

1. **Comments Submitted on behalf of Gannett Co., Inc., 7950 Jones Branch Drive McLean, VA 22107, by Robert W. Althaus, Vice President/Circulation, Newspaper Division**
2. These comments are submitted on behalf of the ninety-five metro and community newspapers owned by Gannett Co., Inc. (“Gannett”) in response to the Federal Trade Commission’s (“FTC”) request for public comment on its Proposed Rulemaking to amend the FTC’s Telemarketing Sales Rule, 16 CFR Part 310 (the “TSR”). Gannett confines its comments to certain of the proposed revisions and adopts the comments of the Newspaper Association of America.
3. Gannett Co., Inc. is a large diversified news and information company. Gannett operates 95 daily newspapers and a variety of non-daily publications in the United States. Gannett also operates Gannett TeleMarketing, Inc, a provider of telemarketing services, and Telematch, a provider of database-marketing services.
4. Newspapers provide an inexpensive, important and universal source of community information. In many respects, local newspapers are local businesses and not national telemarketers. Common corporate ownership of local newspapers does not alter the fact that local newspapers appeal to local readers, and telemarketing efforts reflect that local character.
5. Gannett’s newspapers are effective mechanisms for introducing new residents to their communities, and telemarketing is an effective vehicle for imparting that message. For Gannett’s local newspapers, telemarketing sales are responsible for producing on average 58% of the new subscriptions generated through solicitation efforts each year. Additionally, telemarketing routinely is used to provide a “reminder” to current readers to renew or upgrade their current subscriptions. This is a service provided by local newspapers to ensure uninterrupted delivery to customers.
6. **RESPONSES TO CERTAIN OF THE FTC’S QUESTIONS FOR COMMENT ON THE PROPOSED RULE**
7. **IX. C. 3. Under the proposed Rule, sellers and telemarketers would no longer have the option of providing written confirmation as a method of express verifiable authorization. What are the costs and benefits to consumers and industry of eliminating this option of providing authorization?**
8. The proposed Rule prohibits a seller from verifying authorization for phone payment by providing written confirmation of the payment. The FTC should continue to allow telemarketers to use written confirmation as a means to verify authorization for phone payment. Recording equipment for recording oral authorization is quite costly. The effect of the proposal will be to eliminate acceptance of debit cards as a form of payment. Since a newspaper cannot know whether a particular consumer’s debit card

has a limitation of liability, the prudent course will be to refuse all debit cards. This will work to the disadvantage of consumers who do not have checking or credit card accounts. The proposal is overbroad to the extent it disposes of the written confirmation method because it is “subject to abuse”. The Rule should not prohibit this useful commercial tool.

- 9. IX. D. 3a. The proposed Rule prohibits blocking or altering the transmission of caller identification (“Caller ID”) information.... What costs would this impose on sellers?**
10. The proposed Rule does not recognize that current phone systems, including those tied to company dial-out codes, may alter the identification on a consumer’s caller identification device. In addition, the proposal would inhibit the use of third party telemarketing firms since the Caller ID for those firms would not reflect a newspaper’s name. Finally, the proposal adds significant cost. One Gannett newspaper estimates that a change in equipment would require a significant increased ongoing expense of \$13,000 annualized. The FTC should simply require that telemarketers take no action to block Caller ID.
- 11. IX. D. 5. The proposed Rule would establish a national “do-not-call” registry maintained by the Commission.**
- a. **What expenses will sellers, and telemarketers acting on behalf of sellers or charitable organizations, incur in order to reconcile their call lists with a national registry on a regular basis? What changes, if any, to the proposed “do-not-call” scheme could reduce these expenses? Can the offsetting benefits to consumers of a national do-not-call scheme be quantified?**
 - d. **How long should a telephone number remain on the central “do-not-call” registry? Should telephone numbers that have been included on the registry be deleted once they become reassigned to new consumers? Is it feasible for the Commission to accomplish this? If so, how? If not, should there be a “safe harbor” provision for telemarketers who call these reassigned numbers?**
 - e. **Who should be permitted to request that a telephone number be placed on the “do-not-call” registry? Should permission be limited to the line subscriber or should requests from the line subscriber’s spouse be permitted? Should third parties be permitted to collect and forward requests to be put on the “do-not-call” registry? What procedures, if any, would be appropriate or necessary to verify in these situations that the line subscriber intends to be included in the “do-not-call” registry?**
- 12. IX. D. 7. What procedures could ensure that telephone numbers placed on the “do-not-call” registry by consumers who subsequently change their numbers do not stay on the registry? Can information be obtained from the local exchange carriers or other telecommunications entities that would enable this to be done, and if so, how? If not, why not?**

