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April 15, 2002

Office of the Secretary
Federal Trade Commission
Room 159
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: Telemarketing Rulemaking – Comment, FTC File no. R411001

Dear Sir or Madam:

On behalf of KeyCorp, I submit this letter as our comment to the Federal Trade Commission's ("FTC") proposal to amend the Telemarketing Sales Rule ("TSR") issued under the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §6101-6108 ("Telemarketing Act"), ("Proposal"). KeyCorp is a bank holding company headquartered in Cleveland, Ohio, with assets in excess of $86 billion. KeyCorp provides financial products and services to consumers primarily through two national banks, several financial service company subsidiaries and McDonald Investments Inc, an investment brokerage.

Key firmly supports the FTC's efforts to provide consumers with increased protection against deceptive, fraudulent and abusive telemarketing sales practices and to provide greater control over solicitation preferences. Key believes it is important to be able to provide a full spectrum of financial products and services that are beneficial to its customers while at the same time respect consumers telemarketing preferences. Key supports the right of consumers to choose not to receive unsolicited telephone calls and has for many years maintained an internal Do Not Solicit ("DNS") list to accommodate our customers' preferences. Because this is such an important issue to Key, we appreciate the opportunity to comment on the Proposal.

Key supports the concept of having a national Do Not Call ("DNC") list with which consumers can register to prevent calls from unwanted telemarketers. However, there are many legitimate businesses that solicit products and services by telemarketing in a very straightforward and trustworthy manner. Because the telephone's flexibility, ease of use, effectiveness and cost

efficiency benefit both businesses and consumers, this channel of communication has come to be an important business tool for financial institutions. Key is concerned that the Proposal as drafted could have a number of significant unintended consequences for businesses, consumers and, the FTC.

Key uses the telephone both to inform consumers about new products and other opportunities available to them that they might not otherwise learn of, and to allow consumers direct access to product information, account information, and customer service. Key has strong concerns that the FTC's proposed amendments to the TSR would burden our ability to communicate with consumers without providing commensurate benefits to consumers. Key is particularly concerned about the broad scope of the Proposal and the lack of federal preemption. The Proposal contains no exception for contacting existing customers, extends coverage of the TSR to some incoming calls, and creates a federal DNC list that will exist on top of existing state, industry, and company lists.

While neither the TSR nor the Proposal directly applies to federally regulated financial institutions, the proposal appears to apply to telemarketing activities performed on behalf of such institutions by third parties (possibly including subsidiaries and affiliates of a financial institution). Therefore, the Proposal would directly affect the manner in which Key telemarkets its products and services and serve its customers.

Key respectfully submits the comments below and hopes the FTC considers these comments in revising the Proposal to develop requirements that strike a more equitable balance between the interests of protecting consumers from fraudulent marketing activities and allowing businesses to get information to and service consumers.

1. **National Do Not Call Standard/Federal Preemption (Section 310.4(b)(1)(iii)(B)).**

The industry is currently faced with a very complex, costly and overall challenging DNC process. Today Key is tasked with complying with a growing number of state DNC laws, none of which have the same requirements, the Direct Marketing Association's DNS lists, as well as our own DNS list. As drafted, the Proposal will complicate, rather than simply an already challenging situation. Under the current regulatory environment Key must obtain and evaluate multiple lists that contain different information in inconsistent file formats in order to determine whether a marketing call may be placed to an individual. This is near to impossible to manage, especially when it is necessary to disburse the relevant information over hundreds of systems to get the necessary information out to the individual employee level. The Proposal merely adds another layer to this already very complex and challenging process.

Without federal preemption, the industry could very soon be in a position of implementing and analyzing 50 state laws lists in addition to the existing lists maintained under the TSR and the Federal Communications Commission's existing rules, together with the new requirements under the Proposal.

The complexity of this situation not only negatively impacts businesses; it clearly impacts consumers as well. It will certainly be confusing to consumers who need to understand the requirements that apply to determine whether a particular telemarketing call is a violation of the FTC Rules or applicable state law. A single federal list would provide consumers with a simple one step way to restrict unsolicited telemarketing calls from third parties with whom they have no previous relationship, and businesses with a single set of rules that will increase accuracy and decrease the cost of compliance.

Key recognizes that the FTC may not currently have the jurisdiction or authority to establish a uniform national DNC standard that can bind all industries. Therefore, we encourage the FTC to work with other federal agencies, and with Congress, if necessary, to ensure that any final rule can have national uniformity and is supported by the requisite legislative and regulatory structure.

