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Donald Clark
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Room 159
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: Review of the Telemarketing Sales Rule – FTC File No. P994414

Dear Mr. Clark:

We, the undersigned Attorneys General,¹ submit the enclosed Comments and Recommendations of Attorneys General for filing in the above matter. We thank you for the opportunity to comment as part of the Commission's review of the Telemarketing Sales Rule. We look forward to working with the Commission to ensure that the Telemarketing Sales Rule continues to provide consumers with meaningful protections against fraudulent and abusive telemarketing practices.

If you or Commission staff have questions or comments with respect to these Comments and Recommendations, please feel free to contact Lynne Ross, NAAG's Deputy Director and Legislative Director, at 202-326-6054, or Sarah Reznick, NAAG's Consumer Protection and Telemarketing Fraud Enforcement Project Counsel, at 202-326-6016.

Sincerely,

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¹Of the states listed, Hawaii is not represented by its Attorney General. Hawaii is represented by its Office of Consumer Protection, an agency which is not a part of the state Attorney General's Office, but which is statutorily authorized to represent the State of Hawaii in consumer protection actions. For the sake of simplicity, the entire group will be referred to as the "Attorneys General," and such designation as it pertains to Hawaii, refers to the Executive Director of the State of Hawaii Office of Consumer Protection.



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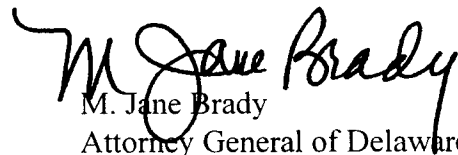
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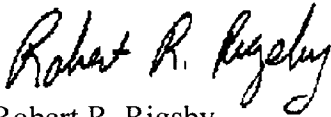
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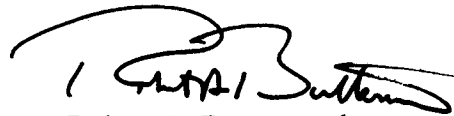
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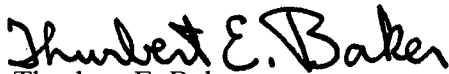
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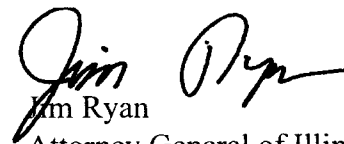
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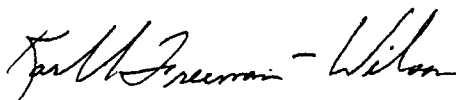
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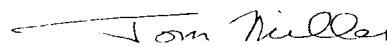
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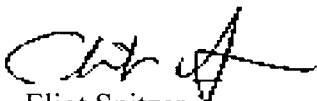
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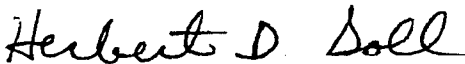
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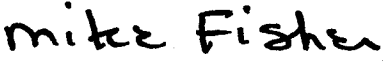

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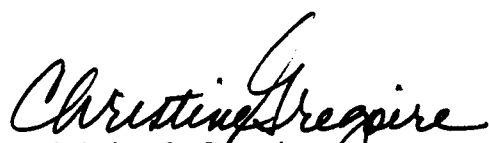

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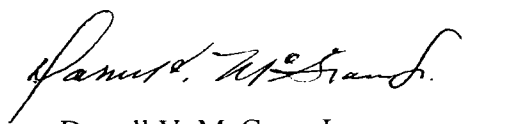

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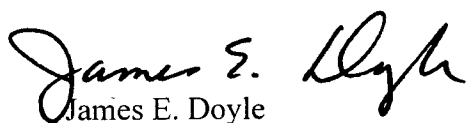

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Enclosure

**BEFORE THE FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580**

**In the Matter of:
“Telemarketing Review-Comment FTC File No. P994414”**

**COMMENTS AND RECOMMENDATIONS
OF THE ATTORNEYS GENERAL OF ALABAMA, ALASKA, ARIZONA, ARKANSAS,
CALIFORNIA, COLORADO, CONNECTICUT, DELAWARE, DISTRICT OF
COLUMBIA, FLORIDA, GEORGIA, HAWAII, IDAHO, ILLINOIS, INDIANA, IOWA,
KANSAS, KENTUCKY, LOUISIANA, MAINE, MARYLAND, MASSACHUSETTS,
MICHIGAN, MINNESOTA, MISSISSIPPI, MISSOURI, MONTANA, NEVADA, NEW
HAMPSHIRE, NEW JERSEY, NEW MEXICO, NEW YORK, NORTH CAROLINA,
NORTH DAKOTA, NORTHERN MARIANA ISLANDS, OHIO, OKLAHOMA,
OREGON, PENNSYLVANIA, RHODE ISLAND, SOUTH DAKOTA, TENNESSEE,
UTAH, VERMONT, VIRGINIA, WASHINGTON, WEST VIRGINIA, WISCONSIN and
WYOMING**

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COMMENTS AND RECOMMENDATIONS

I.

INTRODUCTION

The Attorneys General of Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Northern Mariana Islands, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming submit these Comments in connection with the Federal Trade Commission's review of its Telemarketing Sales Rule (hereinafter the "Rule"), promulgated under the Telemarketing and Consumer Fraud and Abuse Prevention Act of 1994 ("the Act").

At the outset, the Attorneys General acknowledge the FTC's important work on behalf of consumers in promulgating and implementing the Rule to address the pervasive, complex, and frustrating problem of telemarketing fraud and abuse. The FTC staff deserves special recognition for designing and coordinating joint telemarketing enforcement "sweeps," conducting educational efforts, and working closely with the Attorneys General.

Moreover, the Rule is a useful tool in combating telemarketing fraud, because of both the standards of conduct it establishes and the previously unavailable avenues of relief it provides. A forum is now available in which the states may bring a single federal action against a common telemarketer rather than filing separate actions in state courts. Having several states join together in one court offers significant efficiencies in the use of law enforcement resources.

In addition to the development of the Rule, other efforts to curb fraudulent and abusive telemarketing have taken place in the past five years. A U.S. Department of Justice grant coordinated by the National Association of Attorneys General ("NAAG"), has resulted in the training of over 500 state and local investigators and prosecutors from all 50 states, four territories, and the District of Columbia in the detection, investigation, and prosecution of telemarketing fraud. More regional task forces have been formed and state and local law enforcement agencies are working closely with their federal and foreign counterparts. One example of this cooperation was "Operation Double Barrel," a joint effort of state and federal forces announced in December 1998, which resulted in state Attorneys General bringing 255 civil actions and obtaining 295 injunctions; and securing 194 indictments which, as of the end of 1998, had resulted in 150 criminal convictions.

