United States Senate
WASHINGTON, DC 20510

April 17, 2002

Honorable Timothy J. Muris
Chairman
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Chairman Muris:

We are writing to you about the Federal Trade Commission's (FTC) proposed amendments to the Telemarketing Sales Rule (TSR). At the outset, we want to acknowledge the FTC's important work on behalf of consumers in promulgating the Rule and in an effort to strike a balance between the interests of preventing deceptive and abusive telemarketing and not unduly burdening legitimate businesses. While we strongly support your efforts to eliminate abusive marketing practices and to protect people's privacy, we are concerned that certain proposals may go beyond what is necessary or authorized by law and may have unintended consequences.

First, the proposal would expand the definition of "abusive telemarketing acts or practices" to ban all forms of telemarketing in which a telemarketing firm receives consumer billing information from any source other than the consumer, even if the consumer specifically authorizes the use of that billing information. Congress addressed this as a privacy issue in the Gramm-Leach-Bliley Act of 1999, which permitted financial institutions to share encrypted account numbers under carefully controlled circumstances. Those who abuse this billing method should be dealt with through enforcement actions.

Second, the proposal would expand the definition of an "outbound telemarketing call," for which certain disclosures are required, to include a call initiated by a consumer during which the marketing company sells products offered by more than one company or transfers the caller to another company to conduct a second transaction (called an "up-sell"). This proposal to turn an inbound call into an outbound call, requiring lengthy – and thus costly – disclosures, would dramatically and unnecessarily change the way marketers and telemarketing firms handle an inbound call.

Finally, these rules could cause fragmentation in the industry, since the FTC does not have jurisdiction over intrastate calls or those of banks, federal credit unions, long-distance telephone companies, airlines and some insurance companies. Further separating the industry into two regulatory classes is unfair and counterproductive.

In summary, we urge that you address our concerns with respect to the proposed amendments prior to moving forward with the TSR. Thank you for considering our views.

Sincerely,

Chuck Hagel
U.S. Senate

Tim Johnson
U.S. Senate

Thomas R. Carper
U.S. Senate