June 28, 2002

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

RE: Telemarketing Sales Rule -- Comment. 16 CFR Part 310

Dear Mr. Clark:

AARP appreciates this opportunity to supplement our comments on the Federal Trade Commission's (FTC) Notice of Proposed Rulemaking to amend the Telemarketing Sales Rule (the Rule). In addition to commenting on the Commission's Telemarketing Sales Rule User Fees proposal, we will provide supplemental information on preacquired accounts and discuss some concerns we have with proposed exemptions to the Do Not Call Registry.

AARP's interest in the Telemarketing Sales Rule and concerns about telemarketing abuses are long-standing. We have been active participants in the process, from the original rulemaking proceeding to the Public Workshop held earlier this month. Since the adoption of the Rule in 1995, AARP has dedicated significant resources to educating consumers about telemarketing fraud and working with federal, state and local law enforcement agencies to combat it. We have also worked with state legislatures to enact state telemarketing legislation. We expressed our support for the Commission's recommended additions to the Rule in March and are reiterating that support in our comments on the User Fee proposal today.

Telemarketing Sales Rule User Fees

AARP supports the Commission's approach to funding the Do Not Call Registry as detailed in the Notice of Proposed Rulemaking. The goal of the Commission is to raise the estimated $3 million necessary to run the Registry without detrimentally impacting consumers and business. The Commission has proposed a system that will enable consumers to place their names on the registry free-of-charge, an approach that recognizes the concerns of small business and does not unduly burden large businesses. We will respond to some of the questions the Commission has asked in this regard.

In designing the fee system, the Commission has used an estimate of 3,000 telemarketers, a figure arrived at by accumulating the number of entities that have accessed state registries. Absent a methodology that can provide a more accurate number, AARP believes that the Commission's use of the number 3,000 is reasonable.

AARP agrees with the Commission's assumption that some telemarketers will not want access to the entire national registry. Providing telemarketers access to the registry by area codes should prove less cumbersome, allowing them to focus their marketing efforts on individuals who are more likely to have an interest in the product or service being offered.

We also believe that the Commission has struck the right balance by basing the user fee on the number of area codes accessed as opposed to a flat fee approach. The use of a sliding scale approach eliminates one of the major concerns a system funded in this manner might present -- that is, the unfair burden it could impose on small and medium-size businesses. AARP is concerned that if the burden on those businesses is deemed too large, exemptions might be carved out within the Rule that would run counter to the Commission's objectives. By paying nominal charges, as opposed to a $1,000 across-the-board fee, all business entities can effectively comply with the Do Not Call requirements.

As a means to reach the $3 million dollar mark in a fair manner, the Commission has proposed to set the cost of accessing each area code at $12 per year. At this time, AARP cannot assess whether this dollar amount is fair; however, we believe that the system proposed by the Commission to determine the cost of these fees is reasonable.

As discussed, the Commission's plan is to charge telemarketers for lists by area code on a sliding scale. We support the provision that offers area codes 1 through 5 free of charge. Again, this benefits the small business, which we recognize may not have the budget to spend a great deal on purchasing lists from the FTC.

The plan would charge $12 per area code over five, with a cap of $3,000 per year for accessing the entire nation. AARP believes that charging business $3,000 a year for the ability to access consumers all across the country who are more likely to be receptive to telemarketing calls is reasonable. Conversely, for that same $3,000 telemarketers can avoid violating the law and infuriating consumers, giving all parties some solace.

AARP supports the Commission's ruling that access to the registry should be permitted only to telemarketers and that the information obtained there should not be used for any other purpose than to comply with the Telemarketing Sales Rule. In addition, AARP believes that any telemarketer using the database should have to pay an access fee. Telemarketers should have to pay for the service on a per-client basis to avoid situations where a firm might pay for the list and then disseminate the information to other clients or subsidiary firms. For the same reason, telemarketers who acquire new clients during a year should be required to pay for access to the registry for those particular clients.

In short, we endorse the proposed system of User Fees to access the national Do Not Call Registry. The plan deals with telemarketers in a fair, non-discriminatory manner that recognizes that business is the party that wants to make the calls and should therefore bear the cost. The Commission's decision not to charge consumers for this service is appropriate.

Do Not Call Registry

AARP believes a national registry will provide an excellent baseline for protection against unwanted, unsolicited telemarketing sales calls. We would like to address certain questions that arose during the FTC's public forum on the Telemarketing Sales Rule, as discussed below.

