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FEDERAL TRADE COMMISSION
RULEMAKING WORKSHOP

SESSION 1
WEDNESDAY, JUNE 5, 2002
9:00 A.M. TO 5:00 P.M.

MARRIOTT WARDMAN PARK HOTEL
WASHINGTON, D.C.

Reported by: Susanne Bergling, RMR

For The Record, Inc.
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MS. HARRINGTON: Well, good morning. My name is Eileen Harrington, and I am going to be moderating most of this workshop today. I know many of you. Many of you have participated in previous Telemarketing Sales Rule or other rulemaking workshops at the Federal Trade Commission.

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Before we make introductions, I want to go over some ground rules and process points. First, as you know, this entire proceeding is being transcribed for inclusion in the rulemaking record, and our reporter is sitting down at the end of the table to my right. She can't really see you and who you are and your name tags, so it's very important when you speak that you identify yourself and who you're with every single time until our reporter tells me that that's no longer necessary to do. So, just assume that it's necessary until you hear otherwise.

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The reason that we're here is to advance the discussion on specific issues that we've identified after reading all of the comments to our proposed amendments to the Telemarketing Sales Rule. We aren't here to rehash or restate positions that were taken in the comments, but rather, to engage in a discussion

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1 about questions that we have and wish to hear more
2 discussion among and between you about.

3 What we've found is that people who are
4 stakeholders in these rulemakings are often in a better
5 position to discuss points of contention with one
6 another and draw out important distinctions and
7 challenge underlying factual assumptions better than we
8 are. Each of you comes from some perspective or
9 experience that gives you considerable insight and
10 causes you to have considerable information and
11 knowledge about issues in this rulemaking, and that's
12 why we've asked you to sit around the table and talk
13 with us.

14 I am a complete autocrat when it comes to
15 running these sorts of things. If you are talking too
16 much, if you are repeating yourself, if you are giving
17 speeches, we're just going to cut you off, and I don't
18 want that to happen particularly, but this is really
19 intended to be a dialogue and not a forum for people to
20 make lengthy statements or speeches.

21 The procedure for being recognized to speak is
22 that you just raise your tent, and I will be making
23 note of whose tents are raised indicating a wish to
24 participate, and I might call on you in the order in
25 which your tent goes up, but I might call on you out of

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1 order if I think that it's likely that you may have
2 something very relevant to say to the discussion at the
3 point that we're at.

4 We're going to stick religiously to this time
5 schedule and agenda, and I want to also apologize in a
6 sense for being in this cavernous setting. The
7 security people at the Federal Trade Commission kind of
8 blew a fuse when they thought about all of the people
9 involved in this workshop having to sign in and get
10 cleared at the FTC headquarters building, and so they
11 asked at the last minute that we move off site, and so
12 here we are.

13 This is not quite as intimate as Room 432 of
14 the FTC building, and I want to apologize, particularly
15 to people who are here with participants at the table
16 and had expected that they would be able to have better
17 communication between them. I would invite that, and,
18 you know, at the risk of sending our logistical people
19 over the edge, just pick your chairs up and move closer
20 to the table. There doesn't need to be this kind of
21 distance between where the people who are observing are
22 seated and where the people at the table are seated.

23 The other thing Allen my colleague points out,
24 we need people sitting behind us to catch us when we
25 fall off of this raised platform, which is inevitable

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1 during the course of this proceeding. So, I really
2 invite people to move closer. This is a little odd I
3 think for our purpose, which is to engage in a very
4 thoughtful discussion.

5 Well, I see everyone is heeding my urging and
6 just sitting there like lumps, but pick up your chairs
7 and move closer. Thank you very much. Whoever moved
8 closer over there is going to get a special exemption.
9 This is good. Excellent, excellent, excellent, a
10 little self-help. There we go. Very good. Much
11 better.

12 Now, cell phones and pagers and electronic
13 devices are just not welcome in this room. Turn them
14 off if you would, please, because we really don't want
15 to hear ringing phones, and if your phone does ring,
16 you know, you may be subject to scorn and ridicule from
17 the Chair.

18 Any other logistical things? I have no idea
19 where anything is here. I've never been in this room
20 or in this hotel, so I can't make announcements for you
21 about where the restrooms are, where the pay phones
22 are, but certainly they are all around.

23 The food that's outside isn't ours. Many of
24 you and your organizations very generously offered to
25 cover coffee and so forth for coffee breaks, and we had

1 to decline your wonderful offers, because it's just too
2 expensive here and exceeds anything that the FTC could
3 accept under our ethical sensibilities. So, thank you
4 for offering, but there is no coffee, there is no food.
5 We have water, hard candy and pads, and the food out
6 there belongs to someone else.

7 I think that's all in terms of procedural
8 matters. Does anyone have a question about procedure
9 and process before we begin with introductions?

10 MR. MITCHELL: Yes, I do. Good morning, Glenn
11 Mitchell, counsel for the Not for Profit and Charitable
12 Coalition. I have a question which is really a
13 follow-up to some of my questions to your staff about
14 how we're going to proceed.

15 As you know, I indicated in my correspondence
16 to the Commission that we would have three or four or
17 five people from the Coalition because we represent a
18 cross-section of charitable and nonprofit
19 organizations, and I thought it was important that this
20 panel and you in particular and your staff hear from
21 these people from different vantage points. So, while
22 I'm in the musical chair right now, I had told your
23 staff that I expect to step down and let somebody else
24 --

25 MS. HARRINGTON: And that's fine, not at all,

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1 and we will I think see a lot of that. I know many of
2 you will have different people occupying your chairs
3 and we will have different organizations represented
4 during different segments of the discussion. The
5 agenda lays that out pretty well. We will be beginning
6 each session with a quick introduction of participants
7 and a statement of interest.

8 MR. MITCHELL: Thank you.

9 MS. HARRINGTON: Okay. Any other questions
10 about process before we get rolling?

11 All right, what I would like to do is ask each
12 of the participants at the table to introduce
13 themselves, to say who it is that you're representing
14 and give us in one sentence your concern, your most
15 important concern on the do-not-call issue so that we
16 have some sense of where we're coming from.

17 Now, I thought about asking you to identify
18 yourselves and then tell us if you were a flower, which
19 flower you would be, or if you were a book, what your
20 title would be, but I think we will save those for
21 later in the workshop when we're really tired of each
22 other.

23 So, Mallory, why don't we begin with you, if
24 you would introduce yourself and tell us who you're
25 with and what your most significant interest is in the

1 do-not-call issue.

2 MR. DUNCAN: My name is Mallory Duncan. I'm
3 with the National --

4 MS. HARRINGTON: Can you speak right into the
5 microphone?

6 MR. DUNCAN: My name is Mallory Duncan. I'm
7 with the National Retail Federation. We represent a
8 broad swath of retailers throughout the U.S. Our
9 primary concern is that if the commission is to proceed
10 with a national database, that the database be
11 developed in such a way that it optimizes benefits both
12 for businesses and for consumers involved with
13 telemarketing.

14 MS. HARRINGTON: Thank you, Mallory.

15 Now, I called on Mallory first because he's
16 always a star pupil and does things exactly as we ask.
17 That's what we want you all to do. You all should
18 introduce yourself as Mallory Duncan.

19 John Murray. Can you speak right into the
20 microphone, John?

21 MR. MURRAY: Sure, and tell me if it's working
22 fine. My name is John Murray, and I'm vice president
23 of circulation and marketing for the Newspaper
24 Association of America, which represents pretty close
25 to 90 percent of the newspapers in the United States,

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1 the majority of which, of course, are smaller
2 newspapers, about 85 percent are small newspapers.

3 Our primary concern here today is whether in
4 the process of making rules to protect consumers that
5 we could have an adverse effect on individual
6 newspapers and the smaller businesses that most of the
7 newspapers are. They are very dependent on
8 telemarketing as a source of getting new subscriptions.
9 It's their way of remaining viable by having a large
10 enough constituency to be a successful enterprise, and
11 telemarketing is a big part of it, but yet they're
12 local businesses, and we want to make sure that in the
13 process we recognize those factors and the uniqueness
14 of newspapers.