While the states have utilized and benefitted from the Rule, the fraudulent telemarketing "industry" has found new and novel ways to evade the reach of the law. Many of these companies are now located outside of the United States. Technical developments have made it easier for telemarketers both to hide their identity and to obtain personal information on potential victims. Some of these changes have been prompted by enforcement actions under the Rule and otherwise, some are linked to technological developments, and some simply stem from the ingenuity of the criminal's mind.

The Rule must be flexible enough to allow for its adaptation to such changes in the marketplace, while providing bright-line prohibitions on old and new patterns of conduct. When the Rule was promulgated, 800- and 900-number scams, large United States-based boiler rooms, and one-in-five prize promotions were common. These phenomena have faded and been replaced by cross-border fraud, international lotteries, "moneygrams," call blocking, and cloned cell phone

numbers. The Internet, with its vast potential for deceiving online purchasers of goods and services, presents additional telemarketing-related issues.

The unfortunate reality is that five years after the issuance of the Rule, telemarketing fraud and abuse continue, and the difficulty of substantially eliminating the problem endures. The need for strong federal standards is more evident than ever before. Now is the time to enhance and strengthen the Rule.

II.

THE STATES AND THE DEVELOPMENT OF THE RULE

In March of 1993, NAAG approved a resolution creating a Telemarketing Fraud Task Force and urging support for legislation establishing a joint enforcement framework with the FTC. The organization called upon the states “to work with the Federal Trade Commission to help ensure the promulgation of a strong and effective administrative Rule.”¹ Following the enactment of the Telemarketing and Consumer Fraud and Abuse Prevention Act in August 1994, the Attorneys General worked with the FTC to develop the Telemarketing Sales Rule, which was published for comment on February 14, 1995. In a written submission to the FTC, filed on March 30, 1995, 36 Attorneys General² expressed support for the Rule, but offered suggestions for making its provisions clearer. In Reply Comments, submitted on June 28, 1995, the Attorneys General recommended that the proposed regulation be strengthened.

¹See Exhibit I.

²Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, Vermont, Washington, West Virginia, and Wisconsin.

As the FTC considers revising the Rule in light of current circumstances, the Attorneys General continue to advocate strengthening a number of the Rule's provisions. Having national standards that the states can jointly enforce is desirable—but only if the standards are adequate to address the illegal practices that consumers now face.

The cost of compliance with the Rule is apparently not overly burdensome to legitimate telemarketers. During the time the Rule has been the law, legitimate telemarketing companies have not complained to the states regarding the cost of compliance with the Rule. It appears that, for most, the benefits of a clean marketplace outweigh the cost of compliance.

III.

RECOMMENDATIONS FOR CHANGES TO THE RULE

A. Third-Party Liability

One of the most dramatic changes in telemarketing fraud in the past decade has been the relocation of fraudulent telemarketers from domestic fraud hot spots to sites outside of the United States, thereby conducting “cross-border” telemarketing fraud. This migration began when Attorneys General and the Department of Justice undertook criminal prosecutions of telemarketing fraud cases, and it has continued since the issuance of the Rule. Many cross-border telemarketing schemes involved foreign lottery chance offers, advance fee loans, and prize promotions. More recently, offers ranging from British bond investments to credit card protection have been more common schemes.

Fraudulent telemarketers moved their operations out of the United States in order to place themselves and their assets beyond the reach of our courts' jurisdiction. This rise in cross-border fraud created obstacles to effective stateside prosecutions. Extraditing defendants in criminal cases

is difficult and time-consuming; evidence is less easily obtained; provincial differences in procedure and prosecutorial approach further complicate the situation for law enforcement personnel. To overcome these obstacles, state and federal law enforcement authorities have initiated civil and criminal prosecutions attacking the operations on both sides of the border. These efforts have been productive, but more can and must be done to prevent further victimization of United States residents. For example, taking action against aiders and abettors in the United States who provide assistance to Canadian fraudulent telemarketers—such as companies that sell lists of victims, credit card launderers, and fulfillment houses—would be an important aspect of cross-border enforcement strategy. However, a major area of concern of the Attorneys General is the Rule’s restrictive standards of liability for third parties who assist fraudulent telemarketers. As presently written, liability may be imposed on a third party under the Rule³ only when that party “knows or consciously avoids knowing” of the fraud.

In passing the Telemarketing and Consumer Fraud and Abuse Prevention Act, Congress mandated that the Federal Trade Commission “prohibit deceptive telemarketing acts and practices and to include in those deceptive practices, acts and practices of entities or individuals that assist or facilitate deceptive telemarketing, including credit card laundering.” 15 U.S.C. §6102 (a)(2). The Rule, as it was initially proposed, met the statutory mandate by setting out a non-exclusive list of the types of assistance and support that a court could use as a basis for imposing liability on a third party. However, the final Rule promulgated by the Commission significantly restricted the ability of law enforcement agencies to use the Rule to pursue third parties supporting or assisting fraudulent telemarketing operations. In 1995, the Attorneys General filed Comments expressing their belief

³16 C.F.R. §310.3(b).

that the Commission's final rule had placed restrictions on third-party liability which would make prosecutions under the Rule extremely difficult.

The "knows or consciously avoids knowing" standard, by its very terms, requires proof of the third party's mental state, imposing a burden that can rarely be met. By the same token, this requirement sets up an easy defense for those who substantially assist fraudulent telemarketers but who can plausibly deny knowledge of the fraud and consciously avoid such knowledge. This standard of liability is a departure from legal authority under many state consumer protection laws and the FTC Act where courts have imposed liability upon a showing that a party either "knew or should have known" of the fraudulent or deceptive activity. *See, e.g., Citicorp Credit Services, Inc.*, FTC Docket No. C-3413, CCH Trade Reg. Rep. ¶ 23,280.

If the "support system" for cross-border telemarketing fraud is to be successfully challenged, the standard for third-party liability must change. The Attorneys General recommend that §310.3(b) be modified to adopt a "knew or should have known" standard for the imposition of liability against third parties who provide substantial assistance or support to fraudulent telemarketers.

B. Multiple Purpose Calls

In a "multiple purpose" call, a telemarketer both markets goods or services *and* solicits the consumer to enter a sweepstakes or prize promotion, or for some other purpose. In such cases, the Rule does not expressly require that the sales pitch be made *before* the consumer is solicited to enter the sweepstakes or prize promotion. The result is that consumers can be "hooked" on the promotion before ever being informed of the real, commercial purpose of the call.

