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~ A Federation of Nonprofit Funeral Consumer Information Societies ~

UNITED STATES OF AMERICA BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of the
Telemarketing Sales Rule (TSR)

16 CFR PART 310

COMMENTS OF FUNERAL CONSUMERS ALLIANCE ON THE COMMISSION'S REVIEW OF THE TELEMARKETING SALES RULE

FTC File No. P994414/R41 1001

Funeral Consumers Alliance is pleased to have this opportunity for further comment on the Telemarketing Sales Rule (TSR). We are impressed with the work of the Commission and its staff, and laud your efforts.

Scope

We are troubled that, at present and without further amendment, the TSR would apply only to *interstate* calls, not *intrastate* calls. This is a serious limitation. ALL telemarketers—regardless of the state from which they are calling—should abide by the consumer protection regulations set out in the TSR. It makes no sense whatsoever to protect consumers from predatory out-of-state businesses while leaving a door wide open to unethical practices from within a state. (This past year, a funeral home/cemetery telemarketer in Michigan blocked the caller ID function and refused to divulge the name and address of the company that was repeatedly promoting these calls to the point of harassment. . . from within the state.)

Furthermore, telephone technology has created a loophole which makes it impossible to enforce any TSR regulations, a situation that Congress surely did not anticipate in its definitions: Those from another state who might wish to evade an interstate law can do so by setting up a local calling number from which to make phone contact—the number that will show up on a caller-ID—while the caller is tied in by an out-of-state "foreign exchange loop."

Does the Commission have the authority to apply its proposed regulations broadly—for both in-state and out-of-state calls? In spite of the definition in 6106(4), we believe it does.

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Citing section 6105 (c), ***“Nothing contained in this chapter shall be construed to limit the authority of the Commission under any other provision of law.”***

Therefore, in seeking other laws to further its authority, we reviewed the original FTC-creating legislation. In section 45 (a)(2) we find, ***“The Commission is hereby empowered and directed to prevent persons, partnerships, or corporations. . . from using . . . unfair or deceptive acts or practices in or affecting commerce.”***

It goes on to say, under “standard of proof” in section (n), ***“The Commission shall have no authority under this section . . . unless the act or practice causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves”*** [emphasis added].

Thus we believe the Commission has not only the authority but the responsibility to assign a broad application of the TSR when consumers have limited, if any, ability to protect themselves from telemarketing abuse.

Do-Not-Call Registry

A national do-not-call registry will be eagerly welcomed by consumers and businesses alike if it is utilized as promised on your web site: ***“Under the FTC’s proposal, it would be illegal for telemarketers to call consumers who place their phone number on the national registry.”*** However, I feel certain that consumers would be shocked to learn that the amended TSR, as proposed, would not apply to callers from within a person’s state. A national registry that applies to both intrastate and Interstate calls is the most efficient way to exchange information between both buyers and sellers and to protect consumers in the 35 states without any telemarketing regulations.

Elderly people who have difficulty hearing on the telephone or even getting up to answer the phone should be able to have their do-not-call wishes honored. One daughter, knowing that her mother was easily confused or intimidated, asked a funeral preneed seller to stop calling her mother. Only after threatening a law suit did the calls finally stop, but in the meantime her mother had become quite upset. In addition to targeting the elderly, preneed funeral and cemetery marketing has, as a matter of company policy, targeted families immediately after a death [documented in our earlier comment]. In one recent case after the death of a son, the family’s unlisted phone number was taken from funeral home records and used repeatedly by a preneed seller. The family had no way to protect themselves; this intrusion was not “reasonably avoidable” even though their number was unlisted. These families and others would be distressed to learn that **you** will protect them from out-of-state calls but not from in-state harassment.

Lastly, we have found nothing in the Funeral Rule that would address these issues and, therefore, request that the scope of the TSR be expanded to cover both interstate and intrastate telemarketing sales practices.

Respectfully submitted,



Lisa Carlson, Executive Director
March 12, 2002