

**Telemarketing Rulemaking – Comment. FTC File No. R411001
Submitted comments of Gryphon Networks in response to
proposed amendments to the Telemarketing Sales Rule:
March 29, 2002**

The Commission has requested specific comments on the following questions:

Specific Questions

- **How long should a telephone number remain on the national "do not call" registry?** To ensure the accuracy of consumer information, and to provide fairness to businesses engaged in legitimate telemarketing, it is necessary for the Commission to set a reasonable time limit of two to three years during which consumer telephone numbers remain on the national "do not call" registry. At the end of the term of registration, and prior to the removal of a subscribed number from the registry, consumer list registrants should have the ability to simply renew the status of their existing phone number for an additional term, relinquish the number, add a new telephone number, or change an existing registered number. The suggested term of registration is based upon an average of the registration duration periods followed by current states with "do not call" list programs. The states with programs in place have generally defined timeframes of one to five years for consumer list registration. Consideration for this recommendation includes the general transient nature of consumers in the United States who are likely to change residency and/or telephone numbers frequently. It is presently estimated that an average person in this country will move his or her household or primary place of residence every two years. Whether moving to new addresses in or out of state, this substantial segment of the consumer population will continue to contribute to a constant stream of residential phone number changes each year. Further stressing the need for a defined term of inclusion on any state or national list are the situations involving numbers of non-transitory consumers. There are many people each year who, for a variety of reasons, elect to change their existing residential phone numbers. There are others who have neither changed an address nor a phone number, but have received a new number due to the frequent nature of new area code designations. All of these scenarios contribute to the existence of duplicate numbers on lists. Telemarketing businesses engaged in legitimate prospecting should not be prevented from calling a consumer phone number if a "do not call" list registrant is no longer associated with it.

- **Who should be permitted to request that a telephone number be placed on the "do not call" registry? Should requests from the line subscriber's spouse or adult child be permitted? Should third parties (outside the FTC) be permitted to collect and forward requests to be put on the "do not call" registry?** In order to best ensure the accuracy and validity of the consumer telephone numbers added to the national do not call list as well to preserve the

security of the information maintained in the registry, requests for placement on the national do not call list should be limited to the individual line subscriber and his or her spouse. If the Commission envisions consumer registration via a toll-free number and access to an automated system, the owner of record is uniquely qualified to verify his or her information during the sign-up and number validation process. Requests from third parties intending to collect and forward information on behalf of consumers should not be permitted. Not only will that option encourage the emergence of list aggregators who may attempt to charge a consumer fee for such service, but there is simply no way to ensure the integrity and security of the list by any other means. It is, however, important to note that automated registration processes, either via automated touch tone voice attendant, or via internet processes, cannot validate the identity of the person availing himself of the service. Indeed, registrants are largely anonymous beyond transmitted caller ID.

- **What security measures are appropriate and necessary to ensure that only those people who want to place their telephone numbers on the "do not call" registry can do so? Should consumers be able to verify that their numbers have been placed on the registry? If so, how?** Through the use of a toll-free number and an automated system for consumer registration, the automatic number identification (ANI) can be captured to validate that the individual consumer registering a phone number is calling from the telephone line being registered. Verification for consumers, whether it is provided by means of the automated system, a live operator, or return mail is possible but, will add substantial cost to the overall operation of the program. Internet verification for consumers can be provided at little or no additional cost.
- **Should the "do not call" registry be an "all or nothing" option or should it instead allow consumers to specify the days or time of day that they are willing to accept telemarketing calls?** The Commission should contemplate an "all or nothing" scenario. Anything else would be unrealistic and unnecessarily restrictive to businesses that cannot reasonably be expected to comply with such a broad consumer elective.
- **The proposed rule would permit consumers or donors who place their name and telephone number on the "do not call" registry to provide express verifiable authorization to specific sellers or organizations to make calls to them. How will this requirement affect those entities with which a consumer or donor has a pre-existing relationship?** Limits on the definition and qualification of pre-existing business relationship are required to clearly define the intent of the law for businesses and consumers. Consumers with whom a business has had a documented sales transaction within the most recent 6 month period should have the ability to call that consumer for "like-kind" sales, unless or until a consumer requests no further calls. Consumers may also have the option to "opt-in" to calls from specific businesses to whom the consumer has provided written, verifiable authorization for such calls. Such authorization

should be required in cases where no documented like-kind sale has taken place within the most previous 6 month period, and in cases where no prior business relationship exists and the consumer elects to receive calls.

