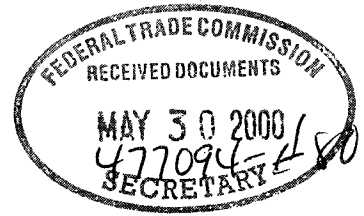


**Telemarketing Review - Comment**  
**FTC File No. P994414**



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## **INTRODUCTION**

The National Consumers League is a private, nonprofit advocacy organization. Its mission is to identify, protect, represent and advance the economic and social interests of consumers and workers. Since 1899, NCL has empowered consumers and workers to navigate the changing workplace and marketplace. To meet its goal, NCL uses the three-pronged approach of research, education, and advocacy.

NCL has a special interest in the Telemarketing Sales Rule because of its long-standing and continued efforts to combat telemarketing fraud. Recognizing the serious economic and social impact of telemarketing fraud, NCL launched a toll-free hotline, the National Fraud Information Center, in 1992. The NFIC provides advice to consumers about how to identify fraudulent or deceptive telemarketing and how to handle telephone solicitations. Consumers may also report suspected telemarketing fraud to the NFIC. That information is transmitted to the Consumer Sentinel database maintained by the Federal Trade Commission and the National Association of Attorneys General. Consumers' fraud incident reports are also relayed to other federal, state and local law enforcement agencies in the United States and Canada. This helps consumers get their information to the appropriate agency or agencies and alerts law enforcement authorities quickly about telemarketing abuses.

In 1996, NCL established a second program, the Internet Fraud Watch, which operates in conjunction with the NFIC, and a new Web site, [www.fraud.org](http://www.fraud.org). Through the toll-free hotline, (800) 876-7060, or the Web site, consumers can obtain information on how to recognize the danger signs of telemarketing or Internet fraud and learn about their legal rights. They can also report possible telemarketing or Internet fraud online via a form on the Web site.

The NFIC/IFW programs receive questions and fraud reports from businesses as well as individual consumers about telephone slamming and cramming, bogus loan offers, office supply scams, fraudulent advertising schemes, and other problems. A special section about "Scams Against Businesses" on the [www.fraud.org](http://www.fraud.org) Web site describes many common scenarios, provides advice about how to guard against those types of fraud, and has links to other resources.

NCL works extensively to educate the public about telemarketing fraud and consumers' rights through many other forms of media. We participated in the original rulemaking process and support the continuance and enhancement of the Telemarketing Sales Rule. NCL would be happy to participate in the July workshop which will be convened by the FTC in this regard. Our comments in response to some of the issues raised in the FTC's notice of Rule review follow.

### **GENERAL QUESTIONS FOR COMMENT**

#### **Continued Need for the Telemarketing Sales Rule**

The Telemarketing Sales Rule is helpful to both marketers and consumers because it provides guidance for the appropriate conduct of telemarketing. It mandates disclosures about the companies offering the goods or services, the terms and conditions of their offers, and other information that is important for consumers to know in making their purchasing decisions. The Rule also prohibits abusive practices that can harm consumers and impede fair competition.

In addition, it gives both state and federal law enforcement authorities effective tools to take action against fraudulent and deceptive telemarketers. As a result of aggressive law enforcement, extensive efforts to educate the public by nonprofit organizations such as NCL, government agencies, and the private sector, and better self-policing by the industry, reports of telemarketing fraud have decreased over the last five years:

<b>Year</b>	<b>Telemarketing Fraud Reports to NFIC</b>
1995	15,738
1996	16,295
1997	12,396
1998	10,879
1999	4,680

### **Consumers Benefit from the Rule**

The Telemarketing Sales Rule provides many benefits for consumers. One is that it helps to identify offers that may not be legitimate. For example, NCL educates consumers that requests for advance payment from telemarketers for loans, credit repair, or recovery services are danger signs of fraud because such requests are prohibited by the Rule.

The Rule also gives consumers some control over who solicits them by phone and when by restricting the time of day for outbound telemarketing calls and barring calls to consumers who have asked to be put on companies' "do-not-call" lists. The disclosures and prohibitions mandated by the Rule benefit consumers by giving them the information they need to evaluate telemarketing offers and protecting them from abusive practices.