The problem of applying the Rule to multiple purpose calls has been particularly troublesome in outbound sales of magazines, where a prize promotion or sweepstakes offer is often used to solicit

the purchase of a subscription. In these cases, telemarketers fail to make required cost disclosures up front, contending (somewhat incredibly) that the primary purpose of the call is to solicit a sweepstakes entry, not to sell a magazine subscription. The Rule requires prompt disclosure of the cost of buying goods or services where the consumer is being requested to participate in a prize promotion. [See §§ 310.3(a)(1)(iv), (v) and 310.4(d)(4)] As a result, telemarketers have argued that they may first commit the consumer to the prize promotion before asking the consumer to make a purchase.⁴

The FTC noted the problem of multiple purpose calls in discussing the disclosure requirements of §310.4(d) in the Statement of Basis and Purpose to the Final Rule. The Commission stated the following with respect to a telemarketer's obligation to make "prompt" disclosures:

"[P]rompt" disclosures should be made prior to the time any substantive information about a prize, product, or service is conveyed to the consumer. . . . [T]he legislative history of the [Act] noted the problem of deceptive telemarketers contacting potential victims under the guise of conducting a poll, survey, or other type of market research. To address these problems, the Commission believes that in any multiple purpose call where the seller or telemarketer plans, in at least some of those calls, to sell goods or services, the disclosures required by this Section of the Rule must be made "promptly," during the first part of the call, before the non-sales portion of the call takes place. Only in this manner will the Rule assure that a sales call is not being made under the guise of a survey research call, or a call for some other purpose.

Statement of Basis and Purpose and Final Rule, 16 C.F.R. Part 310, pp. 45-46.

Despite this guidance from the FTC, the above-described defense arguments have been made

⁴For example, in *People v. Publisher's Direct Service*, Civil No. 97-3162 (C.D. Ill.), the defendant, a magazine subscription service, argued that under the Rule, if the purpose of the call is both to sell a magazine subscription and to offer the consumer an opportunity to enter into a sweepstakes, the telemarketer may focus first on the sweepstakes offer and *subsequently* mention the costs associated with a purchase of the subscription. Although the argument was ultimately unsuccessful in that case, the Rule should be clarified to avoid the problem altogether.

on a recurring basis. Thus, the Attorneys General recommend that the text of the Rule should state that in a dual or multiple purpose call where one of the purposes is the sale of goods or services, the sales promotion purpose of the call shall be deemed to be the primary purpose of the call. Consequently, the total costs to purchase the goods or services must be disclosed *before any other purpose of the call is mentioned*.

C. Disclosure of “Total Costs”

The Attorneys General have identified two primary issues relating to the disclosure to consumers of the “total costs” of a telemarketing purchase: how the term “total costs” is defined, and when its disclosure must be made.

1. Definition of “Total Costs”

The “total costs” disclosure requirement of § 310.3(a)(1)(i) does not provide sufficient clarity of the meaning of “total costs.” For example, in the case of magazine subscriptions, it is common practice for the telemarketer to state the weekly price for a magazine subscription without giving the total cost of the entire subscription, (*i.e.*, the telemarketer will state merely that the consumer will be charged \$3.45 per week for 48 months, rather than stating that the consumer’s ultimate liability for receiving the magazines will be more than \$700 over the 48-month period.). We maintain that “total costs” have not been clearly and conspicuously disclosed in this scenario. The consumer is merely being advised of his or her installment payment; not the full price of the contract he or she is entering.

We recommend that the Rule specifically indicate that the “total costs” equal the entire amount that the consumer will pay to purchase, receive, or use the goods or service over the full duration of the contract.

2. Timing of "Total Costs" Disclosure

Although § 310.3(a)(1)(i) requires that the "total costs" to purchase goods or services must be disclosed before a customer pays for them, this directive does not prevent a telemarketer from soliciting payment information before the "total costs" are disclosed, such as requesting credit card information purportedly for verification purposes before advising the consumer of the price of the goods or services. For example, in the magazine sales illustration referenced above, the telemarketer, prior to stating the weekly rate for the magazine subscription, had asked whether the consumer was a customer of MasterCard, American Express, or Visa. Holding a major credit card was clearly a precondition to the continuation of the telemarketing sales pitch. In this example, the telemarketer was able to ensure payment ability without having first given the consumer the opportunity to express an interest in purchasing the goods or services. Further, there is great potential for abusive solicitation practices and high pressure sales in any situation where the telemarketer is able to obtain the consumer's payment information before the consumer realizes how much he or she is being requested to spend. We believe the spirit of the Rule, if not the letter, is violated by such sales practices.

The Attorneys General have noted that some telemarketers are making "total costs" disclosures in the verification portion of the telemarketing call after having failed to recite the "total costs" disclosures during the solicitation portion of the call. This technique does not provide consumers with meaningful disclosures at the appropriate time. The Rule should expressly state that where the telemarketing call is divided into a sales portion and a verification portion, the "total costs" disclosures must be given in the sales portion of the call before any payment information is discussed.

The Attorneys General recommend that the Rule be clarified to limit this deceptive practice by requiring that the “total costs” be disclosed before any payment information can be discussed, and that “total costs” be stated in both the sales portion and verification portion, if any, of a call.

D. Pre-Acquired Account Telemarketing

Some telemarketing companies enter agreements with financial institutions that allow the telemarketer to charge a consumer’s account held by the financial institution. This type of telemarketing, known as “pre-acquired account telemarketing,” involves charges to credit card accounts, checking accounts, phone service accounts, and even mortgage accounts. Telemarketers also obtain information from retailers or other companies that have account numbers from customers and then provide the pre-acquired account telemarketer with the ability to charge that account. The most common form of pre-acquired account telemarketing is the sale of membership club programs. These membership companies typically use pre-acquired account information in scripting “free-trial” offers or “trial membership” offers to consumers.

1. Deception in Pre-Acquired Account Telemarketing

Pre-acquired account telemarketing presents inherent opportunities for abuse and deception, especially with elderly and vulnerable consumers. A typical telemarketing sale not involving pre-acquired accounts requires that the consumer provide his or her credit card or other account number to the telemarketer, or that the consumer send a check or sign a contract in a later transaction. Other than a cash purchase, providing a signature or an account number is a readily recognizable means for a consumer to signal assent to a deal. Pre-acquired account telemarketing removes these short-hand methods for the consumer to control when he or she has agreed to a purchase. The telemarketer with a pre-acquired account turns this process on its head. The pre-acquired account telemarketer

not only establishes the method by which the consumer will provide consent, but also decides whether the consumer actually consented.

