



Comments of the Direct Selling Association
On the Telemarketing Sales Rule Review

16 CFR § 310

May 30, 2000

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I. Introduction

The Direct Selling Association (DSA) is pleased to have this opportunity to comment on the current Federal Trade Commission (the Commission) Telemarketing Sales Rule (the Rule) Review.

DSA supports the current face-to-face exemption.¹ In addition, DSA respectfully recommends that the Commission add two additional exemptions to the Rule. We suggest an exemption with language that releases telephone calls where the solicitation is an isolated transaction and not done in the course of pattern or repeated transactions of like nature, and one that exempts telephone calls made to any person with whom the caller has a prior or established business or personal relationship. Finally, DSA suggests modifying the definition of telemarketing² so that it states that a telemarketing campaign involves the use of more than one telephone, to emphasize the presence of a "plan, program or campaign".

By way of background, DSA is a national trade association representing approximately 200 companies that sell their products and services by personal presentation and demonstration, primarily in the home. Our association members, with almost 10 million individual American direct sellers, include some of the nation's most well known commercial names, such as Amway, Avon, Tupperware, Mary Kay, and Shaklee. The home party and person-to-person sales methods used by our companies and their independent contractor sales forces have become an integral part of the American economy. Our industry represents over \$23 billion in domestic sales and over \$80 billion in worldwide sales.

The direct selling industry attracts individuals who seek job flexibility, with low startup costs and minimal work experience. Many direct sellers are women, minorities and the elderly who work on a part-time basis to supplement their income. Direct sellers typically sell to their neighbors, relatives and friends. While they might occasionally use the telephone, direct sellers are never considered telemarketers.

The typical individual direct seller is a woman who operates her own business part-time from her home. Her financial goal is to earn enough income to make a desired purchase, possibly for a holiday gift, or to reach some other similar short-term financial goal. In this regard, the typical direct seller is the quintessential small businessperson.

The intent of the Rule is to regulate intrusive telemarketing calls organized as part of complex telemarketing campaigns conducted by large corporations. The calls are patterned and almost identical in content. Generally, these campaigns make hundreds to thousands of sales calls per day. The persons who make these calls sit at cubicles and use sophisticated telecommunications equipment and computers to make their calls.

In contrast, direct sellers make infrequent sales calls. If a direct seller uses the telephone to make a sales call, she will use a residential telephone line her home to call people she knows or

¹ 16 C.F.R. § 310.6(c) (2000).

² 16 C.F.R. § 310.2(u) (2000).

with whom she has a mutually established relationship. On occasion, a direct seller will be referred by a current customer to a prospective customer and will contact that person by telephone to set up an appointment. Finally, a hostess of a direct selling party might use the telephone to invite potential guests.

These legitimate, occasional and harmless uses of the telephone by direct sellers are not the telemarketing practices so often cited by consumers as problems.

II. Retain the Current Face-to-Face Exemption.

The Commission recognized that a direct seller's use of the telephone is not problematic by including an exemption within the Rule applicable to direct sellers.³ The so-called face-to-face exemption covers telephone calls where the sale of goods is not completed until after a later face-to-face sales presentation by the seller. Consumers are protected from fraud because the Commission regulated face-to-face sales under the Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations.⁴

DSA supports the current face-to-face exemption, as it is the only clear differentiation for direct sellers from telemarketers under the Rule. Nineteen state laws contain a similar exemption.⁵ Moreover, the American Association of Retired Persons also uses face-to-face exemption language in their model telemarketing fraud legislation.

Without the current face-to-face exemption, a direct seller's infrequent and harmless telephone sales activities could deem her as being engaged in telephone solicitations and subject her to burdensome regulation. More importantly, direct sellers could be subject to significant penalties upon violation of the law.

DSA respectfully urges the Commission to retain the current face-to-face exemption in the telemarketing sales rule to distinguish the innocuous uses of the telephone by direct sellers from the intrusive and annoying telemarketing campaigns conducted by corporations.

³ Note 1 *supra*.

⁴ 16 C.F.R. § 429 (2000).