13. The FTC proposal to amend the TSR includes a proposal to institute a National “Do-Not-Call” Registry (“National List”) maintained by the FTC. The proposal does not pre-empt state statutes requiring statewide do-not-call lists, nor does the proposal delete the current requirement of a company-specific list.
14. These questions raised by the FTC regarding establishing, reconciling and maintaining the lists inquire into a serious business problem arising from do-not-call requests. Telemarketers and sellers are expending money and time in efforts to comply with genuine consumer requests, but are faced with inaccurate, outdated or incomplete information that they must glean from numerous sources. Rather than adding to the complexity of complying with the TSR (by adding yet another list to be consulted), the FTC should be looking to simplify compliance with valid do-not-call requests.
15. In addition to the additional costs of purchasing and maintaining the company-specific list, the state-specific list, and a National List, companies will bear the burden of now cross-referencing and reconciling THREE lists instead of the current two lists to ensure that a telemarketer honors a do-not-call request that may have been expressed to one, but not all, registries. Increasing the number of do-not-call lists will increase the number of inaccuracies in those lists, thereby increasing the burden on telemarketers.
16. A regulatory proposal to improve compliance with do-not-call lists ought to simplify compliance also by promoting the maintenance of a complete, current and accurate list. Inaccurate and incomplete lists are costly and time-consuming for businesses in that they create a risk of unintentional calls to consumers who do not want calls and remove a potential source of business.
17. One of the most significant deficiencies of the current regulations is overbreadth of do-not-call lists. For example, one person making a do-not-call request may share a phone number with a person who would welcome a solicitation call from a particular seller. Moreover, telephone subscribers move and change phone numbers. Thus a telephone subscriber may fall off a list because the subscriber’s new number is not on the list. At the same time, a telephone number reassigned to a new household remains on do-not-call lists – even though the telephone subscriber placing the number on the list no longer has that number. (The FTC would do well to propose a safe harbor for telemarketers to clean up do-not-call lists of numbers that fall into the latter category.)
18. Thus, to facilitate an accurate and complete source of do-not-call information, regulations should require requesters to provide the name, phone numbers and address sought to be placed on a company’s do-not-call list.
19. In addition, placement of such information on a do-not-call list should expire and be renewable at relatively short intervals. All information not renewed should be removed from the list. It should be the consumer’s responsibility to renew the information. Telemarketers should not be obligated to send a notification or reminder to members of the registry, as that obligation increases the cost of maintaining do-not-

call registries. These costs become another burden for the companies that utilize telemarketing.

20. Full information and mandatory expiration with renewal can ease the overbreadth problem for sellers. These requirements will further the goal of accurate and complete do-not-call information, which will allow better and easier compliance by telemarketers.
21. A third significant practical obstacle to compliance for telemarketers is assuring that the person claiming authority to place a number on a do-not-call list is actually authorized to do so. Not all persons sharing a phone number will agree on whether they do not want to receive telemarketing calls. Not all persons sharing a phone jointly purchase the telephone service. The rule currently does not address the issue of authority to place a number on a do-not-call list.
22. At a minimum, the FTC should not require registration on a do-not-call list of names and numbers submitted by third parties. Self-styled public interest groups present telemarketers with aggregated lists of dozens of names and telephone numbers. The authenticity and currency of these third party submissions cannot be verified. Permitting third parties to place names and telephone numbers of consumers on do-not-call lists improperly favors the interests of these groups over legitimate businesses interested in developing accurate do-not-call lists.
- 23. IX. D. 11. Is the fact that, in the Commission's view, telemarketers who abandon calls are violating § 310.4(d) sufficient to curtail abuses of this technology? Is there additional language that could be added to the Rule that would more effectively address this problem?**
24. The proposed Rule and the FTC's strict liability view regarding predictive dialers misapprehends the technology and creates the possibility of liability for telemarketers when mechanical errors, rather than an intent to abandon a call, is the source of the abandonment. The assertion that any abandoned call is per se abusive and a violation of TSR Section 310.4(d) is overly broad.
25. A telemarketer faced with a lawsuit because of an inadvertently abandoned call would likely be unable to defend against such a suit. The telemarketer would not know that that call had been inadvertently abandoned and certainly no records would be kept. In such a case there would not have been an intent to violate the TSR, but in the FTC's view as articulated in the NPRM, that would not matter.
26. Defining any abandoned call as a TSR violation is an indirect way of attempting to ban the use of predictive dialers entirely. The technology is simply not refined enough to guarantee that no calls will be dropped as they are transferred to a sales representative. A telemarketer would be at risk of liability for each such call. The financial incentive for telemarketers would be to abandon predictive dialers. Creating that incentive is at odds with the FTC's view as expressed in the NPRM that a balance between privacy and efficiency is appropriate.

27. IX.E. Exemptions

28. The proposed Rule does not exempt from the definition of telemarketing calls to a person with whom the settler has an existing business relationship. The TSR should explicitly maintain an exception to the prohibition against calling a person on a do-not-call registry when the seller has an existing business relationship with that person. It is an important part of a newspaper's business to renew subscriptions or advertising with current subscribers and advertisers. If a subscriber or advertiser has placed his name on the National List, but is not on the newspaper's own do-not-call list and has not made an express verifiable authorization, under the proposal, the newspaper would not be able to make a telemarketing call to continue the business relationship. Preventing renewal calls disserves subscribers or advertisers whose transactions with the newspaper may end because of inattention rather than intent.

29. Respectfully submitted,
Robert W. Althaus
Vice President/Circulation
Newspaper Division
Gannett Co., Inc.
7950 Jones Branch Drive
McLean, VA 22107

April 15, 2002

#61470