The frail elderly, consumers who speak English as a second language, and other vulnerable groups are especially at risk with pre-acquired account telemarketers. Telemarketers with pre-acquired accounts can charge the bank account or credit card of a particularly vulnerable consumer in situations where the consumer would never voluntarily provide an account number to the caller. For instance, recent consumer fraud actions by a state Attorney General revealed that a telemarketer with a pre-acquired account charged the following elderly consumers: the credit card of an 85-year old man with Alzheimer's; the credit card of a 90-year old woman who asked to "quit this" and said "sounds like a scam to me;" and the bank checking account of an impaired 90-year old man who did not believe he consented to the charge. Attached to these Comments as Exhibits 2, 3, and 4 are transcripts of the tape recorded portion of these calls.

Even with less vulnerable consumers, pre-acquired account telemarketing generates a significant number of vehement consumer complaints about unauthorized account charges. The "free-trial offer" membership programs typically are presented to consumers as low involvement marketing decisions. The consumer is asked to agree only to allow the mailing of a packet of materials about the offer and is told that he or she can decide whether to accept the offer after reviewing the materials. As one telemarketer explicitly stated in its scripts: "we're sending you the information through the mail, so you don't have to make a decision over the phone."

In fact, these telemarketers almost invariably use a trial offer approach whereby the consumer's pre-acquired account is charged unless the consumer acts to cancel within the trial offer period. Telemarketers using the free-trial offer typically do not disclose until the tail end of the

lengthy call that the consumer's pre-acquired account will be charged. By this time, many consumers have already concluded that they understood the deal as requiring their consent after they review the mailed materials. Pre-acquired account telemarketers rarely, if ever, directly ask the consumer for authority to charge his or her account. Instead, the telemarketer asks the consumer a general question about whether she or he understands the terms of the offer. One such telemarketer has deemed the following question sufficient to determine consumer consent to the account charge:

And just to verify that I have your approval to process your trial membership and that you know how it will be billed, I need the month, day and year of your birth. **(Alternate code: mother's maiden name)**. What would that be please?

If the consumer gave his or her birth date, the company construed that as full consent to charge the pre-acquired account unless the consumer affirmatively acted to cancel within the trial period.

Pre-acquired account telemarketers claim that they carefully tape record this last portion of the telephone call as proof of each consumer's consent to the negative option deal. In cases conducted by state Attorneys General, a review of these supposed "verification" tapes has proved the inadequacy of this form of obtaining consumer consent in a pre-acquired account telemarketing transaction. In addition to the problems with vulnerable consumers highlighted in the attached transcripts, pre-acquired account telemarketers have been unable to actually produce tapes that even meet their own requirements for establishing consumer consent to the transaction. A review of over 300 tapes produced by one such telemarketer showed that in over one-third of the tapes the telemarketer omitted altogether the verification question seeking a birth date, and the consumer gave no affirmative indication of consent to the offer prior to being charged by the company. Attached to these Comments as Exhibit 5 is a transcript of a conversation with the verification omitted. A review of tapes produced by another telemarketing company selling trial memberships using pre-

acquired account information revealed a 50% failure rate in producing tapes that were even facially adequate to establish consent for consumer complainants.

The combination of a trial offer with a pre-acquired ability to charge the consumer's account based on the telemarketer's construction of consent makes deception of consumers almost inevitable.

2. Proposed Rule Modification

The current rule does not expressly reference or effectively regulate pre-acquired account telemarketing practices. Section 310.3(a)(3), which provides for verification of bank drafts, allows for written follow-up as a means of confirming such a charge. This section does not apply to credit card or many other charges to accounts. Even with bank drafts, §310.3(a)(3) does not ensure that, to the maximum extent possible, the consumer rather than the telemarketer determines initial consent to the transaction during a pre-acquired account telemarketing call, which is the crux of the problem with pre-acquired account telemarketing.

The Attorneys General propose that the Rule be modified to require that the telemarketer obtain written consent from the consumer before causing a charge to a pre-acquired account. Consumers must have some easily recognizable form of confirming consent to a telemarketing charge. In a routine telemarketing call, the consumer knows that he or she has withheld consent to a telemarketing offer until he or she provides a writing (*e.g.*, a check or a contract) as a follow-up confirmation of the sale, or until the consumer provides the telemarketer his or her credit card or other account number to charge. Telemarketers using pre-acquired accounts should not be able to circumvent these established mechanisms for consumers to signal consent.

E. Prompt Disclosure

Section 310.4(d) of the Rule requires that certain oral disclosures be made during outbound

telemarketing calls. The actual language of the section states as follows: “[i]t is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer in an outbound telephone call to fail to disclose *promptly* and in a clear and conspicuous manner to the person receiving the call, the following information” (emphasis added.)

The definition section of the Rule fails to define “promptly.” However, the FTC’s Statement of Basis and Purpose to the Rule states that “[i]ntending to permit some flexibility in the seller’s telemarketing presentation, the Commission has opted not to include in the Rule a definition of the term ‘prompt.’” In a footnote to this sentence, the Commission noted that that “the usual meaning of the term should apply. ‘Prompt’ is defined as ‘done, performed, delivered, etc., at once or without delay.’ (citation omitted)”⁵

Failing to include a definition of “promptly” in the text of the Rule gives too much latitude to the telemarketer as to when such disclosures should be made. The Rule should be revised, consistent with the common definition of “promptly,” to require disclosure at the *onset* of the call of (i) the caller’s true first and last name; (ii) the seller’s name; and (iii) the fact that the purpose of the call is to sell goods or services.

F. Failure to Disclose Material Facts

Section 310.3(a)(1)(ii) of the Rule states that, before payment is made, there must be clear and conspicuous disclosure of “[a]ll material restrictions, limitations, or conditions to purchase, receive or use the goods or services.” The omission of such material facts can mislead consumers as surely as providing false information.

⁵Federal Trade Commission, Statement of Basis and Purpose in Final Rule, 16 C.F.R. Part 310, pp. 45-46.