15 MS. HARRINGTON: Thank you, John.

16 Michael?

17 MR. ROSEN: Good morning, I'm Michael Rosen,
18 and I am here to represent the Association of
19 Fundraising Professionals, so you might expect from
20 that my primary concern here today are issues
21 surrounding do-not-call as it relates to the nonprofit
22 sector.

23 Specifically, we believe that for-profit
24 telemarketing companies that are agents for charitable
25 organizations should be subject to the same rules and

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1 guidelines that apply to the charitable organizations
2 themselves and not be treated as commercial
3 telemarketing companies that offer products and
4 services.

5 MS. HARRINGTON: Thank you, Michael.

6 Now, we've had sentence creep here. We are
7 getting more than one sentence. Char, show us how to
8 do it.

9 MS. PAGAR: Okay, everyone can hear this,
10 right? My name is Char Pagar. I am here on behalf of
11 the Promotion Marketing Association, which represents
12 more than 650 companies that are involved in various
13 aspects of the promotional marketing industry. Our
14 primary concern with the creation of a do-not-call list
15 by the Federal Trade Commission is that if such a list
16 is created, it be done in a manner that is reasonable
17 and practical for business compliance purposes.

18 MS. HARRINGTON: Thanks, Char.

19 Jeff?

20 MR. KRAMER: I'm Jeff Kramer with AARP
21 representing 35 million consumers age 50 and older, and
22 our main concerns are that the National Do-Not Call
23 Registry have as few exemptions as possible and that it
24 not preempt the work the states have done.

25 MS. HARRINGTON: Jim?

1 And could you turn your tents toward me? Could
2 all of you make sure that your name tags are positioned
3 so that I may read them? Thank you.

4 MR. WARDEN: Hi, my name is James Warden, Jr.
5 I'm here on behalf of May Chao, our chairperson and
6 executive director of the New York State Consumer
7 Protection Board. I'm the general counsel.

8 I would say we have probably two overarching
9 concerns. Number one, to the extent that the Federal
10 Trade Commission decides to go ahead with the National
11 Do-Not Call Registry, we would like to make sure it
12 interacts and works with the states in a seamless
13 manner, and secondly, we would like to get the
14 preemption issue, if we could, hopefully clarified.
15 Our view is that the Federal Trade Commission does not
16 have the authority to preempt at the present time.
17 Thank you.

18 MR. ANDERSON: I'm Keith Anderson. I'm an
19 economist with the Commission, so I don't have an issue
20 to grind.

21 MR. HILE: I'm Allen Hile, Federal Trade
22 Commission, and I'm here to listen.

23 MS. HARRINGTON: And I'm Eileen Harrington, and
24 my primary interest is to see that we do the right
25 thing.

1 MS. HARRINGTON-MCBRIDE: I'm Katie
2 Harrington-McBride with the Federal Trade Commission,
3 and I echo the comments of my colleagues.

4 MS. LEONARD: I'm Karen Leonard also with the
5 Federal Trade Commission, and right back at you.

6 MR. GOODMAN: Michael Goodman with the Federal
7 Trade Commission, and I don't have issues or concerns
8 but I'm interested in hearing what everyone has to say
9 about this.

10 MS. DANIELSON: Carole Danielson, Federal Trade
11 Commission. Also I'm here to listen.

12 MR. TOROK: David Torok with the Federal Trade
13 Commission. I am involved in the Telemarketing Sales
14 Rule team as part of the possible implementation
15 program. If the do-not-call registry is adopted, how
16 do we implement it?

17 MR. CATLETT: I'm Jason Catlett from
18 Junkbusters. We want consumers to be able to
19 effectively stop telemarketing calls if they want
20 through enforcement and good rules.

21 MR. PRIDGEON: Good morning. My name is
22 Stratis Pridgeon. I'm here on behalf of the American
23 Resort Development Association representing over 800
24 vacation time-share resorts predominantly and an
25 industry that's over \$7 billion in sales annually. Our

1 primary concern here, of course, is the establishment
2 of a National Do-Not Call Registry that would be
3 acceptable if it's reasonable and based, you know, in
4 fact and provides the necessary business exemptions,
5 business relationship exemptions, that are enjoyed in
6 several of the other states.

7 MR. WALLACE: My name is George Wallace. I'm
8 representing the American Financial Services
9 Association, which is an association of market-funded
10 consumer credit grantors. Our principal concern about
11 the do-not-call list is that it be worked out in a way
12 that is reasonable and practical, that we can comply
13 with efficiently, and eventually that the do-not-call
14 list has preemptive effect.

15 MS. HARRINGTON: Excuse me, I don't know where
16 our sound people are, but we are getting an awful lot
17 of feedback here. Is there a sound board somewhere?
18 Can you reduce the feedback? Thanks.

19 MR. PROCHNOW: My name is Tyler Prochnow. I'm
20 here on behalf of the American Teleservices
21 Association, which is a 2000-member trade association
22 dedicated solely to the telemarketing industry. We're
23 here today to continue to work with the Commission to
24 ensure that any rulemaking that goes through and
25 especially on the do-not-call issue continues to strike

1 the fair balance that the Commission has in the past
2 regarding legitimate business practices and consumer
3 protection.

4 MR. MITCHELL: Good morning, Glenn Mitchell
5 again for the Not-for-Profit and Charitable Coalition,
6 a coalition of 277 nonprofit and charitable
7 organizations throughout the United States, some
8 national, some local, some regional.

9 Our position is that the proposed amendment to
10 the Telemarketing Sales Rule should not apply to
11 fund-raising, charitable fund-raising, directly or
12 indirectly, and by indirectly I mean through the
13 efforts of professional fund-raisers, and we would
14 respectfully submit that the staff should consider
15 exempting fund-raising, both directly and indirectly,
16 for charitable and nonprofit organizations. Thank you.

17 MR. MCGARRY: Good morning, Dennis McGarry with
18 Personal Legal Plans. I'm a small business owner, and
19 my issues and concerns are the same as millions of
20 other small business owners and the self-employed. I'm
21 concerned about both burdensome laws as well as the
22 impacts in our marketplace. Small business owners
23 create three out of four jobs in America.

24 MR. BULMASH: Good morning, this is Bob
25 Bulmash. I'm with Private Citizen, Incorporated. My

1 concerns are that the FTC final regs don't preempt
2 state laws, that they do include for-profit
3 organizations marketing on behalf of nonprofits, and in
4 the final analysis create a plan, an operation that
5 will allow people to get rid of these unwanted calls.
6 It's costing the American public billions of dollars a
7 year.

8 MR. CERASALE: Good morning. I'm Jerry
9 Cerasale with the Direct Marketing Association. We
10 represent over 4000 marketers and their suppliers that
11 sell products directly to individuals or do
12 fund-raising directly to individuals through all
13 channels of communication.

14 Our concern here today on the do-not-call list
15 is that we worry about government regulation
16 significantly harming a \$278 billion-per-year
17 business-to-consumer operation and want to ensure that
18 the Government takes into account the efforts that the
19 industry is already doing in not calling customers who
20 don't want to be called.

21 MR. MAXWELL: Good morning, Dave Maxwell,
22 Consumer Choice Coalition. Our primary concern is just
23 the real impact that this is going to have on commerce
24 and on employment. Thank you.

25 MR. CONWAY: Art Conway, Dial America

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1 Marketing. We're one of the largest outbound
2 telemarketing service bureaus in the country. Our
3 concern is that we feel that if certain issues in
4 telemarketing are adequately addressed by the various
5 government agencies, such as Caller ID, abandonment
6 rates and dead air, there would not be such a perceived
7 need for a national do-not-call list, and we don't want
8 to see these agencies hide behind the do-not-call list
9 in solving the problems with telemarketing when we feel
10 there are other solutions that are more viable and
11 better for the consumer and the industry.

