UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In The Matter Of Telemarketing Review -

Commission File No. P994414

COMMENTS OF
THE AMERICAN TELESERVICES ASSOCIATION
ON THE REVIEW OF THE
TELEMARKETING SALES RULE

INTRODUCTION

The American Teleservices Association (ATA) is the trade association dedicated solely to the teleservices industry, representing the providers and users of teleservices in the United States and around the globe. The ATA was founded in 1983 to provide leadership and education in the professional and ethical use of the telephone, to increase service effectiveness, enhance customer satisfaction and improve decision-making. Today, the ATA has more than 2,000 member companies in 43 states and 19 countries, representing all segments of the industry, including telemarketing service agencies, consultants, customer service trainers, providers of telephone and Internet systems, and the users of teleservices, such as advertisers, non-profit organizations, retailers, catalogers, manufacturers, financial service providers, and many others. The ATA membership is made up of a wide range of businesses and other entities, large and small,

national and local. It is important to note that while our membership includes major players in the American economy such as SBC, AT&T, Chase Manhattan, the Chicago Tribune, IBM, and GTE, it also includes less obvious users of teleservices, such as the American Cancer Society, the Maryland Department of Business & Economic Development, the City of Austin, Texas, the Metropolitan Opera, Windsor Vineyards, Pace University, the University of California – Riverside, ALSAC/St. Judes Children's Research Hospital, the Collin Street Bakery, the Queensland, Australia government, the Industrial Development Board of Northern Ireland, and the Texas Work Force Commission.

The Association is dedicated to promoting a positive image of telephone marketing through the highest standards of ethical practices throughout the industry.

A primary mission of the ATA is to educate its members on the laws that govern teleservices through its annual law/legislative conferences and other educational seminars and conferences, and through its legal bulletins detailing trends in legislation affecting the industry. The ATA also serves as a resource to state legislatures, state attorneys general and federal regulatory agencies in drafting appropriate and focused legislation and rules to combat deceptive practices.

In support of that goal, the ATA has established a Code of Ethics which attempts to educate Association members, the public and public officials concerning the legal and ethical behavior for telemarketing. The Code is provided to all members as they join the Association and is available by request to the general public at no cost. It is also posted on the ATA's website (www.ataconnect.org).

The ATA is also a member of the FTC's Partnership for Consumer Education. As part of our continuing effort to help law enforcement agencies identify and prosecute fraudulent telemarketers, the ATA and the FTC launched a nationwide consumer education program in 1997. As you are aware, the campaign's goal was to promote the Telemarketing Sales Rule. As part of that nationwide education campaign, the ATA distributes a free brochure, entitled Consumer Guidelines, which contains tips for consumers on how they can obtain safe and satisfying sales and services through the convenience of the telephone and identify those tactics used by criminals in their fraudulent activities.

The ATA's commitment to encouraging and conducting legitimate and honest telmarketing programs is without question. It is with that background that we submit the following comments regarding the Telemarketing Sales Rule (the "Rule"). Our comments use the same paragraph numbers as those used by the Commission in its Request For Public Comment:

Section F. Questions and Issues for Comment Pursuant To Regulatory Review of the Rule.

I. *General Questions For Comment*

1. Is There A Continuing Need For The TSR?

It is clear that there is a continuing need for the Rule. The Rule has been an invaluable tool for ATA members as well as government enforcement agencies and consumers as well. The Rule has created an environment in which legitimate users of teleservices can develop successful sales programs, while still providing law enforcement with a clear set of characteristics to distinguish fraudulent telemarketing activities. As a

participant in the workshop held by the FTC in Chicago in the spring of 1995, we were very vocal in our concerns regarding the ability of the criminals to develop fraudulent programs that appeared to be very similar to those programs used by ATA members and other legitimate telemarketers. From our perspective, one of the most important aspects of the final version of the Rule was that it finally established requirements that would preclude these criminals from being able to co-opt the appearance of legitimacy. For example, the prohibition on credit card laundering.