General Comments

The Commission has requested general comments to the proposed Rule changes that include relevant data statistics, consumer complaint information, or any other evidence available concerning the proposed modifications including answers to the following questions.

- **What is the effect (including any benefits and costs), if any, on consumers?**

As of March 21, there are 5,640,108 US telephone numbers on state Do-Not-Call lists. This represents 5.4% of 2001 census US households. The number of consumer subscribers to state DNC lists will likely double with the addition of new states, including population-dense states Texas in July 2002 and California in January 2003. The Direct Marketing Association established their Telephone Preference Service list (DMA/TPS) in 1999 with little effect. Despite the DMA's best intentions, their ability to deliver on consumer telephone privacy demands is dramatically limited by the scope of the organization's membership and by the scale of DMA/TPS participation. Indeed, even by the most conservative estimates, there are 150,000 US telemarketers in the United States. The DMA claims 3,500 members and fewer than 1,300 total DMA/TPS subscribers, less than 1% of US telemarketers. Consumer demand is far broader than the DMA could ever hope to fulfill. The simple fact is that current practice and procedure is not working. The result is growing consumer dissatisfaction with current TCPA and TSR compliance among telemarketers.

Ultimately, a national DNC list will deliver consumers a centrally managed, elective registry that has a good chance of general compliance among telemarketers. A centrally managed registry may also serve to clarify requirements and general exemptions that exist under TCPA and TSR law.

Namely, it will:

1. Clarify the "existing business relationship" exemption, prohibiting calls without verifiable, written authorization, and;
2. Define for the telemarketer the specific time required to honor a consumer DNC request.

- **What is the impact (including any benefits and costs), if any, on individual firms that must comply with the Rule?**

The age-old argument is that the outbound telemarketing industry is far more productive avoiding calls to consumers who the DMA describes as “resentful and unresponsive.” Lost productivity is measured by a number of variable costs including:

- Wages of calling agent
- Local and toll charges of the dead-end telephone call
- Time that may have been spent on a productive call
- Negative PR, image and goodwill impact on the industry

There is legitimate, quantifiable benefit to telemarketers by avoiding costs associated with calls to unreceptive consumers. Please see the analysis that follows entitled “Incremental Cost to Industry.”

- **What is the impact (including any benefits and costs), if any, on industry?**

INCREMENTAL COST TO INDUSTRY

It is clearly evident that consumer demand for Do-Not-Call laws will not abate. States are aggressively enforcing requirements for list subscriptions and penalties for non-compliance. The state of Missouri, for example, has collected over half a million dollars in penalties since their DNC law became effective on July 1, 2001. There are two ways to analyze the total incremental cost to industry:

Cost of Non-Compliance – Total industry incremental exposure to state and federal penalties

What is the industry exposure as a result of no action?. That is, industry takes no action to comply with existing laws that are effective and enforceable, and those that are sure to continue at the state level. The following analysis makes several conservative assumptions using the 1995 Subcommittee on Communications & Finance Report to the Committee on Energy and Commerce as a baseline. That report found that, in 1994, 18 million calls a day are completed to US consumers from 300,000 telemarketers, including 75,000 stock brokers making 1.5 billion consumer calls a year / 6 million calls a day.

Technological advances in predictive dialing, industry growth and a strong economic environment have contributed to increase the number of total consumer calls since 1994. The analysis conservatively estimates that consumer call volume increased 2.5% per year since the 1994 baseline. Furthermore, consumer participation in state DNC lists is conservatively estimated to increase 25% per year to a total of 17 million US consumers by 2006.

Incremental industry cost of non-compliance must include exposure to quantifiable penalties at both the federal and state levels. The FTC is empowered to impose penalties of up to \$11,000 per call to a consumer who has previously requested to opt out of future calls. It is reasonable to estimate that the number of US consumers on federally-required internal DNC lists is at least on par with the number on state lists. The aforementioned Committee Report, in fact, found that 13.85 million consumer numbers existed on the top 4 US telemarketer's internal DNC lists alone. One company's DNC list totaled 5.35 million consumer numbers – and that was in 1995.

