information about the goods or services they are offering and the terms of the sale, and prohibits them from making specific material misrepresentations.

24. So the TSR does more than regulate unwanted telemarketing calls. Are there any changes to the fraud and deception provisions of the Rule?

Yes. The amended TSR adds new provisions and strengthens existing ones to provide greater protection to consumers from fraud and deception. The most important of these changes addresses unauthorized charges to consumers' accounts. For example, some telemarketers and sellers have the ability to bill charges to your credit card account or other accounts *even if you do not give them your account number*. The amended TSR will help to protect you from unauthorized charges when this occurs. The amended TSR spells out the steps that telemarketers must follow to make sure you have agreed to make a purchase and requires that in every transaction they obtain your "express informed consent" to be charged, and to be charged to a specific account. If a telemarketer has your account information before the call, and is offering you goods or services on a "free-to-pay conversion" basis — meaning that you get the goods or services for free for a limited time and then you will be charged automatically — the telemarketer must get your permission to use a particular account number, ask you to confirm the number by repeating the last four digits, and, for your protection, keep an audio recording of the entire phone transaction.

Another change addresses problems that arise when a telemarketer uses a new or unfamiliar payment mechanism — for example, billing charges for goods or services to your checking account, your phone bill, your existing mortgage account, or some other account besides a credit card or debit card. When you pay for goods or services in a telemarketing transaction using any of these unconventional billing methods, the telemarketer must obtain your express verifiable authorization to the terms of the transaction. The Rule spells out in detail exactly what a telemarketer must do to make sure you understand what account will be charged, and how much.

Report for Congress

Received through the CRS Web

Telemarketing: Order Code RL30763 Dealing with Unwanted Telemarketing Calls

Updated October 8, 2002

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Telephone Consumer Protection Act of 1991 (TCPA)

The TCPA, P.L. 102-243, was signed by President Bush on December 20, 1991. It was the first of the six federal laws passed dealing specifically with telemarketing issues. This Act directed the Federal Communications Commission to issue rules balancing the fair business practices of telemarketers with the privacy concerns of consumers.

Some of the provisions of the FCC rules resulting from this Act are:

(1) Telemarketing companies must maintain a do-not-call list for calls placed to residential telephone numbers. If a consumer requests that his/her name be placed on such a list, the company must honor the request for 10 years. Nonprofit and charitable organizations are exempted from this provision, and the rules do not apply to calls placed to business telephone numbers.

If a consumer's name is on a company's do-not-call list and the company places more than one call to that consumer in the year after the consumer has been placed on the list, the consumer may, if he/she wishes, sue the telemarketer in state court, usually a small claims court. Should a consumer pursue court action, he/she should maintain records of all calls and contacts with the company.

(2) Telephone solicitations to private residences may only be made between the hours of 8 a.m. and 9 p.m.

(3) Use of autodialers or prerecorded (artificial) voice messages to call any emergency telephone line (911, hospital, medical office, health care facility, poison control center, police, or fire lines), a guest or patient room in a hospital, health care facility, or home for the elderly, any phone number assigned to a paging service or cellular telephone, or services for which the person called would be charged for the call are prohibited unless prior consent was given to receive such calls.

(4) Prerecorded (artificial) voice calls to private homes are prohibited. However, such calls are permitted if the person called has consented to receive such calls, the call is noncommercial (from a charitable, nonprofit, political, or polling organization or government agency), the entity calling has an established business relationship with person called, or the call is an emergency. Such calls to business numbers are permitted.

(5) Any person or entity making a telephone solicitation to a private home must provide the name of the individual caller, the name of the person or entity on whose behalf the call is being made, and a telephone number or address where that person or entity may be contacted.

(6) Any person or business using autodialers or prerecorded (artificial) voice calls, including calls placed to businesses, must state its identity at the beginning of the message and its telephone number or address during or after the message.

(7) Autodialer calls may not lock onto a phone line. Within 5 seconds of a phone being hung up, the autodialer must release the phone line. In some areas of

Information on submitting comments to the FCC may be found at [<http://www.fcc.gov/cgb/>].

Telemarketing and Consumer Fraud and Abuse Prevention Act

P.L. 103-297 was signed by President Clinton on August 16, 1994. The Act directed the Federal Trade Commission to establish rules to prohibit certain telemarketing activities. The FTC's final Telemarketing Sales Rule (TSR) was adopted on August 15, 1995. The rule covers most types of telemarketing calls and also applies to calls consumers make in response to material received in the mail, but it is not intended to affect any state or local telemarketing laws. The rule went into effect on December 31, 1995.

Some of the provisions of the rule are:

- (1) The rule restricts calls to the hours between 8 a.m. and 9 p.m.
- (2) It forbids telemarketers from calling consumers if they have been asked not to. Violations of this provision may be reported to the state Attorney General.
- (3) It requires certain prompt disclosures, prohibits certain misrepresentations and lying to get consumers to pay, and makes it illegal for a telemarketer to withdraw money directly from a checking account without the account holder's specific, verifiable authorization.

Telemarketers calling consumers must promptly identify the seller of the product or service, that the purpose of the call is to sell something, the nature of the goods or services being offered and, in the case of a prize promotion, that no purchase or payment is required to participate or win. In addition, prior to a consumer paying for any good or service, the consumer must be provided with material information that is likely to affect their choice of the good or service. Material information includes cost and quantity; restrictions, limitations, or conditions; refund policy; and, in the case of a prize promotion, information on the odds of winning, that there is no payment required to enter the promotion, how the consumer may enter the promotion without paying, and information on any material costs or conditions that may be required to receive or redeem any prize.

- (4) Telemarketers and sellers are required to maintain certain records for 2 years from the date that the record is produced. Records includes items such as advertising and promotional materials, information about prize recipients, sales records, employee records, and all verifiable authorizations for demand drafts for payment from a consumer's bank account.

There are exceptions to the Telemarketing Sales Rule. For example, calls initiated by a consumer that are not made in response to a solicitation, business-to-business calls (in most cases), and sales of 900-number (pay-per-call) services and franchises (covered by other FTC rules) are not covered. Certain types of businesses—banks, federal credit unions, federal savings and loans, common carriers (long-

in the *Federal Register* on January 30, 2002, on pages 4491-4546. The FTC accepted comments on the proposed TSR rule changes until March 29, 2002.

On May 24, 2002, the FTC announced that it had not yet made any final determination regarding the establishment of a national do-not-call registry. However, concerned with funding for operation of the registry should it be implemented, the FTC amended its January 22 proposal to include the assessment of user fees on all telemarketers that access or obtain data from any national do-not-call registry that might be established. The Commission also reiterated that it is not proposing any charges to consumers for adding their names to the registry. Currently, the FTC estimates that development and implementation of a national list would cost approximately \$5 million. Of that, approximately \$3 million would come from user fees. According to the FTC, there are approximately 3,000 telemarketers that would be required to pay the user fee.

The Direct Marketing Association (DMA), a national trade association serving the direct marketing industry, believes this amendment to the original proposal would be counterproductive to the industry's efforts at self-regulation and would be a financial burden to telemarketers. The DMA currently operates the DMA Telephone Preference Service, an industry-run national do-not-call list with 4.5 million names on the list.

The full text of the Notice of Proposed Rulemaking concerning the proposed user fees may be found in the *Federal Register* of May 29, 2002, on pages 37362-37369. The FTC announcement of the Notice with links to the text of the proposal may be found at [<http://www.ftc.gov/opa/2002/05/fyi0229.htm>]. Comments on this issue will be accepted until June 28, 2002.

Senior Citizens Against Marketing Scams Act of 1994

This Act was Title XXV of the Violent Crime Control and Law Enforcement Act of 1994, P.L. 103-322, and was signed by President Clinton on September 13, 1994. It included provisions that increased penalties for telemarketing fraud against people over 55 years old. Provisions of this law allow imprisonment up to an additional 5 years for certain telemarketing crimes or up to 10 additional years if 10 or more persons over the age of 55 were victimized or the targeted persons were over 55. Also, the Act requires that full restitution be paid to victims and directs the U.S. Attorney to enforce any restitution order.

Telecommunications Act of 1996

P.L. 104-104, signed by President Clinton on February 8, 1996, was a substantial amendment to the 62-year old Communications Act of 1934. Section 701 of the Act closed a loophole that allowed information service providers and telemarketers to connect callers to "pay-per-call" services even though the callers had initially dialed a toll-free telephone number.

Passed following the September 11 attacks, Section 1011 amends the Telemarketing and Consumer Fraud and Abuse Prevention Act (see above) to expand the coverage of the FTC's Telemarketing Sales Rule to apply to calls made to solicit charitable contributions. The rule currently covers only calls made to sell goods and services. Charitable organizations are exempt from the rule. Although this law does not remove that exemption, it does permit the FTC to take action against a for-profit company that fraudulently, deceptively, or abusively solicits charitable contributions for charities.

In addition, the Act increases the penalty for impersonating a Red Cross member or agent.

What Consumers Can Do

Hang Up

Simply say, "No, thank you. I'm not interested." No one has to make any special excuse or listen to the presentation of the person on the line.

Be Informed

Consumers can go to a local library and ask for help in finding information on telemarketing and telemarketing scams. The library's Internet connection (if available) will provide access to the Web sites listed in this report. If no Internet connection is available, one may contact the FTC to request information about the Telemarketing Sales Rule.

Federal Trade Commission
Public Reference Branch
6th Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20580
[<http://www.ftc.gov>]

Contacting the local Better Business Bureau (BBB) to obtain information about telemarketing and the various types of telemarketing scams is another option. The BBB also provides information at its Web site [<http://www.bbb.org/library>].

Be Cautious

If a letter or postcard arrives or there is a message on a home answering machine stating that someone has won a free trip or a prize or a sweepstakes, be cautious. Consumers should check the area code for the number that must be called to claim a prize or respond to a telemarketing call before they make the call. Most Caribbean countries and Canada have area codes that are integrated into the U.S. telephone system and may be reached by direct dialing without using separate country codes. Simply making a call to certain area codes may incur substantial long-distance charges. Those charges will depend upon the area code called, long-distance carrier, length of call, a customer's long-distance calling plan (or lack thereof), and other

The information that is provided to the FTC may help the agency establish a pattern of violations that may require action. However, the FTC generally does not get involved in individual disputes with telemarketing companies.

The FTC also provides information about telemarketing fraud through its Ditch the Pitch Campaign at its Web site. Information is provided for consumers on protecting themselves and for businesses on complying with FTC regulations. Complaints about telemarketing practices may be filed at this site. See [<http://www.ftc.gov/bcp/online/edcams/telemarketing/index.html>].

National Fraud Information Center. Suspected fraudulent telemarketing activities may also be reported to the National Fraud Information Center (NFIC), a private, nonprofit organization that assists consumers with telemarketing complaints. NFIC forwards all appropriate complaints to the FTC. One may obtain information on telemarketing or report suspicious incidents to NFIC via telephone, mail, or the Internet.

National Fraud Information Center
P.O. Box 65868
Washington, D.C. 20035
1-800-876-7060
[<http://www.fraud.org>]

Federal Communications Commission. One may also contact the Federal Communications Commission if they believe violations of the Telephone Consumer Protection Act have occurred. Send a letter describing the complaint in detail to:

Federal Communications Commission
Consumer & Governmental Affairs Bureau
Complaints
445 12th Street, N.W.
Washington, D.C. 20554
1-888-CALL-FCC (1-888-225-5322)

Complaints may be filed online at the FCC Web site:
[<http://www.fcc.gov/cgb/complaintfiling.html>]

Information is available at the following FCC Web pages:
[<http://www.fcc.gov/cgb/consumerfacts/tcpa.html>] (unwanted telemarketing calls), or
[<http://www.fcc.gov/cgb/consumerfacts/unwantedfaxes.html>] (unwanted faxes), or [<http://www.fcc.gov/cgb/consumerfacts/telemarketscam.html>] (telemarketing scams)

Ask to Be Placed on a Do-Not-Call List. If someone wants to be placed on a firm or individual's do-not-call list, they should state clearly and firmly to the caller that their name is to be added to the list. The caller must take the name, add it to their list, and keep it there for 10 years. In addition, consumers should take

DMA Privacy Promise. On July 7, 1999, the DMA announced implementation of its "*DMA Privacy Promise to American Consumers.*" This effort requires all DMA members to adhere to a set of consumer privacy protection measures. These measures include:

(1) Disclosing to consumers when contact information about them may be shared with other marketers;

(2) Providing a means for consumers to opt-out of any information sharing arrangement;

(3) Honoring any individual consumer's request not to receive any further solicitations from the marketer; and

(4) Requiring member companies to use the DMA's Mail Preference and Telephone Preference Services to maintain updated marketing lists of consumers who have chosen to place their name on these lists.

DMA members were given reasonable time to comply, and through the use of secret shoppers, decoys, review of consumer complaints, and random staff contacts, the DMA seeks to assure that its members comply with these measures. If a member refuses to correct its procedures when asked to do so, the DMA Board may expel the company and make its actions public.

In addition, the DMA, in conjunction with the FTC and FCC, has developed a Web page providing advice to consumers who shop by phone. The site provides shopping tips, information on federal laws and regulations, and provides information on filing complaints [<http://www.the-dma.org/consumers/shoppingbyphone.html>].

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Final version (Enrolled Bill) as passed by both Houses. There are 4 other versions of this bill.

GPO's PDF version of this bill	References to this bill in the Congressional Record	Link to House Committee Report	Link to the Bill Summary & Status file.	Printer Friendly Display - 5,068 bytes. [Help]
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Do-Not-Call Implementation Act (Enrolled as Agreed to or Passed by Both House and Senate)

--H.R.395--

H.R.395

One Hundred Eighth Congress

of the

United States of America

AT THE FIRST SESSION

Begun and held at the City of Washington on Tuesday,

the seventh day of January, two thousand and three

An Act

To authorize the Federal Trade Commission to collect fees for the implementation and enforcement of a 'do-not-call' registry, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Do-Not-Call Implementation Act'.

SEC. 2. TELEMARKETING SALES RULE; DO-NOT-CALL REGISTRY FEES.

The Federal Trade Commission may promulgate regulations establishing fees sufficient to implement and enforce the provisions relating to the 'do-not-call' registry of the Telemarketing Sales Rule (16 CFR 310.4(b)(1)(iii)), promulgated under the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6101 et seq.). Such regulations shall be promulgated in

accordance with section 553 of title 5, United States Code. Fees may be collected pursuant to this section for fiscal years 2003 through 2007, and shall be deposited and credited as offsetting collections to the account, Federal Trade Commission--Salaries and Expenses, and shall remain available until expended. No amounts shall be collected as fees pursuant to this section for such fiscal years except to the extent provided in advance in appropriations Acts. Such amounts shall be available for expenditure only to offset the costs of activities and services related to the implementation and enforcement of the Telemarketing Sales Rule, and other activities resulting from such implementation and enforcement.