As we have discussed with the Commission over the past several years, one of the strictest business practice requirements facing the telemarketing industry at present comes from our payment system providers. Our credit card merchants and other payment companies have instituted extremely strict requirements for maintaining a merchant account. Most, if not all, credit card companies now will terminate a telemarketer's merchant account if that telemarketer incurs chargebacks at a rate greater than 1% of total sales. While this threshold is difficult to meet, but attainable for nearly all legitimate telemarketers, it is impossible for fraudulent telemarketers to maintain such a low chargeback rate. Thus most criminals are now unable to obtain or maintain a valid merchant account. If a company is attempting to process payments through the merchant account of another company or individual, the chances of that company being engaged in criminal activity is highly likely.

These bright line distinctions are exactly why the rule has been a success in the past five (5) years and why it should continue in its current form. The Rule does all that effective government regulation should. It provides both consumers and law enforcement agencies the ability to distinguish between honest corporate citizens and criminals

masquerading as such, while still allowing the legitimate marketplace the freedom to grow through innovation and new technology. As if that alone was not enough, we note that, according to the National Association of Attorneys General, complaints against telemarketers dropped from the top consumer complaint in 1995 to tenth place on the list in the first year of the Rule. This remarkable achievement says all that needs to be said about the effectiveness of the Rule and its continuing place in American consumer protection. Its resounding success provides undeniable testimony of the enlightened policies that can result when industry and government join forces in developing guidelines that work. It further allows enforcement agencies to redirect scarce resources to address problem areas at the top of the list where action is most needed.

Section G. Questions and Comments Regarding the Past and Future of the Telemarketing Industry.

I. Industry Background

As the Commission has recognized in the past, telemarketing provides many benefits to the consumer and the economy. Telemarketing provides a cost-effective way for legitimate businesses to reach potential consumers. Telemarketing also provides consumers with lower costs for goods or services, a wider variety of choices, and increased convenience to make their purchasing decisions. Consumers are able to complete their transactions quickly and conveniently from the comfort of their own home, thereby saving the time, effort and inconvenience of traveling to a store.

Additionally, the telemarketing industry is one of the fastest growing industries in the country. According to a report issued by the Texas House of Representatives in 1999,

(Exhibit A) the telemarketing industry is now the single largest direct marketing system in the country, employing more than 3.4 million people nationwide and generating $550 billion in annual revenue. In a time of unparalleled job growth in all sectors of the American economy, job growth in the telemarketing industry is more than three times that of the overall national job growth average. With those kinds of numbers, it is obvious that American consumers are making use of the telephone to purchase goods and services; they enjoy having that option, and will continue to use it. Those numbers also suggest that the vast majority of telemarketing companies are doing it legally, ethically and responsibly.

As discussed previously, the ATA attributes at least part of this phenomenal growth to the Rule. That consumers now have a better understanding of those practices that distinguish criminals from legitimate users of the telephone has clearly led to increased consumer comfort with the industry and that comfort has translated into an increase in consumers availing themselves of the telemarketing option.

IV. Government Regulation

In survey after survey of our members this topic has surfaced as their number one concern. Specifically, our members cite the incredible cumulative impact of all the new state regulations. While we have applauded (and continue to applaud) the positive impact the Rule has had on the teleservices industry, the fact remains that the onslaught of state regulation is becoming troublesome. While many of our members have full-time legal departments or legal counsel on retainer who can track new laws as they are enacted, the majority of our members find this to be overly burdensome.

In response to our member's concerns, the ATA has taken several steps in recent years to provide as much information in this area as possible. We currently have on retainer two individuals who monitor legislative activity around the country. While they are technically responsible for separate arenas, (one individual to monitor federal activity, while the other monitors the states), it has become increasingly necessary for them to work together. Initiatives that have their origin at the state level often find their way into federal legislation and vice versa. The sheer number of legislative and regulatory initiatives that have been proposed in the past several years mandates this cooperation.

In addition to our retention of these monitoring resources, we have taken several steps to provide as much information to our members as possible. As noted above, we hold an annual conference in Washington, D.C. in which we spend several days discussing all of the new regulatory requirements facing the industry. We post regulatory information on our website. We have distributed thousands of brochures for complying with the Rule. We produce a manual entitled *The Compendium of State Laws and Regulations*, which is designed to offer at least a basic understanding of the legal framework facing the industry at the state level.