12 MS. GOLDSTEIN: Good morning, I'm Linda
13 Goldstein representing the Electronic Retailing
14 Association. We represent over 300 member
15 organizations involved in all aspects of electronic
16 retailing, which includes telephone sales as well as
17 internet sales. Our primary concerns with the
18 do-not-call list relate to potential inefficiencies and
19 burdens on the industry presented by the lack of
20 preemption of state do-not-call lists, and certain
21 details regarding the implementation of the do-not-call
22 list, such as the reliance on ANI data and the lack of
23 an existing business relationship exemption, we feel
24 may result in unintended consequences for the consumer.

25 MR. PASHBY: Good morning, I'm Michael Pashby

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1 with the Magazine Publishers of America. We represent
2 240 publishing companies publishing over 1500 consumer
3 magazines, and they represent about 85 percent of the
4 consumer magazine dollar volume in this country. We,
5 like most of the industries sitting around this table,
6 have been generally supportive of the national
7 do-not-call list, but as proposed, we believe it is
8 duplicative, confusing, underfunded, and unless
9 substantially changed, will be ultimately unworkable,
10 which could impact consumers and industry in the
11 future. Thank you.

12 MR. BURLISON: Good morning, I'm Rex Burlison.
13 I'm Chief Counsel with the Missouri Attorney General's
14 Office in the Eastern District of St. Louis here on
15 behalf of the National Association of Attorneys
16 General. I would say our primary concern would be the
17 issue of preemption and the timing of the
18 implementation of any proposed rule.

19 MS. GRANT: Good morning, I'm Susan Grant, vice
20 president for public policy at the National Consumers
21 League and director of the National Fraud Information
22 Center, which is a telemarketing fraud hotline that we
23 operate. Our main concern is ensuring that consumers
24 have convenient and effective ways of avoiding unwanted
25 sales calls, and in particular, that states not be

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1 preempted and that if the FTC does create a National
2 Do-Not Call Registry, that it works in tandem with the
3 state regimes.

4 MS. HARRINGTON: And we've been joined by Ann
5 Schneider from the Missouri Attorney General's Office.
6 Do you want to introduce yourself, Ann?

7 MS. SCHNEIDER: I'm Ann Schneider, Missouri
8 Attorney General's Office, worked with the comments
9 that NAAG, the National Association of Attorneys
10 General, submitted on these no-call issues. Thank you,
11 Eileen.

12 MS. HARRINGTON: Thank you.

13 Well, let's get right to the issue of interplay
14 between the proposed FTC national do-not-call list and
15 state lists and laws, and the opening question is, how
16 should the state programs, lists and laws interface
17 with an FTC rule and national registry should it be
18 adopted? What should the interface be?

19 Well, Susan, I am going to call on you, because
20 you actually mentioned that this is a concern. Do you
21 have thoughts about specifically how you think the two
22 should interface?

23 MS. GRANT: Well, I thought that the comments
24 from the New York State Consumer Protection Board were
25 really excellent in that regard. It seems sensible to

1 me that there would need to be sharing of consumers'
2 information back and forth between state lists and
3 federal lists so that there were no big gaps in
4 consumer privacy, and I think that's probably the most
5 important aspect of it for me.

6 MS. HARRINGTON: Okay. And let me remind you
7 to identify yourself when you speak.

8 Art?

9 MR. CONWAY: Art Conway, Dial America.

10 Our position on this is that there should be
11 preemption of the states. The industry does not need
12 another layer of do-not-call lists to cope with. We're
13 having a difficult time coping with the states. It's a
14 quagmire of different exemptions, updates. Eventually
15 our feeling is we're going to probably have 40 or 45
16 state lists. If we're going to go ahead with a
17 national list, give the industry some relief and
18 preempt the state lists.

19 MS. HARRINGTON: Are you saying that it's the
20 need for one list and not a need to preempt state law
21 that gives the states enforcement authority?
22 What's --

23 MR. CONWAY: I'm not in favor of the national
24 -- I just want to make it clear, I'm not in favor of
25 the national do-not-call list --

1 MS. HARRINGTON: Right, but --

2 MR. CONWAY: -- but if there were to be
3 one --

4 MS. HARRINGTON: Right, let me just hone in on
5 that. If there was one list and the requirements could
6 be enforced by the FTC or by the states and by the
7 states under the Telemarketing Sales Rule in federal
8 court or their existing laws in state court, but
9 there's one list, does that solve your problem?

10 MR. CONWAY: Of a national do-not-call list?

11 MS. HARRINGTON: Yes.

12 MR. CONWAY: No.

13 MS. HARRINGTON: Why?

14 MR. CONWAY: I'm saying I don't believe a
15 national do-not-call list is necessary. I believe that
16 the FTC, and maybe you have to get the FCC involved,
17 can do things to take care of some of the problems that
18 are clearly there in outbound telemarketing today. If
19 you address those problems, I don't think you would
20 see such an adverse consumer reaction to outbound
21 telemarketing. I think to create a national
22 do-not-call list is a way for people to get away from
23 the problems by saying don't call me anymore.

24 MS. HARRINGTON: So, you are really not arguing
25 for preemption?

1 MR. CONWAY: I'm arguing that if you go do
2 this, that you ought to preempt the states and let us
3 take some of the burden off the industry of having to
4 deal with all -- the states are going to be dealing
5 with a national do-not-call list that in your estimate
6 is going to be -- some 40 million people are going to
7 sign up for this.

8 MS. HARRINGTON: Okay, Tyler?

9 MR. PROCHNOW: Tyler Prochnow with the American
10 Teleservices Association.

11 The ATA is, in fact, in favor of preemption and
12 would be in favor of one national list.

13 MS. HARRINGTON: Well, let me pin you down on
14 this.

15 MR. PROCHNOW: Sure.

16 MS. HARRINGTON: If there's one national list
17 so that marketers only have to go to one place, why do
18 you need preemption?

19 MR. PROCHNOW: Well, I think you end up in a
20 situation where you have state lists which have
21 separate exemptions, they have different requirements.
22 I think the other biggest issue that you see are the
23 state requirements out there right now that require you
24 to purchase the list. You're out of compliance, you're
25 in violation of state statute if you have not bought

1 the list from certain states, like the State of New
2 York.

3 If you buy the list from the FTC, in theory, if
4 there is a National Do-Not Call Registry, which the ATA
5 is on record opposing as well, but in that instance, if
6 it's going to go through, it needs to be preemptive for
7 that very reason, so you don't have this cumulative
8 burden of having to purchase list after list after
9 list, leaving the states to set their rules as they see
10 fit to fund their own programs.

11 MS. HARRINGTON: What if we assume that the
12 reason that the states charge for their list is to
13 cover their cost of assembling the list and that the
14 states and the Federal Trade Commission agree to pool
15 registration information into one database and that
16 there's a one-stop shop for marketers?

17 MR. PROCHNOW: I'll tell you it's a start, but
18 I don't think that that solves the problem either.

19 MS. HARRINGTON: What problem doesn't it solve?

20 MR. PROCHNOW: Well, it doesn't solve the
21 problems of all the different exemptions that are
22 available at the state level.

23 MS. HARRINGTON: But what's the problem there
24 if the state exemptions are more -- if the FTC's
25 coverage --

1 MR. PROCHNOW: The confusion that comes from
2 both consumers and businesses. If I'm exempt in one
3 state and not in another, if I'm a consumer that signed
4 up for a state list that in some way, shape or form is
5 pooled into a national list, you know, the
6 administrative nightmare of trying to figure out who
7 you can call and who can't based on the administrative
8 requirements of the states I think would place an
9 extreme burden on the industry.

10 MS. HARRINGTON: George?

11 MR. WALLACE: Just one follow-up on what Tyler
12 is trying to point out to you. You've got both a list
13 -- I'm sorry, I'm George Wallace. I'm used to talking
14 out of turn.

15 To go back, you've got the list question, which
16 Eileen Harrington has raised, and there is also the
17 question of the state compliance rules, and the state
18 compliance rules are different, and they represent a
19 substantial capital cost for anybody going into this
20 business. You've got to hire the appropriate lawyers
21 who know the rules; they're expensive. You've got to
22 develop your electronic systems so that you control
23 your people who are calling in compliance with that
24 system. That's a substantial capital cost that
25 discourages small businesses from trying to get into

1 the business of telemarketing, and they do do
2 telemarketing and they should do telemarketing.