SEC. 3. FEDERAL COMMUNICATIONS COMMISSION DO-NOT-CALL REGULATIONS.

Not later than 180 days after the date of enactment of this Act, the Federal Communications Commission shall issue a final rule pursuant to the rulemaking proceeding that it began on September 18, 2002, under the Telephone Consumer Protection Act (47 U.S.C. 227 et seq.). In issuing such rule, the Federal Communications Commission shall consult and coordinate with the Federal Trade Commission to maximize consistency with the rule promulgated by the Federal Trade Commission (16 CFR 310.4(b)).

SEC. 4. REPORTING REQUIREMENTS.

(a) **REPORT ON REGULATORY COORDINATION-** Within 45 days after the promulgation of a final rule by the Federal Communications Commission as required by section 3, the Federal Trade Commission and the Federal Communications Commission shall each transmit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report which shall include--

(1) an analysis of the telemarketing rules promulgated by both the Federal Trade Commission and the Federal Communications Commission;

(2) any inconsistencies between the rules promulgated by each such Commission and the effect of any such inconsistencies on consumers, and persons paying for access to the registry; and

(3) proposals to remedy any such inconsistencies.

(b) **ANNUAL REPORT-** For each of fiscal years 2003 through 2007, the Federal Trade Commission and the Federal Communications Commission shall each transmit an annual report to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report which shall include--

(1) an analysis of the effectiveness of the 'do-not-call' registry as a national registry;

(2) the number of consumers who have placed their telephone numbers on the registry;

(3) the number of persons paying fees for access to the registry and the amount of such fees;

(4) an analysis of the progress of coordinating the operation and enforcement of the 'do-not-call' registry with similar registries established and maintained by the various States;

(5) an analysis of the progress of coordinating the operation and enforcement of the 'do-not-call' registry with the enforcement activities of the Federal Communications Commission pursuant to the Telephone Consumer Protection Act (47 U.S.C. 227 et seq.); and

(6) a review of the enforcement proceedings under the Telemarketing Sales Rule (16 CFR 310), in the case of the Federal Trade Commission, and under the Telephone Consumer Protection Act (47 U.S.C. 227 et seq.), in the case of the Federal Communications Commission.

Speaker of the House of Representatives.

Vice President of the United States and

President of the Senate.

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List of Subjects of 16 CFR Part 310
Telemarketing, Trade practices.

PART 310: TELEMARKETING SALES RULE

Sec.

- 310.1 Scope of regulations in this part.
- 310.2 Definitions.
- 310.3 Deceptive telemarketing acts or practices.
- 310.4 Abusive telemarketing acts or practices.
- 310.5 Recordkeeping requirements.
- 310.6 Exemptions.
- 310.7 Actions by states and private persons.
- 310.8 Severability.

Authority: 15 U.S.C. 6101-6108.

§ 310.1 Scope of regulations in this part.

This part implements the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. 6101-6108.

§ 310.2 Definitions.

- (a) *Acquirer* means a business organization, financial institution, or an agent of a business organization or financial institution that has authority from an organization that operates or licenses a credit card system to authorize merchants to accept, transmit, or process payment by credit card through the credit card system for money, goods or services, or anything else of value.
- (b) *Attorney general* means the chief legal officer of a State.
- (c) *Cardholder* means a person to whom a credit card is issued or who is authorized to use a credit card on behalf of or in addition to the person to whom the credit card is issued.
- (d) *Commission* means the Federal Trade Commission.
- (e) *Credit* means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.
- (f) *Credit card* means any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.
- (g) *Credit card sales draft* means any record or evidence of a credit card transaction.
- (h) *Credit card system* means any method or procedure used to process credit card transactions involving credit cards issued or licensed by the operator of that system.

- (i) *Customer* means any person who is or may be required to pay for goods or services offered through telemarketing.
- (j) *Investment opportunity* means anything, tangible or intangible, that is offered, offered for sale, sold, or traded based wholly or in part on representations, either express or implied, about past, present, or future income, profit, or appreciation.
- (k) *Material* means likely to affect a person's choice of, or conduct regarding, goods or services.
- (l) *Merchant* means a person who is authorized under a written contract with an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services.
- (m) *Merchant agreement* means a written contract between a merchant and an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services.
- (n) *Outbound telephone call* means a telephone call initiated by a telemarketer to induce the purchase of goods or services.
- (o) *Person* means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.
- (p) *Prize* means anything offered, or purportedly offered, and given, or purportedly given, to a person by chance. For purposes of this definition, chance exists if a person is guaranteed to receive an item and, at the time of the offer or purported offer, the telemarketer does not identify the specific item that the person will receive.
- (q) *Prize promotion* means:
- (1) A sweepstakes or other game of chance; or
 - (2) An oral or written express or implied representation that a person has won, has been selected to receive, or may be eligible to receive a prize or purported prize.
- (r) *Seller* means any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration.
- (s) *State* means any State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, and any territory or possession of the United States.
- (t) *Telemarketer* means any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer.
- (u) *Telemarketing* means a plan, program, or campaign which is conducted to induce the purchase of goods or services by use of one or more telephones and which involves more than one interstate telephone call. The term does not include the solicitation of sales

through the mailing of a catalog which: contains a written description or illustration of the goods or services offered for sale; includes the business address of the seller; includes multiple pages of written material or illustrations; and has been issued not less frequently than once a year, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the catalog and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term "further solicitation" does not include providing the customer with information about, or attempting to sell, any other item included in the same catalog which prompted the customer's call or in a substantially similar catalog.

§ 310.3 Deceptive telemarketing acts or practices.

(a) **Prohibit deceptive telemarketing acts or practices.** It is a deceptive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:

(1) Before a customer pays[1] for goods or services offered, failing to disclose, in a clear and conspicuous manner, the following material information:

(i) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of the sales offer;[2]

(ii) All material restrictions, limitations, or conditions to purchase, receive, or use the goods or services that are the subject of the sales offer;

(iii) If the seller has a policy of not making refunds, cancellations, exchanges, or repurchases, a statement informing the customer that this is the seller's policy; or, if the seller or telemarketer makes a representation about a refund, cancellation, exchange, or repurchase policy, a statement of all material terms and conditions of such policy;

(iv) In any prize promotion, the odds of being able to receive the prize, and if the odds are not calculable in advance, the factors used in calculating the odds; that no purchase or payment is required to win a prize or to participate in a prize promotion; and the no purchase/no payment method of participating in the prize promotion with either instructions on how to participate or an address or local or toll-free telephone number to which customers may write or call for information on how to participate; and

(v) All material costs or conditions to receive or redeem a prize that is the subject of the prize promotion;

(2) Misrepresenting, directly or by implication, any of the following material information:

(i) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of a sales offer;

(ii) Any material restriction, limitation, or condition to purchase, receive, or use goods or services that are the subject of a sales offer;

- (iii) Any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer;
 - (iv) Any material aspect of the nature or terms of the seller's refund, cancellation, exchange, or repurchase policies;
 - (v) Any material aspect of a prize promotion including, but not limited to, the odds of being able to receive a prize, the nature or value of a prize, or that a purchase or payment is required to win a prize or to participate in a prize promotion;
 - (vi) Any material aspect of an investment opportunity including, but not limited to, risk, liquidity, earnings potential, or profitability; or
 - (vii) A seller's or telemarketer's affiliation with, or endorsement by, any government or third-party organization;
- (3) Obtaining or submitting for payment a check, draft, or other form of negotiable paper drawn on a person's checking, savings, share, or similar account, without that person's express verifiable authorization. Such authorization shall be deemed verifiable if any of the following means are employed:
- (i) Express written authorization by the customer, which may include the customer's signature on the negotiable instrument; or
 - (ii) Express oral authorization which is tape recorded and made available upon request to the customer's bank and which evidences clearly both the customer's authorization of payment for the goods and services that are the subject of the sales offer and the customer's receipt of all of the following information:
 - (A) The date of the draft(s);
 - (B) The amount of the draft(s);
 - (C) The payor's name;
 - (D) The number of draft payments (if more than one);
 - (E) A telephone number for customer inquiry that is answered during normal business hours; and
 - (F) The date of the customer's oral authorization; or
 - (iii) Written confirmation of the transaction, sent to the customer prior to submission for payment of the customer's check, draft, or other form of negotiable paper, that includes:
 - (A) All of the information contained in §§ 310.3(a)(3)(ii)(A)-(F); and
 - (B) The procedures by which the customer can obtain a refund from the seller or telemarketer in the event the confirmation is inaccurate; and
- (4) Making a false or misleading statement to induce any person to pay for goods or services.
- (b) **Assisting and facilitating.** It is a deceptive telemarketing act or practice and a violation of this Rule for a person to provide substantial assistance or support to any

seller or telemarketer when that person knows or consciously avoids knowing that the seller or telemarketer is engaged in any act or practice that violates §§ 310.3(a) or (c), or § 310.4 of this Rule.

(c) **Credit card laundering.** Except as expressly permitted by the applicable credit card system, it is a deceptive telemarketing act or practice and a violation of this Rule for:

(1) A merchant to present to or deposit into, or cause another to present to or deposit into, the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant;

(2) Any person to employ, solicit, or otherwise cause a merchant or an employee, representative, or agent of the merchant, to present to or deposit into the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant; or

(3) Any person to obtain access to the credit card system through the use of a business relationship or an affiliation with a merchant, when such access is not authorized by the merchant agreement or the applicable credit card system.

§ 310.4 Abusive telemarketing acts or practices.

(a) **Abusive conduct generally.** It is an abusive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:

(1) Threats, intimidation, or the use of profane or obscene language;

(2) Requesting or receiving payment of any fee or consideration for goods or services represented to remove derogatory information from, or improve, a person's credit history, credit record, or credit rating until:

(i) The time frame in which the seller has represented all of the goods or services will be provided to that person has expired; and

(ii) The seller has provided the person with documentation in the form of a consumer report from a consumer reporting agency demonstrating that the promised results have been achieved, such report having been issued more than six months after the results were achieved. Nothing in this Rule should be construed to affect the requirement in the Fair Credit Reporting Act, 15 U.S.C. 1681, that a consumer report may only be obtained for a specified permissible purpose;

(3) Requesting or receiving payment of any fee or consideration from a person, for goods or services represented to recover or otherwise assist in the return of money or any other item of value paid for by, or promised to, that person in a previous telemarketing transaction, until seven (7) business days after such money or other item is delivered to that person. This provision shall not apply to goods or services provided to a person by a licensed attorney; or

(4) Requesting or receiving payment of any fee or consideration in advance of

obtaining a loan or other extension of credit when the seller or telemarketer has guaranteed or represented a high likelihood of success in obtaining or arranging a loan or other extension of credit for a person.

(b) Pattern of calls. (1) It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer to engage in, or for a seller to cause a telemarketer to engage in, the following conduct:

(i) Causing any telephone to ring, or engaging any person in telephone conversation, repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number; or

(ii) Initiating an outbound telephone call to a person when that person previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the seller whose goods or services are being offered.

(2) A seller or telemarketer will not be liable for violating § 310.4(b)(1)(ii) if:

(i) It has established and implemented written procedures to comply with § 310.4(b)(1)(ii);

(ii) It has trained its personnel in the procedures established pursuant to § 310.4(b)(2)(i);

(iii) The seller, or the telemarketer acting on behalf of the seller, has maintained and recorded lists of persons who may not be contacted, in compliance with § 310.4(b)(1)(ii); and

(iv) Any subsequent call is the result of error.

(c) Calling time restrictions. Without the prior consent of a person, it is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer to engage in outbound telephone calls to a person's residence at any time other than between 8:00 a.m. and 9:00 p.m. local time at the called person's location.

(d) Required oral disclosures. It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer in an outbound telephone call to fail to disclose promptly and in a clear and conspicuous manner to the person receiving the call, the following information:

(1) The identity of the seller;

(2) That the purpose of the call is to sell goods or services;

(3) The nature of the goods or services; and

(4) That no purchase or payment is necessary to be able to win a prize or participate in a prize promotion if a prize promotion is offered. This disclosure must be made before or in conjunction with the description of the prize to the person called. If requested by that person, the telemarketer must disclose the no-purchase/no-payment entry method for the prize promotion.

§ 310.5 Recordkeeping requirements.

(a) Any seller or telemarketer shall keep, for a period of 24 months from the date the record is produced, the following records relating to its telemarketing activities:

(1) All substantially different advertising, brochures, telemarketing scripts, and promotional materials;

(2) The name and last known address of each prize recipient and the prize awarded for prizes that are represented, directly or by implication, to have a value of \$25.00 or more;

(3) The name and last known address of each customer, the goods or services purchased, the date such goods or services were shipped or provided, and the amount paid by the customer for the goods or services;^[3]

(4) The name, any fictitious name used, the last known home address and telephone number, and the job title(s) for all current and former employees directly involved in telephone sales; provided, however, that if the seller or telemarketer permits fictitious names to be used by employees, each fictitious name must be traceable to only one specific employee; and

(5) All verifiable authorizations required to be provided or received under this Rule.

(b) A seller or telemarketer may keep the records required by § 310.5(a) in any form, and in the manner, format, or place as they keep such records in the ordinary course of business. Failure to keep all records required by § 310.5(a) shall be a violation of this Rule.

(c) The seller and the telemarketer calling on behalf of the seller may, by written agreement, allocate responsibility between themselves for the recordkeeping required by this Section. When a seller and telemarketer have entered into such an agreement, the terms of that agreement shall govern, and the seller or telemarketer, as the case may be, need not keep records that duplicate those of the other. If the agreement is unclear as to who must maintain any required record(s), or if no such agreement exists, the seller shall be responsible for complying with §§ 310.5(a)(1)-(3) and (5); the telemarketer shall be responsible for complying with § 310.5(a)(4).

(d) In the event of any dissolution or termination of the seller's or telemarketer's business, the principal of that seller or telemarketer shall maintain all records as required under this Section. In the event of any sale, assignment, or other change in ownership of the seller's or telemarketer's business, the successor business shall maintain all records required under this Section.

§ 310.6 Exemptions.