Although the Rule provides a definition of “material,” its application can be narrowly construed by a court when read in the context of §310.3(a)(1)(ii). For example, several cross-border telemarketing cases have been prosecuted involving the sale of foreign lottery tickets to United States residents. Such sales are illegal under U.S. law. Certainly, the illegality of an offer is a matter that is material to a consumer considering a purchase. Courts have found this fact to be material in preliminary rulings. However, an argument may be made that this information need not be disclosed under §310.3(a)(1)(ii)

Many state laws prohibit the omission of material facts beyond those facts set out in §310.3(a)(1)(ii). The Attorneys General recommend that §310.3(a)(1)(ii) be expanded to require the disclosure of all material terms and conditions of the offer including, but not limited to, restrictions, limitations, or conditions to purchase, receive, or use the goods or services that are the subject of the sales offer, or which will result in a consumer being charged.

G. Exemptions

Section 310.6 exempts from Rule coverage a number of types of sales and calls, including two that are of particular concern to the Attorneys General: most calls initiated by a consumer in response to an advertisement through any media other than direct mail solicitations, §310.6(e); and most calls between a telemarketer and a business, §310.6(g).

1. Media

In their 1995 Comments, the Attorneys General expressed concern that the inclusion of a broad exemption in the Rule for inbound calls made in response to non-direct mail offers could create serious obstacles to effective enforcement. The expectation was that some fraudulent telemarketers would tailor their sales practices to fall within the exemptions. The Attorneys General

continue to see little justification for exempting fraudulent telemarketers from the Rule's coverage merely because they utilize television, newspaper, or Internet advertisements to induce consumers to call a telemarketer, when the same activity would be covered by the Rule if the initial solicitations were conducted by direct mail. In either case, the fraud is perpetrated over the phone. For example, sales resulting from inbound calls in response to "government/postal jobs," "miracle hearing aid device," and "fat-burner pill" advertisements offered via the Internet are exempted from the Rule, even though the same activity is covered by the Rule if the offer is made by direct mail.

This exemption from the Rule is inconsistent with the intent of the underlying statute. Congress mandated that rules promulgated under the Act cover "telemarketing," which it defined to include all outbound and inbound calls, except those inbound calls involving catalog sales. *See* 15 U.S.C. §6106(4). All deceptive telemarketing schemes, no matter how victims are enticed at the outset, should be governed by the Rule. Therefore, the Attorneys General recommend that the Rule be modified to delete the "media" exemption set out in §310.6(e).

2. Business-to-Business

The exemption in §310.6(g) for business-to-business telemarketing of goods other than nondurable office supplies or cleaning supplies should also be narrowed. This exemption has prevented states from proceeding in federal court against any telemarketer that promotes the sale of a product *other than* office or cleaning supplies.

The breadth of this exemption is inappropriate in light of the fact that, according to a number of states, small businesses are increasingly becoming the preferred targets for a variety of telemarketing scams. Among the new services being aggressively telemarketed to small businesses are website design, hosting, and maintenance. "Free-trial" offers have been used to bait the

businesses, which are then unwittingly trapped into paying monthly fees for the service, in addition to paying a website “set-up” fee. This latter fee has typically appeared on businesses’ telephone bills just prior to or at the end of the free-trial period, even though the business is not expecting to be billed unless and until it affirmatively accepts the service.

The Attorneys General urge that consideration be given to deleting from the current exemption business-to-business transactions in a marketplace where small businesses have become the new consumers of choice for fraudulent telemarketers. Because of the abuse seen in the sale of Internet website services to small businesses, at a minimum the Rule should be expanded to cover these types of transactions.

IV.

ADDITIONAL RECOMMENDATIONS

The Attorneys General recommend that the following additional matters be addressed in the Rule to enhance its overall effectiveness.

A. “No-Call” Issues

In the experience of the states, consumers are greatly interested in placing their names on “no-call” lists in order to stop telemarketing calls from coming into their homes. However, the current no-call system, which is extremely cumbersome for consumers, should be simplified in the Rule. Specifically, the Rule should be revised to alleviate the burden currently placed on the consumer to request that each individual telemarketer not make any further contact. *See* §310.4(b)(ii) (abusive practice to initiate outbound telemarketing call to person who has previously stated that he or she does not wish to receive further calls from seller in question). The consumer must repeat this step with every telemarketer that calls and, to meet the difficult burden of proving

notice and a subsequent contact in order to enforce one's rights in court, must also keep careful records of such requests to determine whether the same entity calls again. With more than 30,000 businesses actively telemarketing goods and services and an estimated 300,000 telephone solicitors placing more than 18 million calls every day, this approach places an unreasonable burden on the consumer.

A "one-stop" method should be instituted to help prevent unwanted telemarketing calls. The compilation of a national "no-call" list would be a method of allowing consumers to quickly reach many telemarketers. The existing state "no-call" databases could be included in a national list. The Rule should make it easier to be placed on a company's no-call list, and to track which companies a consumer has contacted. Requiring telemarketers to confirm in writing (as by a postcard mailed to the consumer) that a person has asked to be placed on their no-call list would ensure that consumers are, in fact, placed on the list. Such a mandate would also allow consumers to keep track of which businesses they have notified.

Attorneys General have also received reports from consumers indicating that some telemarketers are requiring them to comply with burdensome procedures in order to exercise their right not to be called. For example, some telemarketers require consumers to send written notice to the company itself, or to an industry association. Others require consumers to call a second number in order to be placed on the no-call list. The Rule should be modified to prohibit sellers and their telemarketing agents from initiating outbound telemarketing calls to any person who has previously indicated, by any of the following methods, that he or she does not wish to receive unsolicited calls:

(i) by enrolling in any state or industry organization "no-call" list, *see*, U.S. Postal Service Domestic Mail Manual §10.0 (as amended 65 Fed. Reg. 17594 (Apr. 4, 2000)) (individual may remove his or

her name from sweepstakes mailing lists by contacting state Attorney General); or (ii) by oral notification during any unsolicited telemarketing call with notification to be confirmed by a post card to the consumer.

B. Caller ID Display Required on All Outbound Calls

One of the most frustrating problems associated with telemarketing fraud and abuse is the lack of information a consumer receives about the caller. Many calls fail to display information on “caller ID,” because that service is either blocked or unavailable. It is strongly recommended that all telemarketers placing outbound calls be required to display a caller name and telephone number on caller ID. This would allow the consumer to know who is placing the call even if the call is not completed by the telemarketer. The ability to document the source of a call is critical to consumers’ ability to exercise their “do-not-call” right, as well as to the ability of law enforcement personnel to identify the source of a fraudulent or abusive telemarketing call.

