

**Before the  
Federal Trade Commission**

**In the Matter of** )  
 ) **FTC File. No. R411001**  
**Telemarketing Rulemaking-Comment** )

**Comments of the  
National Consumers League  
April 12, 2002**

**Introduction**

The National Consumers League (NCL) is a private, nonprofit consumer organization. Founded in 1899, NCL’s mission is to represent and advance the economic and social interests of consumers and workers in the marketplace and the workplace. NCL accomplishes those goals through research, education, and advocacy. NCL applauds the Federal Trade Commission (the Commission) for its thorough review of the Telemarketing Sales Rule (the Rule) and its thoughtful approach in proposing solutions to persistent problems and new trends that have emerged since the Rule was first promulgated.

NCL works on the front lines in the battle against telemarketing fraud and abuse. Ten years ago, in 1992, NCL established the first national toll-free hotline for consumers to get advice about telemarketing and report suspected telemarketing fraud. In 1996, NCL created a companion program, the Internet Fraud Watch, which offers advice about online solicitations and accepts reports about Internet fraud. NCL’s [www.fraud.org](http://www.fraud.org) Web site provides tips about telemarketing and Internet fraud and an online form that consumers can use to report fraud.

Complaints about telemarketing and Internet fraud are transmitted electronically to the appropriate local, state and federal law enforcement agencies, alerting them to marketers who may be violating the law and consumers who need their assistance. The information is also provided to the Consumer Sentinel Database, which is maintained by the Commission and the National Association of Attorneys General as a resource for government investigators and prosecutors.

Prevention is an equally important element of NCL’s fraud-fighting work. Through the advice provided by the NFIC’s telephone counselors and the educational information offered on the Web site, consumers can learn how to identify the “red flags” of telemarketing and Internet fraud and avoid victimization.

Based on the complaints and inquiries that the NFIC receives directly from consumers, NCL has firsthand knowledge about telemarketing fraud and abuse. NCL is also aware, from surveys that it

has conducted, calls and letters that it receives, and presentations to consumer audiences, that there is increasing public concern about personal privacy. NCL recently created a special Web section about privacy and works with groups such as the Privacy Coalition and ConsumerPrivacyGuide to educate the public. In February 2002, NCL launched a new educational campaign, “Stop Calling Me,” to coincide with National Consumer Protection Week. The goal is to help consumers understand how to avoid unwanted solicitations and how to exercise their privacy rights. This information is available on [www.nclnet.org/privacy](http://www.nclnet.org/privacy).

NCL draws on its considerable knowledge and expertise in commenting on whether certain changes to the Rule will adequately protect consumers from fraud and abuse, including interference with their rights to privacy.

## **Scope**

### ***Charitable Solicitations***

Section 1011 of the USA Patriot Act<sup>1</sup> provides important new protections for consumers against fraudulent and deceptive charitable solicitations. This issue received intense publicity in the wake of the tragic events of September 11, when the NFIC and others began to hear about bogus telemarketing and online solicitations for aid to the victims. Charity scams not only rob the donors; they divert contributions from legitimate charities. We welcome the action by Congress to amend the Telemarketing Consumer Fraud and Abuse Prevention Act<sup>2</sup> in this regard. The new provisions in the Rule regarding for-profit fundraisers will be very helpful in curbing deceptive and abusive practices.

### ***Jurisdictional Limits***

Because the Commission’s general jurisdiction does not include significant segments of the telemarketing industry, such as common carriers and financial institutions, the Rule does not provide comprehensive protection for consumers or a level playing field for marketers. NCL believes that these jurisdictional barriers should be eliminated, at least for purposes of the Rule. The Commission should work with Congress, the Federal Communications Commission, and other agencies to ensure that there is a uniform approach to preventing deceptive and abusive telemarketing practices.

## **Definitions**

### ***Billing Information***

The Commission properly recognizes that there are an increasing number of options for billing consumers in telemarketing sales and charitable solicitations. Checks and money orders are no longer the most common methods of payment in telemarketing fraud. In 2001, demand drafts became the #1 method of payment in incidents reported to the NFIC, followed closely by credit cards. Utility bills and debit cards are also used for payment, especially in certain categories of telemarketing fraud. By

---

<sup>1</sup> Pub. L. 107-56, October 25, 2001

<sup>2</sup> 15 U.S.C. 6101-6108

defining “billing information” broadly, the Commission provides protection for these and other methods of payment that are emerging in this evolving marketplace.