The following acts or practices are exempt from this Rule:

(a) The sale of pay-per-call services subject to the Commission's "Trade Regulation Rule

Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992," 16 CFR Part 308;

(b) The sale of franchises subject to the Commission's Rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures," 16 CFR Part 436;

(c) Telephone calls in which the sale of goods or services is not completed, and payment or authorization of payment is not required, until after a face-to-face sales presentation by the seller;

(d) Telephone calls initiated by a customer that are not the result of any solicitation by a seller or telemarketer;

(e) Telephone calls initiated by a customer in response to an advertisement through any media, other than direct mail solicitations; provided, however, that this exemption does not apply to calls initiated by a customer in response to an advertisement relating to investment opportunities, goods or services described in §§ 310.4(a)(2) or (3), or advertisements that guarantee or represent a high likelihood of success in obtaining or arranging for extensions of credit, if payment of a fee is required in advance of obtaining the extension of credit;

(f) Telephone calls initiated by a customer in response to a direct mail solicitation that clearly, conspicuously, and truthfully discloses all material information listed in § 310.3(a)(1) of this Rule for any item offered in the direct mail solicitation; provided, however, that this exemption does not apply to calls initiated by a customer in response to a direct mail solicitation relating to prize promotions, investment opportunities, goods or services described in §§ 310.4(a)(2) or (3), or direct mail solicitations that guarantee or represent a high likelihood of success in obtaining or arranging for extensions of credit, if payment of a fee is required in advance of obtaining the extension of credit; and

(g) Telephone calls between a telemarketer and any business, except calls involving the retail sale of nondurable office or cleaning supplies; provided, however, that § 310.5 of this Rule shall not apply to sellers or telemarketers of nondurable office or cleaning supplies.

§ 310.7 Actions by States and private persons.

(a) Any attorney general or other officer of a State authorized by the State to bring an action under the Telemarketing and Consumer Fraud and Abuse Prevention Act, and any private person who brings an action under that Act, shall serve written notice of its action on the Commission, if feasible, prior to its initiating an action under this Rule. The notice shall be sent to the Office of the Director, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, and shall include a copy of the State's or private person's complaint and any other pleadings to be filed with the court. If prior notice is not feasible, the State or private person shall serve the Commission with the required notice immediately upon instituting its action.

(b) Nothing contained in this Section shall prohibit any attorney general or other authorized State official from proceeding in State court on the basis of an alleged

violation of any civil or criminal statute of such State.

§ 310.8 Severability.

The provisions of this Rule are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

By direction of the Commission.

Donald S. Clark
Secretary

Footnotes:

1. When a seller or telemarketer uses, or directs a customer to use, a courier to transport payment, the seller or telemarketer must make the disclosures required by § 310.3(a)(1) before sending a courier to pick up payment or authorization for payment, or directing a customer to have a courier pick up payment or authorization for payment.
2. For offers of consumer credit products subject to the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR 226, compliance with the disclosure requirements under the Truth in Lending Act, and Regulation Z, shall constitute compliance with § 310.3(a)(1)(i) of this Rule.
3. For offers of consumer credit products subject to the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR 226, compliance with the recordkeeping requirements under the Truth in Lending Act, and Regulation Z, shall constitute compliance with § 310.5(a)(3) of this Rule.

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Telemarketers Sue to Stop 'Do Not Call' List
By Andy Sullivan

WASHINGTON (Reuters) - Telemarketers went to court on Wednesday in an attempt to stop the U.S. government from setting up a proposed "do not call" list that would help consumers block unwanted sales calls.

Four telemarketing companies and a trade group filed suit in federal court in Oklahoma City to stop the Federal Trade Commission from setting up a program that would allow consumers to place their names on a list of households that do not want to receive such calls.



Telemarketers who ignored the FTC's list would face fines of up to \$11,000. Callers for charities and political groups would be exempt.

The FTC's proposal, which could be up and running as early as August, has won unprecedented support from consumers who have swamped the agency with more than 50,000 letters of support.

But telemarketers say 27 existing state do-not-call lists and a voluntary national list run by the Direct Marketing Association trade group should provide consumers enough protection.

In the suit, the DMA and four telemarketing firms said the FTC's effort would violate free-speech laws and discriminate against an industry that provides millions of jobs.

"The FTC is singling out this form of advertising now, what will be next?" said DMA President Robert Weintzen in a prepared statement.

The FTC should have waited to move forward with its proposal until the Federal Communications Commission, which regulates the telecommunications industry, finishes its reassessment of existing telemarketing rules, the plaintiffs said.

Federal officials say the two agencies have been working closely together to make sure they do not come up with conflicting rules when the FCC finishes its work in the spring.

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The proposal cleared a crucial hurdle earlier Wednesday when a House of Representatives committee voted to give the FTC the power to collect fees from telemarketers to pay for the list.

The list has already won approval in the Senate.

Rep. Billy Tauzin, who chairs the House Energy and Commerce Committee, said such a move would give the FTC greater legal authority to defend itself against legal challenges from the industry.

FTC officials were not immediately available for comment.

Other plaintiffs in the suit include U.S. Security, based in Oklahoma; Consolidated Benefit Services, of Illinois; and Global Contract Services and Infocision Management Corp., both based in Delaware.

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ATA Launches Legal Challenge Against New Rules

January 2003 - The American Teleservices Association (ATA) and two Colorado marketing companies filed suit today in federal court in Colorado against the Federal Trade Commission (FTC) to prevent implementation of certain amendments to the Telemarketing Sales Rule (TSR). Among the more prominent features of the revised TSR is the establishment of a national do-not call registry which, according to the government's own estimates, could result in the removal of as much as 60% of American households from the marketplace.

In its complaint, the ATA and individual plaintiffs charged that the FTC's actions "violate the First and Fifth Amendments to the United States Constitution, exceed the bounds of the FTC's statutory authority, and are arbitrary and capricious under the Administrative Procedure Act (APA)." In a strongly worded declaration, the filing observed that Congress empowered the FTC to deal with telemarketing fraud, not to create a national do-not-call registry, and yet the agency has set out to adopt just such a rule. The ATA further asserts that the new rule is riddled with statutory exemptions and exclusions, "and subjects identically-situated telemarketers to radically disparate regulatory requirements. The resulting regime imposes a prior restraint on speech by callers in certain categories that are disfavored by the government, and imposes various other unlawful restrictions." In doing so, the new "do-not-call" regime does not

implement the calling preferences of individual homeowners, but substitutes the judgment of the government regarding which calls should be permitted and which ones should be banned.

The FTC's action manifests an utter disregard for the economic dislocations it will create, particularly among small businesses seeking to cope with the challenges of a recovering economy. "The telemarketing industry contributes over \$660B annually to the American economy," notes ATA Chairman Tom Rocca, "and employs some six million workers. Millions of those jobs are being put at risk by this misguided government interference in the free marketplace. The selection of goods and services available to consumers will be reduced while costs will increase."

GM Matt Mattingley, ATA's Director of Government Affairs, advised that there has been a national company specific do-not-call program in effect since 1991 that has worked well. "It allows consumers to refuse offers they have no interest in while preserving their right to accept those they find attractive. The 'all-or-nothing' blanket approach means consumers may never hear an offer they might otherwise accept." Mattingley noted the FTC has failed to provide persuasive evidence to demonstrate the current program does not work. "Any attempt to restrict commercial free speech places a significant burden on government to justify its actions. The FTC has failed to meet that burden. We believe their proposal will not withstand legal scrutiny."

###

The American Teleservices Association represents the providers, users, equipment suppliers, and professionals of teleservices in the United States and around the globe. For more information, please contact Kevin Brosnahan, Public Relations Manager, at (202) 293-2452 ext 111.



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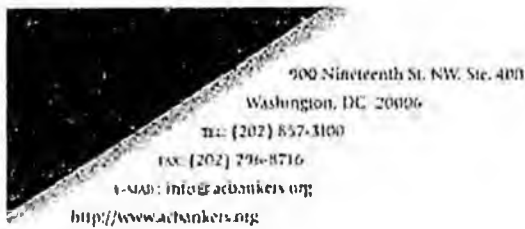
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June 28, 2002

Office of the Secretary
Room 159
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington D.C. 20580

Re: Telemarketing Sales Rule User Fees
67 FR 37362 (May 29, 2002) 16 CFR Part 310

Dear Madam or Sir:

America's Community Bankers ("ACB")¹ welcomes the opportunity to comment on the Federal Trade Commission's ("FTC" or the "Commission") proposed amendments to the Telemarketing Sales Rule.² The Commission is seeking comment on proposed user fees on telemarketers and their clients for access to a proposed national "do-not-call" registry under consideration.

ACB Position

ACB opposes the imposition of user fees on telemarketers to access a list of consumers who have indicated a preference not to receive telemarketing calls from organizations subject to FTC jurisdiction. Such fees represent an unjustifiable business tax on organizations that choose to utilize telemarketers to contact their customers. Moreover, many issues remain unresolved from an earlier released proposed telemarketing rule to credibly establish a fee structure to fund the development and operation of the proposed registry system. ACB urges the Commission to resolve the myriad of issues stemming from the January proposal³ prior to considering telemarketing registry user fees.

¹ ACB represents the nation's community banks of all charter types and sizes. ACB members, whose aggregate assets exceed \$1 trillion, pursue progressive, entrepreneurial and service-oriented strategies in providing financial services to benefit their customers and communities.

² 67 Fed. Reg. 37362 (May 29, 2002).

³ 67 Fed. Reg. 44926 (Jan. 30, 2002).

Background

The current Telemarketing Sales Rule ("TSR") became effective in 1995 pursuant to the Telemarketing Act⁴. The Telemarketing Act required the Commission to develop regulations that would prohibit telemarketers from undertaking "a pattern of unsolicited telephone calls which the reasonable consumer would consider abusive of the consumer's right to privacy." The TSR rule imposes a variety of disclosures and requires companies that engage in telemarketing to maintain their own "do-not-call lists." Under this approach, telemarketers are prohibited from calling consumers who demand not to be called by or on behalf of a particular seller. Other companies, however, may lawfully call that same consumer until he or she requests each of them not to call.

On January 30, 2002, the Commission issued proposed amendments to the TSR⁵ that anticipated the establishment of a national "do-not-call" registry. The proposed rule would expand the current company-specific "do-not-call" requirement by allowing consumers to join a central "do-not-call" registry maintained by the FTC. Unlike the current regulation, the proposal is not company specific. All companies under FTC jurisdiction would be required to "scrub" their lists and remove all consumers who have placed themselves on the FTC's registry. Therefore, all telemarketers would be barred from calling a consumer on the national registry unless the consumer has expressly requested to be called by or on behalf of a specific seller or charitable organization. Additionally, the January proposed amendments to the TSR prohibited other telemarketing practices such as blocking caller identification services.

Community Banks and Telemarketing

In today's increasingly competitive financial marketplace, some community banks have begun to utilize limited telemarketing to offer services such as reduced mortgage rates, higher CD returns, and other products to keep customers. These same community banks often outsource their telemarketing operations to reduce costs. Community banks and other federally regulated financial institutions are exempt from the Telemarketing Act, and therefore would not be subject to implementing telemarketing regulations. The FTC, however, has taken the position that telemarketing regulations do apply to third parties that act on behalf of financial institutions. As a result, the proposed amendments to the Telemarketing Sales Rule will negatively impact community banks that contract with third parties for the performance of telemarketing services. These institutions will be forced to develop an in house telemarketing system to be able to place a marketing call to an existing customer who is on the national registry.

Issues From Original Telemarketing Sales Rule Proposal Must Be Addressed

The Commission will endeavor to recover the full cost of creating and implementing the registry. Based on a request for information, — which is not part of the public record,

⁴ 15 USC 6102(a)(3)(A).

⁵ 67 Fed. Reg. 4492 (Jan. 30, 2002).

nor subject to public disclosure — the Commission estimates the cost to develop and implement a national registry will be approximately \$5 million in the first year. No estimate is provided for ongoing operation of the national registry. Based on this information, the Commission has proposed an annual fee structure that would range from no-charge to access one to five area codes, up to a maximum of \$3,000 for 250 area codes of data or more. ACB believes that these estimates may grossly underestimate the cost to develop and operate a national registry system in light of several outstanding issues that remain from the TSR proposal issued in January.

Listed below is a detailed summary of ACB's issues and concerns stemming from the January TSR. ACB opposes the TSR issued in January that would prohibit a financial institution's agent from contacting its current customers who have joined the "do-not-call" registry. Therefore, ACB strongly opposes requiring the agent of a financial institution to pay a fee to contact the institution's current customers whose costs would eventually be passed on to the client financial institution. Additionally, ACB strongly urges the Commission to develop a TSR that will preempt state law in order to eliminate the enormous compliance burdens and consumer confusion a state-by-state "do-not-call" process would create.

I. Contacting Existing Customers

ACB strongly urges the Commission not to prohibit a financial institution's agent, subsidiary, or affiliate from contacting the institution's customers who join the national do-not-call registry. Because the proposed amendments will apply to a third party that acts on behalf of a financial institution, banks will be unable to contact their own customers via outside telemarketing firms. As a result, telemarketing costs will increase and consumers will be negatively affected. Specifically, community banks that currently outsource their telemarketing operations to reduce costs will be forced to develop an in house telemarketing capabilities to place a marketing call to an existing customer who is on the national registry.

Furthermore, consumers who indicate a preference for not receiving telemarketing calls may welcome special offers from companies with whom they currently do business. For example, under the proposed rule, a customer who is placed on the centralized "do-not-call" list will be unable to receive a call from an agent of his or her bank offering reduced mortgage rates, higher CD returns, or more efficient, enhanced products.

Accordingly, the FTC should revise the TSR proposed amendments to allow banks, which Congress specifically exempted from the Telemarketing Act, to use third parties to contact customers who have joined the national "do-not-call" registry. Furthermore, in order to preserve the Gramm-Leach-Bliley Act's financial modernization provisions, all members of a corporate family should be permitted to call individuals on the "do-not-call" list that have an established customer relationship with any subsidiary or affiliate.

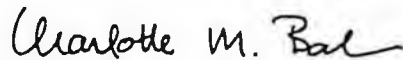
II. Centralized "Do-Not-Call" List Should Preempt State Law

The proposed rule's attempt to establish a national "do-not-call" list would complicate, rather than centralize, the "do-not-call" process. Currently, telemarketers are subject to the existing Telemarketing Sales Rule and a patchwork of state telemarketing laws. As of January 2002, twenty states had passed "do-not-call" statutes and seven others considering "do-not-call" legislation. As a result, telemarketers must examine multiple databases just to determine whether a marketing call may be placed to an individual. The proposed rule will merely add to this complex process. Therefore, the FTC should not establish another "do-not-call" list without addressing this problem. If the FTC decides to adopt the "do-not-call" list approach, ACB strongly urges the Commission to preempt state "do-not-call" requirements.