Moreover, federal and state law enforcement agencies use the Rule to obtain redress for consumers and prevent others from being victimized. Private parties may also enforce their rights under the Rule.

### **Changes and Additions to the Rule are Needed**

Since the Rule was first promulgated, new products and services have been developed and new methods of marketing and billing have evolved. As a result, changes to the Rule are needed to protect consumers and provide further guidance for marketers. Suggestions for major improvements are highlighted as follows.

### *Telephone-Billed Sales*

One of the changes that has occurred in the last five years is the increased marketing of local and long-distance services spurred by deregulation and new competition in the telecommunications marketplace. This has resulted in more choices for consumers. Unfortunately, it has also led to the practice of "slamming," switching consumers' phone service from their original carriers to other companies without their knowledge or consent. Slamming was added to the categories in the NFIC database in 1997 and by the end of that year it ranked as the 5th most frequent subject of complaint. In 1998 and 1999 it ranked even higher at #3.

Another change is the development and marketing of new telecommunications services such as voice mail, personal 800 numbers, paging, and Internet access. Again, while these options have benefited consumers, they have also led to a new scam, "cramming," unauthorized charges for services that consumers never agreed to purchase. This new category was added to the NFIC database in October of 1997; by the end of 1998, it was the #1 subject of complaint. It dropped to #6 in 1999 because of aggressive law enforcement action, extensive public education by NCL and others, and voluntary guidelines adopted by the local telephone companies to screen third-party vendors for whom they bill more effectively and terminate billing contracts more quickly when abuses are discovered.

Slamming and cramming spring from the same root -- the fact that the telephone bill has become a new method of payment vehicle for vendors of all types of products and services. Some of these services are not even related to telecommunications; consumers have complained that charges were "crammed" onto their phone bills for club memberships and dating services. Unlike credit card numbers, consumers' telephone numbers are widely available from a variety of

sources, making it easy to place unauthorized charges on their telephone bills. Twenty-three percent of the fraudulent telemarketing transactions reported to the NFIC in 1999 were billed through consumers' telephone bills; in 1998 this method of billing was even higher, at 43 percent, but it fell in 1999 due to the lower number of complaints about "cramming."

The Rule should address the issue of verification for telephone-billed purchases. As we will note later in these comments in the section on exceptions from the Rule, the distinction between common carriers and other vendors is becoming less relevant as all types of entities compete to provide similar products and services to consumers.

#### ***New Forms of Electronic Payment***

New forms of electronic payment are also being used for telemarketing purchases. Debit cards accounted for one percent of the fraudulent telemarketing transactions reported to the NFIC in 1999 and this form of payment is likely to grow as more consumers are issued debit cards and grow more comfortable using them. In the context of electronic commerce, other new forms of payment such as cyberwallets are being developed. Changes in the Rule may be necessary to protect consumers from abuses and provide better oversight of vendors who participate in new electronic payment systems.

#### ***"Free" or "Trial" Offers***

The Rule should also address a growing problem that is being reported to the NFIC with telemarketing sales of products that include a "free" or "trial" offers for services such as buyer's clubs. Consumers provide their credit card numbers to pay for a product or, if it is "free," for the cost of shipping. They do not realize that they will also be enrolled in a service or, if they do, that after the first thirty days they will automatically be charged on their credit cards for the

service unless they contact the company to cancel. In fact, they often have no idea how to contact the company, since the original contact was made merely to purchase an item over the telephone. This problem is not adequately covered by the current Rule.

### ***Advance Fee Credit Card Offers***

Bogus credit card offers consistently rank in the top 10 telemarketing frauds reported to the NFIC. Many of these offers involve requests for fees in advance. NCL believes that it would be easier for consumers to distinguish legitimate from fraudulent credit card offers if requests for advance fees were prohibited under the Rule.

