

THE FINANCIAL SERVICES ROUNDTABLE



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Richard M. Whiting
Executive Director

May 1, 2003

Office of the Secretary
Room 159
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
feerule@ftc.gov

Re: Telemarketing Rulemaking – Revised Fee NPRM Comment. FTC File No. R411001

Dear Mr. Secretary:

I appreciate the opportunity to comment on behalf of the member companies of the Financial Services Roundtable on the proposal released by the Federal Trade Commission (the “FTC”) describing (1) how the FTC’s pending national do-not-call list may be funded and (2) which parties may access the FTC’s list (the “FTC Fee and Access Proposal”). I further note our support for close coordination between the FTC and the Federal Communications Commission on this matter, as required by the Do-Not-Call Implementation Act of 2003. I would like to express in particular our concern regarding the potential consequences of the FTC Fee and Access Proposal involving entities that are exempt from the FTC’s jurisdiction.

The Financial Services Roundtable is a national association representing 100 of the largest integrated financial services companies in the U.S. providing banking, insurance, securities, and investment products and services to American consumers

Concern Regarding Entities Outside the FTC’s Jurisdiction

The Roundtable’s concerned that the FTC’s approach to funding its national do-not-call list could require persons outside the FTC’s jurisdiction to purchase the FTC’s list. As an initial matter, we note that the Telemarketing Consumer Protection Act (the “TCPA”) does not grant the FTC authority over interstate telemarketing calls made by persons exempt from the jurisdiction granted to the FTC pursuant to the Federal Trade Commission Act (the “FTC Act”). See 15 U.S.C. §6105(a). As a result, the rules issued by the FTC to implement the TCPA may not be enforced against entities such as financial institutions and utilities (the “exempt persons”). However, the use of the term “seller” in the FTC Fee and Access Proposal would, by its terms, include such exempt persons, and would likely create significant legal and regulatory risk for a telemarketer that made calls on behalf of exempt persons that have not purchased the FTC’s list.

While some telemarketers may consider themselves agents of exempt persons when making telemarketing calls on their behalf, and therefore exempt from the FTC's jurisdiction with respect to such calls, other telemarketers most likely will force exempt persons to purchase the FTC's list before doing business with them. Therefore, in order to remove this issue from doubt, we request that the FTC exclude from 16 CFR §310.8 persons over whom the FTC lacks jurisdiction pursuant to the FTC Act and the TCPA. To achieve this result, we propose that the FTC add the following new language as 16 CFR §310.8(f): "The term "seller," as used in this §310.8, shall not include any person that is exempt from the jurisdiction granted to the Commission by the Federal Trade Commission Act."

The Roundtable believes this change is consistent with both the jurisdiction of the FTC and Congress' mandate that the FTC and FCC coordinate their efforts in this area. Recent press reports indicate that the FCC is considering whether exempt entities such as banks, savings associations, and utilities should be required to comply with the telemarketing rules that the FCC ultimately creates. We also note that the FTC has expressed its intention to cover exempt persons in connection with its national do-not-call list. As a result, we believe the FTC should coordinate its resolution of this question with the FCC during the FCC's rulemaking process, and should remove any interpretive confusion arising from the FTC Fee and Access Proposal regarding whether exempt persons could be forced to purchase the FTC's do-not-call list. Finally, a more thorough discussion of the Roundtable's position on these and other issues raised in the context of a similar proposed rulemaking by the FTC can be found in the Roundtable's letter dated April 15, 2002 @<http://www.fsround.org/>.

Thank you again for the opportunity to comment on the proposal. If you have any questions or concerns, please do not hesitate to call Rich Whiting, Executive Director, or Irving Daniels at (202) 289-4322.

Sincerely,

Richard M. Whiting

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Executive Director