C. Coverage of Professional Charitable Solicitations

The Rule should continue to be interpreted as requiring compliance by for-profit telemarketers who on behalf of non-profit entities provide any goods or services to customers for consideration. When these for-profit telemarketers provide such goods or services, even in connection with a not-for-profit entity, the dangers to the public are the same and public is best served by having the same regulations as when it is a strictly for-profit telephone sale by a for-profit seller.

D. Marketing of Victims Lists

The Attorneys General recommend that the practice of marketing information on previous victims of telemarketing fraud be included as an abusive practice under §310.4. No legitimate business interest is served by the marketing of lists of known telemarketing victims.

E. The Targeting of Vulnerable Groups

It is also recommended that the practice of targeting any group which is particularly vulnerable, such as the elderly, with a telemarketing scheme containing any misrepresentation of material fact be included as an abusive practice under §310.4.

F. Express Affirmative Verification Required for All Forms of Payment

The Attorneys General are aware that consumers have had their credit card accounts charged, or bank accounts accessed, in connection with a telemarketing transaction, without affirmative authorization for that specific mode of payment. Clearly, consumers have an interest in choosing the method they use to pay for goods or services; the risks of not being able to do so include the overdrawn checking account, the added finance charges associated with a large credit card bill, or simply the inability to know from what “pocket” funds are being withdrawn. The Attorneys General urge that the Rule be modified to state that consumers’ agreement to any particular form of payment be expressly demonstrated and subject to verification. In the case of bank accounts, written authorization should be required. Some states already require such authorization.⁶

V.

CONCLUSION

The Attorneys General view the eradication of telemarketing fraud and abuse as a law enforcement priority, especially since such fraud and abuse frequently target vulnerable consumers. During the past five years, progress in addressing the problem has been made; but the daily loss of money and invasion of privacy continue, particularly with respect to seniors. With the FBI estimating that consumers lose \$40 to \$60 billion each year to telemarketing fraud, federal and state

⁶See, e.g., 9 Vt. Stat. Annot. §2464(b)(2); Ky. Rev. Stat. §367.46955(5).

agencies must redouble their enforcement efforts and utilize all available laws to combat this fraud. But those laws must be up to the task.

To that end, the Attorneys General urge the Federal Trade Commission to consider the Comments contained herein and to revise and strengthen the Telemarketing Sales Rule in keeping with their recommendations.

NATIONAL ASSOCIATION OF ATTORNEYS GENERAL

Adopted

**Spring Meeting
March 28-30, 1993
Washington, D.C.**

RESOLUTION

TELEMARKETING FRAUD

WHEREAS, telemarketing fraud continues to be a major national problem, costing consumers billions of dollars annually; and

WHEREAS, from a single location, fraudulent telemarketers are able to victimize consumers located throughout the country; and

WHEREAS, among the most common fraudulent schemes is the use of "prize promotions" to lure consumers into buying grossly overpriced and unwanted merchandise over the telephone; and

WHEREAS, some fraudulent telemarketing is directed at vulnerable populations, especially senior citizens, who are often victimized more than once by one or more telemarketers; and

WHEREAS, fraudulent telemarketers often use "legitimate" vehicles through which to obtain payment from consumers, including credit card charges, unsigned demand drafts, electronic funds transfers, and pickups of personal checks at consumers' homes by common carriers, and often use merchant accounts other than their own to factor credit card charges resulting in losses to financial institutions and consumers alike; and

WHEREAS, state Attorneys General, who are among the principal enforcement officials attempting to curb telemarketing fraud, have been critically hampered in their ability to reduce telemarketing fraud by the artificial constraints of jurisdictional boundaries, by the absence of any forum in which to obtain multistate relief, by inadequate procedural mechanisms to achieve coordination among the states and with federal agencies, and by a lack of adequate resources; and

WHEREAS, Congress is considering legislation such as H.R. 868, the Consumer Protection Telemarketing Act, and will likely consider legislation similar to last year's S. 568, the Telemarketing and Consumer Fraud and Abuse Prevention Act, both of which were drafted to allow state Attorneys General to enforce, in federal court, a Federal Trade Commission (FTC) Rule proscribing fraudulent telemarketing;

NOW, THEREFORE, BE IT RESOLVED THAT THE NATIONAL ASSOCIATION OF ATTORNEYS GENERAL:

1. Urges Congress to adopt federal legislation such as H.R. 868 and similar Senate legislation S. 568, which would allow state Attorneys General to enforce federal telemarketing Rule in federal court as quickly as possible;
2. Urges that such legislation authorize state Attorneys General to (a) obtain nationwide injunctive relief and consumer restitution on behalf of the residents of all states whose Attorney General has authorized said Attorney General to seek such relief and (b) obtain civil penalties and fees and costs;
3. Directs the Attorneys General who serve on the NAAG-FTC Working Group to work with the FTC to help ensure the promulgation of a strong and effective administrative Rule which provides, among other things, that it shall be a violation of the Rule for any telemarketer to represent to a consumer that the consumer is a "winner" or has been "selected" or is otherwise being included in a select group for receipt of a prize or an opportunity or that a person is entering a "contest," "sweepstakes," "drawing," or other competitive enterprise from which a winner or select group of winners will receive a prize or opportunity when, in fact, the enterprise is a promotional scheme designed to make contact with prospective customers and all or a substantial number of those "entering" receive the same "prize" or "opportunity";
4. Directs the Consumer Protection Committee Chair to appoint a Telemarketing Fraud Task Force charged with the following mission:
 - develop and implement specific strategies to address the use of credit cards, unsigned demand drafts, electronic funds transfers, common carrier pickups and other "legitimate" means of effecting payment from consumers to fraudulent telemarketers;
 - coordinate the dissemination of information concerning fraudulent telemarketers among state Attorneys General and the FTC, increasing investigations and legal actions against fraudulent telemarketers as well as coordinating these efforts with similar efforts by other state and federal agencies;
 - encourage coordination and communication between federal criminal law enforcement agencies and state Attorneys General in specific enforcement actions and operations;

- coordinate efforts with the FTC Working Group regarding the development of protocol and procedures for joint federal/state information sharing, training and enforcement initiatives;
 - devise strategies to address the particular problem of fraudulent telemarketing directed at senior citizens, including coordination of federal, state and local law enforcement efforts, and encourage development of federal and state legislation enhancing civil and criminal penalties for deceptive telemarketing targeted at the elderly;
 - encourage development of federal legislation to appropriate funds for innovative state programs designed to combat telemarketing fraud and state and local enforcement of civil and criminal statutes against deceptive telemarketers; and federal credit card factoring legislation making the factoring of a credit card draft by anyone other than the merchant a criminal felony offense and extending the definition of "mail" to private mail carriers for the purposes of enforcement of federal mail fraud statutes.
5. Authorizes the Executive Director and General Counsel to transmit these views to Members of Congress, the Federal Trade Commission, other federal and state enforcement agencies, industry groups, and to other interested parties.