3 What you're forcing them to do is they can't do
4 it themselves without getting slammed with an
5 enforcement order. They have got to hire one of the
6 few national or major regional telemarketing firms to
7 do the work for them. That increases their costs. It
8 seems to me that the simple system that accomplishes
9 the policy goal that you are pushing here and
10 encouraging is to have federal preemption, one set of
11 rules, one set of exemptions, one list, one-stop
12 shopping. That's efficient. That helps small
13 business. I think that's what you want to accomplish.
14 That's my comment.

15 MS. HARRINGTON: Thank you.

16 Bob?

17 MR. BULMASH: Bob Bulmash, Private Citizen,
18 Incorporated.

19 I don't think there should be preemption. The
20 FTC's regs, if they go into effect, with the exemptions
21 that are available to common carriers, telephones,
22 insurance companies, banks, so on and so forth, if
23 state laws are preempted, those firms, those industries
24 are going to be able to call right through.

25 Because of the holes that will necessarily be

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1 in the FTC's final regs if they come to pass, we do
2 need state laws to still be extant. The fact that we
3 have telemarketers complaining about the cost of buying
4 various lists, I alluded to earlier in my introduction
5 of myself that American residents pay billions of
6 dollars in order to avoid telemarketing calls through
7 Caller ID, Privacy Manager and other types of
8 equipment, answering machines, so on and so forth, and
9 I will go into that further in the future.

10 I'm sorry that the telemarketing industry
11 doesn't want to pay for their sins, but unfortunately,
12 if we want to be left alone in our home, which is our
13 fundamental right, somebody's got to pay the price.
14 We're paying the price for our privacy. Maybe there's
15 some other price to be paid.

16 MS. HARRINGTON: Thank you.

17 Okay, now, I hope that people will focus in on
18 the question that I've asked a couple of times, which
19 is if there is one list that is assembled from the
20 whole variety of sources that presently and may in the
21 future come to provide a registration portal, so that
22 businesses have to check their list once, what's the
23 economic justification for preemption, that's my
24 question, or is there one? We're looking for some
25 discussion on that.

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1 Stratis?

2 MR. PRIDGEON: I don't think -- I'm sorry,
3 Stratis Pridgeon with ARTA.

4 I don't think that -- well, first, if there
5 are consistent rules and regulations regarding the
6 acceptance and sign-up of the names on the list, which
7 there isn't right now -- I mean, as has been pointed
8 out, each state is a little different -- then that
9 might be going down the right road, but I don't think
10 from an enforcement standpoint and other issues that
11 you can discount preemption. I think that is necessary
12 in order for it to work.

13 I mean, if it's left in the states' hands, and
14 certainly not to take away from any of the states'
15 enforcement on this, I think it would be inconsistent.
16 I think it needs to be at one level.

17 MS. HARRINGTON: Rex?

18 MR. BURLISON: Well, Eileen, to focus on what
19 you're trying to focus on, you have got to separate
20 first the list from the enforcement when you look at
21 preemption. The industry wants to not go to 45 states
22 for lists. If there is one national list, that would
23 satisfy that concern, but the issue then becomes, do
24 you preempt the states from enforcing their present
25 law?

1 As the proposed rule is written, it exceeds
2 many of the laws in many states as to exemptions.
3 There's less exemptions in the federal law. So, if
4 you're looking for the issue of enforcement with
5 regards to preemption, it's really a ghost issue. If
6 the federal law holds the bar higher than most of the
7 state laws, then the federal law is going to be used by
8 the states anyway to go after the phone companies if
9 this reaches the FCC's involvement or other exempted
10 entities that certain states have allowed, the states
11 will just go after those entities in the federal
12 courts, and the entities that have no exemptions under
13 the state law, the states will just use that law.

14 So, really, once you have a national list, the
15 issue of preemption if a federal law is stringent
16 enough is really a ghost issue, and I believe that's
17 where the focus of this question is going.

18 MS. HARRINGTON: Okay.

19 Jerry?

20 MR. CERASALE: Jerry Cerasale, Direct Marketing
21 Association.

22 I think one thing, the question asked for
23 interplay between a federal list and state lists, and
24 it's just looking at the Government. Of course, DMA
25 has more than a half million people on its list, and

1 how does it interplay with that as well is part of the
2 key.

3 In looking at trying to make it easier for
4 one-stop type shopping for marketers, the DMA is trying
5 to get the ability to have all state lists together,
6 and marketers can come to us in one spot and get lists,
7 and we have a very huge push-back from states saying
8 that each marketer has to pay a certain amount, the
9 costs keep going up, and the enforcement -- as a
10 matter of fact, trying to get people not to call people
11 who are on lists, we try and help that. We get
12 threatening letters from attorneys general saying that
13 you're violating the law because you have to have other
14 people pay and so forth, so that this thing becomes a
15 money-maker in that instance, not trying to reduce
16 costs.

17 MS. HARRINGTON: Jerry, I have heard that
18 characterization, and we have looked through carefully
19 and have not found a state that's making money. Do you
20 have some data on that?

21 MR. CERASALE: That's making money?

22 MS. HARRINGTON: Yeah, that it's not a
23 money-maker, that is.

24 MR. CERASALE: We understand that Indiana is
25 not. New York has threatened us in trying to put

1 together a ban on marketers to be able to come to the
2 DMA and get lists of all the states. We have been
3 threatened by New York that we would be violating state
4 law --

5 MS. HARRINGTON: Right, but I am going to your
6 assertion that it's a money-maker.

7 MR. CERASALE: Oh, no, I didn't say it was a
8 money-maker. I said states are trying to get money on
9 it. I don't know whether they're making money or not
10 making money.

11 MS. HARRINGTON: Okay.

12 MR. CERASALE: That's not -- I don't see their
13 books, let's put it that way, I only see what's in the
14 press.

15 From the point of view of different state
16 enforcement, right now -- okay, if the federal law is
17 more stringent than the state laws, then, of course,
18 you are going to get state prosecutors going after
19 federally, but if you don't preempt, there is nothing
20 to preempt the states from changing their laws and
21 becoming -- even if today what you're proposing is the
22 most stringent, and that's not the case I don't
23 believe, but is the most stringent, states can make
24 different changes, and if you don't preempt, then you
25 mess up the situation again on enforcement.

1 You have a situation, you have to also
2 understand, as you go with one huge list and so forth
3 and how it's distributed, you're going against smaller
4 marketers. The larger the list, the more expensive it
5 is to run it, and so we will get to that in other
6 panels, but you have that type of interplay as well
7 that comes into play here as you're looking at this
8 regulation, which we think -- you know, I mean,
9 business is doing things, and we think that you have to
10 look at that as well.

11 Thanks.

12 MS. HARRINGTON: Karen, do you have a question?

13 MS. LEONARD: Yeah, I was wondering, as
14 industry looks at the compliance costs for dealing with
15 the current state regimes, where do you see the bulk of
16 your costs? Is it in collecting, is it paying for the
17 lists, scrubbing the lists, or is it in understanding
18 what the various state regs and exemptions are and
19 ensuring compliance in that regard? Is it the
20 administration of buying lists, scrubbing it, et
21 cetera, or is it in those further undertakings?

22 MS. HARRINGTON: Let's hear from Mallory and
23 Linda, whatever it was that you wanted to say about the
24 discussion that we're having, in addition to any
25 comments that you have on Karen's question, please.

1 Mallory?

2 MR. DUNCAN: Mallory Duncan, National Retail
3 Federation.

4 I suppose I should start by saying two points.
5 One, preemption is in many respects, as a practical
6 matter, a false issue, and number two, that the issue
7 is more complicated than the single question that's on
8 the table.

