



## NATIONAL TROOPERS COALITION

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March 11, 2002

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

### **Re; Amendments to Telemarketing Sales Rule**

Dear Sir/Madam,

On behalf of the National Troopers Coalition and it's 30,000 members, the attached written statement is provided to you as the official position adopted by the membership at its February 2002 Winter meeting.

The proposed amendments by the Federal Trade Commission to the Telemarketing Sales Rule would devastate the numerous public safety educational and advocate programs conducted by State Police and Highway Patrol organizations.

Therefore, I respectfully request your review of the attached comments and request our amendment be adopted. Should you or your staff request further information, please contact me at your convenience.

Respectfully,

Scott Reinacher, Chairman

NATIONAL TROOPERS COALITION

STATEMENT OF POSITION  
ON THE  
PROPOSED AMENDMENTS BY THE FTC TO THE  
TELEMARKETING SALES RULE

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STATEMENT OF POSITION

The National Troopers Coalition (“Coalition”) opposes the amendments to the Telemarketing Sales Rule proposed by the Federal Trade Commission.

The Coalition is a nonprofit organization, with membership comprised of over 35 statewide nonprofit associations representing highway patrol or state police officers. Substantially all of these associations depend upon grass root telemarketing communication as the most economic and efficient means available to contact their many supporters in fundraising appeals. The appeal for support by a nonprofit, whether it is made directly or through a telemarketing service bureau, is a form of equally protected speech. Because Coalition member associations rely on the expertise of outside agents, the proposed national “do-not-call” list would apply to them, but would not apply to other comparable organizations that use their own employees to appeal for public support.

The message delivered by the agencies retained by the Coalition member organizations educate, advocate, and seek public support to fund membership programs and a wide variety of community projects.

The effect of the proposed revisions, if approved, would result in a discriminatory application to some but not others; would not address the basis on which most complaints are generated for unsolicited telephone calls; and would constitute a violation of the First Amendment rights of the Coalition members and other nonprofits similarly situated.

ORGANIZATIONAL STATEMENT

The National Troopers Coalition was established in 1977, and represents over 35 state trooper associations with a combined membership of approximately 30,000 state troopers and highway patrol officers. The primary purpose of the Coalition is to seek improvements to the professional opportunities and employment conditions for all state troopers and highway patrol officers through interactive programs and information exchanges, and through legislative initiatives at the national and state levels. To support some of its programs, the Coalition created the National Troopers Coalition Foundation, a charitable organization which is recognized as tax exempt under § 501(c)(3) of the Internal Revenue Code.

Because of the composition of the Coalition's membership, it is not practical, nor even desirable to have individual law enforcement officers make the telephone calls. To do so would be contrary to some state laws and public policy. Further, public safety personnel do not have the expertise or resources to conduct their own public appeals.

## LEGAL ISSUES

There are a series of legal issues which mitigate against the adoption of the amendments to the Telemarketing Sales Rule which would extend its application to calls made on behalf of nonprofit organizations. The purpose of creating a national "do-not-call" list is ostensibly to protect the privacy of individuals from unwanted telephone calls. The proposed amendments to the Rule will not accomplish that goal. The FTC has no jurisdiction over telephone calls made by long distance companies, FDIC regulated banks, nonprofits, and other non-regulated commercial callers. A strong body of law already exists holding that government is not allowed to favor one telephone call over another based upon the content of the message. *See Pearson v. Edgar*, 153 F.3d 397 (7<sup>th</sup> Cir. 1998).

Because the FTC does not regulate long distance companies and banks, for example, calls from commercial interests will be favored over calls made on behalf of nonprofits. Government is forbidden from favoring commercial speech over constitutionally protected speech. *See Metro Media, Inc. v. City of San Diego*, 453 U.S. 490, 512 (1980).

The appeal for public support made by a nonprofit either directly or indirectly through a professional representative is a form of fully protected speech and is entitled to the full plenary protection of the First Amendment to the Constitution of the United States. *See Riley v. National Federation of the Blind of North Carolina, Inc.*, 487 U.S. 781 (1988). The FTC's proposed changes to the Telemarketing Sales Rule fail to meet the constitutional standards required when government attempts to limit fully protected speech.

The fact that nonprofits using paid employees to make the same calls will not be subject to the "do-not-call" list creates a prohibited prior restraint on the nonprofit organizations that do not have the resources to use employees. *See Riley, supra*.

## STATE LAW CONFLICT

As aforementioned, approximately twenty states have either passed or are in the process of passing some form of a "do-not-call" law. By the end of 2002 that number is expected to increase to thirty. With few exceptions, most of those laws either exempt or do not apply to calls made on behalf of nonprofit organizations. The proposed revisions to the Telemarketing Sales Rule to establish a national "do-not-call" list would not only create a conflict with the laws of the various states, but also add yet another level of burdensome and costly regulatory compliance.

## UNINTENDED EFFECTS

The FTC's proposed do-not-call registry if implemented could and likely will have a sweeping and negative impact on the ability of Coalition members to get their message through to a broad base of the community and to seek financial support. We anticipate that a significant number of citizens and businesses will elect to place their telephone numbers on the do-not-call registry initially and that the number of names included on the list will grow progressively with the passage of time. Preliminary estimates suggest that the registry procedure could prevent fundraisers for nonprofits and charities from contacting by telephone as much as 40 to 50 percent of their potential support base. These estimates are based on actual citizen participation rates in a state which has adopted a do-not-call list provision similar to the federal proposal.

Not only would the FTC proposal foreclose contacts to a substantial percentage of new prospective donors, but it would also foreclose fundraisers from contacting any existing supporters whose names appear on the registry. Such a limitation would have an immediate and direct effect of reducing significantly the level of financial support for Coalition member organizations. The FTC contemplates that the proposed rule and do-not-call registry would likewise apply to calls on behalf of charities or nonprofits to businesses. This expansion of the rule represents a radical departure **from** the prior and existing regulatory framework which exempts calls to businesses. This modification, of course, could have a profound negative effect on any magazines, shows, or similar fundraising programs involving contacts to the business community on behalf of Coalition members.

**An** added layer of "do-not-call" regulation will also have the unintended effect of raising the cost of fundraising by increasing compliance costs, thereby reducing the net amount of funds available for program services.

## SOURCES OF TELEMARKETING COMPLAINTS

Because of the lack of jurisdiction over certain callers, the FTC's proposed national "do-not-call" law would **only** stop some – not all unwanted calls.

The National Association of Attorneys General, as well as the National Fraud Information Center and other watchdog agencies, publish on a regular basis a list of the top ten consumer complaints. Invariably, those complaints include work at home schemes, prizes and sweepstakes, telephone slamming, telephone cramming, credit card sales calls, home repair and services, and time shares. Never has the list ever included telephone calls made on behalf of nonprofit organizations.

## REQUESTED AMENDMENT

**The amendments to the Telemarketing Sales Rule proposed by the FTC should be revised so that they do not apply to calls made by or on behalf of nonprofit organizations that are not marketing goods or services. The issue is a state's rights issue that should be respected and existing F T C regulations concerning solicitation should be enforced, as well as, each state's applicable consumer laws be enforced by the appropriate authority.**