2. **Exemption for Existing Customers**

As drafted, the Proposal does not provide an exemption for contacting existing customers who are included on the DNC list. Prohibiting a financial institution from communicating with its existing customers interferes with the institutions' relationship with its customer. Under such restrictions Key will no longer be able to communicate with our customers regarding ways to enhance their banking relationship which is service our customers expect.

Additionally, Key's customers save money from relationship pricing, proactive offers we make that meet the needs of our customers, efficient use targeted marketing and third party products and services we may offer from time to time. On an industry level these savings are very significant. However, existing customers would lose these valuable benefits if their inclusion on the DNC list would prohibit us from calling our them to educate them about offers for cheaper, more efficient products that are better suited for their particular needs.

Customers already have the ability to contact Key and be added to our DNS list. If a customer does not want Key to call him or her for additional products or services, they can call at any time to be added to our DNS list and we will respect their request. This is a right our customers have had for a long time.

Additionally, a restriction on the right to call customers will be difficult, at best, to manage. Frequently account servicing calls, whether initiated by the company or the customer, develop into what may be considered telemarketing. When and how the DNC restrictions would apply in these varied customer relationship situations is nearly impossible to foresee.

In addition, any member of a corporate family, including all affiliates and subsidiaries, should be permitted to call an individual on the DNC list so long as the individual has an established customer relationship with any member of that corporate family. This rule is necessary to preserve the benefits that the Gramm-Leach-Bliley Act ("GLBA") was intended to provide. At Key, it is our goal to work together to service all of the financial needs of the consumer by offering the full spectrum of financial products and services available across Key. Finally, the customer exception should extend to agents that provide services on our behalf; as those companies that provide services on our behalf should be able to contact our customers if we can.

3. **Restrictions on Exchanging Billing Information (Section 310.4(a)(5))**

The Proposal prohibits the use of consumer billing information in telemarketing, even if the information was previously acquired account information and the customer has specifically authorized the particular use. This restriction prohibits the sale of a product or service to an incoming caller unless the consumer directly provides the billing information.

Consumers' account numbers were already protected by Congress in the restrictions in the GLBA, and the FTC's implementing regulation, which prohibit a financial institution from disclosing a customer's account number for use in telemarketing. The broad restrictions of the Proposal contradict the requirements of the GLBA, which provides several well thought out exceptions that were adopted by the federal regulatory agencies. Under GLBA account numbers can be shared with a financial institution's service provider for the purpose of marketing the institution's own products/services (as long as the service provider is not able to initiate charges to the account); to support a private label or affinity card program; and, in encrypted form so long as a means to decode the encrypted number is not given.

Because sufficient protection exists, the Proposal should not cover preacquired account information to the extent it is already covered by, or contrary to the GLBA. In the alternative, the Proposal should be modified to be consistent with the GLBA.

4. **Express Verifiable Authorization (Sections 310.3(a)(3))**

The Proposal requires a telemarketer to obtain a consumer's "express verifiable authorization" ("EVA") before submitting the consumer's billing information for payment. A telemarketer is not subject to this requirement if the means of payment is covered by

unauthorized use and billing error protections similar or comparable to those under the Fair Credit Billing Act ("FCBA") and the Truth In Lending Act ("TILA").

The FTC should explicitly recognize other examples of payment mechanisms that provide sufficient protections. In particular, the FTC should expressly exempt payment methods covered by Regulation Z, the implementing rule for the TILA, and electronic fund transfers subject to the Electronic Fund Transfer Act ("EFTA") and its implementing rule, Regulation E. The EFTA and Regulation E provide similar consumer protections that are comparable to those provided in the TILA and FCBA. Additionally, payments methods covered by the Uniform Commercial Code (such as checks and demand drafts) provide consumers significant protection from liability and, therefore, should also be exempted. Finally, transactions that use a payment system that limits customer liability by payment system, should also be exempted if they provide the same and/or greater protections than that provided by federal law (e.g. major credit card issuers' "zero liability" policies).

Under the Proposal, an EVA is valid if it is either written, including the consumer's signature, or an express oral authorization, which must be recorded and made available upon request to the consumer and the consumer's bank. Key commends the FTC for recognizing that an EVA may be obtained over the telephone, however to be valid the EVA must clearly evidence the consumer's authorization and must include the number, date and amount of payment(s), the consumer's name, the consumer's billing information, *including account number*, a customer service telephone number and the date of the consumer's authorization. We urge the FTC to amend the requirements for a valid oral EVA to not include the consumer's account number. In many instances the telemarketer may not have the consumer's account number. This requirement would, therefore, force a consumer to provide an account number in order to complete a purchase, which is directly contradictory to the FTC's repeated recommendations that consumers not provide account numbers to telemarketers. Additionally, the EVA should not require the date(s) of payments as the telemarketer might not know be able to determine the actual date of the payment(s). A possible substitution may be to record the frequency of the payment.