### ***Online Solicitations***

When the Rule was first promulgated, NCL argued that it should cover online solicitations. Five years later, as electronic commerce is burgeoning and Internet fraud is increasing exponentially, we believe that it is time to add a new section to the Rule concerning online solicitations.

Comparing the top twenty telemarketing and Internet frauds reported to the NFIC and IFW respectively in 1999, many of the same categories appear: work-at-home, advance fee loans, magazine sales, travel offers, investments, telephone slamming, business opportunities, prizes and sweepstakes, multilevel marketing, telephone cramming, credit card offers, and government services. The same basic principles for conduct of telemarketing should apply to marketing in cyberspace. Online vendors should identify themselves, clearly and completely disclosure all material information about the goods or services they offer and the related terms and conditions, and refrain from making misrepresentations and committing abusive practices.

A new online marketing section in the Rule would help "brick and mortar" businesses

adjust their policies and practices to the online environment and provide guidance to new e-commerce start-ups. It would also help consumers distinguish between legitimate and fraudulent online solicitations and provide better legal tools to combat fraudulent and deceptive practices in cyberspace.

The Guidelines for Consumer Protection in the Context of Electronic Commerce adopted last December by the Organization for Economic Cooperation and Development provide a good framework for this purpose. The FTC, as head the United States delegation to the OECD Consumer Policy Committee, played a major role in crafting the guidelines. All member countries are to review current law and take steps necessary to implement the guidelines.

NCL also notes that the convergence of the Internet and the telephone creates the need for new regulation. The latest example of this is a new way of offering services via the Internet through dialer programs that consumers can download. In doing so, they are connected to the vendor's server through a foreign phone number, resulting in long-distance charges to the originating number. Unfortunately, this fact is not always clearly disclosed; in some cases it is not disclosed at all. Even if some attempt at disclosure is made, the service provider cannot tell the consumer exactly how much the service will cost, since that is determined by a number of varying factors: which long-distance calling plan is being used to dial the service, the time of day, and how long the consumer uses the service. Furthermore, there is no way for the service provider to ensure that the person who is responsible for the telephone bill has agreed to purchase the service.

The issues of disclosure and verification raised by converging technology and new methods of marketing should be addressed in the Rule.



## **Conflicting Laws**

NCL understands the difficulties that businesses engaged in telemarketing and electronic commerce face in complying with laws of multiple jurisdictions. At the same time, we believe that governments at all levels have the obligation to ensure that their constituents are adequately protected. In enacting the 1994 Telemarketing and Consumer Fraud and Abuse Prevention Act, Congress clearly recognized that important principle. Rather than using a preemptive approach, the statute and the Rule promulgated under it allows states to adopt stricter measures governing telemarketing. At the same time, state authorities may bring actions in federal court to enforce the Rule.

Since 1995, states have built upon the basic foundation provided by the Rule. Many have enacted licensing or registration requirements for telemarketers. These measures have been helpful because they enable state authorities to identify telemarketers who are operating within their jurisdictions and to take swifter action to stop abuses. Some states also impose additional requirements and prohibitions; for example, mandating written contracts in certain circumstances. Several have established state-operated "do-not-call" lists that consumers can sign up for if they do not wish to receive telemarketing solicitations. Telemarketers that solicit in those states must obtain the lists and purge those names before commencing their marketing efforts.

NCL believes that it is the responsibility of businesses to be aware of and comply with the relevant applicable laws in the jurisdictions in which they choose to operate. We are not aware of any evidence to document that multiple state and federal laws governing telemarketing have curtailed this form of commercial solicitation.

This issue also arises in the electronic marketplace. NCL feels that the best way to address it is to craft a new section of the Rule that would provide clear guidance and strong consumer protection for online solicitations. In addition, the FTC should encourage the development of and set standards for alternative resolution systems in e-commerce disputes. This would help to mitigate the need for formal legal action in many cases.

## **DEFINITIONS**

NCL suggests that if the Rule is amended to include specific requirements for "free" or "trial" offers, there should be a definition in that regard.

The definitions for credit card, merchant and merchant agreement may also require changes if the Rule is amended to address telephone billing and new forms of electronic payment.

