



May 30, 2000

Mr. Don Clark
Office of the Secretary
Federal Trade Commission
Room 159
6th Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20580

RE: Telemarketing Review -- Comment. FTC File No. P994414

Dear Mr. Clark:

AARP appreciates this opportunity to comment on the Federal Trade Commission's (FTC) review of the Telemarketing Sales Rule (the Rule). AARP's interest in the Telemarketing Sales Rule and concerns about telemarketing abuses are long-standing. Five years ago we were active participants in the original rulemaking proceeding. Since the adoption of the Rule in 1995, AARP has dedicated a significant amount of resources to educating consumers about telemarketing fraud and to working with federal, state and local law enforcement agencies to combat telemarketing fraud. We have also worked with state legislatures to enact state telemarketing legislation. The Rule has helped to support these efforts and AARP believes it should be retained. AARP also believes that the Rule can be improved and we will offer specific recommendations for strengthening it.

Today our comments will focus on three major topics. These are:

- 1) Importance of the Rule – Why the Telemarketing Sales Rule is an important protection for consumers.
- 2) Awareness and Enforcement Activities – AARP, other consumer groups, the FTC, and other government and law enforcement agencies have been active in the telemarketing arena over the past five years. We will highlight some of these efforts.
- 3) Necessary Changes – Certain additions to the existing Rule can strengthen it.

In our discussion of the three areas listed above, AARP will touch on many of the issues raised in the Commission's notice. Unfortunately we cannot respond completely to the questions raised by the Commission, because little empirical evidence is available outside of AARP research efforts in this area, making it virtually impossible to gauge the success or failure of many provisions of the Rule. We anticipate expanding upon many of the FTC's inquiries during the Public Workshop scheduled for July 27 and 28 of this year.



Importance of the Rule

AARP strongly supports retention of the Telemarketing Sales Rule. The Rule has served as a foundation from which AARP has been able to mount education and awareness campaigns. The Rule has also empowered law enforcement agencies to prosecute unlawful telemarketers and helped establish standards of conduct for telemarketers. Finally, the Rule has provided the states with a floor of consumer protection -- and many have been successful in raising that floor.

AARP has educated its membership about what constitutes legal and illegal telemarketing behavior by explaining provisions in the Rule that

- require telemarketers to make specific disclosures of material information;
- prohibit misrepresentations;
- set limits on the times telemarketers may call consumers;
- prohibit calls to a consumer who has asked not to be called again; and
- set payment restrictions for the sale of certain goods and services.

Our advocacy efforts have built upon the Rule's provisions regarding disclosures, prohibitions, and enforcement mechanisms as well. We have also conducted research related to the Rule, some of which will be described later in these comments.

The existence of the Telemarketing Sales Rule has enabled federal, state and local law enforcement officials to take action against telemarketing firms. The ability to point to specific violations of the Rule, such as the "Do Not Call" provision, has led to prosecutions and in some cases, remuneration for victims.

In addition, the Rule has served as a template for individual states. Using the protections and prohibitions enumerated in the FTC's Rule as a "floor," close to thirty states have expanded upon the federal provisions in developing state-specific laws and regulations that better protect consumers. At least eleven of the states have enacted laws using provisions from an AARP model law building upon the Rule, and additional states are in the process of considering comprehensive telemarketing legislation. In fact, a recent AARP survey conducted in New York state (which we are submitting for the record) finds that an overwhelming percentage of survey participants favor additional state laws to prevent unfair, misleading, or deceptive telemarketing practices.¹

Awareness and Enforcement Activities

Telemarketing fraud is a crime that costs American consumers billions of dollars. It is a particularly pernicious offense because victims are targeted repeatedly, and each time the scheme is different. AARP has been especially concerned because this crime disproportionately impacts older Americans. More than half of the respondents queried in an AARP survey of telemarketing fraud victims were 50 years of age or older.

¹ Opinion on Telemarketing Issues in New York State: Findings from an Omnibus Survey, May 2000.

Armed with the Telemarketing Sales Rule and the knowledge that older Americans were being targeted, AARP made combating telemarketing fraud one of its strategic priorities in 1996. We officially launched a multi-year, multi-faceted, educational and advocacy initiative that has involved dozens of AARP staff members, thousands of volunteer hours and expenditures totaling more than \$2.2 million.

AARP's efforts have been grounded in research. A number of significant quantitative and qualitative studies were conducted to assess awareness of the Telemarketing Sales Rule and the impact of the educational campaign AARP conducted on telemarketing.

In addition to survey research, AARP has engaged in a variety of public information initiatives and has been active in assisting law enforcement agencies in actions against illegal telemarketing. Working with the Federal Bureau of Investigation (FBI), AARP participated in "Operation Senior Sentinel." Using AARP volunteers under Bureau direction, the FBI recorded suspected illegal telemarketing calls. This information was critical to the prosecution of many fraudulent telemarketers.

A final example of AARP's efforts to aid law enforcement is "Operation Mailbox." This October 1997 operation involved civil actions against more than 60 direct mail and telemarketing operations brought by the FTC, the U.S. Postal Inspection Service, and state attorneys general. AARP analyzed solicitations forwarded by volunteers, sending the most questionable examples to the FTC for inclusion in a law enforcement data bank.

The above represent some of the efforts AARP has undertaken to further the goals of the Telemarketing Sales Rule to combat telemarketing fraud. Unfortunately, despite the best efforts of AARP and numerous other organizations, it is hard to gauge whether the Rule is truly effective, making it extremely difficult to directly answer a number of the inquiries posed by the Commission in its notice.

Necessary Changes

While the consumer protection provisions of the existing Rule have been helpful, AARP believes that there are several areas where the Telemarketing Sales Rule can be significantly strengthened. Specifically, AARP recommends changes in the areas of timing of disclosures, access to a consumer's bank account and courier pickups.