Conclusion

ACB appreciates the opportunity to comment on this important matter and supports the efforts of the FTC to develop a telemarketing rule that protects consumers' interests, while minimizing the impact on business and community banks. We stand ready to work with the FTC as it develops its final rule. Should you have any questions on this subject, please contact the undersigned at 202-857-3121 or via email at cbahin@acbankers.org; or Rob Drozdowski at 202-857-3148 or via email at rdrozdowski@acbankers.org.

Sincerely,



Charlotte M. Bahin
Director of Regulatory Affairs
Senior Regulatory Counsel

HB

15

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 5/2/04

FURTHER:

REPORTED OUT

MAY 07 2004

SENATE FINANCE
COMMITTEE

DATE TURNED
IN TO OFFICE: 5/07/04

Finance Committee considered CS FOR HOUSE BILL NO. 15(FIN) am

HB 15 SOLICITATIONS/CONSUMER PROTECTION

"An Act relating to fair trade practices and consumer protection, to telephone solicitations, to charitable solicitations; and providing for an effective date."

and recommends:

- be replaced with S cs CS HB 15 (FIN)
- adopt previous _____ cs CS Forthcoming (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:
 Same Title
 New Title

House Bill:
 Same Title
 Technical Title Change
 New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero.	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
DCED	4/2/04			✓	#4
LOW	4/2/04	✓		✓	#5

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>[Signature]</i>	✓			
<i>[Signature]</i>			✓	
<i>[Signature]</i>			✓	
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
COCHAIR:				
COCHAIR: <i>[Signature]</i>	✓			

FISCAL NOTE

REPORTED OUT

MAY 07 2004

SENATE FINANCE
COMMITTEE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 4
 Bill Version: CSHB 15(FIN)
 (H) Publish Date: 2/24/04

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
 Title Telemarketers No-Call Lists RDU Banking, Securities & Corp. (115)
 Component Banking, Securities & Corp.
 Sponsor Representatives Fate, et al
 Requester House Finance Component No. 1233

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (At ach a separate page if necessary)

This legislation does not affect the operations of this department.

Prepared by: Mark Davis, Director Phone (907) 465-2521
 Division Banking, Securities & Corporations Date/Time 2/13/04 2:04 PM
 Approved by: Edgar Blatchford, Commissioner Date 2/13/2004
 Agency Department of Community & Economic Development

MAY 07 2004

SENATE FINANCE
COMMITTEE

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 5
Bill Version: CSHB 15(FIN)
(H) Publish Date: 2/24/04

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
Title: "An Act relating to fair trade practices and consumer RDU: CIVIL
protection, to telephone solicitations, to charitable solicitations..." Component: Commercial & Fair Business
Sponsor: Representative Fate
Requester: House Finance Committee Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()	76.6	76.6	76.6	76.6	76.6	76.6
-------------------------------	-------------	-------------	-------------	-------------	-------------	-------------

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1007 Interagency Receipts						
1141 RCA Receipts						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill has two general components. First, it amends the Unfair Trade Practices and Consumer Protection Act by creating a state cause of action for violations of the national do-not-call registry. It also amends the Act's do-not call provision (the "black dot law") and provides for its repeal once the establishment and enforcement of the national registry is ensured. In addition, the bill clarifies that "goods or services" covered by the Act include consumer credit transactions and other credit transaction involving an indebtedness secured by a consumer's residence.

The bill also amends the Charitable Solicitations Act (CSA) and Telephone Solicitations Act (TSA) in a number of ways. It requires payment of a fee when charitable organizations, paid solicitors for charitable organizations, and telephone solicitors register, or renew their registrations, with the

Prepared by: Kathryn A. Daughhetea, Director Phone 465-3673
Division: Administrative Services Date/Time 2/23/04 8:27 AM
Approved by: Kathryn Daughhetea for Gregg D. Renkes, Attorney General Date 2/23/2004
Agency: Department of Law

FISCAL NOTE #5

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. CSHB 15(FIN)

ANALYSIS CONTINUATION

Department of Law as required under these Acts.

Paid solicitors for charitable organizations would be required to submit a financial report to the department at the close of each solicitation campaign. The report would include, among other information, the disclosure of gross revenue generated during the campaign and the amount provided to the charity.

In addition, the bill would specifically provide that a person may not provide false information on the registration form filed with the Department, and allow the forms to be submitted either under oath or affirmation or under penalty of unsworn falsification. Thus, prosecution for perjury or unsworn falsification could be pursued if a registrant provided inaccurate information to the Department. The bill also amends the TSA to remove an exemption from registration for solicitations for the sale of magazines, periodicals, sound recordings and books.

Because the bill no longer provides for the creation of a state do not call registry, the expenditures indicated the fiscal note for CSHB 15 STA) are no longer relevant. With the registration fees that would be established in the amendments to the TSA and CSA, it is anticipated that this bill would generate approximately \$76,600 each year. This revenue estimate is based on average fees charged by other states and the number of organizations that submitted registration in 2003:

Charitable organization: $\$40 \times 1,615 = \$64,600$
Paid Solicitors: $\$200 \times 30 = \$ 6,000$
Telephone solicitors: $\$200 \times 30 = \underline{\$ 6,000}$

\$76,600

SENATE CS FOR CS FOR HOUSE BILL NO. 15(FIN)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES FATE, Gara, Chenault, Crawford, Kerttula, Croft, Seaton, Hawker,
Wilson, Foster, Kookesh, Guttenberg, Gruenberg

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to fair trade practices and consumer protection, to telephone
2 solicitations, to charitable solicitations; and providing for an effective date."

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * Section 1. AS 45.50.471(b)(35) is amended to read:

5 (35) violating AS 45.63 ([TELEPHONIC] solicitations by telephonic
6 means):

7 * Sec. 2. AS 45.50.475(a) is amended to read:

8 (a) A person is in violation of AS 45.50.471(b)(41) if the person

9 (1) engages in the telephone solicitation of a residential telephone
10 customer of a telecommunications company and the customer is identified in the
11 telephone directory as not wishing to receive telephone solicitations; [OR]

12 (2) engages in the telephone solicitation of a customer whose
13 telephone number has been registered with the national do not call registry for
14 the minimum amount of time required by the national do not call registry before

1 the date the call is made;

2 (3) engages in the telephone solicitation of a customer who has
 3 previously communicated to the telephone solicitor, or to the business enterprise
 4 or charitable organization for which the person is calling, the customer's desire
 5 not to receive telephone solicitations to that number; or

6 (4) originates a telephone call using an automated or recorded message
 7 as a telephonic advertisement or a telephone solicitation.

8 * Sec. 3. AS 45.50.475(d) is amended to read:

9 (d) A person who employs individuals to engage in telephone solicitations is
 10 not liable for a [THE] violation of (a)(1) - (3) of this section [IF AN EMPLOYEE
 11 SOLICITS A RESIDENTIAL TELEPHONE CUSTOMER WHO IS IDENTIFIED IN
 12 THE TELEPHONE DIRECTORY AS NOT WISHING TO RECEIVE TELEPHONE
 13 SOLICITATIONS] if the person establishes [ESTABLISHED] that

14 (1) the person has adopted and implemented written procedures and
 15 policies to comply with (a)(1) - (3) [(a)] of this section, including corrective actions if
 16 [WHERE] appropriate;

17 (2) the person has trained its personnel in the procedures and policies
 18 established under (1) of this subsection;

19 (3) the call that violated (a)(1) - (3) of this section was made contrary
 20 to the procedures and policies established by the person; and

21 (4) the call that violated (a)(1) - (3) of this section was made as a
 22 result of a good faith error [CALLS ON BEHALF OF THE PERSON THAT
 23 RESULT IN VIOLATIONS OF THIS SECTION ARE INFREQUENT].

24 * Sec. 4. AS 45.50.475(e) is amended to read:

25 (e) An individual who solicits a [RESIDENTIAL] telephone customer in
 26 violation of (a)(1) - (3) of this section [WHO IS IDENTIFIED IN THE
 27 TELEPHONE DIRECTORY AS NOT WISHING TO RECEIVE TELEPHONE
 28 SOLICITATIONS] is not liable for the violation [OF THIS SECTION] if the
 29 individual establishes that the individual did not intend to make the [A] call in
 30 violation of this section and did not recklessly disregard information or policies and
 31 procedures that would have avoided the improper call.

1 * Sec. 5. AS 45.50.475(f) is amended to read:

2 (f) Local exchange telecommunications companies shall inform
3 [RESIDENTIAL] customers of the provisions of this section. Notification shall
4 [MAY] be made by

5 (1) quarterly [ANNUAL] inserts in the billing statements mailed to
6 [RESIDENTIAL] customers; and [OR]

7 (2) clear and conspicuous publication of the notice in the consumer
8 information pages of local telephone directories.

9 * Sec. 6. AS 45.50.475(g)(2) is amended to read:

10 (2) "customer" means a [RESIDENTIAL] telephone customer of a
11 telecommunications company;

12 * Sec. 7. AS 45.50.475(g)(3) is amended to read:

13 (3) "telephone solicitation"

14 (A) means the solicitation by a person by telephone of a
15 customer at the residence of the customer for the purpose of encouraging the
16 customer to purchase property, goods, or services, or make a donation;

17 (B) does not include

18 (i) calls made in response to a request or inquiry by the
19 called customer or communication made during a call made by the
20 customer;

21 (ii) calls made by a charitable organization [, A
22 PUBLIC AGENCY,] or volunteers on behalf of the charitable
23 organization [OR PUBLIC AGENCY] to a member [MEMBERS] of
24 the organization [OR AGENCY] or to a person [PERSONS] who,
25 within the last 18 [24] months, has [HAVE] made a donation to the
26 organization [OR AGENCY] or expressed an interest in making a
27 donation, but only if the charitable organization has not received a
28 request from the member or person asking that the telephone
29 solicitations cease;

30 (iii) calls limited to soliciting the expression of ideas,
31 opinions, or votes;

1 (iv) business-to-business calls; or

2 (v) a person soliciting business from prospective
3 purchasers who have, within the last 18 [24] months, purchased from
4 the person making the solicitation or from the business enterprise for
5 which the person is calling but only if the person or business enterprise
6 has not received a [WRITTEN] request from the prospective purchaser
7 asking that telephone solicitations cease; the person or business
8 enterprise is presumed to have received a written request no later than
9 10 days after the prospective purchaser mailed it, properly addressed
10 and with the appropriate postage.

11 * Sec. 8. AS 45.50.475(g) is amended by adding a new paragraph to read:

12 (4) "national do not call registry" means the data base of telephone
13 numbers of customers who do not wish to receive telephone solicitations established
14 and maintained by the Federal Trade Commission and the Federal Communications
15 Commission.

16 * Sec. 9. AS 45.50.561(a) is amended by adding a new paragraph to read:

17 (12) "goods or services" includes goods or services provided in
18 connection with a consumer credit transaction or with a transaction involving an
19 indebtedness secured by the borrower's residence.

20 * Sec. 10. AS 45.63.010(a) is amended to read:

21 (a) A person may not sell or attempt to sell property or services by telephonic
22 means if the person makes substantially the same offer on substantially the same terms
23 to two or more persons, unless the telephone [TELEPHONIC] seller is registered with
24 the Department of Law at least 30 days before the solicitation campaign.

25 * Sec. 11. AS 45.63.010(c) is amended to read:

26 (c) Registration under (b) of this section is not complete until the telephone
27 [TELEPHONIC] seller receives an acknowledgement from the department that the
28 seller has complied with (b) of this section.

29 * Sec. 12. AS 45.63.010(d) is amended to read:

30 (d) The notice of intent must be on a form or in a format provided and
31 established by the department by regulation. The department may require the

1 notice of intent to be submitted under oath or affirmation or with notice that
2 false statements made are punishable as unsworn falsification under
3 AS 11.56.210. The notice of intent must include detailed information about the nature
4 of the solicitation campaign and the identity and business practices of the telephone
5 [TELEPHONIC] seller, including information on the employees, agents, and officers
6 affiliated with the telephone [TELEPHONIC] seller. The notice of intent must
7 disclose criminal convictions, civil judgments, orders, consent decrees, or
8 administrative determinations involving allegations of unfair or deceptive business
9 practices by the telephone [TELEPHONIC] seller.

10 * Sec. 13. AS 45.63 is amended by adding a new section to read:

11 Sec. 45.63.015. Registration fees. Each separate registration filed under
12 AS 45.63.010(b) must be accompanied by a registration fee. The department shall
13 establish the amount of the fee by regulation. The fees required by this section are
14 nonrefundable and shall be deposited in the general fund.

15 * Sec. 14. AS 45.63.020 is amended to read:

16 Sec. 45.63.020. Written contract required. Until a telephone
17 [TELEPHONIC] seller receives from a buyer a signed, written contract for the
18 purchase, the telephone [TELEPHONIC] seller may not solicit payment for the
19 purchase, charge a credit card account for the purchase, negotiate a check or other
20 commercial instrument intended for payment of the purchase, or accept a cash
21 payment for the purchase. The written contract must notify the buyer of the rights of
22 the buyer under AS 45.63.030(a) and disclose the information required by the
23 department by regulation.

24 * Sec. 15. AS 45.63.030(a) is amended to read:

25 (a) Notwithstanding AS 45.01 - AS 45.08, AS 45.12, AS 45.14, and AS 45.29
26 (Uniform Commercial Code), a telephone [TELEPHONIC] seller shall give the buyer
27 a refund, credit, or replacement, at the option of the buyer, if

28 (1) the property or services purchased are defective, not as represented,
29 or not received as promised by the seller;

30 (2) within seven days after receiving the purchased property, the buyer
31 returns the purchased property and makes a written request for the refund, credit, or

1 replacement; or

2 (3) within seven days after paying for the purchased services and
3 before the services are provided, the buyer makes a written request for the refund or
4 credit.

5 * Sec. 16. AS 45.63.030(c) is amended to read:

6 (c) Notwithstanding AS 45.01 - AS 45.08, AS 45.12, AS 45.14, and AS 45.29
7 (Uniform Commercial Code), a purchase of property from a telephone
8 [TELEPHONIC] seller becomes final seven days after receipt of the property, unless
9 the buyer requests a refund, credit, or replacement under (a) of this section, or the
10 telephone [TELEPHONIC] seller fails to obtain the contract required by
11 AS 45.63.020.

12 * Sec. 17. AS 45.63.030(d) is amended to read:

13 (d) A purchase of services from a telephone [TELEPHONIC] seller becomes
14 final seven days after receipt of the contract required by AS 45.63.020, unless the
15 buyer requests a refund or credit under (a) of this section.