If a new section of the Rule was created for online solicitations, additional definitions would obviously be necessary.

## **DECEPTIVE TELEMARKETING ACTS OR PRACTICES**

### **Disclosures**

In prize promotions, telemarketers should disclose to consumers that making a purchase in no way improves their chances of winning. This change would be consistent with the requirements for mail solicitations under the Deceptive Mail Prevention and Enforcement Act of 1999.

New disclosures are needed to address problems with "free" and "trial" offers to ensure that consumers know that they are being enrolled in a club or some other service. It is also vital for consumers to know under what conditions they may be charged for that service.

If online solicitations are included under the Rule, new disclosure requirements will be needed. For example, one of the provisions in the OECD electronic commerce guidelines is that the business should disclose its physical address. Some of the current disclosure requirements for telemarketing solicitations, such as for prize promotions, will need to be adapted to online solicitations of that nature.

Disclosure requirements for online solicitations will also have to take into account the need to ensure that consumers have the capacity to receive and retain the information.

### **Misrepresentations**

One of the most disturbing types of telemarketing fraud reported to the NFIC is solicitations for credit card loss protection plans. This ranked as the 9th most frequent complaint to the NFIC in 1999.

Consumers allege that the telemarketers misrepresent themselves as being affiliated with their credit card issuers and/or misrepresent their potential legal liability for unauthorized use of their cards. Older consumers appear to be disproportionately vulnerable to these types of misrepresentations. NCL believes that specific prohibitions in this regard would be helpful.

### **Express Authorization**

Express authorization should be expanded to include telephone-billed transactions that are not clearly covered by the FTC 900 Number Rule. In the example provided previously of the Internet dialer program, vendors should be prohibited from telephone billing. Other methods of payment that are less susceptible to unauthorized use, such as credit cards, are available.

Express authorization should also be required before consumers are billed for services that they initially received "free" as part of a trial offer. NCL believes that authorization should

be requested at the time that the "free" period expires and must be affirmative, rather than a negative option.

## **ABUSIVE ACTS OR PRACTICES**

### **Credit Repair, Advance Fee Loans and Recovery Services**

The FTC has asked about the effectiveness of the Rule in curbing abuses with telemarketing offers for credit repair, advance fee loans and recovery services by prohibiting any request for payment until the promised services are performed. Following are the rankings for frequency of these complaints to the NFIC over the past five years

<b>Year</b>	<b>Credit Repair</b>	<b>Advance Fee Loans</b>	<b>Recovery Services</b>
1995	#23	#15	#3
1996	#13	#5	#16
1997	#24	#2	#25
1998	#24	#2	#25
1999	#23	#4	#25

These statistics show that complaints about credit repair have held at a relatively low level and recovery services have fallen dramatically. However, the number of complaints about advance fee loans has risen steeply. It is difficult to know exactly why the Rule has been less effective in preventing advance fee loan fraud than in the other areas.

One reason may be that it is easier for consumers to identify fraudulent credit repair and recovery services because legitimate sources of assistance with credit problems or refunds from companies usually require *no* payment at all (some legitimate credit counseling services assess fees for administering payment plans, but they are usually nominal). On the other hand, consumers may be confused about whether and in what circumstances fees are required for different types of loans.

It is interesting to note that advance fee loans are also a problem in Internet fraud. That category was the 6th most frequent subject of complaint to NCL's Internet Fraud Watch in 1999. Credit repair ranked at #12, but recovery services were much lower than in telemarketing at #34.

Another difference between advance fee loans and the other categories is the fact that many of the fraudulent companies are located in Canada. In 1998, 80 percent of the advance fee loan companies that consumers reported to the NFIC were in Canada, compared to only 2 percent of the credit repair companies. It is fair to assume that fraudulent advance fee loan operators have stationed themselves in Canada in order to make it more difficult for U.S. law enforcement authorities to take action against them for violations of the Rule.

