

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

In The Matter Of Telemarketing Rulemaking

FTC File No. R411001

**COMMENTS OF THE PACESETTER CORPORATION
ON THE PROPOSED REVISIONS TO THE
TELEMARKETING SALES RULE**

INTRODUCTION

The Pacesetter Corporation is based in Omaha, Nebraska and conducts business in thirty-eight (38) states. Pacesetter sells and installs home improvement products including windows, doors, siding and cabinet refacing products. Pacesetter employs approximately 1,800 individuals and has thirteen (13) call centers located throughout the country. These call centers arrange appointments for our sales representatives who make sales presentations in face to face meetings with prospective customers. Pacesetter does not make sales by means of the telephone.

COMMENTS

Pacesetter has steadfastly supported the efforts of the FTC to eliminate fraudulent telemarketing practices. We supported the Telemarketing Sales Rule (the "TSR") adopted by the FTC in 1995. Since then Pacesetter has diligently maintained its list of individuals who indicated to our telemarketers a desire not to be called again by our company. However, we cannot support the revisions proposed by the Commission to expand the scope of the TSR. In our view, the proposed revisions, in particular the establishment of a national "do not call" register, go far beyond prevention of telemarketing fraud and would tremendously harm companies such as Pacesetter who ethically use the telephone as a legitimate marketing device.

Pacesetter has approximately 60 sales locations which typically work a radius of 150-200 miles from the office. This is done in a systematic way by sending sales and installation employees to specified remote locations on a regularly scheduled basis. Our company routinely sets appointments with and makes sales to hundreds of consumers living in rural areas who do not have ready access to

the types of home improvement products and services offered by our company. Many of these consumers have very limited choices locally to obtain remodeling

products. Pacesetter is able to bring to these rural customers new choices in meeting their home improvement needs. By working a discrete geographic area during a particular limited time period our sales force and installation employees can economically deliver our products. This type of marketing plan for our company is made possible by our use of outbound telemarketing directed to a particular geographic area at a given time where our sales personnel will be meeting prospective customers. If, on the other end, we were limited to merely responding to inbound calls to schedule appointments for our sales representatives, the cost of travel to isolated sales visits throughout the entire sales territory would not justify our conducting business in many distant locations. By focusing our outbound telemarketing efforts to a small but distant location where several sales visits can be made over a short period of time, consumers in that area are able to have new choices in fulfilling their home improvement needs.

Pacesetter is fortunate to have many repeat customers. Many of our customers are not able to afford replacing all the windows in their home at one time, so they often purchase two or three windows at a time until their house remodeling has been completed. When our sales and installation personnel will be working in a particular area, we customarily make advance calls to our previous customers in that area to determine whether they are ready to purchase additional products from Pacesetter. Again, this type of systematic marketing approach allows us to furnish our products to previous customers in a fashion that is more economical to both Pacesetter and the consumer. In short, Pacesetter has a strong reliance on outbound telemarketing to reach both new and previous customers.

Pacesetter has serious concerns that the establishment of a national do not call register will significantly impair our ability to effectively and efficiently market our products. The alternatives to our outbound telemarketing program are not financially viable. Print or other mass media advertising is tremendously expensive, and it does not allow us to easily focus our marketing to a particular geographic area. Likewise, direct mail advertising, unless it is followed up by focused telemarketing calls, tends to illicit responses over an extended period of time, beyond that during which our sales and installation employees would normally be working a given area.

Consumers who do not wish to receive telemarketing calls from Pacesetter already have the right under the TSR to stop all future calls from our company. We respect the wishes of consumers who ask Pacesetter not to call them again. This type of company specific prohibition on telemarketing calls is useful and actually promotes efficiency within companies who engage in telemarketing and who have no desire to call persons having no interest in their products or services. At present more than 20 states have established do not call registers, and our company goes to great expense to purchase those lists at an average annual cost of \$400 each. We also obtain the Telephone Preference list published by the Direct Marketing Association. Altogether these various lists obtained by Pacesetter contain more than 3 million names and phone numbers of persons who will not accept any telemarketing calls. The FTC proposal does not eliminate these other lists, it unnecessarily creates one more. As another alternative to availing themselves of the various existing do not call lists, many consumers have already acquired phone blocking devices or

services which screen out telemarketing calls. In short, consumers have a vast array of resources already to prevent telemarketing calls to their residence, and millions of citizens are using them.

The FTC proposes to add yet another layer of protection just in case the consumer has not already placed their name on multiple company specific lists, on their state list and or on the DMA list or signed up for some call blocking service or obtained equipment to screen incoming calls. Is the cost to the public of establishing and maintaining another do not call database justified under these circumstances? In our view a blanket nationwide do not call register is clearly overkill, and in the long run will serve neither the interests of consumers nor legitimate telemarketing firms. In considering the impact of a national do not call register on our business, we must ask how can it be assumed that millions of consumers who have never heard of Pacesetter or its products have no interest in receiving a telemarketing call from our company? And, wouldn't most previous Pacesetter customers who sign up for the national register in fact want to know of special pricing we may be offering for our products? In both cases, consumers would be shut out from receiving information they may need or desire about our company simply because they chose to be placed on a national do not call register to avoid hearing from some other company's telemarketers.

No doubt many consumers are distrustful of telemarketers. However, that does not make telemarketing an inherently evil activity. There is certainly a distinction between those who use the telephone to perpetrate fraud upon consumers and the legitimate, ethical companies of all types which utilize telemarketing as a way to bring their products and services to consumers. By establishing a nationwide do not call register, the FTC appears to be sanctioning the notion that most telemarketing activities are sinister in nature.

The mandate to the FTC under the Telephone Consumer Protection Act was to protect consumers against telemarketing fraud and abuse. The overwhelming majority of telemarketing activity is not fraudulent or abusive. It is quite transparent that those who wish to establish a national register do not earnestly believe such a list will significantly reduce fraud and that their true motive is to use indirect means to eliminate telemarketing as a form of advertising. While many consumers believe that telemarketing calls are at times an inconvenience, one could argue they are certainly no worse than many other types of protected free speech. If we are to protect consumers from inconvenient messages, why not ban television commercials? And, why does the FTC continue to permit door to door sales which most would consider far more intrusive than a telemarketing call? Yet there is no talk of establishing a nationwide do not visit register. Some consumers no doubt find it objectionable that print advertising and return message cards take up so much space in their favorite newspaper or magazine. But no one would believe a prohibition or even a restriction on that type of commercial speech would be lawful, especially under the guise of preventing consumer inconvenience.

Is there evidence that the creation of a nationwide do not call register will in any way reduce telemarketing fraud? We think not. Those who would engage in that type of illegal activity have no regard for do not call lists, whether the lists are created by the FTC, DMA or by state legislatures. No, creating a nationwide do not call register only appeases those who object to inconvenience while placing unnecessary, expensive and burdensome restrictions on business. We would respectfully submit that the FTC should not be regulating a legitimate industry which employs millions of honest Americans in order to protect the convenience of a relatively small minority who already have ample opportunities to avoid all forms of telemarketing.

We urge the Commission to look at the overall negative impact these latest proposals will have on jobs, on our rural communities, our company and its tremendous effect on the economy as a whole. We hope the Commission will abandon its proposal to create a nationwide do not call register. Thank you for your consideration to this matter.

The Pacesetter Corporation

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