

June 28, 2002

VIA HAND DELIVERY

Mr. Donald S. Clark
Secretary
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: Telemarketing Rulemaking—FTC File No. R411001

Dear Secretary Clark:

Time Inc. (“Time”) submits this letter following the Federal Trade Commission’s (“Commission”) June 5-7, 2002 workshop on the proposed amendments to the Telemarketing Sales Rule (“TSR”). Telemarketing Sales Rule; Proposed Rule, 67 Fed. Reg. 4492 (proposed January 30, 2002) (to be codified at 16 C.F.R. pt. 310) (“Notice”). Time Inc. submitted comments during the initial comment period. This letter provides further comment on two specific issues following the discussions at the workshop: (1) creating an exemption for telemarketing to consumers with whom the telemarketer has an established business relationship, and (2) allowing for legitimate transfer of account information.

As described in the Time comments of April 15th, it is critical that there exist an exemption to the Do Not Call list that would allow businesses to contact those individuals with whom they have an established business relationship. Discussion at the workshop indicated that contacts with those customers who have an established relationship are not “deceptive and abusive.” Representatives from state attorneys general offices indicated that it was their experience that an established business relationship exemption does not interfere with or compromise the effectiveness of their state-run Do Not Call lists. Additionally, the representative from the Missouri Attorney General’s office indicated that, using their prosecutorial discretion, they would generally not bring an action against a business where an established business relationship exists. In both instances, calls are not subject to the Do Not Call list, because such calls are not considered to be inherently “deceptive or abusive.” Nowhere in the record or in practical experience is there evidence that would argue against creating an established business relationship exemption.

The Commission asked for elements that should be included in any definition of “established business relationship.” For Time Inc. purposes, it is critical that companies can

continue to communicate with all of our customers, including those many subscribers with whom we may not have weekly contact. In the case of Time-Life, for example, the fact that a customer last purchased a product two years ago does not make them any less of a customer than a Time magazine customer who received a magazine in the last week. Many sales result from telemarketing to recent customers who are not weekly or monthly subscribers. These are legitimate marketing activities, and the relationship with such customers should not be interfered with. Therefore, we believe that the Commission should adopt an approach whereby there exists a three-year exemption for customers where a transaction with consideration has occurred. For situations where there has been an exchange of information per an individual's request, there could exist a shorter two-year time frame to contact the individual under an established business relationship exemption.

Similarly, there was considerable discussion at the workshop regarding the transfer of account information. This discussion clearly supported what Time set forth in its April 15th comments — that there are important and legitimate business practices that involve the transfer of consumer billing information. It is apparent from the workshop discussions, as well as the comments submitted, that there are many different business practices and models involving the transfer of customer account information.

The Commission asked for specific issues to consider as it evaluates the continuum of practices in order to determine whether and where additional regulation in this area should exist. Time believes that businesses should be permitted to transfer billing information or use it with the customer's informed specific consent. This is particularly the case in an inbound call when it is the same operator upselling the product of a different merchant. We also recognize that there may be other legitimate transfers of account information in which other businesses may engage that the Commission should not prohibit.

There has not been any evidence set forth in the record to indicate that a problem results from transfer of account information after the consent of the customer in an inbound upsell that takes place during the same call with the same telephone representative when the credit card had just been provided by the consumer for the first sale. Particularly in such situations, transfer of account information and use of account information should be permitted following informed consent. It was suggested at the workshop that informed consent could come in the form of "express verifiable authorization." So long as there are alternatives for obtaining such authorization, such as written confirmation of the transaction, express verifiable authorization would not unnecessarily overburden legitimate business. Time, however, would be concerned if taping were the sole means of obtaining verifiable authorization in an inbound upsell. Many businesses, including those that are Time business partners, engage in inbound upsells and are not set up for taping of inbound telephone calls. Significant costs would result from such an additional requirement. Estimates for Time business partners in the catalogue industry indicate that an average call center could cost in the range of about \$1 million for hardware and licensing costs, with additional operational costs per telemarketing campaign. In light of the competitive market, where some cataloguers lose money, such additional costs could be prohibitive for making such an investment.

Thank you for further consideration of these additional comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert E. McCarthy", with a long horizontal flourish extending to the right.

Robert E. McCarthy
Senior Vice President, General
Counsel & Secretary
Roger Kirkpatrick
Associate General Counsel
Time Inc.

Jennifer G. Jacobsen
Vice-President, Domestic Policy
AOL Time Warner