16 * Sec. 18. AS 45.63.040 is amended to read:

17 **Sec. 45.63.040. Prohibited representations.** (a) Unless the telephone
18 [TELEPHONIC] seller is asked for the information by the buyer, the seller may not
19 state or imply that the seller has a license, consent, or other form of permission from
20 the state.

21 (b) A telephone [TELEPHONIC] seller may not state or imply that

22 (1) the seller is complying with state law; or

23 (2) the seller's compliance with the laws of this state or a municipality
24 constitutes approval or endorsement by the state or municipality.

25 * Sec. 19. AS 45.63 is amended by adding a new section to read:

26 **Sec. 45.63.045. Required representations; prohibitions.** (a) A telephone
27 seller shall

28 (1) within the first 15 seconds of a call and in a clear and conspicuous
29 manner, disclose the registered seller's name and telephone number, whom the
30 registered seller represents, and that the call is a sales call; and

31 (2) repeat the information at any time during the conversation if

1 requested by a person at the number called.

2 (b) A telephone seller must terminate the telephone solicitation and promptly
3 disconnect the telephone line if the person receiving the call objects to the solicitation
4 or indicates that the person is not interested in the product or service that is the subject
5 of the solicitation.

6 (c) A telephone seller who makes a telephonic solicitation may not cause a
7 telephone to ring repeatedly or continuously with the intent to annoy, abuse, or harass
8 a person at the telephone number called or repeatedly engage a person in a telephone
9 conversation.

10 * Sec. 20. AS 45.63.050 is amended to read:

11 **Sec. 45.63.050. Waiver prohibited and void.** A telephone [TELEPHONIC]
12 seller may not request or obtain from a buyer a waiver of the rights of the buyer under
13 this chapter. A waiver of the rights of a buyer under this chapter is void.

14 * Sec. 21. AS 45.63.080 is amended to read:

15 **Sec. 45.63.080. Exemptions.** AS 45.63.010, 45.63.015, 45.63.020, and
16 AS 45.63.030(c) and (d) do [THIS CHAPTER DOES] not apply to a sale or
17 attempted sale

18 (1) of a security regulated under AS 45.55 or a security that is
19 exempted by AS 45.55.900 from regulation under AS 45.55;

20 (2) by a person registered with the United States Securities and
21 Exchange Commission when acting within the scope of the person's Securities and
22 Exchange Commission license;

23 (3) by an issuer, or a subsidiary of an issuer, of a class of securities that
24 is

25 (A) subject to 15 U.S.C. 78a - 78lll (Securities Exchange Act of
26 1934); and

27 (B) either registered under 15 U.S.C. 78a - 78lll (Securities
28 Exchange Act of 1934) or exempt from registration under 15 U.S.C.
29 78l(g)(2)(A) - (C) or (E) - (H);

30 (4) by a real estate broker, associate real estate broker, or real estate
31 salesperson licensed under AS 08.88 and acting in a capacity covered by the license:

1 (5) by a person who has a certificate of registration under AS 08.18 to
 2 operate as a contractor and is acting in a capacity covered by the certificate of
 3 registration;

4 (6) by an embalmer or funeral director licensed under AS 08.42 and
 5 acting in a capacity covered by the license;

6 (7) by an insurance agent, general agent, broker, solicitor, or adjuster
 7 licensed under AS 21.27 and acting in a capacity covered by the license;

8 (8) by a person who is primarily soliciting the sale of a subscription to,
 9 or advertising in, a newspaper of general circulation;

10 (9) by a charitable organization or paid solicitor if the organization or
 11 solicitor is registered to make charitable solicitations under AS 45.68 and is acting in a
 12 capacity that is covered by the registration;

13 (10) by a person who is primarily soliciting the sale of a
 14 [MAGAZINE, PERIODICAL,] sound recording or [,] book

15 (A) if the person

16 (i) has no minimum purchase requirements;

17 (ii) provides written notice of the buyer's right to
 18 cancel at any time; and

19 (ii) allows the buyer to return the sound recording
 20 or book and obtain a full refund; or

21 (B) through a [, OR] membership in a book or record club

22 (i) [(A)] where the club provides the buyer with a form
 23 that the buyer may use to instruct the club not to ship the offered
 24 merchandise; and

25 (ii) [(B)] that is regulated by the Federal Trade
 26 Commission as a negative option plan under 16 C.F.R. [CFR] 425;

27 (11) by a publisher, or a publisher's agent operating under a
 28 written agreement between a publisher and the agent, who is soliciting the sale of
 29 a publisher's magazine if

30 (A) the buyer has the right to review the magazine and
 31 cancel the subscription for the magazine within seven days after receipt of

1 the magazine or at the time the invoice is received by the buyer, whichever
 2 is later; a cancellation request is timely if the request is mailed, properly
 3 addressed and postmarked, postage prepaid, within seven days after
 4 receipt of the magazine;

5 (B) the right of cancellation and refund is fully disclosed in
 6 writing to the buyer before or at the time the initial invoice is received by
 7 the buyer;

8 (12) of services provided by a cable television system operating under
 9 a franchise issued by a municipality;

10 (13) [(12)] by a person who is soliciting for a business, or for an
 11 affiliate of a business, that is regulated by the Regulatory Commission of Alaska;

12 (14) [(13)] by a person whose solicitation is solely for telephone
 13 answering services provided by the person or the person's employer;

14 (15) [(14)] of property from a mail order catalog that is published on a
 15 regular, periodic basis and that describes or pictures the items for sale and prominently
 16 provides the specific price of each item;

17 (16) [(15)] by a supervised financial institution or the parent,
 18 subsidiary, or affiliate of a supervised financial institution; in this paragraph,
 19 "supervised financial institution" means a commercial bank, savings bank, mutual
 20 savings bank, trust company, savings and loan association, credit union, industrial loan
 21 company, personal property broker, consumer finance lender, commercial finance
 22 lender, or other financial institution if the financial institution is subject to regulation
 23 by this state or the United States;

24 (17) [(16)] by an insurer or the parent, subsidiary, or affiliate of an
 25 insurer;

26 (18) [(17)] by a person who solicits a sale by a contact by telephonic
 27 means without intending to complete the sales presentation during the contact, who
 28 does not complete the sales presentation during the contact, and who only completes
 29 the sales presentation at a later meeting in person, unless at the later meeting the
 30 solicitor attempts to collect payment for property or services delivered before the later
 31 meeting;

1 (19) [(18)] of an item of personal property, including a food product,
 2 that is made by hand by an individual, if the sale or attempted sale of the item is made
 3 by the individual who made the item; in this paragraph, "made by hand" includes the
 4 use of ordinary household devices if the majority of the value of the item is added by
 5 the labor of the individual.

6 * Sec. 22. AS 45.63.080 is amended by adding a new subsection to read:

7 (b) The written disclosure required by (a)(11)(B) of this section does not apply # |
 8 to a sale of a magazine subscription by a publisher or a publisher's agent operating
 9 under a written agreement between a publisher and the agent

10 (1) where a telephone call is made to a customer to solicit a
 11 subscription renewal; or

12 (2) when a telephone call is initiated by the buyer, payment is made by
 13 credit card, and a telephone number to cancel the subscription is on the credit card
 14 statement description line for that charge.

15 * Sec. 23. AS 45.63.100(1) is amended to read:

16 (1) "buyer" means a person who buys from or is solicited by a
 17 [TELEPHONIC] seller by telephonic means;

18 * Sec. 24. AS 45.63.100 is amended by adding a new paragraph to read:

19 (7) "telephone seller" means a person who is required to be registered
 20 under AS 45.63.010.

21 * Sec. 25. AS 45.66.020(b) is amended to read:

22 (b) The department shall establish by regulation the application forms for
 23 registrations under this chapter. The application forms must require the submission of
 24 the following information:

25 (1) the nature of the business opportunity and the method by which it
 26 will be offered, advertised, or promoted:

27 (2) the identity and business practices of the person who will be the
 28 seller, including information on a related person; and

29 (3) a disclosure of criminal convictions, civil judgments, orders,
 30 consent decrees, and administrative determinations involving allegations of

31 (A) fraud, theft, embezzlement, fraudulent conversion,

1 misappropriation of property, the use of untrue or misleading representations in
 2 an attempt to sell or dispose of real or personal property, violations of this
 3 chapter, violations of AS 45.63 ([TELEPHONIC] solicitations by telephonic
 4 means), violations of AS 45.68 (charitable solicitations), or unfair or deceptive
 5 business practices under AS 45.50.471 - 45.50.561, or a substantially similar
 6 law of another jurisdiction, by the person who will be the seller or by a related
 7 person; or

8 (B) a violation of securities or investment laws by the person
 9 who will be the seller or by a related person.

10 * Sec. 26. AS 45.66.200(a) is amended to read:

11 (a) Subject to the other requirements of this section and after reviewing a
 12 response submitted by the person under (b) of this section, the department may issue
 13 an order denying, suspending, or revoking a registration or renewal of a registration
 14 made by a person under AS 45.66.010 - 45.66.030, or prohibiting a person from
 15 selling or offering to sell business opportunities, if the department finds that

16 (1) the person failed to comply with this chapter or the regulations
 17 adopted under this chapter;

18 (2) the sale or offer to sell would constitute, or has constituted, a
 19 misrepresentation of, deceit of, or fraud on the buyer;

20 (3) the nature of the person's business enterprise or method of business
 21 or the nature or method of the business opportunity includes activities that are illegal
 22 where performed;

23 (4) the person failed to file a document, information, fee, or bond
 24 required by AS 45.66.010 - 45.66.060;

25 (5) the literature or advertising of the person or of another person
 26 recommended by the person is misleading, incorrect, materially incomplete, or
 27 deceptive;

28 (6) a person identified in the registration represents an unreasonable
 29 risk to the public interest and

30 (A) has been convicted of

31 (i) a felony or misdemeanor involving fraud, theft,

1 embezzlement, fraudulent conversion, misappropriation of property, or
2 the use of untrue or misleading representations in the sale of or offer to
3 sell or otherwise dispose of real or personal property;

4 (ii) violations under this chapter, violations of AS 45.63
5 ([TELEPHONIC] solicitations by telephonic means), violations of
6 AS 45.68 (charitable solicitations), or an unfair trade practice
7 prohibited by AS 45.50.471 - 45.50.561, or a substantially similar law
8 of another jurisdiction; or

9 (iii) a violation of securities or investment laws;

10 (B) is subject to a final order or judgment against the person in
11 a civil or administrative action, including a stipulated order or judgment, if the
12 complaint or petition in the action alleged acts constituting

13 (i) a violation of this chapter or a substantially similar
14 law of another jurisdiction;

15 (ii) fraud, theft, embezzlement, fraudulent conversion,
16 or misappropriation of real or personal property;

17 (iii) the use of untrue or misleading representations in
18 an offer to sell or dispose of real or personal property;

19 (iv) the use of unfair trade practices under
20 AS 45.50.471 - 45.50.561 or a substantially similar law of another
21 jurisdiction;

22 (v) a violation of AS 45.63 or AS 45.68, or a
23 substantially similar law of another jurisdiction; or

24 (vi) a violation of securities or investment laws;

25 (C) is subject to an injunction relating to business activity if the
26 injunction resulted from an action brought by a federal, state, or local public
27 agency, including an action related to an occupational license under AS 08.

28 * Sec. 27. AS 45.66.230(b) is amended to read:

29 (b) To the extent of the conflict, the provisions of this chapter govern if a sale
30 of or an offer to sell a business opportunity is regulated by this chapter and by
31 AS 45.63 ([TELEPHONIC] solicitations by telephonic means), by AS 45.01 -

1 AS 45.08, AS 45.12, AS 45.14, and AS 45.29 (Uniform Commercial Code), or by
 2 another law, and it is not possible to comply with or to apply both this chapter and the
 3 other law.

4 * Sec. 28. AS 45.68.010(c) is amended to read:

5 (c) To register under this section, a charitable organization or paid solicitor
 6 shall file with the department

7 (1) a registration statement on a form or in a form provided and
 8 established by the department by regulation; and

9 (2) in the case of a paid solicitor, a bond in the amount and under the
 10 conditions established by the department by regulation.

11 * Sec. 29. AS 45.68.010 is amended by adding new subsections to read:

12 (f) The department may require the registration and registration renewal
 13 statement required under (c)(1) and (d) of this section to be submitted

14 (1) under oath or affirmation; or

15 (2) with notice that false statements made in the statement are
 16 punishable as unsworn falsification under AS 11.56.210.

17 (g) A person may not knowingly provide false statements in documents
 18 required by this chapter, including a

19 (1) registration statement;

20 (2) registration renewal statement;

21 (3) report of material change in information required in the registration
 22 statement; or

23 (4) financial report by a paid solicitor.

24 * Sec. 30. AS 45.68 is amended by adding a new section to read:

25 **Sec. 45.68.015. Registration fees.** The registration statement and registration
 26 renewal statement filed under AS 45.68.010(c)(1) and (d) must be accompanied by a
 27 registration or registration renewal fee. The department shall establish the amount of
 28 the fee by regulation. The fees required by this section are nonrefundable and shall be
 29 deposited in the general fund.

30 * Sec. 31. AS 45.68 is amended by adding a new section to read:

31 **Sec. 45.68.055. Paid solicitor financial reports.** (a) Within 90 days after a

1 solicitation campaign is completed and, if a solicitation campaign lasts more than one
 2 year, on the one-year anniversary of the commencement of the campaign, a paid
 3 solicitor shall file with the department a financial report in accordance with this
 4 section.

5 (b) The financial report must

6 (1) be submitted on a form or in a format provided and established by
 7 the department of regulation;

8 (2) include gross revenue and an itemization of all expenses incurred
 9 in the solicitation campaign during the reporting period; and

10 (3) be signed by two authorized officials of the charitable organization.

11 (c) The authorized contracting agent for the paid solicitor shall sign the report
 12 required by (b) of this section. Signature of the report under this subsection must be
 13 made under oath or affirmation, but submission of false information in a notice that is
 14 not signed under oath or affirmation is punishable as an unsworn falsification under
 15 AS 11.56.210.

16 * Sec. 32. AS 45.68.060 is amended to read:

17 Sec. 45.68.060. Public records. The registration statement, registration
 18 renewal statement, financial reports of paid solicitors, contracts, and other
 19 documents required to be filed with the department under this chapter are public
 20 records available for inspection and copying under AS 40.25.110 - 40.25.220.