That being said, it is our opinion that this patchwork of complicated, oftentimes confusing, sometimes contradictory, state regulation poses the single greatest threat to our membership. Companies are forced to spend so much time focused on this myriad of state laws (not because they pose any real stumbling block for compliance, but simply because there are so many of them) that they sometimes have to sacrifice focus on their core business operations. Everyone is so focused on compliance that it takes away from the company's business goals. Companies have less time and resources to focus on those

things that matter, good products, good service, effective customer service, and effective management. That loss of focus is not only bad for business, but also bad for consumers and bad for the American economy as a whole.

Do-Not-Call Regulation

If any provision of the Rule should be considered for possible amendment, the section that provides that the Rule will not pre-empt state regulation is an important area of concern. Specifically, we would urge the Commission to enact an amendment that restricts the creation of state administered Do-Not-Call lists. As the Commission is surely aware, this is currently one of the primary areas of state regulation. The potential problems that these lists create are fairly obvious. If a national company, calling in all 50 states, is forced to purchase 50 different state lists every quarter, not only will that impose a significant direct economic cost of the business, but the many indirect impacts will serve to harm that company as well. For example, the cumulative impact of purchasing 50 different lists, most likely in a number of different computer languages, will cause companies to expend substantial resources hiring computer personnel just to integrate all of these different computer languages into one coherent database, and then to ensure that that single Do-Not-call list is compatible with the company's calling database.

This is not a novel complaint. It is the exact type of problem that Congress was concerned with when it enacted the Telephone Consumer Protection Act (TCPA) in 1991. As you are no doubt aware, when Congress enacted the TCPA it established federal standards regarding telephone solicitations applicable to all telemarketers regardless of where they were located. Congress specifically instructed the FCC, in determining whether to require a national Do-Not-Call database, to "consider the

different needs of telemarketers conducting business on a national, regional, state or local level." It is immediately apparent from that instruction that Congress was aware that independent regulation by the fifty states creating their own "Do-Not-Call" lists would place a ruinous cumulative burden on interstate telemarketers. In enacting the TCPA, Congress committed to the FCC the determination of how best to protect residential telephone subscribers from receiving unwanted telephone solicitations. After an exhaustive study, the FCC concluded that company specific Do-Not-Call regulation was the most effective way to protect consumer privacy without placing an undue burden on legitimate marketers. Four years later, the FTC reached the same conclusion. That conclusion is just as prudent today.

The telemarketing industry is a unique industry. The primary expenses of the business are determined by the time spent on the telephone. A company is often measured by the amount of dollars generated per telephone or per chair. The single greatest predictor of failure in the industry is low per chair production. And the single greatest contributor to low per chair production is spending time on the telephone with people who don't want to talk to you. Thus the industry goes to great lengths to identify only those consumers who are likely purchasers of their products. The successful telemarketer is the business that talks to the fewest uninterested parties. Consequently, it is in the industry's best interests to keep a detailed "Do-Not-Call" list. Not only does it make sense for a company's bottom line, but it increases morale and production among the sales force if they are not talking to hundreds of people who say "No" at the beginning of the call.

Additionally, the company specific "Do-Not-Call" list is the best way to empower consumers to make the type of informed purchasing decisions that are necessary for a satisfactory sale. For consumers who do not want to receive calls, all they have to do is inform the caller at anytime during the call. However, for those consumers who want to receive calls or who only want to receive certain types of calls, the existing federal rule allows them the freedom to determine which calls they want to receive and prohibits those calls they don't.

This is an area where consumers alone, if they are aware of their rights, hold the key to stopping unwanted calls to their home.

Additionally both the TCPA and the Rule allow state attorneys general offices to go after a thief calling from outside the state who has been victimizing consumers in their state. This cross-border enforcement strategy creates a national blanket of protection for consumers. No longer can the thieves escape prosecution by simply picking up their operations and moving them to another state. It is this borderless regulation that supplies the real teeth to the TSR. These teeth make additional regulation and restrictions at the state level redundant, unnecessary, and overly burdensome.

Thus we strongly urge the Commission to consider removing the "no state pre-emption" provision from the Rule.

Conclusion

The ATA accepts most of the provisions of the Rule and is confident that continued consumer education will result in even further decreases in complaints against telemarketers, continuing the downward trend since the Rule was enacted. As we have

discussed, the Rule amply protects consumers from the evils of boileroom operators without imposing overly burdensome regulations on legitimate telemarketers. Should the Commission require any additional information, or seek additional input on any of the comments presented here, or any other matters, you have our pledge of full cooperation.