9 If you'll bear with me just for a moment,
10 what's really needed are two basic things. One, not
11 preemption but comity between states and the Federal
12 Trade Commission in terms of coming up with one list.
13 The second thing that's needed is a singular list that
14 reflects what virtually all the states reflect, which
15 is the established business relationship exemption. If
16 you can do that, you will have achieved one list, it
17 will combine both the federal and the state names and
18 numbers, and you would have multiple enforcement of
19 that singular list.

20 That would be more protective than existing
21 state law, less expensive for businesses to comply
22 with, and if you can achieve such a one list, the issue
23 of preemption goes away.

24 MS. HARRINGTON: Linda?

25 MS. GOLDSTEIN: I think Mallory and I are very

1 much on the same wavelength, and I really wanted to
2 address specifically I think the direction that you're
3 trying to move in, that having one list certainly
4 solves one problem, which is the inefficiencies of
5 having to scrub against multiple lists and the costs
6 that that entails, but I don't think you can neatly
7 separate out enforcement from the list, because
8 enforcement necessarily brings into play the
9 application of safe harbors, which would be different,
10 and the various exemptions that would apply, but I
11 think if we take your principle, which is
12 harmonization, and say we are going to harmonize
13 everything, which would include the lists, the
14 exemptions, the existing customer relationship and the
15 safe harbors, so that ultimately -- what we're looking
16 for here is an efficiency that will allow businesses to
17 set up one procedure for compliance, and that procedure
18 would protect them and ensure compliance across the
19 board.

20 So, I guess I would have to disagree that, you
21 know, you can separate out the lists from enforcement.
22 One necessarily follows the other, and whether you call
23 it preemption or harmonization, you've got to have a
24 single set of standards that applies all through the
25 process.

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1 MR. DUNCAN: May I clarify that?

2 MS. HARRINGTON: Okay, and could we get the
3 feedback reduced again, please?

4 MR. DUNCAN: I think I was agreeing with --
5 Linda and I were agreeing. What I was saying was
6 singular enforcement -- I mean multiple enforcement
7 for a singular rule, which I think necessarily follows.

8 MS. HARRINGTON: Okay, there are a number of
9 issues that you've introduced, and I know there are
10 people who want to speak, but I am going to ask -- I
11 just want to take a sense here of where we are at the
12 table.

13 Is there anyone at the table who believes that
14 a harmonized list is a bad idea? Is there anyone who
15 thinks that that's a bad idea?

16 MR. CATLETT: Please define "harmonized list."

17 MS. HARRINGTON: Okay, let me define -- and if
18 somebody wants to change the definition, speak up, but,
19 you know, we're having a conversation here.

20 If all of the state registrations and
21 registrations to the FTC were harmonized in one list
22 and that one list is made available to marketers,
23 that's what I'm talking about.

24 MR. CATLETT: Eileen, I think --

25 MS. HARRINGTON: Is there anyone who thinks

1 that that is a bad -- I don't want a show of hands.

2 Is there anyone that thinks that's a bad idea?

3 MS. GRANT: Can we ask you a question
4 before --

5 MS. HARRINGTON: Sure, Susan.

6 MS. GRANT: Susan Grant, National Consumers
7 League.

8 You're not talking about exemptions --

9 MS. HARRINGTON: I'm not talking about
10 exemptions. I'm just talking about registrations.

11 MS. GRANT: Okay.

12 MS. HARRINGTON: I'm not talking about -- I'm
13 talking about the compilation of the list.

14 MR. CATLETT: Eileen, could I just suggest the
15 word "merged" or "compiled" rather than "harmonized,"
16 which suggests some sort of regulatory --

17 MS. HARRINGTON: Fine, merged, fine.

18 MR. CATLETT: Okay.

19 MS. HARRINGTON: A merged list. Is there
20 anyone who thinks that that is a bad idea? And I'd
21 like the economic justification for your position.

22 Glenn?

23 MR. MITCHELL: Well, the economic
24 justification, I'm not so sure I can give you -- Glenn
25 Mitchell on behalf of the Coalition.

1 The interplay question, which is the first
2 question on the agenda --

3 MS. HARRINGTON: But that's not the question
4 I'm asking right now, Glenn.

5 MR. MITCHELL: Let me just be heard here.
6 Three out of four states who have --

7 MS. HARRINGTON: Glenn, we are not talking
8 about that right now.

9 Dennis?

10 MR. MCGARRY: Talking about it or not, but my
11 concern -- I am all for a harmonized list if the list
12 -- if the integrity of the list is dealt with.

13 MS. HARRINGTON: Okay, integrity concern.

14 Jerry?

15 MR. CERASALE: If you have a harmonized list, a
16 merged list or whatever and have different exemptions
17 applied to different names on each list, that doesn't
18 work.

19 MS. HARRINGTON: Does anyone have any -- in
20 addition to Jerry's comment -- any objection or
21 concern about costs and burdens to marketers in a
22 merged list?

23 Jim?

24 MR. WARDEN: Without going to some of the more
25 general comments I had on that particular item, we have

1 had feedback particularly from smaller businesses in
2 the State of New York that they are having problems now
3 coping with the physical size of our list, and if you
4 go to a national list, you are obviously going to add
5 to that problem.

6 MS. HARRINGTON: If the data is available by
7 area code, so that somebody could only get -- you
8 know, so that they could get the area codes for New
9 York or their part of New York, does that help?

10 MR. WARDEN: I understand that's what's on the
11 table now and in your follow-up proposal, and frankly,
12 that's too new, and I don't have enough feedback or
13 expertise to speak to that, but certainly if there were
14 a way for a smaller telemarketer simply to access a
15 slice of the data, that would address part of the
16 concerns, certainly.

17 MS. HARRINGTON: Linda?

18 MS. GOLDSTEIN: I just want to echo what
19 Mallory said, which is that it's just not as simple as
20 it might first appear, because you also have issues of
21 by what mechanism did that person get on the list, if
22 there are different mechanisms used to register --

23 MS. HARRINGTON: Right, that's the integrity
24 issue.

25 MS. GOLDSTEIN: -- and how long are people

1 going to stay on the list, are there different renewal
2 times. So, while the concept, it sounds like a good
3 goal, when we start to get into the details, there are
4 a lot of concerns that begin to crop up with
5 implementation.

6 MS. HARRINGTON: Keith?

7 MR. ANDERSON: Yeah, I want to go back to
8 Jerry's question and see if I understand what's going
9 on. Is your concern that we have two consumers in New
10 York, one of whom signs up through New York State and
11 one who signs up through the Commission, and that who
12 can call that person depends on what one they signed up
13 with?

14 MR. CERASALE: Yeah, this is Jerry Cerasale of
15 the DMA.

16 Let's use it in an example that's not exactly
17 true but kind of sets it up. Let's use nonprofit, we
18 have nonprofits here. New York exempts nonprofits, the
19 Federal Trade Commission does not exempt nonprofits,
20 and Jerry Cerasale signs up through the New York City
21 -- I live in New York City, and Jerry Cerasale signs up
22 with the Federal Trade Commission, and Linda Goldstein
23 signs up with New York State. A nonprofit can call
24 Linda, cannot call me, and if you're on the same -- it
25 just makes it impossible to do.

1 MS. HARRINGTON: Well, that's an issue of
2 interpretation in part, of statutory or regulatory
3 interpretation. I'm not sure that we would reach the
4 same conclusion.

5 MR. MITCHELL: What's interpretive about that?
6 I don't follow that, Eileen. His example, I don't see
7 any interpretation there. There's one list you can;
8 there's one list you can't.

9 MS. HARRINGTON: I think that the assumption is
10 that the act of registration invokes a particular law
11 rather than the act of registration being an
12 administrative function that the consumer undertakes,
13 and I think that that's an issue. It's a legal issue.

14 MR. WARDEN: No, Eileen, what he's talking
15 about -- and I agree with the DMA representative --
16 is really inadvertent preemption.