### ***Internet Services***

NCL receives complaints about false promises and misleading representations for Internet services, many of them from businesses. These are classified under Internet fraud, even though the solicitations may be made by via telemarketing. In 2001, Internet Access Services ranked #5 in the top ten Internet-related frauds reported to NCL. This category includes not only offers for connection to the Internet but other services that are frequently promoted to businesses, such as promises to help them find locations in Internet “malls,” design their Web sites, set up systems to accept orders and payments online, and drive customers to their sites. We suggest that the definition of Internet Services should be broad enough to encompass the full array of services that may be offered, making it unnecessary to have a separate definition for Web services.

### ***Outbound Telephone Call***

NCL agrees that the same types of disclosures that are required in outbound telemarketing calls are necessary to protect consumers in inbound calls if the telemarketer makes a pitch on behalf of another seller or charity or transfers them to another telemarketer soliciting a different purchase or donation. Complaints to the NFIC indicate that abuses can occur when consumers who respond to an advertisement for one thing are then solicited for something else, especially if the new offer is significantly different than the original one or is from another vendor. In these situations, the only information that consumers have on which to decide whether to make a purchase or donation is that which is provided during the call.

If these situations are included in the definition of outbound telephone calls, NCL recognizes that exceptions will be needed to some of the requirements to avoid unintended consequences. For example, if a consumer calls a telemarketer at 10 pm and is transferred to a salesperson representing a second marketer, that company could be in violation of the time-of-day restrictions for outbound calls.

## **Deceptive Telemarketing Acts or Practices**

### ***Disclosure of Total Cost***

NCL asks the Commission to reconsider the issue of whether the total cost should be disclosed in the case of sales involving monthly installment payments. The Commission acknowledges that in these instances “it is possible to state the cost of an installment contract in such a way that, although literally true, obfuscates the actual amount that the consumer is being asked to pay.”<sup>3</sup>

While such a statement of cost may violate the “clear and conspicuous” standard for disclosures under the Rule, that charge is only invoked *after the fact*. Since there is usually no provision to cancel these agreements, consumers who complain to the seller about being misled are often given the impression that there is nothing they can do. The problem with the Rule as it is currently written is that it

---

<sup>3</sup> 67 Fed. Reg. 20, 4502

fails to *prevent* consumers from being misled about the total cost at the time of these purchasing decisions. Consumers do not normally have calculators at hand next to the telephone, nor should the burden be on them to “do the math.” The telemarketers know exactly how much these installment contracts will cost and should be obliged to provide that information as part of the solicitation. NCL does not believe that this would be an undue burden for any legitimate telemarketer.

### ***Disclosures Regarding Prize Promotions***

NCL is pleased that the Commission has proposed to add the disclosure that making a purchase will not improve a consumer’s chance of winning a prize to the relevant sections of the Rule concerning Deceptive Telemarketing Acts or Practices and Abusive Telemarketing Acts and Practices.<sup>4</sup> This tracks the requirements for mailings under the Deceptive Mail Prevention and Enforcement Act and will help prevent consumers from being misled in prize promotions.

### ***Verified Authorization for Certain Payment Methods***

Billing disputes often arise in connection with deceptive or abusive telemarketing. Consumers are sometimes lured into providing their billing account information under false pretenses. For instance, in offers for credit card loss protection, the services may be misrepresented as “free” but consumers are asked to “verify” their account numbers. In sweepstakes scams, victims may be asked for their banking information in order for their “winnings” to be deposited in their accounts.

Consumers may provide billing information to purchase a particular item or service, only to discover later that they have been billed for other products or services that they never agreed to buy. The goods or services that consumers agreed to purchase may be misrepresented, or never be delivered at all.

As the Commission notes, the legal recourse that is available to consumers through different billing systems varies significantly. The increasing use of payment methods that do not provide the same strong liability limits and dispute rights as credit cards has heightened concern about the lack of uniform consumer protection. For example, demand drafts accounted for 23percent of all payments reported to the NFIC in 2001, compared to just 6percent in 1999. Use of demand drafts was even higher in some categories of telemarketing fraud: 26percent of payments for buyer’s club memberships, 62percent of payments for bogus offers of credit cards. In complaints about Internet Access Services reported to NCL, demand drafts were used in 19percent of payments.

