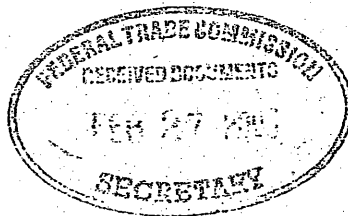


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February 27, 2003

BY HAND & FACSIMILE

Mr. Donald Clark
Secretary
Federal Trade Commission
6th & Penn. Ave., NW
Washington, DC

**RE: Petition filed pursuant to 16 CFR §1.25 Regarding
Portions of the Amendments to the Telemarketing Sales
Rule 16 CFR Part 310.**

Dear Mr. Clark:

Pursuant to 16 CFR §1.25, we write on behalf of The Direct Marketing Association (The DMA), and its members, to request through this Petition that the Federal Trade Commission (FTC) either forebear from enforcing the requirements of § 310.4(b)(1)(iv) ("Abandoned Call Rule") and § 310.4(a)(6)(i) ("Free-to-Pay/Preacquired Account Rule") of the Telemarketing Sales Rule (TSR) or, in the alternative, stay the effectiveness of these sections of the rule, for a time certain.

The compliance date for these rules is March 31, 2003. Significantly, though, compliance with the conditions contained in the rules requires the purchase and installation of new equipment, and the corresponding implementation of significant operational changes. In many instances, the requisite equipment cannot be purchased, installed and integrated into existing DMA member company operations before the March 31, 2003 effective date. In other words, many in the regulated community are facing the specter of impossibility of compliance by March 31, 2003. Compounding this problem is the fact that elements of the "Abandoned Call Rule" (§ 310.4(b)(4)(iii)) may be in conflict with the requirements of 47 U.S.C. section 227(b)(2)(B)(II) administered by the Federal Communications Commission ("FCC").

As the FTC is aware, the above rules are currently the subject of pending litigation, including a suit filed by The DMA (*U.S. Security et al. v. FTC*, No. CIV 03-122-W (W.D. Ok.)). The DMA respectfully submits that the FTC exercise its discretion in forbearing from enforcing the above rules or, in the alternative, deferring their effective dates, pending resolution of the above litigation. This will enable both the FTC and the regulated community to potentially avoid spending otherwise scarce resources pending the short time period necessary to resolve the above action. The DMA notes that this Petition follows the letter from a Mr. Jerry Cerasale of The DMA submitted to the FTC on February 14, 2003 requesting a forbearance of enforcement or deferral of the effective date of section 310.4(b)(1)(iv) (the Abandoned Call rule).

These issues are discussed further below.

1. 310.4(b)(1)(iv) – Abandoned Call Rule

Section 310.4(b)(1)(iv) makes clear that an abandoned call violates the TSR. Section 310.4(b)(4), however, establishes a "safe harbor" from liability for violation of 310.4(b)(1)(iv) if the seller or telemarketer "promptly plays a recorded message that states the name and telephone number of the seller on whose behalf the call has been placed." At the same time, the Telephone Consumer Protection Act and certain rules promulgated thereunder by the FCC squarely prohibit any pre-recorded voice messages that "include the transmission of any unsolicited advertisement." 47 U.S.C. § 227 (b)(2)(B)(II). Hence, leaving a recording with the name of the seller as required by the FTC's safe harbor to the Abandoned Call rule may constitute a "telephone solicitation" and, consequently, a violation of existing FCC rules. Thus, DMA members complying with the FTC safe harbor rule may well find themselves in violation of the corresponding FCC rule. This cannot have been the FTC's intent. To help bring resolution to this issue, The DMA has also requested that the FCC clarify its rule regarding the permissible use of pre-recorded messages (The DMA did this recently in comments filed with the FCC on January 31, 2003). Thus, the FTC should forebear enforcing or implementing the Abandoned Call rule until this potential conflict is resolved.

There are two other compelling reasons supporting this request. First, many of The DMA's members do not have the requisite equipment to play such a recording and will be unable to obtain that equipment by the rule's effective date of March 31, 2003. In essence, the deadline will be impossible to meet for many members of the regulated community. In addition, the Abandoned Call rule requires a telemarketing service bureau, that serves many seller clients, to play a different recording for each client. This is because, unlike the caller ID requirement in § 310.4(a)(7), the service bureau may not substitute its name and phone number for the seller. Many DMA members that currently have the

capability to play a recorded message do not have the current capability to play a different message for each client. In short, forbearance of enforcement or deferral of the effective date is necessary to allow marketers time to purchase, install, and make operational the requisite equipment necessary to comply with the rule.

2. 310.4(a)(6)(i) - Free-to-Pay/Preacquired Account Rule

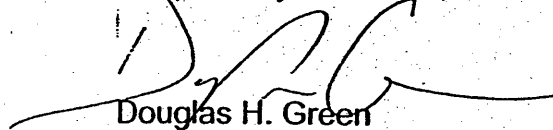
Section 310.4(a)(6)(i) requires telemarketers that engage in transactions involving preacquired account information and a free-to-pay conversion feature to (A) obtain from the customer, at a minimum, the last (4) digits of the account number to be charged; (B) obtain from the customer his or her express agreement to be charged for the goods or services and to be charged using the account number pursuant to subsection (A) of this section; and, (C) make and maintain an audio recording of the entire telemarketing transaction.

Many DMA members also face the specter of impossibility of compliance with the requirements of this rule by March 31, 2003. This is because many telemarketers that engage in free to pay conversions using preacquired account information do not currently tape such calls, nor own the equipment required to undertake such recordings. Purchasing this equipment and installing the same into existing operations is expensive, and most important, time consuming. In many cases, it will not be possible to have the necessary equipment in place by the March 31 effective date. For this reason, additional time is necessary for telemarketers to obtain equipment and implement taping of calls to comply with this new requirement of the TSR.

* * * * *

We appreciate your consideration of this petition and would be pleased to address any questions that arise as the FTC considers it.

Respectfully submitted,



Douglas H. Green
On Behalf of The Direct
Marketing Association