WHY THE FTC
SHOULD NOT
IMPLEMENT A NATIONAL REGISTRY

1. The FTC Does Not Have Statutory Authority to Establish A Do-Not-Call List

   a) If Congress had intended to grant the FTC authority to establish a National Do-Not-Call list, it would have done so explicitly in the TSA.

   b) It infringes on Congress' specific grant of authority to the FCC to consider establishing such a registry.

   c) An agency may not use its rulemaking authority to amend a statue or to insert something into the statue, which is not already there. The term "abusive" is being used out of context in FTC's reasoning to justify a National Registry. The term "abusive" was related to the activities of a specific telemarketer and his/her company. It was not the intent of the Congressional Committee that telemarketing practices be considered per se "abusive".

   d) Congress did not grant the FTC authority to adopt any measure that the FTC believes advances a privacy concern or that fights a perceived nuisance.

   e) FTC's proposed national registry clearly ignores Congress' instructions that it does not add any burdens to legitimate telemarketing activities beyond those imposed by the TCPA.

2. A Rule Must Be Predicated On Substantial Evidence

   a) The FTC has no data, factual and evidentiary support, to justify its proposed actions. The FTC has provided no data that specifically deals with the telemarketing activities that are under its jurisdiction.

   b) The FTC Act requires that the acts or practices that are subject to the rulemaking be "prevalent". Prevalence would be found if the Commission had issued a number of cease and desist orders regarding such acts or practices. No information was provided by the FTC to support any prevalent pattern. In addition, there was a complete lack of enforcement actions brought by the Commission in recent years pertaining to such acts or practices.

   c) As denoted in the NPRM, on page 111, the Commission suggests that telemarketers make nine (9) billion phone calls annually. With 100 million households in America, based on this data, the average American household would receive 1.7 calls per week from all telemarketing entities. If you further dissect these figures, it is probably less than .5 calls per week being made by entities under FTC's authority. Does that small level of calls warrant further action by the FTC? I do not believe so.

   d) It is one thing for a consumer to express their views to the FTC on the merits of a National Registry and another to exercise their existing legal rights of putting their name on do-not-call lists. How many of the consumers responding to the FTC were fully aware what action they could take today to reduce unwanted phone calls? Is educating the public the real issue? Is enforcement of the current laws the real issue? We do not need new rules with limited jurisdiction – lets educate the public and enforce existing laws.

3. The FTC cannot show that they are the best entity to solve the perceived problems related to DNC lists

   a) The FTC fails to offer evidence to show how the proposed National Registry provides a privacy enhancing and cost effective benefit relative to existing do-not-call registries such as by the DMA's Telephone Preference Service list (membership represents 80% of the telemarketing market), a Company Specific DNC list, and State DNC lists (State's currently with Do-Not-Call Lists represent over 50% of the U.S. population).

   b) How can the Commission justify spending the time and money necessary to create such a Registry, when it will not add any further protection than what the DMA and States can and have done? Again, the FTC is limited in which businesses it can control – the DMA and the States are not!! As an example, in Florida, a citizen of the State has "one stop" shopping. He/she can make one request to be on the State's Do-Not-Call List, that's it. It covers significantly more types of businesses than the FTC's limited proposed National Registry. Please refer to Exhibit I to further illustrate this point.

4. Infringes on Commercial Free Speech

   a) The do-not-call list is not a sufficiently "narrow tailored device" to withstand the First Amendment.

   b) The proposed Rule fails to "carefully calculate the costs and benefits associated" with the imposing regulatory do-not-call list. That failure is manifested by this proposal to implement such an extensive regulatory regime affecting only a small segment of the telemarketing business channel rather than relying upon State and self-regulatory (DMA) commitments applicable to a much broader number of calls. Regulations have been found unconstitutional when, like here, an agency implements stringent speech-restrictive regulations without considering less stringent options to accomplish its mandate of enhancing consumer privacy.

   c) The Rule is filled with exemptions and inconsistencies by virtue of the limits on the FTC's jurisdiction "that the government cannot hope to exonerate it".

5. Unduly Burdens and Harms Small Businesses

   a) Compliance with an FTC administrative do-not-call list would have a significant economic burden on small businesses who do not have the resources (time and equipment) to manage multiple lists i.e., multiple States, Company Specific, DMA and now an FTC National Registry.

   b) Small businesses rely on the phone to communicate with consumers on the benefits of their service/product and their company. New companies and new products of existing small businesses would be blocked from offering their services that consumers would potentially have an interest in buying.

   c) The FTC proposal is in total conflict of the President's recently announced "Small Business Agenda". Small businesses are the major source of new jobs in America and are the driving force in introducing new products and services to the American public. We cannot stifle American's "entrepreneurial spirit" with burdensome and unnecessary regulations.