Debit card use is also gradually rising. It accounted for less than 1percent of payments reported to the NFIC in 1999, but by 2001 it represented 5percent. Among the top ten telemarketing frauds, it was higher in certain categories: 9percent of buyer’s club payments, 12percent of payments in bogus credit card offers. Utility accounts are also used for billing in many fraud categories.

The Commission proposes to address the concern about unequal billing remedies by requiring express verifiable authorization when payment is made by a method that does not impose a limitation on

---

<sup>4</sup> 39 U.S.C. 3001 (k)(3)(A)(II)

the consumer's liability for unauthorized charges or provide dispute resolution procedures comparable to those available under the Fair Credit Billing Act<sup>5</sup> and the Truth in Lending Act.<sup>6</sup>

NCL believes that it is important to verify both the account that will be billed and the fact that the consumer is agreeing to purchase specific products or services using that account. While some payment methods put telemarketing fraud victims at an even greater disadvantage than others in the event of disputes, all consumers whose accounts will be billed should have the basic protection that such verification provides. Even credit card billing victims, who have the strongest dispute rights and liability protection, must contest the charges in the required manner and time frame to assert their rights. In examining the complaints made to the NFIC last year about buyers clubs, a category in which nearly all of the consumers said they never agreed to purchase the service, NCL found that 60percent of payments were made by credit card. These consumers were furious about having to clear up the unauthorized charges.

NCL suggests a more simple and straightforward approach to this problem. Telemarketers should be required to obtain express verifiable authorization whenever they intend to bill a consumer's account, *no matter what type of account is involved*. As the Commission noted in proposing to eliminate written authorization for demand drafts, most telemarketers use tape recordings to verify authorization. It is no more burdensome to tape all conversations about billing than certain ones; in fact it is probably easier. Express verifiable authorization for all situations in which consumers' accounts will be billed will reduce the potential for disputes later. It will also eliminate the need for telemarketers to differentiate between credit and debit card numbers.

It is not clear to NCL whether the Commission is proposing to take into account voluntary policies that may be adopted by financial institutions, telephone companies, or others who operate billing systems if they offer consumers better recourse for disputes than what the law provides. Because those policies can change at any time, they cannot serve as a basis for determining whether or not to require express verifiable authorization. This is another reason why the best solution would be to require express verifiable authorization whenever a consumer's account will be billed.

### ***Solicitations for Charitable Contributions***

The proposed list of prohibited practices covers most of the common abuses that are reported by consumers and businesses. It might be useful to add a prohibition against deceptive "sound-alikes," deliberate attempts to trick potential contributors by using names that are very similar to those of well-known charities.

### ***Free Trial Offers***

We do not believe that §310.3(a)(1)(ii) is specific or strong enough to prevent the abuses we have cited in previous comments about free trial offers. The best way to protect consumers is to require telemarketers to notify them before the trial period ends and obtain their express verifiable consent to

---

<sup>5</sup> 15 U.S.C. 1666 *et seq.*

<sup>6</sup> *id.*

continue on a paying basis. Even if all the desired disclosures are made during the initial call, it is unfair and unrealistic to expect that consumers will remember when the “free” time ends and how to give notice if they wish to cancel. NCL notes that these are not the same as record or book clubs that operate on a negative option basis. Consumers enter into those agreements with the expectation that they will buy something, and they only pay when they do. In free trial offers, consumers have not committed to purchase anything, but they will be billed unless they cancel before the end of the trial period, even if they never used the products or services at all.

The notice and affirmative consent approach that NCL suggests is consistent with the principle that consumers should give express authorization for their accounts to be billed. In the case of a free trial offer, the consumer agrees to make the purchase at the *end* of the trial period, not the beginning. Thus, the authorization to be billed should occur at that time.