21 * Sec. 33. AS 45.68.900 is amended by adding a new paragraph to read:

22 (7) "solicitation campaign" means soliciting contributions of money or
 23 other property from two or more persons for the same charitable organization.

24 * Sec. 34. AS 45.63.100(6) is repealed.

25 * Sec. 35. AS 45.50.475(a)(1) and 45.50.475(c) are repealed.

26 * Sec. 36. The uncodified law of the State of Alaska is amended by adding a new section to
 27 read:

28 APPLICABILITY. (a) On and after July 1, 2004, the amendments found in the
 29 following sections of this Act apply to filings with the Department of Law:

30 (1) secs. 12 and 13 of this Act regarding the notice of intent to engage in a
 31 solicitation campaign under AS 45.63.010; and

1 (2) secs. 28 - 30 of this Act regarding registration statements and registration
2 renewal statements under AS 45.68.010.

3 (b) Sections 31 and 32 of this Act apply to solicitation campaigns, as defined in
4 AS 45.68.900, as amended by sec. 33 of this Act, that commence on or after July 1, 2004.

5 * Sec. 37. The uncodified law of the State of Alaska is amended by adding a new section to
6 read:

7 TRANSITIONAL PROVISIONS: REGULATIONS. Notwithstanding sec. 40 of this
8 Act, the attorney general may proceed to adopt regulations necessary to implement the
9 changes made by secs. 12, 13, 21, 22, 28 - 31, and 33 of this Act. The regulations take effect
10 under AS 44.62 (Administrative Procedure Act), but not before the effective date of secs. 1 -
11 34 of this Act.

12 * Sec. 38. Section 37 of this Act takes effect immediately under AS 01.10.070(c).

13 * Sec. 39. Section 35 of this Act takes effect the day after the date on which the attorney
14 general notifies the governor and the revisor of statutes that the national do not call registry is
15 established and enforced by the Federal Trade Commission and the Federal Communications
16 Commission.

17 * Sec. 40. Sections 1 - 34 and 36 of this Act take effect July 1, 2004.

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House of Representatives Sponsor Statement SCSCS for HB 15 (JUD)

"An Act relating to fair trade practices and consumer protection; relating to telephonic solicitations; relating to charitable solicitations; and providing for an effective date."

Committee Substitute for House Bill 15 is a combined effort of the Department of Law and our office to assure a quieter dinner hour for Alaskans. When HB 15 was introduced the intent was to bring responsibility to the telemarketing industry, and give Alaskans an opportunity to sign up for a no-call list. While working on the bill, Congress was working on similar language for the nation. H.R. 395 was passed into law, regulations have been promulgated and the National No-Call list is in effect.

The CS version of HB 15 is language that will complete the process for Alaska. It supplements the federal law by making specific, some of the language geared for a nation, rather than a state. Further, it establishes specific guidelines for telemarketers operating in state. Those guidelines include a registration fees, how telemarketers are expected to identify themselves, financial reports, and allows the Department of Law to establish penalties for non-compliance.

CS for HB 15 will accomplish what the original version sought to do, without the need for Alaskans to sign up again in state. It sends a clear message to telemarketers that these people do not wish to be called, and that there are consequences for non-compliance. It strengthens statutory language and assures Alaskans that we agree the phone should only ring during the dinner hours when it is someone we want to talk too.

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House of Representatives Sectional Analysis

SCSCS for HB 15 (JUD)

"An Act relating to fair trade practices and consumer protection; relating to telephonic solicitations; relating to charitable solicitations; and providing for an effective date."

It should be noted that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1

Changes telephonic to telephonic means. This change is throughout the bill and expands the language to include other forms of communication using telephone lines.

Section 2

Identifies the existence of a national do not call registry and that Alaskans on that list are not to be called.

Section 3

References to Section 2 and allows for a good faith error on the part of the solicitor.

Section 4

The no-call policy is expanded to all telephone numbers that are registered. Also referenced is a release from liability for the caller if the call was unintended and did not represent a reckless disregard.

Section 5

Establishes a notification policy for local phone companies to pass along to their customers. The notice will be in the annual phone directory and as an insert in the phone book each quarter.

Section 6

Defines customer to include more than residential

Section 7

Defines telephone solicitation and cites exemptions and specifics for previous contacts, charities, businesses, polls and political ideas.

Section 8

Defines National do not call registry

Section 9

Defines goods and services and includes solicitations by credit organizations offering financing arraignments

Section 10

A telephone seller may not operate in the state without registering 30 days in advance with the Department of Law

Section 11

Further requires a telephone seller not to operate in the state without receiving acknowledgement from the department that they have registered.

(b) To register under (a) of this section, a person shall file with the department (emphasis added)

Section 12

Establishes a format for the notice of intent, which must be filed, and that, at the department's discretion that intent may have to be submitted under oath or affirmation. It requires the telephone seller to detail the campaign and whether the seller has or is involved in criminal, administrative, or civil action.

Section 13

Allows the Department to establish fees for registration.

Section 14

Requires that a written, signed contract must be received by the telephone seller, from the buyer before any charges can be assessed the buyer. The telephone seller must notify the buyer of their rights.

Section 15

Refund and replacement language if the product is not as promised, provided that the buyer returns the product and asks within seven days of receipt.

Section 16

Telephone sales become final seven days after receipt of the product and exceptions.

Section 17

Telephone sales for a service becomes final seven days after delivery and exceptions.

Section 18

Telephone sellers may not represent themselves as licensed in Alaska if they are not nor may they claim that license as an endorsement by the state or municipality.

Section 19

Requires telemarketers to identify themselves when calling, forces them to hang up if the person indicates they are not interested in the goods or service, and prevents them from harassing a person.

Section 20

Prevents a telephone seller from requesting a waiver from the buyer of the buyer's rights.

Section 21

Lists the exemptions in current statute and makes a technical correction. The list of exemptions, only apply to the registration requirements. All other applications of the no-call list must be adhered too. Additional language was added in Senate Judiciary to allow recording or book sales to existing customers and permit periodical sales provided a phone number for cancellation is provided Penalties will also apply for non-compliance.

Section 22

Defines buyer

Section 23

Defines telephone seller

Section 24

Adds telephonic means to existing language and details what must be included as part of the registration or re registration forms.

Section 25

Adds telephonic means to existing language which defines reasons for the department not to issue a, or to suspend a license.

Section 26

Adds telephonic means to existing language in another section of statute

Section 27

Allows the department to use either a form or a format for registration

Section 28

The Department may require additional information of the telephone seller than is on the registration or renewal form and may require oath or affirmation.

Section 29

Allows the Department to establish registration fees for the permit, which must be filed with the registration forms.

Section 30

Establishes reporting requirements for each solicitation campaign including financial information.

Section 31

Makes all reports in reference to telemarketers public information

Section 32

Defines solicitation campaign as contacting two or more people

Section 33 & 34

Emphasis added language is repealed

Sec. 45.63.100. Definitions.

(6) "telephonic seller" means a person who is required to be registered under AS 45.63.010

Sec. 45.50.475. Unlawful, unwanted telephone advertisements and solicitations.

(a) A person is in violation of AS 45.50.471 (b)(41) if the person

(1) engages in the telephone solicitation of a residential telephone customer of a telecommunications company and the customer is identified in the telephone directory as not wishing to receive telephone solicitations; or (existing black dot)

(c) A local exchange telecommunications company shall, upon request, provide to a person who engages in telephone solicitation a list of all telephone numbers identified in the telephone directory as residential customers who do not wish to receive telephone solicitations. If possible and if requested by the person who engages in telephone solicitations, this list shall be provided in computer readable format. The local exchange telephone company may impose a reasonable charge for the list. The charge shall be based on the cost of providing the list and is subject to the approval of the Regulatory Commission of Alaska. (emphasis added)

Section 35

Effective dates for various Sections of the Bill

Section 36

Allows the department to begin the regulation process to take effect when the statute becomes law.

Section 37-39

Effective dates for various Sections of the Bill



April 26, 2004

The Honorable Ralph Seekins, Chair
Senate Judiciary Committee
Alaska Capitol, Room 125
Juneau, AK 99801-1182

RE: HB 15 (Fate)—Support

Dear Chair Seekins:

On behalf of the AARP members in Alaska, we encourage you and your colleagues on the Senate Judiciary Committee to support HB 15, authored by Representative Bud Fate and co-sponsored by Representatives Gara, Chenault, Crawford, Kerttula, Croft, Seaton, Hawker, Wilson, Foster, Kookesh, Guttenberg, and Gruenberg.

Well over half the number of people targeted by telemarketers each day are age 50 and over – and many of them are your own constituents.

AARP's perspective:

Recently the Federal Tenth Circuit Court ruled in favor of upholding the constitutionality of the National Do Not Call Registry. AARP filed an amicus brief to support the recently enacted federal legislation.

This court ruling affirms the long campaign AARP waged in Congress to put control of the telephone back where it belongs—with the consumer.

AARP's survey of older telemarketing fraud victims revealed they find it almost impossible to tell the difference between fraudulent and legitimate sales calls, underscoring the importance of allowing the consumer to stop calls in the first place.

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James G. Parkel, President | William D. Novelli, Executive Director and CEO | www.aarp.org

AARP ALASKA
PRIORITY ISSUES

Even though baby boomers have been called the most savvy and informed consumers of any generation of Americans, many of them, like their parents and their children, have been victims of an unrelenting deluge of unwanted telemarketing sales calls.

The FTC does not regulate intrastate calls. The FTC Chair has explained that it is very hard to predict how many calls the new federal registry will prevent, as telemarketers may establish in-state call centers to avoid the federal law. Therefore, state law is crucial to cover any Alaska-originated calls.

The FTC has no jurisdiction over common carriers (such as long-distance companies or airlines), banks, credit unions, or insurance companies. There is no limitation on the states to regulate these calls and state law is needed to address the exemptions to the FTC rule.

In addition, telephone calls soliciting money for charitable institutions or political organizations are not covered by the Telemarketing Sales Rule. Alaska has the authority to regulate these types of solicitations should the Legislature decide to include them.

Realistically, it may be difficult to have comprehensive federal enforcement of a national Do Not Call law covering millions of people, given the relatively small size of the FTC's staff devoted to this issue and the resources available to fight abuse of consumers. Alaska is in a much better position to detect, deter, and prosecute Do Not Call violations. AARP believes a state law that is enforceable in state court is essential to give the law some needed teeth. Without a state statute, some telemarketers may not have a strong incentive to carefully monitor, update, and follow Do Not Call lists.

It should be much more cost-effective for Alaska to enact a Do Not Call law in 2004 since we will not have to bear the expense of collecting, updating, and disseminating the Do Not Call list. The FTC will allow consumers to register free-of-charge and will use a sliding scale to charge telemarketers for access to the list.

Other states have already taken step to make sure that their constituents can have dinner in peace. Alaska's citizens deserve no less.

AARP recommends an "AYE" vote on HB 15.

Should you have any questions about our position, please feel free to contact Marie Darlin (907.586.3637), Coordinator of the AARP Capital City Task Force; Patrick Luby (907.762.3314), AARP Legislative Representative; or me (907.245.5259).

Thank you for your consideration.

Sincerely,

Marguerite Stetson

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cc: Representative Bud Fate
Vice-Chair Scott Ogan
Senator Gene Theriault
Senator Johnny Ellis
Senator Hollis French
Marie Darlin
Patrick Luby

February 18, 2004

Do-Not-Call Registry for Telemarketing Upheld in Court

By DAVID STOUT

WASHINGTON, Feb. 17 - A federal appeals court on Tuesday upheld the government's right to help people shield themselves from unwanted telemarketing calls.

A panel of the United States Court of Appeals for the Tenth Circuit in Denver ruled that a do-not-call registry created by the federal government last fall helped to combat abusive telemarketing and "prevents the invasion of consumer privacy."

"The challenged regulations do not hinder any business's ability to contact consumers by other means, such as through direct mailings or other forms of advertising," the ruling said.

The telemarketing industry said it was considering an appeal to the United States Supreme Court. But the Supreme Court may not feel the need to take the case because it does not involve any conflicts among circuit courts, said Gregory A. Castanias, a Washington lawyer who specializes in appeals involving constitutional issues and technology law.

The chairman of the Federal Trade Commission, Timothy J. Muris, said Tuesday that the do-not-call registry had been very successful and that "we are pleased that this popular program, like America's dinner hour, will not be interrupted."

H. Robert Wientzen, president and chief executive of the Direct Marketing Association, which represents nearly 5,000 companies in the United States and elsewhere, said an appeal to the full Tenth Circuit or to the Supreme Court was possible. Meanwhile, he said, his group will follow the voluntary policy it has had for 18 years: "If people don't want to be called, we don't want to call them."

Since the F.T.C. and the Federal Communications Commission established the registry last fall, it has grown enormously. It now includes more than 50 million telephone numbers.

Telemarketing interests have maintained that the calls are a legitimate business technique, and that the new federal regulations could cost as many as 2 million jobs in an industry that now has 6.5 million workers. But the court was not swayed. "Just as a consumer can avoid door-to-door peddlers by placing a 'no solicitation' sign in his or her front yard, the do-not-call registry lets consumers avoid unwanted sales pitches that invade the home via telephone," Judge David M. Ebel wrote.

The appeals court set aside a ruling by Federal District Judge Edward W. Nottingham of Denver, who had found that the list violated the right to free speech. The appeals court said that the First Amendment did not prevent the government from giving consumers the do-not-call option. It had allowed the government to enforce the program pending the outcome of the case decided Tuesday.

The ruling combined the government's appeal of Judge Nottingham's decision with two related cases. One was a case brought against the Federal Communications Commission by Denver telemarketers, and the other was an appeal by the Federal Trade Commission of an Oklahoma ruling that said it had no authority to create and enforce a do-not-call list.

FOR IMMEDIATE RELEASE

CONTACT: David Schneier, 202-434-2561

AARP REACTION STATEMENT ON NATIONAL DO NOT CALL LIST RULING

AARP is very pleased with the Tenth Circuit's ruling today in upholding the constitutionality of the National Do Not Call Registry. The ruling of the court adheres closely to the AARP amicus brief filed in support of the do not call legislation.

This ruling affirms the long and hard campaign that AARP has waged at the state and national level to put control of the telephone back where it belongs – with the consumer.

AARP's survey of older telemarketing fraud victims revealed they find it almost impossible to tell the difference between fraudulent and legitimate sales calls, underscoring the importance of allowing them to stop calls in the first place.

"Baby boomers have been called the most savvy and informed consumers of any generation of Americans," said AARP Foundation Litigation senior attorney Deborah Zuckerman. "Yet many of them, like their parents and their children, have been victims of an unrelenting deluge of unwanted telemarketing sales calls."