#### **Advance Fee Credit Card Offers**

The NFIC receives numerous complaints about telemarketing and online offers for credit cards in which the consumers either never got any cards or received vendors' own charge cards, not the credit cards they were promised. Usually an advance fee is requested, not as a deposit for a secured card but for "processing" or an "annual fee." These offers are typically directed at consumers who have poor credit or no credit histories as a way to get "guaranteed" credit cards.

NCL believes that legitimate credit card issuers do not need to charge fees in advance. If there is an annual fee or other charge, it can simply be assessed on the first bill. It would be easier for consumers to distinguish between legitimate and fraudulent credit card offers if advance fees for credit cards were prohibited under the Rule.

#### **"Free" and "Trial" Offers**

NCL believes that consumers are too easily abused by "free" or "trial" offers that will ultimately result in charges to their credit cards or some other form of billing unless they contact

the company to cancel. The Rule should prohibit such billing unless the consumer has been notified that the end "free" period is ending and has affirmatively agreed to pay for continued services.

### **"Do-Not-Call" Provisions**

It is unclear how effective the "Do-Not-Call" Provisions of the Rule have been in protecting consumers from unwanted telephone solicitations. We do know that many people are still very frustrated by telemarketing calls. In the National Consumers League's "Consumers and the 21st Century" survey which was conducted by Louis Harris & Associates, Inc. in April and May 1999, consumers were asked to rate how much seven everyday experiences bothered them on a scale from 1 to 10; 1 meaning "not bothered at all" and 10 indicating "completely fed up." Forty-nine percent of the respondents rated telemarketing at 10. Only automated phone menus, with 54 percent, and junk mail, at 59 percent, ranked higher on the aggravation scale.

Further evidence of consumers' attitudes and knowledge about telemarketing can be gleaned from the answers to questions that were posed to state residents by the Vermont Department of Public Service in February and March 1999 as part of a broad telephone survey designed to help prepare the Vermont Telecommunications Plan. Only 2.7 percent of the respondents said they had no objections to telemarketing calls. About 9 percent said they would like to receive fewer telemarketing calls, and the vast majority, nearly 88 percent, said that they wanted all telemarketing calls to stop.

When asked if there was anything they could do to stop telemarketers from calling, 51 percent of the survey respondents said yes, 41 percent said no. Of the consumers who thought there was something they could do, 37 percent offered "hang up" as the solution -- hardly the

most effective means of handling unwanted sales calls. Thirty-six percent suggested asking to be put on the company's "Do-Not-Call" list, and 15 percent cited registering with the Telephone Preference Service (which is operated by the Direct Marketing Association).

However, only 28 percent had actually asked to be put on companies "Do-Not-Call" lists and fewer than 3 percent said they had signed up with the TPS. When those who had not done anything were asked why, they gave a variety of explanations: didn't have time, weren't sure how to do it, weren't sure it would be worthwhile.

Of the respondents who tried to stop telemarketing calls, a disappointingly small number, 20 percent, characterized their efforts as "very successful." The survey did not delve into what types of telemarketing solicitations consumers receive most frequently or which of their efforts to stop unwanted sales calls were most successful. It does indicate, however, that many consumers do not know about their "Do-Not-Call" rights and that even those who are aware that they can stop unwanted sales calls may not be sure how to do so.

NCL believes that it would be easier for consumers to assert their "Do-Not-Call" rights under the Rule if they were asked by telemarketers with whom they do not already have a relationship and from whom they decline to purchase if they wish to be put on the company's "Do-Not-Call" list. This would also help ensure that companies do not spend their time and other resources calling consumers who are not interested in hearing from them.

Another alternative would be a "Do-Not-Call" list administered by the federal government. This would be the easiest option for consumers who feel that they are besieged by unwanted telemarketing solicitations. For those who want some, but not all, telemarketing calls, it would still be important to preserve the right to make individual "Do-Not-Call" requests.

## **EXEMPTIONS**

### **Covered Entities**

In this era of increased competition in telecommunications products and services, de-tarriffing, merging of different types of businesses, and converging technologies, NCL believes that some of the exemptions in the Rule no longer make sense. Consumers should be entitled to the same information and protected from the same abuses in all commercial telemarketing (and online) solicitations, regardless of the types of entities involved.