Exemptions

Do Not Call legislation is only meaningful if it is comprehensive. Exemptions are essentially holes in the law -- carve-outs from the express request of consumers not to be subject to unwanted, unsolicited calls. Arguments by the telemarketing industry that consumers who appreciate telemarketing calls will be injured are without logic. Inclusion on a Do Not Call list is a purely voluntary act by the consumer; those people who still wish to receive calls need not place their names on a Do Not Call registry. AARP recognizes that there may be an expectation by consumers that they will be in contact with businesses with which they have a current, ongoing, voluntary relationship; calls from such businesses are not necessarily unwanted or unsolicited. Calls made from a business with which consumers have had a prior relationship are a different matter altogether. In situations where the consumer has chosen not to continue a business relationship, it cannot be presumed they wish to be solicited by that business again. In fact, it is a source of consumer frustration to be repeatedly asked to buy something from a business when the previous responses have been "no."

Therefore, AARP believes any exemption for an existing business relationship must be limited to those situations where the relationship is current, ongoing, voluntary, involves an exchange of consideration, and has not been terminated by either party. Such relationships demonstrate that consumers have chosen to be customers of that company. Past inquiries or applications alone are not an indication that the consumer has chosen to do business with that company, and certainly does not mean the consumer wishes to be called, despite being on a Do Not Call list. Consumers will have no incentive to seek information from businesses in an attempt to comparison shop if, by doing so, they subject themselves to unwanted and often intrusive telemarketing calls. The spirit of a Do Not Call law will not be met by creating exemptions that facilitate telemarketing.

AARP also strongly supports making the Do Not Call provisions of the Rule applicable to face-to-face transactions, pay-per-call services, and franchising. These types of transactions are currently exempt from the existing Rule's fraud provisions, but the FTC now seeks to include them in the proposed Do Not Call provisions of the Rule. The sales method is immaterial and unrelated to whether consumers want to receive such calls in the first place. It is the call itself that is objectionable. For the same reasons, the Rule provisions addressing the blocking, circumventing, or altering caller ID systems should also apply to such calls.

Duration

AARP strongly supports the Commission's proposal to keep consumers on a Do Not Call list for ten years. The argument that consumers move often (and therefore should have to renew yearly) is unpersuasive, and the effect of such a requirement would be to impose a huge burden on consumers. If consumers change telephone numbers, they must register their new number with the state or FTC, but otherwise, there is no reason for them to re-register every year. Convenient mechanisms can be devised for consumers to remove their telephone numbers from the list if they decide they want to resume receiving telemarketing calls.

Preacquired Account Information

AARP strongly supports the Commission's proposal to prohibit receiving or disclosing a consumer or donor's billing information for use in telemarketing from any person other than the consumer or donor. As the Notice of Proposed Rulemaking discusses, the abuses associated with these practices far outweigh any purported consumer benefit, none of which has been demonstrated on the record.

AARP conducted a survey[1] to assess consumers' knowledge of this practice, and whether they agreed or disagreed that *only they* should have the ability to provide billing information (specifically, debit or credit card numbers) to telemarketers. The survey shows overwhelming support for the Commission's proposal.

Only 39 percent of respondents indicated they are even aware that telemarketers have the ability to cause a charge to their credit or debit card account without getting credit or debit card numbers directly from them. Sixty percent either do not think this is possible (45 percent) or do not know if such a practice is permissible (15 percent). Therefore, for well over half of those surveyed, no form of consent can be implied.

More striking is the number of consumers who agree that only they should be able to provide telemarketers with this information. Eight out of ten respondents agree (with sixty-nine percent strongly agreeing) that telemarketers should **only** be able to cause charges to their debit or credit card if **they expressly** provide telemarketers with their debit or credit card numbers. Seven out of ten respondents over 50 agree, with 61 agreeing strongly, that such charges should only be made if they expressly provide this information.

Only thirty-five percent of consumers surveyed believe it is possible for a telemarketer to cause charges to their bank accounts without getting their account numbers directly from them. Sixty-four percent either do not think this is possible (51 percent) or do not know (13 percent).

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[1] AARP commissioned a survey by telephone June 14-19, 2002 among a nationally representative sample of 1,240 respondents age 18 years of age and older (including 610 respondents age 50+). Fieldwork was conducted by ICR/International Communications Research of Media, PA. The topline data is attached to these comments.