EXHIBIT 1

ROBERT E. STEELE TRANSCRIPT

(Mr. Steele is now deceased. He was 85 years old and suffered from Alzheimer's at time of call.)

T.tape scrambled...I need to verify a little bit of information to make sure we're sending it to the right place. With your permission, sir, I would like to tape record the confirmation of your trial membership and your mailing address so there is no chance of any clerical mistakes on my part. Is that okay Mr. Steele?

C. That sounds alright.

T. Okay. I show the spelling of your last name as S-T-E-E-L-E and first name as Robert. R-O-B-E-R-T. Middle initial E. Is that correct?

C. Yes.

T. Okay. You live at 1309 River Wood Drive, Little Falls, Minnesota 56345. Is that correct?

C. Yea.

T. Okay. Now, just so we are clear Mr. Steele, your membership materials will arrive shortly in a white envelope. After 30 days, unless we hear from you, the low introductory annual fee of \$59.95, which works out to less than \$5.00 per month, will be billed automatically to your [bank name redacted] Bank account. Now, for annual renewals we'll bill your account at the then current annual fee. However, as I said Mr. Steele, if you decide not to continue with the program, then just give our toll-free number a call. And just to verify that I have your approval to process your trial membership and that you understand how it will be charged, I need the month, day and year of your birth. And what would that be Mr. Steele?

C. What?

T. The month, day and year of your birth?

C. That's (inaudible)

T. Uh? Mr. Steele?

C. Yea.

T. Could I have the month, day and year of your birth sir?

C. The month and day of my birth?

T. Yea. Your birthday?

EXHIBIT 2

C. Well, my birthday is July 21. 7-21.

T. Okay. And the year?

C. 13.

T. Okay. 1913. Alright. Mr. Smith...

C. Long time ago.

T. That's not so long ago, Mr. Steele. (Laughing).

C. I'm 85.

T. Yea but (inaudible). That's not very long ago.

C. No. No. I'm still running.

T. That's good. That's good.

T. Well, I study Biology and to me 85 years Mr. Steele is not a very long time.

C. It is if you stand on your head.

T. (Laughing) Well, I am sure Mr. Steele when I'm 85 I'll probably think it's a long time, but you still have time.

C. If you go the right road.

T. That's - That's right. That's exactly right. Mr. Steele, I'd first of all I just want to ask you which one of the benefits of our package sounds best to you? I'm going to read you a list of four. And this is just a survey question. First of all, 20% cash rebates for all your purchases at any of your favorite retailers. Or 20% cash rebates for the best selling video game system and video games. Or 20% cash rebates on photographic and communications equipment. Or 40% savings off local (inaudible) prices on items for your home. Which one of those appeals to you the most Mr. Steele?

C. Probably the first one.

T. The first one. Okay. I'll make a note of...

C. ah...no...and the

[TAPE ENDS]

EXHIBIT 2

DOROTHY CHRISTENSEN TRANSCRIPT

(Ms. Christensen is now deceased; was 90 years old at time of call)

- T. And now with your permission I would just like to tape record the confirmation of your trial membership and your mailing address so there is no chance of any clerical mistakes on my part. okay?
- C. Okay.
- T. Okay. I show the spelling of your last name C-H-R-I-S-T-E-N-S-E-N?
- C. Right.
- T. And your first name is Dorothy?
- C. Right.
- T. And I have your address as 4400 36th Avenue North, Apartment 201...
- C. Right.
- T. Minneapolis, Minnesota 55422?
- C. Yeah. Are you calling from [bank name redacted] you said?
- T. We're calling [bank name redacted] cardholders on behalf of Smart Source.
- C. OK.
- T. Anyhow, just so we're clear, Mrs. Christensen, your annual membership materials will arrive shortly in a white envelope after 30 days unless we hear from you. for the introductory annual fee of \$59.95 which works out to less than \$5.00 per month will be billed automatically to your [bank name redacted] Bank VISA MasterCard account. For annual renewals we will bill your account at the then current annual fee. However, if you decide not to continue then just give our toll-free number a call. And remember, Mrs. Christensen, you can receive this gift of two free roundtrip tickets by simply completing and returning the business reply card in your membership kit. And just to verify that I have your approval to process your trial membership, and that you understand how you will be charged, can I get your birthday, what would that be, please?
- C. And what else?
- T. I need your birth date.

EXHIBIT 3

C. 10-9-8

T. Pardon me?

C. 10-9-8.

T. 10-9-8. OK, that's just to verify that I have your approval to process your trial membership. And you understand how you will be charged. And Mrs. Christensen, just a quick survey question. Which one of these benefits sounds the best to you at this time? A 20% cash rebates for all your purchases at any of your favorite retailers, a 20% cash rebates for the best selling video games and video game systems, a 20% cash rebates on photographic and communic - communications equipment, or up to 40% savings on local prices on items for the home.

C. I, I can't remember all that, you'd have to show it to me, or I can't - I think we just better quit this.

T. Well ma'am, if after reviewing the membership materials if you found our program to be cost-effective and beneficial for you, would you decide to keep it?

C. Keep what?

T. If after reviewing this program, if you found our program to be cost-effective and beneficial for you, would you decide to keep it?

C. Well, I'll see, I don't know yet.

T. Alright, I'll note that. I really think you'll get a lot out of your membership. Also remember to return the business reply card in your membership kit to receive your two free airline tickets. Please note travelers are required to spend a minimum number of nights in one of the hotels in the program at the hotel's regular published rate.

C. This sounds like a scam to me.

T. Pardon me?

C. This sounds like some kind of a scam.

T. (incomprehensible) trial membership for the SmartSource program, ma'am?

C. (incomprehensible) You want to send me this and then I don't have to pay anything until I read it over.

T. If you should find that this is (incomprehensible) there's absolutely no cost during the 30-day trial membership...

EXHIBIT 3

C. OK.

T. ...you receive a month to review and use it and if you should find that it's not for you during the month, all we ask is that you give us a call at our toll-free number during the month and let us know and you're not even billed.

C. OK.

T. Again, my name is Sherry, and I'd like to thank you for agreeing to try the program. If you have any questions, please give one of our service representatives a call at 1-800-211-9746. And this number is also included in your membership kit.