AARP will continue to advocate for state laws that compliment the federal rule in scope and jurisdiction.

#

AS 45.50.475. Unlawful, unwanted telephone advertisements and solicitations.

(a) A person is in violation of AS 45.50.471(b)(41) if the person

(1) engages in the telephone solicitation of a residential telephone customer of a telecommunications company and the customer is identified in the telephone directory as not wishing to receive telephone solicitations; or

(2) originates a telephone call using an automated or recorded message as a telephonic advertisement or solicitation.

(b) A local exchange telecommunications company and a company that provides a telephone directory on behalf of a local exchange telecommunications company shall provide for the identification in the telephone directory of those residential customers who do not wish to receive telephone solicitations. The local exchange telecommunications company may impose a reasonable charge for identification in the directory. The charge shall be based on the cost of providing the identification and is subject to the approval of the Regulatory Commission of Alaska.

(c) A local exchange telecommunications company shall, upon request, provide to a person who engages in telephone solicitation a list of all telephone numbers identified in the telephone directory as residential customers who do not wish to receive telephone solicitations. If possible and if requested by the person who engages in telephone solicitations, this list shall be provided in computer readable format. The local exchange telephone company may impose a reasonable charge for the list. The charge shall be based on the cost of providing the list and is subject to the approval of the Regulatory Commission of Alaska.

(d) A person who employs individuals to engage in telephone solicitations is not liable for the violation of this section if an employee solicits a residential telephone customer who is identified in the telephone directory as not wishing to receive telephone solicitations if the person established that

(1) the person has adopted and implemented written procedures to comply with (a) of this section including corrective actions where appropriate;

(2) the person has trained its personnel in the procedures established under (1) of this subsection;

(3) the call that violated this section was made contrary to the procedures and policies established by the person; and

(4) calls on behalf of the person that result in violations of this section are infrequent.

(e) An individual who solicits a residential telephone customer who is identified in the telephone directory as not wishing to receive telephone solicitations is not liable for the violation of this section if the individual establishes that the individual did not intend to make a call in violation of this section and did not recklessly disregard information or policies and procedures that would have avoided the improper call.

(f) Local exchange telecommunications companies shall inform residential customers of the provisions of this section. Notification may be made by

Provided by Rep. Fate

(1) annual inserts in the billing statements mailed to residential customers; or

(2) conspicuous publication of the notice in the consumer information pages of local telephone directories.

(g) In this section,

(1) "charitable organization" has the meaning given in AS 45.68.900;

(2) "customer" means a residential telephone customer of a telecommunications company;

(3) "telephone solicitation"

(A) means the solicitation by a person by telephone of a customer at the residence of the customer for the purpose of encouraging the customer to purchase property, goods, or services, or make a donation;

(B) does not include

(i) calls made in response to a request or inquiry by the called customer or communication made during a call made by the customer;

(ii) calls made by a charitable organization, a public agency, or volunteers on behalf of the charitable organization or public agency to members of the organization or agency or to persons who, within the last 24 months, have made a donation to the organization or agency or expressed an interest in making a donation;

(iii) calls limited to soliciting the expression of ideas, opinions, or votes;

(iv) business-to-business calls; or

(v) a person soliciting business from prospective purchasers who have, within the last 24 months, purchased from the person making the solicitation or from the business enterprise for which the person is calling but only if the person or business enterprise has not received a written request from the prospective purchaser asking that telephone solicitations cease; the person or business enterprise is presumed to have received a written request no later than 10 days after the prospective purchaser mailed it, properly addressed and with the appropriate postage.

(a) In AS 45.50.471 - 45.50.561

(1) "advertising" includes the attempt directly or indirectly by publication, dissemination, solicitation, endorsement, or circulation, display in any manner, including solicitation or dissemination by mail, telephone or door-to-door contacts, or in any other way, to induce directly or indirectly a person to enter or not enter into an obligation or acquire title or interest in any merchandise or to increase the consumption of it or to make a loan;

(2) "cemetery lot" means a lot, plot, space, grave, niche, mausoleum, crypt, vault, or columbarium, used or intended to be used for the interment of human remains;

(3) "chain distributor scheme" means a sales device whereby a person, upon condition that the person make an investment, is granted a license or right to solicit or recruit for profit one or more additional persons who are also granted a license or right upon condition of making an investment and may further perpetuate the chain of persons who are granted a license or right upon the condition of investment; a limitation as to the number of persons who may participate, or the presence of additional conditions affecting eligibility for the license or right to solicit or recruit or the receipt of profit from these does not change the identity of the scheme as a chain distributor scheme; as used in this paragraph, "investment" means acquisition, for a consideration other than personal services, of tangible or intangible property, and includes but is not limited to franchises, business opportunities and services; "investment" does not include sales demonstration equipment and materials furnished at cost for use in making sales and not for resale;

(4) "consumer" means a person who seeks or acquires goods or services by lease or purchase;

(5) "dealing in hearing aids" has the meaning given in AS 08.55.200;

(6) "documentary material" means the original or a copy of a book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording, wherever situated;

(7) "examination" of documentary material includes the inspection, study, or copying of the material, and the taking of testimony under oath or acknowledgment in respect of documentary material or copy of it;

(8) "fresh" means a condition of food that has never been frozen;

(9) "hearing aid" has the meaning given in AS 08.55.200;

(10) "knowingly" means actual awareness of the falsity or deception, but actual awareness may be inferred where objective manifestations indicate that a person acted with actual awareness;

(11) "seconds" means manufactured items having flaws or consisting of a standard quantity or quality less than the manufacturer's quality standard.

(b) AS 45.50.471 - 45.50.561 may be cited as the Alaska Unfair Trade Practices and Consumer Protection Act.

AS 45.63.010. Registration.

(a) A person may not sell or attempt to sell property or services by telephonic means if the person makes substantially the same offer on substantially the same terms to two or more persons, unless the telephonic seller is registered with the Department of Law at least 30 days before the solicitation campaign.

(b) To register under (a) of this section, a person shall file with the department

(1) a notice of intent to engage in a solicitation campaign; a separate notice of intent shall be filed for each solicitation campaign;

(2) an irrevocable consent appointing the department the person's agent for the receipt of service of process in a court action or other proceeding against the person, or the successor in interest of the person, for a violation of this chapter; and

(3) a signed statement that the person has read and will comply with this chapter and the regulations adopted under this chapter.

(c) Registration under (b) of this section is not complete until the telephonic seller receives an acknowledgement from the department that the seller has complied with (b) of this section.

(d) The notice of intent must be on a form provided and established by the department by regulation. The notice of intent must include detailed information about the nature of the solicitation campaign and the identity and business practices of the telephonic seller, including information on the employees, agents, and officers affiliated with the telephonic seller. The notice of intent must disclose criminal convictions, civil judgments, orders, consent decrees, or administrative determinations involving allegations of unfair or deceptive business practices by the telephonic seller.

(e) A person may not provide false information in a notice of intent.

AS 45.63.020. Written contract required.

Until a telephonic seller receives from a buyer a signed, written contract for the purchase, the telephonic seller may not solicit payment for the purchase, charge a credit card account for the purchase, negotiate a check or other commercial instrument intended for payment of the purchase, or accept a cash payment for the purchase. The written contract must notify the buyer of the rights of the buyer under AS 45.63.030(a) and disclose the information required by the department by regulation.

AS 45.63.030. Cancellation or replacement.

(a) Notwithstanding AS 45.01 - AS 45.08, AS 45.12, AS 45.14, and AS 45.29 (Uniform Commercial Code), a telephonic seller shall give the buyer a refund, credit, or replacement, at the option of the buyer, if

(1) the property or services purchased are defective, not as represented, or not received as promised by the seller;

(2) within seven days after receiving the purchased property, the buyer returns the purchased property and makes a written request for the refund, credit, or replacement; or

(3) within seven days after paying for the purchased services and before the services are provided, the buyer makes a written request for the refund or credit.

(b) A return or request is timely under (a) of this section if the return or request is made in person within the seven days or if the return or request is mailed, properly addressed and postmarked, postage prepaid, within the seven days.

(c) Notwithstanding AS 45.01 - AS 45.08, AS 45.12, AS 45.14, and AS 45.29 (Uniform Commercial Code), a purchase of property from a telephonic seller becomes final seven days after receipt of the property, unless the buyer requests a refund, credit, or replacement under (a) of this section, or the telephonic seller fails to obtain the contract required by AS 45.63.020.

(d) A purchase of services from a telephonic seller becomes final seven days after receipt of the contract required by AS 45.63.020, unless the buyer requests a refund or credit under (a) of this section.

AS 45.63.040. Prohibited representations.

(a) Unless the telephonic seller is asked for the information by the buyer, the seller may not state or imply that the seller has a license, consent, or other form of permission from the state.

(b) A telephonic seller may not state or imply that

(1) the seller is complying with state law; or

(2) the seller's compliance with the laws of this state or a municipality constitutes approval or endorsement by the state or municipality.

AS 45.63.050. Waiver prohibited and void.

A telephonic seller may not request or obtain from a buyer a waiver of the rights of the buyer under this chapter. A waiver of the rights of a buyer under this chapter is void.

AS 45.63.060. Criminal penalties.

(a) A person who sells or attempts to sell property or services by telephonic means by making substantially the same offer on substantially the same terms to two or more persons without complying with the registration requirements of AS 45.63.010, or who solicits, or receives, payment for a purchase before receiving the written contract required by AS 45.63.020 is guilty of a class C felony.

(b) A person who violates AS 45.63.030 - 45.63.050 is guilty of a class A misdemeanor.

AS 45.63.070. Remedies not exclusive.

The remedies in this chapter are in addition to other remedies available to a buyer or the department.

AS 45.63.080. Exemptions.

This chapter does not apply to a sale or attempted sale

(1) of a security regulated under AS 45.55 or a security that is exempted by AS 45.55.900 from regulation under AS 45.55;

(2) by a person registered with the United States Securities and Exchange Commission when acting within the scope of the person's Securities and Exchange Commission license;

(3) by an issuer, or a subsidiary of an issuer, of a class of securities that is

(A) subject to 15 U.S.C. 78a - 78lll (Securities Exchange Act of 1934); and

(B) either registered under 15 U.S.C. 78a - 78lll (Securities Exchange Act of 1934) or exempt from registration under 15 U.S.C. 78l(g)(2)(A) - (C) or (E) - (H);

(4) by a real estate broker, associate real estate broker, or real estate salesperson licensed under AS 08.88 and acting in a capacity covered by the license;

(5) by a person who has a certificate of registration under AS 08.18 to operate as a contractor and is acting in a capacity covered by the certificate of registration;

(6) by an embalmer or funeral director licensed under AS 08.42 and acting in a capacity covered by the license;

(7) by an insurance agent, general agent, broker, solicitor, or adjuster licensed under AS 21.27 and acting in a capacity covered by the license;

(8) by a person who is primarily soliciting the sale of a subscription to, or advertising in, a newspaper of general circulation;

(9) by a charitable organization or paid solicitor if the organization or solicitor is registered to make charitable solicitations under AS 45.68 and is acting in a capacity that is covered by the registration;

(10) by a person who is primarily soliciting the sale of a magazine, periodical, sound recording, book, or membership in a book or record club

(A) where the club provides the buyer with a form that the buyer may use to instruct the club not to ship the offered merchandise; and

(B) that is regulated by the Federal Trade Commission as a negative option plan under 16 CFR 425;

(11) of services provided by a cable television system operating under a franchise issued by a municipality;

(12) by a person who is soliciting for a business, or for an affiliate of a business, that is regulated by the Regulatory Commission of Alaska;

(13) by a person whose solicitation is solely for telephone answering services provided by the person or the person's employer;

(14) of property from a mail order catalog that is published on a regular, periodic basis and that describes or pictures the items for sale and prominently provides the specific price of each item;

(15) by a supervised financial institution or the parent, subsidiary, or affiliate of a supervised financial institution; in this paragraph, "supervised financial institution" means a commercial bank, savings bank, mutual savings bank, trust company, savings and loan association, credit union, industrial loan company, personal property broker, consumer finance lender, commercial finance lender, or other financial institution if the financial institution is subject to regulation by this state or the United States;

(16) by an insurer or the parent, subsidiary, or affiliate of an insurer;

(17) by a person who solicits a sale by a contact by telephonic means without intending to complete the sales presentation during the contact, who does not complete the sales presentation during the contact, and who only completes the sales presentation at a later meeting in person, unless at the later meeting the solicitor attempts to collect payment for property or services delivered before the later meeting;

(18) of an item of personal property, including a food product, that is made by hand by an individual, if the sale or attempted sale of the item is made by the individual who made the item; in this paragraph, "made by hand" includes the use of ordinary household devices if the majority of the value of the item is added by the labor of the individual.

AS 45.63.090. Regulations.

The department shall adopt regulations under AS 44.62 (Administrative Procedure Act) to implement this chapter.

AS 45.63.100. Definitions.

In this chapter,

- (1) "buyer" means a person who buys from or is solicited by a telephonic seller;
- (2) "department" means the Department of Law;
- (3) "notice of intent" means the notice of intent required by AS 45.63.010 to engage in a solicitation campaign;
- (4) "solicitation campaign" means a sale or attempt to sell property or services by telephonic means by making substantially the same offer on substantially the same terms to two or more persons;

(5) "telephonic means" means a telephone or another method using telephone lines, and includes a facsimile machine and electronic communication between electronic computing devices; "telephonic means" includes a letter, postcard, notice, or other written communication advising, requesting, motivating, or otherwise encouraging a person to contact a seller by telephonic means;

(6) "telephonic seller" means a person who is required to be registered under AS 45.63.010.

9 AAC 14.900. Definitions

Statute text

(a) In this chapter,

(1) "affiliated company" means any company that will engage in business transactions with buyers relating to sales solicited by the telephonic seller, or which accepts responsibility for the acts or statements made by the telephonic seller relating to sales made or solicited by the telephonic seller;

(2) "owner" means a person who owns or controls 10 percent or more of the net income of a telephonic seller;

(3) "parent company" means a business entity that has authority to control the appointment of officers or managers of the telephonic seller by reason of being an owner of the telephonic seller;

(4) the term "sound recording" in AS 45.63.080(10) includes video recordings when the video recording has an audio component.