17 MS. HARRINGTON: Okay.

18 MR. WARDEN: In other words, if you are -- and
19 he's quite correct that in New York, charities are
20 permitted to solicit and professional fund-raisers on
21 behalf of charities are permitted to solicit, okay?
22 Under your proposed rule, the charities themselves
23 could solicit, because they're specifically exempted
24 under federal statute, but the organizations who might
25 solicit on their behalf could not, okay?

1 MS. HARRINGTON: That's right.

2 MR. WARDEN: Now, how is anybody going to know
3 from a telemarketing point of view what they can call
4 or what they can't? In effect, their risk of violating
5 federal law, even if they make a call within New York
6 State and they're supposedly okay under our law, so
7 federally you have inadvertently preempted us.

8 MS. HARRINGTON: Rex, did you want to say
9 something?

10 MR. BURLISON: It's back to the issue of you
11 have got to separate the list from enforcement. Just
12 because you sign up on a state list or the federal list
13 has nothing to do with you automatically choosing to
14 get an exemption by that state or not get an exemption.
15 That's why you have to separate the two.

16 The list is a compilation of numbers that will
17 be used by the industry to scrub their numbers against.
18 Now, whether or not the number that comes out after
19 scrubbing, whether or not that's going to be a
20 violation of law, that's a separate issue, but, you
21 know, we have got to separate the compiling and the
22 integrity of the list from the enforcement.

23 MS. HARRINGTON: Okay, we're going to move on
24 to the existing business relationship issue, and here
25 is my question:

1 Under the proposed amendment, businesses may
2 call customers who give their permission to be called.
3 Why doesn't that suffice for marketers?

4 Art?

5 MR. CONWAY: Art Conway, Dial America.

6 Our question on this is, do you really think
7 people are going to do that, to go through the effort
8 to do that? You've come out and said that the
9 company-specific do-not-call thing doesn't work, list
10 doesn't work. I don't believe that people are going to
11 on their own go out and sign up and say, okay, company
12 X, you can call me. I don't think that's realistic.

13 MS. HARRINGTON: Okay, George?

14 MR. WALLACE: Starting with my name, George
15 Wallace, American Financial Services Association.

16 Just starting with the basic premise itself,
17 there is nothing wrong with contacting your existing
18 customer, as far as I know, to talk about the
19 relationship that you have, and if that's a financial
20 services product, that involves a range of stuff that
21 the customer may have bought from you already or may
22 need as part of the counseling process that goes on.

23 I don't see why you want to interfere with that
24 process, which consumers generally value. So, I think
25 that existing customers should be preserved. I'm

1 concerned that your rule is overbroad in this respect.
2 I'm also concerned that the definition of "outbound
3 call," which I understand is not on the table at this
4 particular moment, so broadens the effect of the
5 do-not-call rule that it interferes with customer
6 service functions.

7 It also, I believe, interferes with debt
8 collection functions, because I think that the rule can
9 be abused by consumers to stop debt collection calls
10 the way you have it written at this particular point.

11 MS. HARRINGTON: How is a debt collection call
12 a telemarketing call?

13 MR. WALLACE: Because you go on -- as part of
14 the debt collection process, you go on often and say,
15 do you need to restructure your debt? I think that's
16 selling an additional product or service. I don't
17 know. I mean, your rule is extraordinarily ambiguous
18 in practical application, and I think that you have to
19 watch out for that. This is a sweeping rule, and
20 you're interfering with areas that you don't intend to
21 interfere with.

22 MS. HARRINGTON: Do you have an example of an
23 exemption for existing business relationship that isn't
24 also extremely ambiguous?

25 MR. WALLACE: A very fair --

1 MS. HARRINGTON: And so who should the
2 ambiguity favor?

3 MR. WALLACE: -- a very fair question. I think
4 if you look at some of the states' existing exemption
5 of businesses, they say simply if it's an existing
6 relationship. I think that's strong enough and that's
7 clear enough. I would also like one for debt
8 collection, but I mean, you know, this is not the day
9 to express our wish list, but I want you to understand
10 you have a problem here. You're interfering with
11 legitimate activity.

12 I don't necessarily say that I can solve today
13 at this moment your drafting problem, but I think that
14 it's a problem that needs to be addressed seriously by
15 the Commission. I know you don't want to be overbroad,
16 and I think it's a serious problem.

17 So, I think that if you start from recognizing
18 that to some extent my problems with your approach is
19 that you've got an overbroad regulation, in part it's
20 because I think you're interfering with legitimate
21 business activity when you're trying to deal only with
22 abusive behavior. I think that if you start from those
23 two things, you can see where I'm coming from.

24 In addition, your question really was, why
25 doesn't the sign-up process really work? And let me

1 tell you how in our industry it's likely to work. Our
2 industry is a document-based industry. We deal with
3 our customers based on their signature on a money
4 obligation. We will probably add to that money
5 obligation an additional statement, "Will you please
6 allow us to call you at this telephone number?"

7 So that for our ongoing, new customers, we will
8 have an existing customer exemption. I think that to
9 some extent I would point out to you that will be
10 broader than perhaps a well-drafted existing customer
11 exemption would be, and you may wish to consider that.

12 Now, in addition, we have a whole bunch of
13 customers that have relationships with our industry
14 that last for 20 or 30 years. Those customers we will
15 not have any way of -- I mean, we will have to solicit
16 them if we wish to deal with them on a financial
17 services basis, on an amalgamated financial services
18 basis as opposed to a single product basis. I think
19 that that's interfering with our legitimate ability to
20 market to our customers, and that's why I say this is
21 overbroad.

22 MS. HARRINGTON: Jason?

23 MR. CATLETT: Thanks, Eileen, Jason Catlett.

24 There shouldn't be an exemption for an existing
25 business relationship. If I buy a Slurpee at a

1 7-Eleven, I don't want them calling me at home and
2 saying try a new flavor. If the relationship with the
3 customer is of sufficient quality that they have the
4 opportunity to ask, may we telemarket you, check here
5 if we can call you at home to tell you about our new
6 flavor of what Slurpee, fine, let them ask permission,
7 but it's entirely appropriate to only telemarket if
8 affirmative permission is found. You have plenty of
9 opportunity to do that.

10 MS. HARRINGTON: John?

11 MR. MURRAY: I believe particularly in the
12 newspaper industry -- once again, I can speak better
13 about newspapers, that's where I've always worked and
14 what I know about -- we need to have the ability to
15 call people with which we have an existing business
16 relationship. An existing business relationship for a
17 newspaper in a small town constitutes a large part of
18 the population obviously.

19 You have classified customers who are also
20 subscribers, subscribers who are classified customers,
21 you have customers who are subscribers, and things are
22 changing today in how consumers -- in consumer
23 life-styles, and people often, for instance, need to be
24 called when the money has run out for their newspaper
25 subscription so they can renew while they're still

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1 receiving it, to remind them, do you want me to put
2 this on a credit card, or did you remember to pay your
3 bill so you can continue your service? That's an
4 obvious business relationship.

5 But also there's the less obvious one such as a
6 classified customer who's put an ad in for a garage
7 sale. So, because of the uniqueness of the newspaper
8 business and its reliance on the telephone for so many
9 aspects of it in dealing with its customers, whether
10 they be advertisers or whether they be subscribers, but
11 particularly the subscribers and the readers, is the
12 reason that the newspapers have asked for an exemption
13 from the rule.

14 Also, the calls from newspapers, as I said, are
15 generally a reaction to a change in the relationship
16 with the business, not a cold call. The amount of
17 money that we're dealing with doesn't really introduce
18 questions of liability or fraud. A newspaper
19 subscription, I think average across the country is
20 less than \$3. So, for all those reasons and just the
21 civic role and responsibility a newspaper has in
22 maintaining its subscriber base is the reason we're
23 asking for an exemption.

24 But our example I think applies in other
25 situations, too, that there should be a lot of latitude

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1 in calling existing customers, because often it is a
2 service and convenience for the customer. It's not
3 always a burden or harassment on them, and I think that
4 needs to be considered.

5 MS. HARRINGTON: Okay. Katie has a question,
6 and I want to remind you that the question that I've
7 asked is why the proposal to allow calling of existing
8 customers, if they get permission, doesn't work. I'm
9 not interested in a rehash of philosophical objections
10 or your comments, but we really need to focus in on the
11 question that we've asked.

