

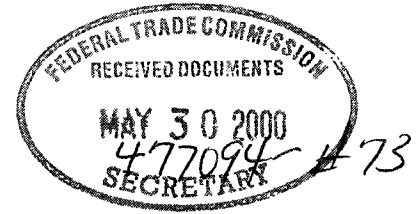
NATIONAL FEDERATION
OF NONPROFITS



May 30, 2000

*"Advocating for Nonprofits
in Postal, Regulatory,
Legislative, and Accountability
Issues Since 1982"*

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue, NW Room 159
Washington, DC 20580
Attention: Catherine Harrington McBride



IN RE: Telemarketing Review-Comment
FTC File Number P994414

Following are the comments of the National Federation of Nonprofits (NFN) on the provisions of the Telemarketing Sales Rule, as that Rule applies to nonprofit organizations which use telephone contacts to seek contributions, memberships, or their renewal.

Because the jurisdiction of the Federal Trade Commission does not extend to nonprofits, which are extensively regulated by the Internal Revenue Service and the several states, the Rule generally does not apply to nonprofits except when they hire professional telemarketers to sell products and services. Nonetheless, to the extent that the Commission's action may create or affect accepted industry standards, the interests of nonprofits are directly involved. Such is the case here, inasmuch as the Commission's current inquiry into the operation of the Rule relates especially to "do not call" lists, which affect nonprofits in many states, and those covered by some federal legislation.

There are two issues of importance involved: the ability to honor a "do not call" request within a specific time frame, and the proliferation of state laws (and at least one federal law) and regulatory requirements.

Regarding the time frame question, it is important to distinguish between the theoretical possibility that a request to add a name to a "do not call" list can be complied with in any given time period, and the reality of penalties or other sanctions because of failure to do so for economic reasons or inadvertence.

When the House Subcommittee on Postal Service was considering the Deceptive Mail Prevention and Enforcement Act of 1999, NFN testified that the proposed standard of 35 days to assure that a request to add a name to "do not call" lists was seriously inadequate for many nonprofit organizations. Instead, NFN proposed a standard of 90 days, after demonstrating that many nonprofits use volunteers to handle data entry relating to contributions and "do not call" requests.

For example, we cited the case of a public television station, in a top ten market, which relies exclusively on volunteers for this function, and may not have "do not call" requests and other data entered in computers for periods exceeding 60 days, depending on the number and skills of volunteers available at any given time. The legislation as passed by Congress adopted a standard of 45 days, and it is certain that some nonprofits will inevitably run afoul of that provision.

Moreover, when national or regional calling campaigns are conducted, they are normally not concerned with state boundaries. For that reason, the National Federation of Nonprofits is concerned about the burgeoning number of states which have adopted or are considering establishing state-specific "do not call" lists. The opportunity to unknowingly violate one or more such laws grows exponentially with the number of states adopting the provisions.

Even for "local" calling, much telephoning is interstate and the opportunity to inadvertently err is great. Many member stations of the Public Broadcasting Service serve markets which reach into more than one state. WETA is an example, with viewers in the District of Columbia, Virginia, Maryland, and West Virginia. Similar situations exist in numerous markets, including Boston, New York City, Kansas City, Chicago, Raleigh, New Orleans, Memphis, and others. The stations often call members to solicit renewals and additional contributions. Other cultural organizations, such as symphony orchestras, operas, ballets, and museums do the same. With different regulations in each state, it is inevitable that some nonprofits will inadvertently violate one or more of the dissimilar statutes.

Because of that proliferation, the establishment of a single industry standard would be a positive action. However, any legal or otherwise accepted standard must be one with which the least sophisticated and technologically advanced organization can comply, not one which relies on full time experts working with expensive and complicated computers and automated telephone systems.

With proper recognition of the needs of nonprofits, NFN would support the establishment of a single national standard, as to the time frame in which a "do not call" request must be honored, the circumstances under which such requests may be made, the length of time the request is valid, and other parameters. But such a standard must be workable for the smallest and least sophisticated organization as well as the largest and best-equipped, and must supercede, not further complicate, the existing morass of laws and regulations.

We also believe that a system already exists which might provide the basis for a single standard.

The Telephone Preference Service (TPS) of the Direct Marketing Association pre-dates by many years government recognition of the desire of some fairly finite segment of consumers not to be called under certain circumstances. Telephone marketing being a more recent phenomenon, the TPS is growing while the size of the much older Mail Preference Service remains static. This is clear indication that only a relatively small number of consumers (more perhaps for telephone than for mail) feel so strongly about not being contacted that they take action to close their mailboxes or turn off their telephones.

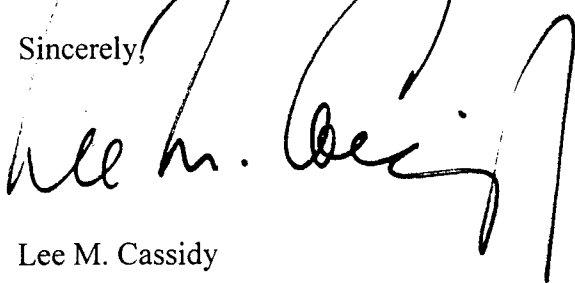
But TPS is an expensive program for the DMA to maintain.

We believe that when voluntary industry action works, it should be celebrated and supported, not nullified by government intervention. Could the FTC not engage the DMA as contractor to manage the TPS under FTC supervision, rather than replicate a functioning entity? The system is in place, it is recognized and supported by the industry, and has operated successfully for years. All it needs is the force of law, and financial support.

We hope that the Commission will seriously consider discussing that possibility with the DMA.

We appreciate the opportunity to make these comments, and will be pleased to engage in further discussions that may improve the operation of the Rule.

Sincerely,

A handwritten signature in black ink, appearing to read "Lee M. Cassidy". The signature is written in a cursive style with a large, looping initial "L".

Lee M. Cassidy

Executive Director