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Office of the Secretary
Room 159
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, D.C. 20580
feerule@ftc.gov

Re: Telemarketing Rulemaking –
Revised Fee NPRM Comment. FTC File
No. R411001

Dear Mr. Secretary,

The American Bankers Association ("ABA") is pleased to submit itsr comments on the Federal Trade Commission's ("FTC") proposed amendments to its Telemarketing Sales Rule published in the 3 April 2003 *Federal Register*. The proposal adds a new section that would impose fees on entities accessing the national do-not-call registry.

The ABA brings together all elements of the banking community to represent the interests of this rapidly changing industry. Its membership – which includes community, regional, and money center banks and holding companies, as well as savings associations, trust companies, and savings banks – makes ABA the largest banking trade association in the country.

Under the proposal, sellers and telemarketers on behalf of any seller, may not initiate an outbound telephone call to any person whose telephone number is within a given area code unless the seller has paid the annual fee for the national do not call registry. This appears to contradict Section 310.4(b)(1)(B)(ii) of the regulation which excludes from the prohibition against calling people on the national do-not-call registry calls to people with whom the seller has an "established business relationship." Accordingly, Sections 310.8 (a) and (b) should be revised to recognize this exception.

In addition, the proposal provides that a telemarketer violates the rule if, on behalf of any seller, it initiates an outbound telephone call unless that seller first has paid the annual fee for access to the national do-not-call registry. We strongly suggest clarification that telemarketers may initiate outbound telephone calls as agents of sellers not subject to FTC jurisdiction even if the exempt seller has not paid the annual fee for access to the national do-not-call registry.

The FTC's authority under the Telemarketing Fraud and Abuse Prevention Act does not extend to persons exempt from FTC's jurisdiction under the Federal Trade Commission Act. (See 15 U.S.C. Section 6105(a)). However, the proposal may cause confusion if it is not made clear that telemarketers acting as agents of exempt sellers may initiate outbound calls on behalf of an exempt entity even if the seller has not paid the annual fee for access to the do-not-call registry. Accordingly, we suggest that the FTC insert the following to Section 310.8:

> (f) The term "seller" as used in this section shall not include any person exempt from the Federal Trade Commission jurisdiction pursuant to the Federal Trade Commission Act.

ABA appreciates the opportunity to comment on this important proposal. We would be pleased to provide additional comments.

Sincerely,

Nessa Eileen Feddis