Again, eight in ten consumers agree (with sixty-nine percent strongly agreeing) that telemarketers should **only** be able to cause charges to their bank accounts if **they expressly** provide telemarketers with this information.

Consumers were also asked about the practice of "upselling" using preacquired account information. They were asked about situations where they might buy products from a telemarketer with a debit or credit card, and then be asked to buy products from a second company. Here as well, 60 percent either do not think telemarketers can charge other products to their debit or credit cards without getting these numbers directly from them (forty-eight percent) or do not know if this is possible (twelve percent). And again, for over half of respondents, no form of consent can be implied, as they are not aware such a practice is possible.

When asked whether they agreed or disagreed that a second company should be able to charge a second product to their debit or credit cards without getting this information directly from them, 74 percent stated they disagree, with seven out of ten respondents stating they strongly disagree with this practice. The percentages are the same for those respondents that are 50+.

AARP believes that the survey results, together with the information already on the record, demonstrates the need to make the use or disclosure of preacquired billing information in telemarketing an abusive practice under the Telemarketing Sales Rule.

Conclusion

The Federal Trade Commission is to be commended for the issuance of this Notice of Proposed Rulemaking and for its effort to amend the Telemarketing Sales Rule to include a National Do Not Call Registry that will not preempt the states. In the seven years since the institution of the Telemarketing Sales Rule, AARP and other organizations have worked hard to ensure its effectiveness. Adoption of the Commission's recommendations will go a long way toward providing consumers with the protection they deserve from unwanted telephone calls.

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

Sincerely,

David Certner
Director
Federal Affairs

ICR
53 West Baltimore Pike
Media, Pennsylvania 19063-5698

INTERNATIONAL COMMUNICATIONS RESEARCH

AARP's Preacquired Account Information
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Topline Document

This study was conducted by telephone June 14 – June 19, 2002 among a nationally representative sample of 1,240 respondents 18 years of age and older including 610 respondents age 50+. Field work by ICR/International Communications Research of Media, PA.

Introduction – now some questions about telemarketing…

PA-1. Often telemarketers ask you to buy something with a credit card or debit card. Do you think telemarketers are able to **cause charges** to your credit card or debit card without getting your credit or debit card numbers directly from you?

	Yes they can	No they can't	Don't know	Refused
6/19/02 Total	39	45	15	1
50+	39	41	18	2

PA-2. Do you agree or disagree that a telemarketer should **only** be able to cause charges to your credit card or debit card if **you expressly** provide the telemarketer with your credit or debit card numbers? (GET ANSWER THEN ASK: Is that strongly or somewhat agree/disagree?)

	---AGREE---			---DISAGREE---			Don't know	Refused
	NET	Strongly	Somewhat	NET	Somewhat	Strongly		
6/19/02 Total	80	69	10	14	3	11	5	1
50+	69	61	8	20	4	15	8	3

PA-3. Do you think telemarketers are able to cause charges to your bank account without getting your account number directly from you?

	Yes they can	No they can't	Don't know	Refused
6/19/02 Total	35	51	13	1
50+	33	44	20	3

PA-4. Do you agree or disagree that a telemarketer should **only** be able to cause charges to your bank account if **you expressly** provide the telemarketer with your account number? (GET ANSWER THEN ASK: Is that strongly or somewhat agree/disagree?)

	AGREE			DISAGREE			Don't know	Refused
	NET	Strongly	Somewhat	NET	Somewhat	Strongly		
6/19/02 Total	80	69	11	13	3	11	4	2
50+	70	61	9	20	4	16	7	4

PA-5. Sometimes when people buy products from a telemarketer with a credit or debit card, they will be asked to buy other products from a second company. Do you think telemarketers can charge these other products to your credit card or debit card without getting your credit or debit card numbers directly from you?

	Yes	No	Don't know	Refused
6/19/02 Total	38	48	12	2
50+	35	47	15	3

PA-6. Do you agree or disagree that the second company should be able to charge these other products to your credit or debit card without getting your credit or debit card numbers directly from you? (GET ANSWER THEN ASK: Is that strongly or somewhat agree/disagree?)

	AGREE			DISAGREE			Don't know	Refused
	NET	Strongly	Somewhat	NET	Somewhat	Strongly		
6/19/02 Total	19	16	3	74	5	70	5	2
50+	16	14	2	74	3	71	6	4