### ***Credit Card Loss Protection Plans***

NCL commends the Commission for the sensible approach it has taken to address the problems we have seen in sales of these services. Credit card loss protection plans ranked #8 in the top telemarketing frauds reported to the NFIC in 2001. This category of telemarketing fraud is particularly pernicious because it usually involves blatant misrepresentations and scare tactics about consumers’ liability for lost or stolen cards. It is also troubling because it targets older consumers; 55 percent of the victims in credit card loss protection plans last year were age 60 or older, while that age group accounted for only 26 percent of telemarketing fraud victims overall.

As with credit repair, consumers need to understand the protection that they already have under federal law in order to make informed decisions about whether they need additional protection. The Credit Repair Organization Act<sup>7</sup> requires written disclosures of consumers’ rights concerning erroneous credit records. Furthermore, it provides that an agreement for credit repair services is not binding unless there is a written contract signed by the buyer, who has three days to cancel. NCL believes that similar requirements for written disclosures, signed contracts, and an automatic “cooling off” period are necessary in connection with the sale of credit card loss protection plans.

## **Abusive Telemarketing Acts or Practices**

### ***Preacquired Account Information***

Checks and money orders are no longer the most common methods of payment in telemarketing complaints made to the NFIC. As NCL noted earlier, demand drafts, credit cards, debit cards, utility bills, and other types of accounts are increasingly used for payments. Sometimes consumers contend that they never provided their account numbers to the telemarketers; many of these complainants say they never even heard of the companies before they received their bills or bank statements.

---

<sup>7</sup> 15 U.S.C. 1679

In the July 2000 public forum convened by the Commission as part of the Rule review, industry representatives confirmed that there is a growing trend for telemarketers to obtain consumers' billing account information from other sources, especially in "upselling" and joint marketing situations. NCL believes that there is a direct correlation between this practice and the complaints that it receives from consumers who say, "I never gave my credit card number" or "I don't know how they got my bank account number." Sometimes in questioning the unauthorized charges or debits, consumers learn that their billing information came from another source. This may solve the mystery but not the underlying problem: with preacquired account information, telemarketers can easily charge or debit consumers' accounts even if there has been absolutely no interaction between them or the consumer declined the offer.

While preacquired account information may offer some small convenience for the marketer, it is far outweighed by the unreasonable degree of risk for unauthorized charges or debits to which consumers are exposed. Merely requiring telemarketers to disclose that they have already obtained the billing account information from another source or that they may share that information with other marketers would not provide consumers with adequate protection from abuse. Express verifiable authorization to use the billing account information is not enough in these instances because it comes into play *after the fact*; it does not give consumers prior knowledge of or control over who has their account information.

Consumers are understandably horrified to discover that their billing account information has been passed around for anyone to potentially use. It is a fundamental violation of their rights to privacy and security. The Commission takes the correct approach by proposing to prohibit telemarketers from acquiring billing account information from sources other than the account holders or providing that information to other marketers.

NCL rejects the argument that it is unduly burdensome for telemarketers to obtain billing information directly from the account holder at the time of purchase. Requiring telemarketers to ask for that information would benefit both parties by helping to confirm the consumer's intention to make the purchase and the correct account that will be used for that purpose, reducing the potential for billing disputes later. Some marketers contend that the use of preacquired account information actually protects consumers' privacy and security because the salespeople do not need to have access to it. NCL suggests that the best protection against internal fraud is proper screening, training, monitoring, and supervision of salespeople.

### ***Blocking or Altering Transmission of Caller ID***

There is no question that intentionally blocking or altering transmission of Caller ID should be considered an abusive act. The reason that consumers pay for this service is to identify who is calling. We note that consumers are unable to block their own numbers from being revealed through Automatic Number Identification when they call a company's 800 number. The real question is whether telemarketers should be able to use systems that do not relay Caller ID. If it is technologically and financially feasible for telemarketers to arrange for Caller ID to be transmitted, the Rule should prohibit their failure to do so.

Caller ID should display the name of the seller or charity, regardless of who is actually making the calls, and a telephone number that consumers can use to ask about the solicitation and request not to be called again.

### ***Interfering with a Consumer's Right to be placed on a "Do Not Call" List***

NCL believes that telemarketers should ask consumers who are not interested in their offers if they would like to be placed on the companies' "do not call" lists. At the very least, telemarketers should not deliberately make it difficult for consumers to exercise their "do not call" rights. It is entirely appropriate to include such interference as an abusive act or practice.