(b) In AS 45. and in this chapter, the sale of "property or services" does not include a transaction:

(1) when the only consideration for the money spent by the buyer is participation in a telephone conversation;

(2) initiated by a written communication addressed to "boxholder," "occupant," "resident," or similar generic description of the intended recipient and no individual person, institution, or business organization is named anywhere in the written communication in a manner that identifies the individual person, institution or business enterprise as the intended recipient; or

(3) initiated by a communication in newspapers, magazines, and other publications unless they are directed to one or more persons, institutions, or business organizations by name, specifically advising, requesting, motivating, or otherwise encouraging that specific person, institution, or business organization to contact the seller by telephonic means.

(emphasis added)

History

History: Eff. 3/19/94, Register 129

Annotations

Authority: AS 45.63.010

AS 45.63.090

AS 45.63.100

Public Law 108-10
108th Congress

An Act

To authorize the Federal Trade Commission to collect fees for the implementation and enforcement of a "do-not-call" registry, and for other purposes.

Mar. 11, 2003
[H.R. 395]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Do-Not-Call Implementation Act".

Do-Not-Call
Implementation
Act.
15 USC 6101
note.

SEC. 2. TELEMARKETING SALES RULE; DO-NOT-CALL REGISTRY FEES.

The Federal Trade Commission may promulgate regulations establishing fees sufficient to implement and enforce the provisions relating to the "do-not-call" registry of the Telemarketing Sales Rule (16 CFR 310.4(b)(1)(iii)), promulgated under the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6101 et seq.). Such regulations shall be promulgated in accordance with section 553 of title 5, United States Code. Fees may be collected pursuant to this section for fiscal years 2003 through 2007, and shall be deposited and credited as offsetting collections to the account, Federal Trade Commission—Salaries and Expenses, and shall remain available until expended. No amounts shall be collected as fees pursuant to this section for such fiscal years except to the extent provided in advance in appropriations Acts. Such amounts shall be available for expenditure only to offset the costs of activities and services related to the implementation and enforcement of the Telemarketing Sales Rule, and other activities resulting from such implementation and enforcement.

15 USC 6101
note.

SEC. 3. FEDERAL COMMUNICATIONS COMMISSION DO-NOT-CALL REGULATIONS.

Not later than 180 days after the date of enactment of this Act, the Federal Communications Commission shall issue a final rule pursuant to the rulemaking proceeding that it began on September 18, 2002, under the Telephone Consumer Protection Act (47 U.S.C. 227 et seq.). In issuing such rule, the Federal Communications Commission shall consult and coordinate with the Federal Trade Commission to maximize consistency with the rule promulgated by the Federal Trade Commission (16 CFR 310.4(b)).

15 USC 6101
note.

Deadline.

SEC. 4. REPORTING REQUIREMENTS.

(a) **REPORT ON REGULATORY COORDINATION.**—Within 45 days after the promulgation of a final rule by the Federal Communications Commission as required by section 3, the Federal Trade Commission and the Federal Communications Commission shall each transmit to the Committee on Energy and Commerce of the

15 USC 6101
note.
Deadline.

House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report which shall include—

(1) an analysis of the telemarketing rules promulgated by both the Federal Trade Commission and the Federal Communications Commission;

(2) any inconsistencies between the rules promulgated by each such Commission and the effect of any such inconsistencies on consumers, and persons paying for access to the registry; and

(3) proposals to remedy any such inconsistencies.

(b) ANNUAL REPORT.—For each of fiscal years 2003 through 2007, the Federal Trade Commission and the Federal Communications Commission shall each transmit an annual report to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report which shall include—

(1) an analysis of the effectiveness of the “do-not-call” registry as a national registry;

(2) the number of consumers who have placed their telephone numbers on the registry;

(3) the number of persons paying fees for access to the registry and the amount of such fees;

(4) an analysis of the progress of coordinating the operation and enforcement of the “do-not-call” registry with similar registries established and maintained by the various States;

(5) an analysis of the progress of coordinating the operation and enforcement of the “do-not-call” registry with the enforcement activities of the Federal Communications Commission pursuant to the Telephone Consumer Protection Act (47 U.S.C. 227 et seq.); and

(6) a review of the enforcement proceedings under the Telemarketing Sales Rule (16 CFR 310), in the case of the Federal Trade Commission, and under the Telephone Consumer Protection Act (47 U.S.C. 227 et seq.), in the case of the Federal Communications Commission.

Approved March 11, 2003.

LEGISLATIVE HISTORY—H.R. 395:

HOUSE REPORTS: No. 108-8 (Comm. on Energy and Commerce).

CONGRESSIONAL RECORD, Vol. 149 (2003):

Feb. 12, considered and passed House.

Feb. 13, considered and passed Senate.



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TITLE 16--COMMERCIAL PRACTICES

CHAPTER I--FEDERAL TRADE COMMISSION

PART 310--TELEMARKETING SALES RULE--Table of Contents

Sec. 310.1 Scope of regulations in this part.

This part implements the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. 6101-6108.

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TITLE 16--COMMERCIAL PRACTICES

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Sec. 310.2 Definitions.

(a) Acquirer means a business organization, financial institution, or an agent of a business organization or financial institution that has authority from an organization that operates or licenses a credit card system to authorize merchants to accept, transmit, or process payment by credit card through the credit card system for money, goods or services, or anything else of value.

(b) Attorney General means the chief legal officer of a State.

(c) Cardholder means a person to whom a credit card is issued or who is authorized to use a credit card on behalf of or in addition to the person to whom the credit card is issued.

(d) Commission means the Federal Trade Commission.

(e) Credit means the right granted by a creditor to a debtor to defer payment

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of debt or to incur debt and defer its payment.

(f) Credit card means any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.

(g) Credit card sales draft means any record or evidence of a credit card transaction.

(h) Credit card system means any method or procedure used to process credit card transactions involving credit cards issued or licensed by the operator of that system.

(i) Customer means any person who is or may be required to pay for goods or services offered through telemarketing.

(j) Investment opportunity means anything, tangible or intangible, that is offered, offered for sale, sold, or traded based wholly or in part on representations, either express or implied, about past, present, or future income, profit, or appreciation.

(k) Material means likely to affect a person's choice of, or conduct regarding, goods or services.

(l) Merchant means a person who is authorized under a written contract with an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services.

(m) Merchant agreement means a written contract between a merchant and an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services.

(n) Outbound telephone call means a telephone call initiated by a telemarketer to induce the purchase of goods or services.

(o) Person means any individual, group, unincorporated association,

limited or general partnership, corporation, or other business entity.

(p) Prize means anything offered, or purportedly offered, and given, or purportedly given, to a person by chance. For purposes of this definition, chance exists if a person is guaranteed to receive an item and, at the time of the offer or purported offer, the telemarketer does not identify the specific item that the person will receive.

(q) Prize promotion means:

(1) A sweepstakes or other game of chance; or

(2) An oral or written express or implied representation that a person has won, has been selected to receive, or may be eligible to receive a prize or purported prize.

(r) Seller means any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration.

(s) State means any State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, and any territory or possession of the United States.

(t) Telemarketer means any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer.

(u) Telemarketing means a plan, program, or campaign which is conducted to induce the purchase of goods or services by use of one or more telephones and which involves more than one interstate telephone call. The term does not include the solicitation of sales through the mailing of a catalog which: Contains a written description or illustration of the goods or services offered for sale; includes the business address of the seller; includes multiple pages of written material or illustrations; and has been issued not less frequently than once a year, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the catalog and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term further solicitation does not include providing the customer with information about, or attempting to sell, any other item included in the same catalog which prompted the customer's call or in a substantially similar catalog.

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Sec. 310.3 Deceptive telemarketing acts or practices.

(a) Prohibited deceptive telemarketing acts or practices. It is a deceptive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:

(1) Before a customer pays \1\ for goods or services offered, failing to disclose, in a clear and conspicuous manner, the following material information:

\1\ When a seller or telemarketer uses, or directs a customer to use, a courier to transport payment, the seller or telemarketer must make the disclosures required by Sec. 310.3(a)(1) before sending a courier to pick up payment or authorization for payment, or directing a customer to have a courier pick up payment or authorization for payment.

(i) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of the sales offer; \2\

\2\ For offers of consumer credit products subject to the Truth in Lending Act, 15 U.S.C. 1601 et seq., and Regulation Z, 12 CFR part 226, compliance with the disclosure requirements under the Truth in Lending Act, and Regulation Z, shall constitute compliance with Sec. 310.3(a)(1)(i) of this Rule.

(ii) All material restrictions, limitations, or conditions to purchase, receive, or use the goods or services that are the subject of the sales offer;

(iii) If the seller has a policy of not making refunds, cancellations, exchanges, or repurchases, a statement informing the customer that this is the seller's policy; or, if the seller or telemarketer makes a representation about a refund, cancellation, exchange, or repurchase policy, a statement of all material terms and conditions of such policy;

(iv) In any prize promotion, the odds of being able to receive the prize, and if the odds are not calculable in advance, the factors used in calculating the odds; that no purchase or payment is required to win a prize or to participate in a prize promotion; and the no purchase/no payment method of participating in the prize promotion with either instructions on how to participate or an address or local or toll-free telephone number to which customers may write or call for information on how to participate; and

(v) All material costs or conditions to receive or redeem a prize

that is the subject of the prize promotion;

(2) Misrepresenting, directly or by implication, any of the following material information:

- (i) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of a sales offer;
- (ii) Any material restriction, limitation, or condition to purchase, receive, or use goods or services that are the subject of a sales offer;
- (iii) Any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer;
- (iv) Any material aspect of the nature or terms of the seller's refund, cancellation, exchange, or repurchase policies;
- (v) Any material aspect of a prize promotion including, but not limited to, the odds of being able to receive a prize, the nature or value of a prize, or that a purchase or payment is required to win a prize or to participate in a prize promotion;
- (vi) Any material aspect of an investment opportunity including, but not limited to, risk, liquidity, earnings potential, or profitability; or

(vii) A seller's or telemarketer's affiliation with, or endorsement by, any government or third-party organization;

(3) Obtaining or submitting for payment a check, draft, or other form of negotiable paper drawn on a person's checking, savings, share, or similar account, without that person's express verifiable authorization. Such authorization shall be deemed verifiable if any of the following means are employed:

- (i) Express written authorization by the customer, which may include the customer's signature on the negotiable instrument; or
- (ii) Express oral authorization which is tape recorded and made available upon request to the customer's bank and which evidences clearly both the customer's authorization of payment for the goods and services that are the subject of the sales offer and the customer's receipt of all of the following information:

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- (A) The date of the draft(s);
- (B) The amount of the draft(s);
- (C) The payor's name;
- (D) The number of draft payments (if more than one);
- (E) A telephone number for customer inquiry that is answered during normal business hours; and
- (F) The date of the customer's oral authorization; or
- (iii) Written confirmation of the transaction, sent to the customer prior to submission for payment of the customer's check, draft, or other form of negotiable paper, that includes:
 - (A) All of the information contained in Secs. 310.3(a)(3)(ii)(A)-(F); and
 - (B) The procedures by which the customer can obtain a refund from the seller or telemarketer in the event the confirmation is inaccurate; and
- (4) Making a false or misleading statement to induce any person to pay for goods or services.
 - (b) Assisting and facilitating. It is a deceptive telemarketing act or practice and a violation of this Rule for a person to provide substantial assistance or support to any seller or telemarketer when that person knows or consciously avoids knowing that the seller or telemarketer is engaged in any act or practice that violates Secs. 310.3(a) or (c), or Sec. 310.4 of this Rule.
 - (c) Credit card laundering. Except as expressly permitted by the

applicable credit card system, it is a deceptive telemarketing act or practice and a violation of this Rule for:

(1) A merchant to present to or deposit into, or cause another to present to or deposit into, the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant;

(2) Any person to employ, solicit, or otherwise cause a merchant or an employee, representative, or agent of the merchant, to present to or deposit into the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant; or

(3) Any person to obtain access to the credit card system through the use of a business relationship or an affiliation with a merchant, when such access is not authorized by the merchant agreement or the applicable credit card system.

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Sec. 310.4 Abusive telemarketing acts or practices.

(a) Abusive conduct generally. It is an abusive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:

(1) Threats, intimidation, or the use of profane or obscene language;

(2) Requesting or receiving payment of any fee or consideration for goods or services represented to remove derogatory information from, or improve, a person's credit history, credit record, or credit rating until:

(i) The time frame in which the seller has represented all of the goods or services will be provided to that person has expired; and

(ii) The seller has provided the person with documentation in the form of a consumer report from a consumer reporting agency demonstrating that the promised results have been achieved, such report having been issued more than six months after the results were achieved. Nothing in this Rule should be construed to affect the requirement in the Fair Credit Reporting Act, 15 U.S.C. 1681, that a consumer report may only be obtained for a specified permissible purpose;

(3) Requesting or receiving payment of any fee or consideration from a person, for goods or services represented to recover or otherwise assist in the return of money or any other item of value paid for by, or promised to, that person in a previous telemarketing transaction, until seven (7) business days after such money or other item is delivered to that person. This provision shall not apply to goods or services provided to a person by a licensed attorney; or

(4) Requesting or receiving payment of any fee or consideration in advance of obtaining a loan or other extension of credit when the seller or telemarketer has guaranteed or represented a high likelihood of success in

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obtaining or arranging a loan or other extension of credit for a person.

(b) Pattern of calls. (1) It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer to engage in, or for a seller to cause a telemarketer to engage in, the following conduct:

(i) Causing any telephone to ring, or engaging any person in telephone conversation, repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number; or

(ii) Initiating an outbound telephone call to a person when that person previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the seller whose goods or services are being offered.

(2) A seller or telemarketer will not be liable for violating Sec. 310.4(b)(1)(ii) if:

(i) It has established and implemented written procedures to comply with Sec. 310.4(b)(1)(ii);

(ii) It has trained its personnel in the procedures established pursuant to Sec. 310.4(b)(2)(i);

(iii) The seller, or the telemarketer acting on behalf of the seller, has maintained and recorded lists of persons who may not be contacted, in compliance with Sec. 310.4(b)(1)(ii); and

(iv) Any subsequent call is the result of error.

(c) Calling time restrictions. Without the prior consent of a person, it is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer to engage in outbound telephone calls to a person's residence at any time other than between 8 a.m. and 9 p.m. local time at the called person's location.

(d) Required oral disclosures. It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer in an outbound telephone call to fail to disclose promptly and in a clear and conspicuous manner to the person receiving the call, the following information:

(1) The identity of the seller;

(2) That the purpose of the call is to sell goods or services;

(3) The nature of the goods or services; and

(4) That no purchase or payment is necessary to be able to win a prize or participate in a prize promotion if a prize promotion is offered. This disclosure must be made before or in conjunction with the description of the prize to the person called. If requested by that person, the telemarketer must disclose the no-purchase/no-payment entry method for the prize promotion.