12 Katie, what's your question?

13 MS. HARRINGTON-MCBRIDE: I think that this may
14 help to maybe get at some of the issues we saw in the
15 comments. A number of commenters who advocated for an
16 existing business relationship, presumably in lieu of
17 our approach to get authorization to call existing
18 customers, suggests that consumers simply will not
19 understand the gravity of their choice to be placed on
20 a national no-call list, that they will misunderstand
21 that by doing so, they will stop all calls from
22 entities that are covered by the FTC's jurisdiction.

23 Is that the case, that consumers would
24 misunderstand, and if so, couldn't that be cured by
25 education?

1 MS. HARRINGTON: Okay, an additional question
2 combined with the one that I've asked.

3 Ann?

4 MS. SCHNEIDER: Ann Schneider, National
5 Association --

6 MS. HARRINGTON: Would you use your Mike, Ann?

7 MS. SCHNEIDER: I'm sorry, thank you. Ann
8 Schneider, National Association of Attorneys General.

9 You know, we were somewhat appalled by the
10 suggestion that consumers cannot or are incapable of
11 understanding the significance of this decision, and
12 education, to the extent necessary, you know, certainly
13 is viable.

14 We also think that the method suggested by the
15 FTC is not unreasonable and in many circumstances will
16 be fairly easy to execute by businesses. To the extent
17 that the Commission might decide that there should be
18 some sort of exemption in this area, we would encourage
19 the Commission to look at this whole issue from the
20 vantage of the consumer and would direct the Commission
21 to at least evaluate what the State of California, the
22 Attorney General's Office, has done in their rulemaking
23 and their interpretation of what existing business
24 relationship should be, you know, take that into
25 consideration.

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1 MS. HARRINGTON: Thank you.

2 We're going to hear from Michael Rosen and then
3 Michael Pashby.

4 MR. ROSEN: Michael Rosen, Association of
5 Fundraising Professionals.

6 I think having people first opt out of
7 telemarketing, then opt back in, just sort of defies
8 human nature. Every time you ask an individual to take
9 action, you are going to have a significant percentage
10 simply overlook it, not understand it, intend to do it
11 but put it to the bottom of the pile, and this notion
12 that this can be overcome with education and just
13 tossing that out without attaching a cost to it I think
14 is ridiculous.

15 If we're talking about serving the needs of the
16 consumer, I think we want to make things as easy for
17 consumers as possible, and the easiest way to do that
18 in this particular case is by allowing the exemption
19 for preexisting business relationship.

20 It's also the least expensive way to protect
21 the consumers, because if there's a cost associated
22 with educating them, you can sure bet that business is
23 going to pass that cost along to the consumer.

24 MS. HARRINGTON: Michael?

25 MR. PASHBY: Michael Pashby, MPA.

1 Obviously we believe that a prior business
2 relationship exemption should exist, and there's a good
3 economic reason for it for industry, and that's that
4 response rates for recent customers are generally more
5 than double the response rates for people who have not
6 been recent customers. So, there is a good economic
7 reason.

8 But in addition, the consumer is protected as
9 well, because the consumer has the opportunity to ask
10 that marketer to go on their company-specific
11 do-not-call list, and no one has actually pointed that
12 out here. It's not an all or nothing. You can go onto
13 the national list, but you can also go onto the
14 company-specific list as well. So, if the consumer
15 does not want to receive those calls, they can ask that
16 company to place them on their own list.

17 And we believe that a reasonable business
18 relationship exemption would be for a two-year period
19 since the consumer's received goods and services or if
20 the consumer has initiated business contact with the
21 company.

22 MS. HARRINGTON: Jeff?

23 MR. KRAMER: Thank you, Jeff Kramer, AARP.

24 We would argue the opposite. We think the
25 national registry is important and that if a consumer

1 chooses to do business with a certain company, they
2 would give that authorization, and I think we're
3 selling the consumers short here. I'm not sure they
4 need a phone call to remind them that the newspaper
5 subscription is expiring and then to be sold additional
6 products and services. I think if my subscription
7 expires because I didn't pay attention to it, I will
8 say, oh, I'm not getting my Washington Post, I think
9 I'll call and find out why my subscription's expired,
10 and then the consumer is taking the lead and the
11 merchant can talk to them there. So, we think that the
12 exemption is not necessary.

13 MS. HARRINGTON: Okay, Glenn?

14 MR. MITCHELL: Yes, Glenn Mitchell again for
15 the Coalition.

16 The Coalition is in favor of the exemption for
17 a prior -- I should note not a business relationship
18 but a donor relationship. In particular, there's an
19 irony there, because the Telemarketing Sales Rule
20 certainly was never intended to reach a prior donor to
21 a charitable organization, and I would submit that the
22 exemption should apply.

23 When I make that argument, Eileen, certainly I
24 am not giving away any of my larger argument, of
25 course, that the entire nonprofit sector should be

1 exempt. I just want to make that clear for the record.

2 MS. HARRINGTON: Okay, Tyler?

3 MR. PROCHNOW: Tyler Prochnow with the American
4 Teleservices Association.

5 I hope I can address your questions in order.
6 First of all, why is the express verifiable
7 notification a problem? From our standpoint, and I
8 think it was raised earlier, I think it would create a
9 significant problem in that, yes, in new customers, you
10 may have the option of being able to go to that person,
11 whether it's a document-based program like the
12 financial services or others, where you would have a
13 permission-based system, where you're contacting
14 customers, but for all of those people who are already
15 customers of yours in your database, you would have to
16 go back and expend a significant amount of money to
17 recontact those people, some way of trying to get their
18 permission.

19 Well, if they are on the do-not-call list, you
20 can't call them to get their permission. So, you would
21 have to go through some type of process --

22 MS. HARRINGTON: Well, what type of -- let me
23 ask you about that, Tyler. If this becomes law,
24 presumably there's going to be some delay between
25 promulgation and the effective date. Would that permit

1 -- you know, where it wouldn't be illegal to contact
2 existing customers to ask for their permission.

3 MR. PROCHNOW: I don't think I can answer that,
4 I mean, not knowing how much time there would be.
5 Every company is in a different situation. I think
6 that's a loaded question.

7 MS. HARRINGTON-MCBRIDE: Well, I hope this one
8 isn't quite as loaded, but this is Katie
9 Harrington-McBride at the FTC, and I have a further
10 follow-up on that.

11 Wouldn't it be possible -- it seems to me,
12 anyway, that there should be other methods of
13 contacting people who you have existing business
14 relationships with. I know some of the examples that
15 have been put forward are companies like cable
16 companies from whom I receive a bill every month. My
17 financial services providers provide me regular
18 statements.

19 Are there not other methods for businesses who
20 want to do telemarketing to their existing customers as
21 one channel, are there not other channels to which they
22 could reach out to their customers for authorization to
23 call?

24 MR. PROCHNOW: There may be. Those channels
25 usually are not as effective. I mean, if you are doing

1 telemarketing, you are doing it for one pretty good
2 reason, because it works, but it's also an expensive
3 process, too, to switch gears on a channel on which you
4 already have a database which you have used for years
5 possibly, contacted consumers via the telephone.

6 Now you've got to take that practice, something
7 that's ingrained and probably your primary business
8 model, and switch gears --

9 MS. HARRINGTON-MCBRIDE: I'm sorry, I'm not
10 actually suggesting switching channels. I'm suggesting
11 that if you wanted permission to continue marketing in
12 the channel that you thought most effective,
13 telemarketing, that you use an alternate channel.

14 For example, on my monthly bill I get a
15 statement that says, you know, we would like to get
16 permission to call you about special offers and explain
17 what the benefit to the consumer would be and seek
18 their consent that way.

19 MR. PROCHNOW: That's assuming that you're
20 dealing with situations where you're getting a monthly
21 bill or there's constant contact of another type with
22 that consumer.