### ***National "Do Not Call" Registry***

Many consumers feel that they are besieged by telemarketing. In the National Consumers League's "Consumers and the 21<sup>st</sup> Century" survey, which was conducted by Louis Harris & Associates in April and May 1999, 49 percent of respondents rated telemarketing as the every-day experience that most bothered them. Another indication of this sentiment is the popularity of state "do not call" (DNC) lists, Caller ID, unlisted or unpublished numbers, and the Direct Marketing Association's Telephone Preference Service (TPS). Some consumers may be content to accept telemarketing calls on a case-by-case basis. For people who want to take a more comprehensive approach to protect their privacy, a national DNC registry list would provide a convenient tool.

NCL rejects the arguments that creating a national DCN registry would exceed the Commission's jurisdiction or violate marketers' free speech rights. The Telemarketing and Consumer Fraud and Abuse Prevention Act specifically directs the Commission to require that "telemarketers may not undertake a pattern of unsolicited telephone calls which the reasonable consumer would consider coercive or abusive of such consumer's right to privacy."<sup>8</sup> Some consumers clearly view having to deal with unwanted telemarketing calls as "coercive" and "abusive" of their privacy.

Because consumers would "opt in" to the national DNC registry, telemarketers would only be precluded from calling people who have expressly declared that they do not want to receive telephone solicitations. As far as we know, telemarketers have no free speech right to call consumers who do not want to talk to them.

The fact that some callers are not subject to the Commission's jurisdiction and would not be constrained from calling consumers under the Rule is not persuasive grounds for objecting to a national DNC registry. NCL hopes that those who make that complaint will support measures to fill some of those gaps in the future. At the very least, the DNC registry will help consumers substantially reduce the number of unwanted calls they receive. Furthermore, it will give law enforcement agencies better tools to stop abusive callers, many of whom do not participate in industry programs such as the TPS.

### **Restriction on Use**

---

<sup>8</sup>15 U.S.C. 6102 (a)(3)(A)



The Commission proposes to create a national DNC registry in order to address consumers' legitimate privacy concerns. Those who sign up will be motivated by one desire – the desire to be left alone. NCL strongly believes that it would be an invasion of consumers' privacy to use any information from the registry that identifies or could be used to identify them (for instance, phone numbers can be crossed-referenced to names or addresses) for any other purpose.

### **Who Can Make the “Do Not Call” Request**

We do not believe that it is necessary to limit the person who can make the “do not call” request to the line subscriber. Spouses, roommates, care givers, and others with legitimate interests should be able to make those requests. The goal should be to make it as easy as possible for consumers to avoid unwanted calls.

### **Registration Process**

The Commission should provide a variety of methods to register, including telephone, letter, and an online form. The system should be designed to make it easy to enroll, taking into special consideration consumers who have various types of disabilities.

### **Registration should be Free for Consumers**

Cost is another potential barrier to consumers who want to take advantage of a national DNC registry. Only companies that are obliged to use the lists should be charged.

### **Confirming Registration**

Consumers should receive confirmation that their registration has been processed. There should be convenient options for getting confirmation, such as postcard and email. The confirmation can be an important educational tool. For example, it could include information about what types of callers are not covered, how to make complaints, how to renew registration if that is necessary, and how to remove oneself from the registry if desired. There should also be simple methods that consumers can use to confirm that they are still listed with the registry.

### **Length of Registration**

Consumers should be able to remove themselves easily from the DNC registry at any time. However, unless they do so or their phone numbers are reassigned, they should remain on the list indefinitely. If periodic renewal is required, renewal notices should be sent to consumers. The burden should not be on them to remember when they need to renew, as it is with the TPS.

### **Separate DNC Requests for Sales Calls and Charitable Solicitations**

NCL believes that consumers should have the choice of avoiding sales calls, calls for charitable solicitations, or both.

### **Interplay between State Lists and a National DNC Registry**

NCL opposes preempting state laws when they provide stronger protection for consumers than federal law. States are historically more responsive to the needs of their constituents and quicker to act on their behalf. The proliferation of state DNC lists in the last several years is a case in point. NCL

notes that the Commission’s jurisdiction over certain types of businesses may be more limited than that provided by state law. The Commission also lacks jurisdiction in intrastate matters. If the Commission proceeds with a national list, it should work closely with the states to ensure that consumers have better protection against unwanted calls, not less protection.