State penalties range from \$1,000 - \$25,000 per errant phone call to consumers on state lists. The analysis conservatively estimates the average state penalty at \$5,000.

***Conclusion:** Existing state and federal DNC laws expose the outbound telephone marketing industry to trillions of dollars in annual non-compliance liability each year. In 2001, the industry generated \$5.4 trillion in exposure that will grow to \$18.8 trillion in 2006. Please see Exhibit 1.3 and the accompanying chart for a complete, phased projection. It is also notable that the analysis makes no quantifiable estimate of the cost of lost productivity and local and long distance costs that result from wasted phone calls to unreceptive consumers. This, of course, exists in addition to the quantifiable penalties.*

Exhibit 1.3: Industry Incremental Cost of Non-Compliance

1999 – 2001 Actual
2002 – 2006 Projected

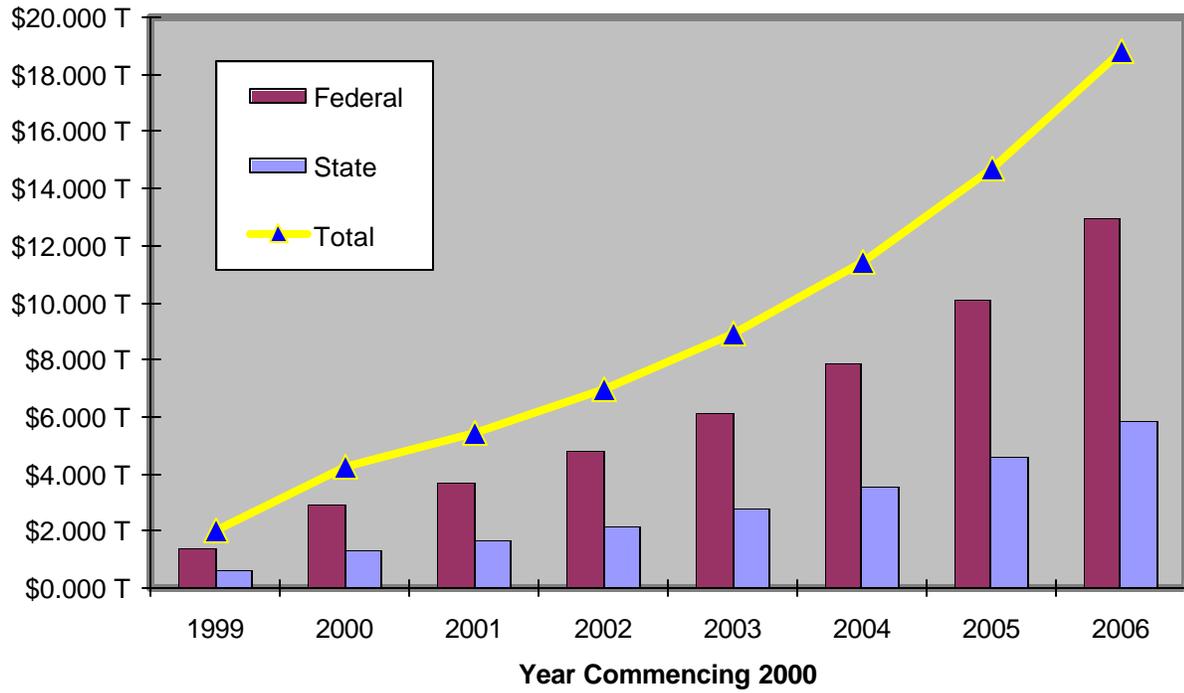
			Annual					Industry Incremental Penalty		
Year	US Telemktrs	Calls per Day *	Days	Calls	DNC %	Total US Households	DNC Hits	Federal @ \$11,000	State @ \$5,000	Total
1994	150,000	18,000,000	312	5,616,000,000						
1995	150,000	18,450,000	312	5,756,400,000						
1996	150,000	18,911,250	312	5,900,310,000						
1997	150,000	19,384,031	312	6,047,817,750						
1998	150,000	19,868,632	312	6,199,013,194						
1999	150,000	20,365,348	312	6,353,988,524	2.00%	2,300,000	127,079,770	\$1.398 T	\$0.635 T	\$2.033 T
2000	150,000	20,874,482	312	6,512,838,237	4.10%	4,715,000	267,026,368	\$2.937 T	\$1.335 T	\$4.272 T
2001	150,000	21,396,344	312	6,675,659,193	5.10%	5,865,000	340,458,619	\$3.745 T	\$1.702 T	\$5.447 T
2002	150,000	21,931,252	312	6,842,550,672	6.38%	7,331,250	436,212,605	\$4.798 T	\$2.181 T	\$6.979 T
2003	150,000	22,479,533	312	7,013,614,439	7.97%	9,164,063	558,897,401	\$6.148 T	\$2.794 T	\$8.942 T
2004	150,000	23,041,522	312	7,188,954,800	9.96%	11,455,078	716,087,295	\$7.877 T	\$3.580 T	\$11.457 T
2005	150,000	23,617,560	312	7,368,678,670	12.45%	14,318,848	917,486,846	\$10.092 T	\$4.587 T	\$14.680 T
2006	150,000	24,207,999	312	7,552,895,637	15.56%	17,898,560	1,175,530,022	\$12.931 T	\$5.878 T	\$18.808 T
TOTAL				85,028,721,116			4,538,778,925	\$50 T	\$23 T	\$73 T