### **Media Used in Telemarketing**

What constitutes telemarketing under the Rule should also be revisited. For example, the #1 subject of telemarketing fraud complaints to the NFIC in 1999 was work-at-home schemes. Twenty-four percent of those offers were made through print advertising, compared to 11 percent over all telemarketing fraud categories.

Advertisements for work-at-home schemes commonly found in newspapers and magazines do not provide sufficient information to evaluate those offers. Often a phone number is listed for consumers to call. Their purchasing decisions are based on the information provided over the telephone. Any solicitation in the general media that does not provide full information about the offer and requires consumers to call to obtain it should not be exempt from the Rule.

One percent of the initial contacts to consumers in fraudulent telemarketing incidents reported to the NFIC last year were by fax. In Internet fraud, just under 10 percent of the initial contacts to consumers were by e-mail. Both of these methods of contact are very similar to outbound telemarketing solicitations. It is reasonable to anticipate that in the future, more marketers will use these lower-cost media to solicit consumers.



NCL believes that these methods of marketing should be covered by the Rule. We also feel that some business-to-business solicitations that are currently exempted should be covered, such as telemarketing (and online) sales of advertising materials or services.

### **CONSUMER ISSUES**

NCL can provide some information to the FTC about the consumers who are affected by telemarketing fraud and the financial losses they incur. Of the 4,680 consumers who reported suspected telemarketing fraud to the NFIC in 1999, 2,618 provided their years of birth. Their ages broke down as follows:

<b>Age</b>	<b>Percentage Telemarketing Fraud Reports</b>
1-29	16.1%
30-39	18.4%
40-49	23.6%
50-59	14.8%
60-69	12.6%
70-79	11.0%
80-89	3.1%
90+	.4%

Of the consumers who reported telemarketing fraud to the NFIC, 4,012 actually lost money. The total loss in 1999 was \$3,911,310, an average of about \$975 per victim. However, it is not unusual for the counselors at the NFIC to speak to consumers who have lost tens of thousands, even hundreds of thousands of dollars in fraudulent telemarketing transactions. It is also not uncommon for relatives and caretakers of victims to call because the victims themselves are reluctant or unable to do so.

While NCL has not analyzed each category of telemarketing fraud reported to the NFIC in 1999 to determine the demographics of those consumers, we conducted such a study of our

1997 statistics in 1998 in cooperation with AARP. We found that while consumers age 50 and older accounted for about 38 percent of the telemarketing fraud reported overall in 1997, the percentages were even higher in certain categories. The telemarketing frauds that most affected people in that age group and the percentages follow:

<b>Category of Telemarketing Fraud</b>	<b>Percentage Consumers Age 50+</b>
Advance fee loans	6%
Work-at-home	17%
Credit card offers	28%
Pay-per-call services	31%
Telephone slamming	33%
Prizes/sweepstakes	36%
Magazine sales	40%
Travel offers	46%
Lotteries	53%
Credit card loss protection plans	71%

Telemarketing victims are found in every state. Not surprisingly, there are more victims in the most populous states. The top states for consumers who reported telemarketing fraud to the NFIC in 1999 were Florida, California, New York, Texas, Pennsylvania and Ohio. In addition, the NFIC receives a small number of reports from consumers in Canada and other countries; these accounted for less than one percent of the total in 1999.

## **CONCLUSION**

The Telemarketing Sales Rule is an important element in the fight against telemarketing fraud. It provides guidance to legitimate marketers and protection against unfair methods of competition by others. It enhances the ability of state and federal law enforcement agencies to stop abuses and obtain redress for victims. It is also useful in educating the public about shopping safely by telephone. In addition, the Rule offers some protection for consumers who do

not want their privacy to be intruded upon by sales calls.

NCL believes that the Rule must be changed and expanded to meet the needs of the changing marketplace. We look forward to working with the FTC and others in this effort.

Submitted by:

A handwritten signature in black ink, appearing to read "Susan Grant", with a long horizontal flourish extending to the right.

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