⁵ Ala. Code § 8-19-A-4(3)(c) (2000); Ariz. Rev. Stat. Ann. § 44-1273(A)(3) (2000); Ark. Code Ann. § 4-99-103(C)(v) (Michie 2000); Cal. Bus. & Prof. Code § 17511.1(e)(9) (West 2000); Colo. Rev. Stat. Ann. § 6-1-302(h) (2000); Fla. Stat. Ann. § 501.604(3) (West 2000); Idaho Code § 48-1005(1)(c) (2000); Ky. Rev. Stat. § 367.46951(d)(15) (Baldwin 1999); La. Rev. Stat. Ann. § 45:822(B)(8) (West 2000); Miss. Code Ann. § 77-3-609 (b)(iii) (West 2000); Nev. Rev. Stat. § 599B.010 (11)(l) (2000); N.C. Gen. Stat. § 66-260(11)(q) (2000); Ohio Rev. Code Ann. § 4719.01(B)(3) (Baldwin 2000); Okla. Stat. Ann. tit. 15 § 775A.2(1)(h) (West 2000); Or. Rev. Stat. § 646.551(2)(i) (1999); Pa. Stat. Ann. tit. 73 § 2242 (2000); Tex. Bus. & Com. Code Ann. § 38.059 (2000); Wash. Rev. Code Ann. § 19.158.020(3)(d) (West 2000); W. Va. Code § 46A-6F-204 (1999).

III. Add Additional Exemptions to the Rule.

DSA would like to take this opportunity to suggest that the Commission consider adding additional exemptions to the Rule to completely distinguish direct sellers from telemarketers. In this regard, we offer two suggested exemptions. First, we suggest that the Commission exempt telephone calls where the solicitation is an isolated transaction and not done in the course of pattern or repeated transactions of like nature. This language currently is included within Florida's Telemarketing Act as well as eight other state telemarketing laws.⁶ As previously stated, direct sellers make infrequent sales calls from the home whereas telemarketers conduct coordinated telephone sales campaigns. The calls for these campaigns are carefully scripted and patterned to be almost identical in nature. In contrast, direct sellers will call people they know or with whom they have a mutually established relationship, or they might be referred by a current customer to a prospective customer and will contact that person by telephone to set up an appointment. These direct selling uses of the telephone are harmless, inoffensive activities and should not be subject to the Rule. Including this suggested exemption language would help clarify the regulatory environment for direct sellers. We commend this language to the Commission and ask that it be carefully considered.

Our second suggestion would be to add an exemption for telephone calls made to any person with whom the caller has an established business relationship. This language is currently part of the Federal Communications Commission's (FCC) Telephone Solicitation Rule.⁷ By including similar language, the Commission would harmonize federal law and provide small entrepreneurial businesses with additional regulatory comfort and predictability.

Finally, we suggest that the Commission expand upon the FCC's established business relationship language by including prior business or personal relationships within the scope of the exemption. This language is currently part of the Georgia Telephone Solicitation Act as well as the telemarketing laws of thirteen other states.⁸ We do not see any harm in allowing small businesses to contact prior customers by telephone about new products. Yet under a technical

⁶ Ala. Code § 8-19-A-4(1) (2000); 2000 Delaware Laws Ch. 262 (H.B. 135); Fla. Stat. Ann. § 501.604(1) (West 2000); Idaho Code § 48-1005(1)(a) (2000); Miss. Code Ann. § 77-3-609 (a) (West 2000); N.C. Gen. Stat. § 66-260(11)(g) (2000); Ohio Rev. Code Ann. § 4719.01(B)(1) (Baldwin 2000); Wash. Rev. Code Ann. § 19.158.020(3)(a)(i) (West 2000).

⁷ 47 C.F.R. § 64.1200(c)(3) (2000).

⁸ Ala. Code § 8-19-A-4(21) (2000); Ark. Code Ann. § 4-99-103(C)(iv) (Michie 2000); Cal. Bus. & Prof. Code § 17511.1(e)(8) (West 2000); Colo. Rev. Stat. Ann. § 6-1-302(t) (2000); Fla. Stat. Ann. § 501.604(21) (West 2000); Ga. Code Ann. § 46-5-27(b)(3)(B) (1999); Idaho Code § 48-1005(1)(b) (2000); La. Rev. Stat. Ann. § 45:822(B)(7) (West 2000); Md. Code Ann. Com. Law § 14-2202(2) (1999); Miss. Code Ann. § 77-3-609(r) (West 2000); Okla. Stat. Ann. tit. 15 § 775A.2(1)(r) (West 2000); Or. Rev. Stat. § 646.551(2)(h) (1999); Wash. Rev. Code Ann. § 19.158.020(3)(c) (West 2000).