* 1994 baseline from Subcommittee on Communications & Finance Report to the Committee on Energy and Commerce

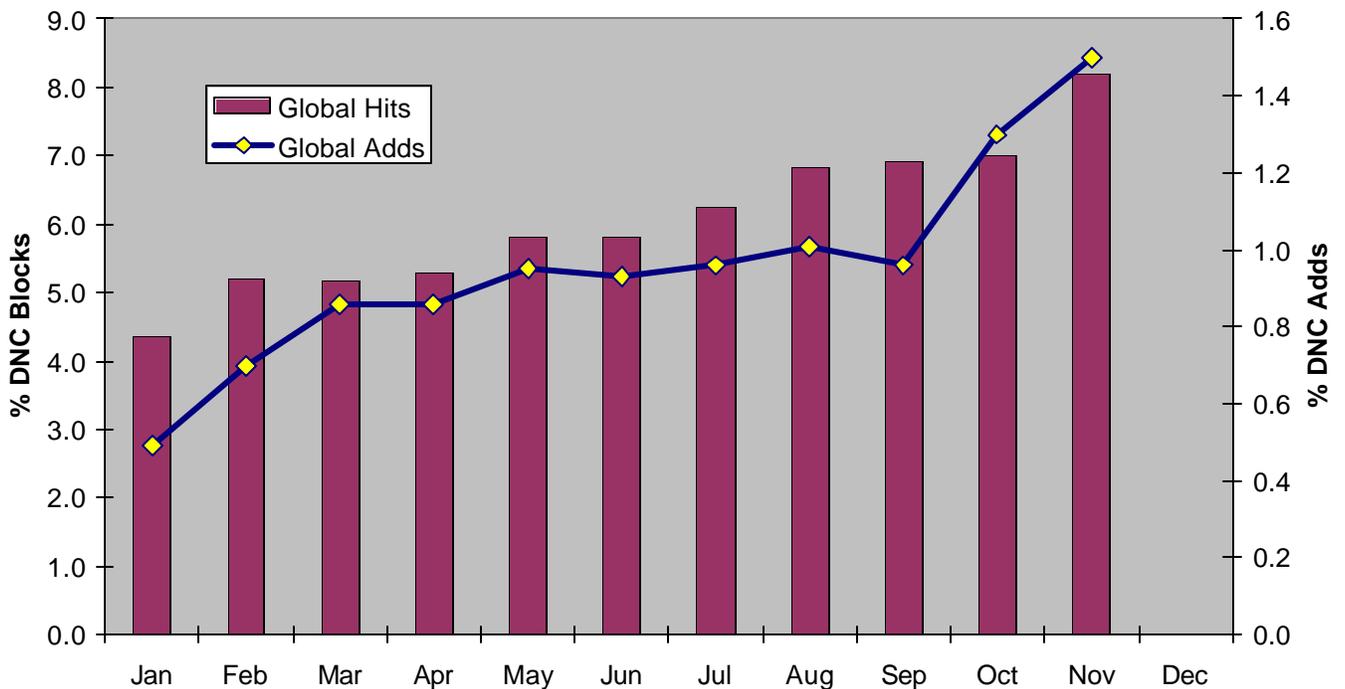
Conservative Assumptions:

- Total US Telemarketers constant since 1994
- 2.5% annual growth in outbound calls with advances in technology
- 26 working days per month includes Saturday calling
- Consumer participation in state DNC lists only meaningful since 1999
- DNC consumer participation will grow 25% per year
- State penalties range from \$1,000 - \$25,000 per infraction. Conservative average is \$5,000

Incremental Industry Cost Exposure of Non-Compliance



Gryphon Networks Trend: Do-Not-Call Hits and Adds - 2001 Actual



Cost of Compliance – Incremental cost of internal compliance

Variable Costs - What capital, operating expense and internal resource investment must the outbound industry make in order to proactively comply with Do-Not-Call laws?

Productivity Improvement – The cost of compliance must be balanced with improvements in call productivity that result from eliminating calls to unreceptive consumers. An independent study conducted by Dr. Jon Anton, Director of Purdue University's Center for Customer Driven Quality, found in a 2001 report that the average cost of a single telemarketing call among surveyed outbound marketers is \$3.00. The full study is available at www.benchmarkportal.com.

Conclusion: *Operating expenses associated with state and federal DNC compliance are limited to costs of acquiring state lists and administrative costs of maintaining internal lists. The net effect of complying with state and federal laws and the resulting improvement in business productivity makes compliance a revenue positive undertaking. For the 4 year period 2003 – 2006, the analysis projects a net positive industry impact of almost \$1.2 billion. Please see Exhibit 1.4 and accompanying chart for a complete phased projection.*

Exhibit 1.4: Industry Incremental Cost of Compliance

			Operating Expense		Productivity Impact						
Year	US Telmktrs	State Lists	Cost per per	Total Cost to Industry	Calls per Day *	Annual Calls	DNC %	Total US Households	DNC Hits	Savings @\$3 per call	Net Cost
1999	150,000	4	\$400	\$240.0 MM	20.4 MM	6,354.0 MM	2.00%	2.30 MM	127.1 MM	\$381.2 MM	(\$141.2 MM)
2000	150,000	6	\$400	\$360.0 MM	20.9 MM	6,512.8 MM	4.10%	4.72 MM	267.0 MM	\$801.1 MM	(\$441.1 MM)
2001	150,000	12	\$400	\$720.0 MM	21.4 MM	6,675.7 MM	5.10%	5.87 MM	340.5 MM	\$1,021.4 MM	(\$301.4 MM)
2002	150,000	22	\$400	\$1,320.0 MM	21.9 MM	6,842.6 MM	6.38%	7.33 MM	436.2 MM	\$1,308.6 MM	\$11.4 MM
2003	150,000	27	\$400	\$1,620.0 MM	22.5 MM	7,013.6 MM	7.97%	9.16 MM	558.9 MM	\$1,676.7 MM	(\$56.7 MM)
2004	150,000	34	\$400	\$2,040.0 MM	23.0 MM	7,189.0 MM	9.96%	11.46 MM	716.1 MM	\$2,148.3 MM	(\$108.3 MM)
2005	150,000	42	\$400	\$2,520.0 MM	23.6 MM	7,368.7 MM	12.45%	14.32 MM	917.5 MM	\$2,752.5 MM	(\$232.5 MM)
2006	150,000	46	\$400	\$2,760.0 MM	24.2 MM	7,552.9 MM	15.56%	17.90 MM	1,175.5 MM	\$3,526.6 MM	(\$766.6 MM)
TOTAL				\$11.580 B		55.509 B			4,538.8 MM	\$13.616 B	(\$2.036 B)
TOTAL 2003 - 2006				\$8.940 B		29.124 B			3,368.0 MM	\$10.104 B	(\$1.164 B)

Conservative Assumptions:

- Average state list DNC subscription @ \$400/year
- States with DNC list laws will grow 25% per year
- Average cost per call at \$3.00 from Dr. Jon Anton, Purdue University Center for Customer Driven Quality

General compliance with Federal and State consumer Do-Not-Call laws is a revenue-positive undertaking that projects to generate \$766 million annually in net cost savings by 2006.