State enforcement is also vital to consumer protection. While states can bring actions to enforce the Rule in federal courts, they often find that state courts are quicker and easier to use. Multistate actions have also proven to be very effective in resolving common problems with telemarketers. The Commission should take care not to interfere with states’ abilities to take whatever action is necessary to protect their constituents and stop deceptive and abusive telemarketing practices. Nothing in the Telephone and Consumer Fraud and Abuse Prevention Act indicates that the Commission could or should preempt the states; in fact, states’ rights to enforce their own laws are explicitly acknowledged in the statute.<sup>9</sup>

### **Express Authorization to Receive Calls**

NCL supports the Commission’s proposal to permit consumers who sign up with a national DNC registry to give specific companies express authorization to call them. This is consistent with the general principle that consumers are entitled to privacy and control of their personal information.

The fact that a consumer may have had a relationship with a company previously does not necessarily mean that he or she wishes to receive calls, or to continue to receive calls, from that company. It is difficult even to define preexisting relationships without creating significant loopholes. If a consumer bought something from a telemarketer ten years ago, is that a preexisting relationship? If the consumer has always made purchases from a company’s physical stores and never by telephone, is that a preexisting relationship for purposes of accepting telemarketing calls? If the consumer merely called to inquire about a product or service but never bought anything, is that a preexisting relationship? Should such a relationship only exist when a consumer has established a specific account with a company for recurring purchases? When a “reloader” repeatedly calls an older telemarketing sweepstakes victim, is that a preexisting relationship? Will consumers who sign up for a national DNC registry have to remember the names of every company they have ever done business with in order to know which can call them and which cannot?

NCL believes that the purpose of creating a national DNC registry list is to give consumers more effective privacy protection. The burden has been on consumers to “opt out” of being called again by individual companies, *after* they have already been disturbed. When consumers have clearly expressed their desire for privacy by signing up on for the national DNC registry, it is not unreasonable to require marketers to ask for permission to call them, whether they have had a previous relationship or not. The request for permission to call should be clear and require affirmative action on the part of the consumer, not be a negative option buried in the fine print.

### ***Predictive Dialers***

---

<sup>9</sup> 15 U.S.C. 6103 (f)(1)

NCL agrees with the Commission's view that when telemarketers abandon calls due to use of predictive dialers, they are committing abusive practices and violating the disclosure requirements under §310(4)(d). The only way that the use of predictive dialers could avoid these violations would be by setting maximum abandonment rate to zero. Caller ID cannot provide the full range of disclosures required by the Rule. A tape recording that provides the required disclosures is an interesting idea, but it might be annoying to consumers and tie up their phone lines – the very reasons why telemarketers are not allowed to use prerecorded messages without prior consent under the Telephone Consumer Protection Act.<sup>10</sup> NCL concludes that there is no way that predictive dialers can be used as they are at present in conformance with the Rule.

### ***Charitable Solicitations***

It would be useful to require fundraisers to identify themselves as well as the charities on whose behalf they are operating. This would aid in making complaints about violations of the Rule and might also help trigger an important question for consumers to ask – how much of their contribution is going to the fundraiser?

### ***Prison-based Telemarketing***

The Commission has noted that no monitoring system can guarantee that abuses will not occur in the use of prison-based telemarketing. The prison population is different than the population in general; it is comprised of people who, while they may eventually be rehabilitated, have committed fraud, identity theft, and a variety of other crimes. In light of that, disclosures would do little to alleviate the concerns that were raised at the July 2000 public forum. NCL believes that it is inappropriate for prisoners to have access to consumers' billing account and other personal information. We have no information to indicate that this work provides meaningful job training for prisoners. Instead, the main motivation for marketers seems to be to the opportunity to obtain cheap labor. NCL believes that prison-based telemarketing should be prohibited as an abusive practice.