Timing of Disclosures

AARP strongly believes material terms and conditions regarding telemarketing sales should be disclosed *before* any payment is requested. Telemarketing calls are unsolicited sales pitches from potentially unknown sellers, and require the consumer to agree to a purchase without seeing (or seeing demonstrated) the goods or services offered. Therefore, consumers should be made aware of the terms of the sale, the total costs, restrictions, limitations, and conditions before payment is *requested*, not simply before

payment is *collected*, as the Rule currently allows. This is also true for disclosures regarding a telemarketer's refund, cancellation, exchange, or repurchase policies; in fact, it may be even more important for a consumer to know these terms up-front.

The current Rule permits telemarketers to make such disclosures long after the consumer has agreed to the sale, sometimes simply in a package insert. This is inadequate consumer protection. Such information is key to making truly informed buying decisions, particularly because the consumer is not in a position to "comparison shop" when agreeing to the telemarketing sales pitch. If a consumer changes his or her mind about a purchase once these disclosures are made, the cost and inconvenience of returning the goods or canceling the services (if permitted) falls entirely on the consumer. Not making these disclosures before the sale is "closed" is misleading at best, and deceptive or fraudulent at worst.

Access to a Consumer's Bank Account

AARP strongly believes that a consumer's bank account should only be accessed with the consumer's express *written* authorization. As the legislative history behind the Telemarketing and Consumer Fraud and Abuse Prevention Act indicates,² the practice of obtaining payment by debiting a consumer's bank account can often be abusive, or even fraudulent. Once a telemarketer has a consumer's bank account information, it is possible for the account to be drained, with essentially no recourse for the consumer. Although the majority of telemarketers using this practice are not fraudulent, this practice should not be legal. How can consumers determine whether they are giving their bank account information to a legitimate telemarketer, or a boiler room? Once this information is given over the telephone, they have lost control over how this information is used.

A written authorization requirement would not only keep this control with the consumer, but would document the exact amount of money involved and the conditions under which the money could be withdrawn. Further, banks could require that written authorization be shown before the money was debited from an account; with taped, oral authorizations, banks are under no obligation to listen to the recording before releasing the money. Again, once the money is debited under the current system, the consumer has no recourse against the bank if the debit is improper or depletes the consumer's account.

² Innovation in Telemarketing Frauds and Scams: Joint Hearing Before the Subcommittee on Regulation, Business Opportunities and Energy of the Committee on Small Business and the Subcommittee on Health and Long-Term Care of the Special Committee on Aging, 102nd Congress, 1st Session, 1991.

Courier Pick-ups

At the FTC workshop on the initial Rule held in Chicago in September of 1995, the Commission recognized that courier pick-ups are disproportionately associated with fraudulent telemarketing.³ Courier pickups are so commonly used by fraudulent sweepstakes or prize promotions that FedEx trained its couriers how to spot potential telemarketing fraud victims, so that these consumers could be warned that they might be the target of a telemarketing scam (and therefore, could refrain from sending a check to a fraudulent telemarketer through the courier service).

According to the National Association of Attorneys General (NAAG),⁴ courier pick-ups are commonly used in conjunction with telemarketing fraud, not only because couriers collect payments before consumers have a chance to change their minds, but because it makes the contest seem more "official" if a "bonded courier" is coming to pick up the check. In fact, legitimate companies use courier pick-ups for similar reasons: to make it more difficult for consumers to change their minds if their nonrefundable "deposit" for goods or services has already been collected. And, businesses that target low-income consumers often use courier pick-ups, recognizing that these people cannot afford to cancel a purchase and lose their deposit in the process. This practice is simply unfair, and often fraudulent. Courier pick-ups should not be permitted unless the consumer has an opportunity to inspect any goods that are the subject of the sale before payment is collected.

As with any rule or regulation, enforcement of the Telemarketing Sales Rule is critical. Equally important is the disclosure of information regarding enforcement actions. AARP is very concerned that there is a lack of national statistics regarding enforcement actions, the effectiveness of the Rule or even the amount of money that is being spent on telemarketing. Absent this type of information, it is extremely difficult to measure the success of AARP's various education efforts and enforcement partnerships. Collecting national telemarketing data that is accessible to the general public would prove beneficial to all interested parties.

Finally, while AARP supports additional provisions to strengthen the Telemarketing Sales Rule, we are firm in our belief that the Rule should not preempt the states. As we have noted, many states have chosen to expand upon the current Rule, to the benefit of consumers in their state. As a result, consumers can look forward to both federal oversight and traditionally more rigorous state enforcement.

³ Comments of the Federal Trade Commission, Public Hearing on the Telemarketing Sales Rule, Chicago, Illinois, April, 1995.

⁴ Comments and Recommendations of the Telemarketing Fraud Task Force of the Consumer Protection Committee of the National Association of Attorneys General In the Matter of the Proposed Telemarketing Sales Rule. FTC File No. R411001 (1995). Pp. 18-19.

Conclusion

The Federal Trade Commission is to be commended for the issuance of this Notice of Rule Review. In the five years since the institution of the Telemarketing Sales Rule, AARP and other organizations have worked hard to ensure its effectiveness. Much progress has been made, but more needs to be done.

We look forward to working with Commission staff and others in the ensuing months to address many of the concerns outlined today. We urge the Commission to incorporate the changes we have advocated. If you have any questions, please feel free to contact me or call Jeff Kramer of the Federal Affairs staff at 202/434-3800. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Martin A. Corry". The signature is fluid and cursive, with a long horizontal stroke at the end.

Martin A. Corry
Director
Federal Affairs