Net Industry Cost of Compliance



- **What changes, if any, should be made to the proposed Rule to minimize any cost to industry or consumers?**
 - Consumers must have an accessible way to “opt-in” to specific companies. Companies may easily provide an internet-accessible form to complete online or download and return by mail. They may also provide consumer telephone access to request an opt in form by mail. It’s important to note that telephone calls to opt-in do not provide “written, verifiable authorization.”
 - The FTC may easily provide a similar form for general use on the FTC website.

- **How would the proposed Rule affect small business entities with respect to costs, profitability, competitiveness, and employment?**
 - It is estimated that the average telemarketing call costs approximately three dollars. Small businesses will benefit from the same general productivity increase as larger businesses and the industry in general. Simply put: consumers that take the time to register to avoid telemarketing calls will not be receptive to businesses, large or small.

GRYPHON NETWORKS AS A UNIQUELY QUALIFIED COMPANY

Gryphon Networks’ core business is managing large-scale no-call databases on behalf of corporate and state clients. Since 1995, Gryphon has built and maintained infrastructure for US-based multinational corporations that employ our technology for database management services. Remote database management is Gryphon Networks’ core business and we are uniquely suited to design, build and manage any state or federal consumer no call registry. This work is routine, and largely in place. Gryphon’s recent success designing, building and maintaining the State of Texas No-Call service is considerable demonstration of our unique qualification. Gryphon is positioned at the epicenter of International Do-Not-Call technology, business and consumer issues.

- **Gryphon’s Core Business**
 - Gryphon designed, patented and built the nations first and only fully automated, network-delivered Do-Not-Call service. Gryphon’s automated technology is entirely network-delivered via global telecom carriers. Accessible worldwide via the internet, Gryphon clients can access and view telemarketing agent calling activity in real time, from any remote location in the world through the Gryphon website. In addition, we routinely process millions of telephone database queries and validate those calls against state and Federally-required client internal Do-Not-Call databases, automatically blocking calls attempted to restricted numbers. New Do-Not-Call requests from consumers not already on a no-call list are instantly and

automatically added to the no-call database via DTMF (touch tone) keypad entry during or immediately after a consumer call, in real time. The in-house technology, management and technological expertise required to develop telecom, database and internet functionality on this level far exceeds that needed to build and maintain any state or national no-call database.

- We presently manage individual client company databases for Fortune 500 companies. We routinely exceed the strict systems audits of these exceptionally demanding corporate clients. Our record of data management, data integrity, disaster recovery and systems monitoring, is exemplary. All of our systems are built, monitored and maintained by Gryphon personnel led by the company's Chief Technology Officer.
-
- **Gryphon Professional Managed Services**
 - Our efforts thus far have been highly successful in the state of Texas where that states' 20 million consumers will likely set the standard for state list participation. Texas is likely to become the largest government-run Do-Not-Call list registry in the nation. Gryphon Networks' role as a third party list administrator has been well received and will continue on several new state DNC list registry projects that we are presently involved with. The systems, personnel, and expertise are already in place from years of similar and critical client database Do-Not-Call management. The transition to state and federal list management is a natural and seamless progression.
- **Recognized Experts**

Although Gryphon Networks is the leading provider of privacy compliance solutions for the business-to-consumer industry the benefits of our data technology and familiarity with telemarketing liability extends to legislators and regulators as well. Our ability to provide technical expertise on consumer and business database list management combined with a thorough knowledge of all state, federal, and international laws affecting the business of telemarketing provides a unique perspective on the subject of Do-Not-Call. Gryphon takes a proactive position focused on providing solutions to existing privacy and regulatory compliance concerns.

We are glad to be of assistance to the Commission as you undertake the significant challenge of creating the first true national Do-Not-Call list for U.S. consumers. Gryphon Networks looks forward to the opportunity to provide the same list development, management, and technical expertise that we have shared with numerous public utility commissions and consumer protection agencies across the country.