C. OK.

T. Thank you and have a good day.

C. You too.

T. Bye bye.

C. Bye.

GUSTAV R. TRANSCRIPT

(Mr. R. is 90 years old)

T. Okay. With your permission, Mr. R., I would just like to tape record the confirmation of your trial membership and your mailing address so there is no chance of any clerical mistakes on my part, okay?

C. Okay.

T. Great. With your per, now with your permission, I have begun taping, all right?

C. Okay.

T. Okay. I have, today's date is August the 17th, 1998, and I show the spelling of your last name as R., (spelling deleted)?

C. Right.

T. And your first name is Gustav.

C. Right.

T. G-U-S-T-A-V.

C. Right.

T. Middle initial A.

C. Right.

T. And I have your address as (address redacted)?

C. Right.

T. That's in Duluth, 55805.

C. Right.

T. Okay, Mr. R., just so that we're clear, your membership materials will arrive shortly in a green and white envelope. Now, there's three very important points that I just need to get your verbal acknowledgment on, okay?

C. Okay.

EXHIBIT 4

- T. Well, first you will have a full 30 days to try Health Trends without a charge. After that, \$8.25 a month will be drafted from your [bank name redacted] Bank checking account, okay?
- C. Well, I can pay my own bills. I don't need nobody to pay my check for me.
- T. I understand that, Mr. R.. That's just how they charge for this. If you would decide to continue with it, that's how they would do the billing, okay?
- C. Okay.
- T. Now, second, with your tape recorded verbal authorization, you give [bank name redacted] Bank the permission to process the monthly membership fees through your checking account. There's no signature is required, okay?
- C. Right.
- T. And third . . .
- C. And the banks'll soon own us anyhow, I guess.
- T. I sometimes I get the feeling of that, yeah.
- C. We get our numbers on the back of our hands.
- T. That's, or across our forehead.
- C. Yeah.
- T. Sir, it's important to note that if you have any questions about the program or would like to cancel your membership, you should contact the customer service number provided in your membership kit, okay?
- C. Okay.
- T. And just to verify that I have your approval to process your trial membership and you know how it would be billed, I need the month, day and year of your birth. What would that be, please?
- C. Well, well, I'm not giving out all my history! (emphatically)
- T. Just your birth date?
- C. Yeah, my birthday.

- T. Okay. Well, I can understand, Mr. R.. You know, we only ask for your date of birth for your protection and to verify that we have your permission.
- C. Well, I don't. . .
- T. That's fine, Mr. R.. I can take your mother's maiden name, okay. This is just for our purposes to know that you are aware of everything that I said to you. That's all. This just proves to us that I did speak with you and you, and not, like a neighbor or if a neighbor answered the phone or whatever. That's all.
- C. Oh, I ain't worrying about that because, they're sticking their nose in everything we got.
- T. Pardon me?
- C. I say that the business houses and the government is sticking their hands right in the, into your pocket.
- T. I understand that, Mr. R..
- C. Yeah, and I'm too old to fall for these little catchy tricks that they got. 'Cause I've seen them work and I've seen them go right down the drain.
- T. What little catchy tricks?
- C. Well, next there'll become a credit card with my number on it.
- T. Oh, no, no, no, no, no, no.
- C. and all kinds of stuff like that.
- T. Oh, no. No, no. Nothing that drastic. Nothing like that. No. This is just, you know, it proves that I did talk to you. It verifies that I have your approval to process your trial membership and, you know, you do understand how it would be billed if you decided to continue with it after the 30 days, that's all. Could I have your mother's maiden name?
- C. Anna.
- T. A-N-N-A?
- C. Right.
- T. Okay. Very good. Mr. -- Gustav, one real quick survey question. Which of these benefits sounds the best to you? The savings on the medication, the savings on eyewear, the savings on chiropractic services or on the doctor hotline?

EXHIBIT 4

C. The one be on the medicines a little bit.

T. The medicines. Okay, great. I'll note down . . .

C. 'Cause the drugstores are robbing us blind anyhow because they make about 300% on everything you buy.

T. I know. Just like the hospitals.

C. Yeah.

T. Okay. Well, I really think you'll get a lot of use from your Health Trends membership. And to help you get started, be sure to turn to page 5 when you receive your membership kit to see exactly how you can use and benefit from the prescription medication. And again, my name is Fran Megly. I'd like to thank you for agreeing to try Health Trends. If you have any questions, Mr. R., please give one of our Health Trends service representatives a call . . .

C. Yeah, okay.

T. . . . at 1-800-544-3291. Now, that number will be included in your membership kit, but would you like to write that down?

C. No.

T. Okay.

C. No, I'm not in that much of a hurry.

T. Oh, okay. Well, Mr. R., again, my name is Fran Megly and I thank you so very much. You have a great day.

C. Yeah, you too.

T. Thank you.

C. All right.

T. Bye-bye.

C. Yeah, bye.

SIGURD A. TRANSCRIPT

(Mr. A. is 87 years old)

- T. With your permission, I would like to tape record the confirmation of your trial membership and your mailing address so there is no chance of any clerical mistakes on my part. okay? Now, I show the spelling of your last name as (spelling redacted)
- C. That's right.
- T. Your first name is S-I-G-U-R-D?
- C. Yes.
- T. And middle initial's A. I have your address as (redacted). That's Lake City, Minnesota?
- C. Yes.
- T. 55041. Is that correct, sir?
- C. That's correct.
- T. Okay. Now, again, and again, Mr. A., your membership materials will arrive shortly. After 30 days, unless we hear from you, the low introductory annual fee of \$59.95, which works out to less than \$5.00 per month, would be automatically billed to your [credit card name redacted] card account. For annual renewals we'll bill your account at the then annual fee. However, if you decide not to continue you just give our toll-free number a call. And finally, Mr. A., just a quick survey question. Which one of these benefits sounds the best to you? Discounts on your music CDs and cassettes, discounts on videos, discounts on movie tickets, discounts on name brand items for your home? If you have no preference, I'll just put down that you . . .
- C. It doesn't appeal too much anyway.
- T. Yeah. What I'll do is just say that you had no preference and when you get your materials, just look over all of it and see which one you can use and best benefit from and, again, my name is Patricia Hunley and I'd like to thank you for uh - for trying Connections and if you have any questions, call one of our Connections service representatives and that number is 1-800, let me see what that number is. Hold on, I've got that number right here. Okay, it's 1-800-568-2386. And this number is also included in your membership kit. And you have a very nice day. Thank you. Goodbye.

EXHIBIT 5