### **Exemptions**

#### ***Business-to-Business***

NCL is troubled by the business-to-business exemptions because many businesses are victims of a variety of telemarketing frauds and abuses. The Commission has sought to address this through exceptions to the exemptions for sales of certain types of goods and services. NCL certainly supports broadening those exceptions to include charitable solicitations and offers for Internet services. However, reports to the NFIC indicate that businesses are also victims of advance fee loan scams, investment fraud, "slamming," "cramming," bogus prize offers, pay-per-call scams, Nigerian money offers, phony advertising schemes, and violations of their privacy.

People who operate businesses, especially small businesses, do not necessarily have any more sophistication in regarding to telemarketing fraud and abuse than the average consumer does. In response to the need to educate businesses, NCL created a special section of the NFIC Web site, at

---

<sup>10</sup> 47 U.S.C. 227 (b)(1)(B)

[www.fraud.org/scamsagainstbusinesses/](http://www.fraud.org/scamsagainstbusinesses/). If the business-to-business exemption is not removed altogether, additional types of telemarketing fraud should be added to the exceptions. Furthermore, businesses should have the benefit of the “do not call” provisions of the Rule.

### ***General Media***

NCL asks the Commission to reconsider the issue of whether the general media exemption is appropriate and workable. Unless advertisements in the general media provide full information about the offers, consumers who call in response to them are vulnerable to fraud and deception. Such advertisements may very well be subject to the Commission’s general authority concerning unfair and deceptive acts and practices. However, it would help to *prevent* deception and abuse if, in all inbound call situations (excluding catalogue sales), telemarketers were at least required to provide the basic material information that consumers need to make informed purchasing decisions.

If the Commission continues to take a category-by-category approach, NCL supports excluding work-at-home plans and other business opportunities that are not covered by the Franchise Rule from the general media exemption. In 35percent of the work-at-home complaints made to the NFIC last year, consumers said that they were solicited through print media. While most of the solicitations for credit card loss protection plans were made by telephone, given the egregious nature of these complaints, sales of these services should be covered by the Rule no matter how they are promoted.

All telemarketers should also be subject to the requirements for express authorization when the consumers’ accounts will be billed, no matter whether the calls are outbound or inbound, with no exemption for general media or direct mail.

### ***Direct Mail***

NCL also believes that the direct mail exemption should be eliminated. By requiring basic material disclosures and express verification of billing information in these inbound calls, the Rule would help *prevent* telemarketing fraud and abuse. Furthermore, as the Commission adds more exceptions to the exemptions, it becomes more confusing for marketers and consumers to understand their obligations and rights.

If the Commission continues to take a category-by-category approach, NCL believes that it is appropriate to exclude direct mail solicitations for work-at-home plans and other business opportunities from the direct mail exemption. Last year, 42percent of the victims of work-at-home scams said that the initial method of contact was by direct mail. Again, only a small percentage of solicitations for credit card loss protection plans were by mail, but NCL strongly supports excluding them from any exemption and requiring written disclosures and contracts for these services.

NCL agrees that faxes and emails are very similar to direct mail. They are often sent to promote fraudulent goods or services. In Nigerian money offers, the fastest growing category of both telemarketing and Internet fraud reported to NCL, faxes and emails are the primary methods of solicitation. They are also used to solicit businesses for a variety of telemarketing scams.

However, we note that unsolicited fax advertisements were prohibited under the Telephone Consumer Protection Act<sup>11</sup> because of their intrusive impact on recipients' privacy. Exempting unsolicited faxes from the Rule if the information in them is accurate and complete would ignore this important public policy determination. Unsolicited fax solicitations should be prohibited as an abusive practice under the Rule. NCL has a similar concern about unsolicited emails. As the Commission is aware, many people strongly believe that unsolicited emails abuse their privacy and should be banned. If unsolicited emails are exempt from the Rule as long as they contain full and accurate information about the offer, this might be interpreted as the Commission giving tacit approval for this controversial practice.

### **Conclusion**

NCL appreciates the opportunity to express its views on how the Rule can be strengthened to better protect consumers' economic security and privacy. We look forward to the public forum that the Commission will hold in June to explore these issues in more depth.

Respectfully submitted,

Susan Grant, Vice President for Public Policy  
National Consumers League  
1701 K Street NW, Suite 1200  
Washington, DC 20006  
(202) 835-3323  
Fax (202) 835-0747

---

<sup>11</sup>47 USC 227 (a)(1)(3)