5. **Transfer of Inbound Calls (Section 310.2(t))**

Under the Proposal, calls initiated by a consumer may be within the restrictions if the call is transferred to another representative to discuss an additional product or service. The TSR currently exempts calls initiated by the consumer.

Transferring a customer service call to another department or affiliate within a financial institution, or to a third party providing services on our behalf is a common practice. Moreover,

the purpose of the GLBA is to facilitate just that type of broad-spectrum financial services operations.

The burden this provision would place on inbound sales is onerous and it is extremely detrimental to our ability to service our customers. If a consumer is on the DNC list, we could not transfer them to the appropriate area to meet his or her needs even though the consumer had initiated the call. Consumers calling a business intentionally put themselves in a business environment. Moreover, inbound call scenarios are not likely to involve the deceptive or abusive acts or practices from which the FTC strives to protect consumers. The intent behind a DNC list is to avoid receiving unwanted or inconvenient telemarketing calls; it should not apply to calls initiated by consumers.

6. **Predictive Dialers (Section 310.4(c)(1)(i))**

Under the Proposal it is an "abusive telemarketing act or practice" for a telemarketer in an outbound call to fail to make specified disclosures. While this restriction does not explicitly ban predictive or automatic dialers, the Supplementary Information published with the Proposal provides that telemarketers who abandon calls violate the law since a call was successfully placed without the telemarketer providing the disclosures required by the law. Thus, under this interpretation, a zero percent abandonment rate appears to be the standard.

There are always going to be times when a consumer picks up the phone just at the moment the phone representative hangs up to dial another number. Therefore, the Proposal will be impossible to comply with in all cases. Moreover, eliminating the efficiencies gained through predictive dialing would cause a dramatic reduction in productivity with a correspondingly dramatic increase in the costs required to contact the same number of consumers.

We believe that the equitable approach is to develop a reasonable standard whereby the use of predictive dialers would be permissible and allow for some a reasonable number of abandoned calls. This approach balances the desire to reduce the number of abandoned calls against the efficiencies provided by predictive dialers, so long as the level of abandoned calls is not allowed to become coercive or abusive.

7. **Operational Issues**

Key, as do other financial institutions, has much experience with the development and maintenance of customer preference lists. As stated before, Key has voluntarily maintained a customer DNS list for many years. Moreover, to comply with the Fair Credit Reporting and Gramm-Leach-Bliley Acts, Key developed the necessary systems/databases to support consumers' preferences on internal and external information sharing. The development and

maintenance of the systems/databases necessary to collect, store, maintain and transmit customers' preferences involve significant development efforts and costs. It also involves the establishment of an ongoing process to collect the information, whether its a call center or paper based, which requires significant training to support the customer interaction involved in the process. Based on our experiences, we believe the costs associated with the development and maintenance of a national DNC process will be very significant.

Additionally, from our experiences we have learned that the type of identification information collected and how it is stored is critical to the success of such databases. If sufficient information to identify the individual who has requested to be added to the DNC list is not maintained, it is very difficult to assure accurate application of his or her preference. Name or telephone number alone is not sufficient information to be able to accurately apply an individual's preference. Common names, names changes and variations on how an individual supplies his or her name in multiple transactions make name alone inadequate for purposes of determining which consumers have elected not to be solicited. Moreover, telephone number alone is not adequate as telephone numbers change frequently and several individuals often share the same number which results one individual having the ability to decide another's solicitation preferences, most of the time without the other person ever knowing it. At a minimum, at least one additional piece of identifying data should be collected to allow for the accurate implementation of the list.

We encourage the FTC to carefully determine the best format and process to use to disseminate the information to the companies that need to comply with the requirements. Again, support of these lists is a very costly process for companies and everything that can be done to ease that burden will benefit consumers in the end by minimizing costs and speeding up the implementation process for updated lists. Issues such a file formats, frequency of list distribution and effective dates for updated lists all have tremendous impact on the amount of work, implementation timelines and costs associated with compliance efforts.

KeyCorp appreciates this opportunity to comment on the FTC's proposal to amend the Telemarketing Sales Rule. If we can be of any assistance in your further analysis of the Proposal, or if you have any questions on our comment, please call me at 216-689-7090.

Very truly yours,

KEYCORP

Angela L. Maynard
Senior Vice President
Chief Privacy Executive

cc: Forrest Stanley, Esq.