23 MS. HARRINGTON-MCBRIDE: Are there examples
24 that industry can point to of existing business
25 relationships where there's no ongoing contact via some

1 other channel?

2 MS. HARRINGTON: Okay, that's another question.

3 MR. PROCHNOW: Can I just --

4 MS. HARRINGTON: Yes, go ahead, Tyler.

5 MR. PROCHNOW: Two other points. One, on your
6 education side, you know, I think you'd be talking
7 about a tremendous amount of education and it would
8 certainly be education that had to take place prior to
9 the time that the customer signed up. I mean, you
10 can't have them all join up, sign up for these lists
11 and then go back, you know, a month, two months or
12 three years later and say, oh, by the way, do you
13 understand what it was that you did?

14 I mean, it would almost be a situation where
15 you would have to sit down individually with each and
16 every consumer as they signed up and say, do you
17 understand what you're doing here? That would be the
18 only way that an education program in my mind would be
19 an effective means of explaining to consumers, you
20 know, what the ramifications of their decisions are.

21 And I found it interesting, being a lawyer
22 practicing in Missouri, that there was the assertion
23 that consumers are not confused by what goes on. We
24 get contacts from consumers all the time on both sides
25 of the issue. One, I didn't know that these companies

1 could call me, and vice versa, I didn't know that my
2 lawn care company or a lawn care company or a local
3 business couldn't call me by signing up for these
4 lists. I get that all the time. Most people know who
5 I represent. So, there is a tremendous amount of
6 confusion, and that presents itself every day.

7 MS. HARRINGTON: Stratis?

8 MR. PRIDGEON: Stratis Pridgeon, American
9 Resort and Development Association.

10 You have kind of gotten to me at the end, I am
11 trying to remember the original question, but the --

12 MS. HARRINGTON: Well, the gist of the question
13 here is why doesn't the opportunity to gain consent
14 from consumers satisfy the need? And let me be even
15 more blunt. Do you people want to call people who
16 don't want to be called? I mean, do you want to try to
17 overcome their reluctance to receive calls?

18 MR. PRIDGEON: One more question, I'll try to
19 answer as many as I can.

20 In the context of someone, especially in our
21 industry where we have people who may make a one-time
22 purchase, kind of getting back to what you were talking
23 about, the ability to contact these people on an
24 ongoing basis, I mean, once they have made their
25 purchase and maybe no longer -- I'll use the example

1 of financing, and I can kind of tag into the
2 Graham-Leach-Bliley Act on that, we may not have a
3 continuous contact with them.

4 There may be magazines that go out or something
5 like that, but from the standpoint of getting
6 individual opt-ins -- and even doing that, I mean,
7 we're talking about -- so, what language do we use? I
8 mean, this is the problem we ran into with the
9 Graham-Leach-Bliley Act, which was extremely costly to
10 our members and to other people in other businesses in
11 the industry and the confusion that resulted from that.

12 So, I mean, what language do we use, number
13 one, in order to get an opt-in? How far does that go?
14 I mean, we have relationships with people on different
15 levels. We have an owner relationship where that
16 person is a consistent -- almost like having an
17 account. They may have an account with a bank that is
18 ongoing. We have someone that may have made a one-time
19 purchase of a vacation package. Can we contact them?
20 That's a different level.

21 Then we have the level of some of our members
22 and their different synergies, their different
23 relationships, provide travel services, can the -- in
24 the affinity marketing context. Can we adopt an opt-in
25 that allows us to contact that person at every level

1 within that relationship?

2 I think it just seems to be very confusing now
3 that there's an automatic opt-out, and then we have to
4 opt back in. I think from the standpoint of our
5 current customers, they have the ability to say no, we
6 don't want to be contacted anymore. I don't think that
7 will be the case, but I think that the burden should be
8 moved over to the customer at that point, because there
9 is a relationship. Where there is no relationship
10 whatsoever, it's a new customer, then I think we can
11 get the opt-in in a different way.

12 MS. HARRINGTON: Okay.

13 Susan?

14 MS. GRANT: Susan Grant, National Consumers
15 League.

16 I think that the approach that the Commission
17 proposes does work, and I think it works for consumers
18 and for businesses for the stated purpose, which is
19 separating out people who want to get calls from people
20 who don't want to get calls.

21 I think that the opposite argument rests on an
22 assumption for which I've heard no support, no
23 underlying support, and that is that if consumers have
24 had some kind of interaction with a business or a
25 charity, that that automatically means that they're

1 open to receiving calls from it, which I think is --
2 has no more validity than the argument that because you
3 provide a good product or service or that you are
4 soliciting for a worthwhile charity, that the consumer
5 wants to hear from you by telephone.

6 I think that the burden should be placed where
7 it properly belongs, which is with the businesses that
8 have some kind of interaction with consumers in another
9 way to ask if they want to be called, and I don't think
10 that that's inappropriate, and I agree that there are
11 lots of different ways that that can be done. When I
12 think about the amount of advertising that I receive
13 from stores with whom I do business, I don't think it's
14 too much to ask that they might send me a postcard with
15 that question.

16 MS. HARRINGTON: Okay, question from Keith?

17 MR. ANDERSON: Yeah, I wanted to sort of follow
18 up on I think it was George's comment about the real
19 problem here is people with whom you have an existing
20 relationship as of day one, as of the date of
21 implementation. If we were to write the rule so that
22 you could call existing customers as of the date of
23 effectiveness for some period of time, for six months,
24 for three months, how long would that need to be, and
25 would that not solve your problem, so that you'd have

1 the ability to -- I mean, what you said was, gee, new
2 customers who come on after the rule's in effect is not
3 a problem, you can get permission from them. I'm
4 thinking of sort of trying to implement the thing in
5 such a way that you've got a period of time to get that
6 permission from your people with an ongoing
7 relationship at the start, and I'm wondering how long
8 that period would need to be.

9 MS. HARRINGTON: George, do you have a quick
10 answer on that?

11 MR. WALLACE: I'm never quick.

12 MS. HARRINGTON: We need greater brevity from
13 our participants.

14 MR. WALLACE: You need brevity.

15 First of all, in the credit industry, there are
16 coupon books, don't forget that, please, it is not a
17 billing system in all instances. A substantial amount
18 of the credit outstanding is a coupon book system. We
19 do not have an ongoing relationship with the customer.
20 I want you to understand that, make sure the record's
21 clear on that.

22 First Eileen asked, you want to call people who
23 are on the do-not-call list? The question is, when
24 somebody goes on the do-not-call list, do they intend
25 to exclude their relationships with their ongoing

1 companies that they have had ongoing relationships with
2 for years? I think the answer to that is no. I think
3 that's part of your problem of not explaining to the
4 consumer of what the effect of going on the do-not-call
5 list is.

6 Now finally, to get to the question that was
7 just raised, I want to be sure that I'm not
8 misunderstood. I did not say that it's hunky-dory with
9 me with regard to ongoing transactions to use your
10 system. I think the existing customer approach is the
11 right approach to take. I think the other one is at
12 best second best, but now you ask, well, if we have
13 three months or six months, is that enough time for us
14 to solicit? Well, I mean, sure, give me ten years.

15 You have to understand, it is a different
16 channel to solicit. You're going to get a different
17 response rate. I don't know the answer to your
18 question. I don't think anybody does, and I don't
19 think you do. That's my comment. Have I been brief?

20 MS. HARRINGTON: Okay, Char and then Linda.

21 MS. PAGAR: Char Pagar from the PMA.

22 I just want to bring up a point with respect to
23 the opt-in methodology. I think in other contexts, I
24 have had many conversations with FTC staffers who
25 pointed out that there is a certain level of consumer

1 inertia that occurs. I mean, for example, when you
2 have consumers who are dissatisfied with the products
3 that have been sold to it by a company, often times
4 they don't complain, and you have low complaint rates,
5 low return rates in that situation, and the Commission
6 staff often tells us that that's not an indication of
7 consumer satisfaction.

8 Well, if consumers often times don't take
9 action when they're dissatisfied, I think we're very
10 unlikely to have consumers taking action in this sort
11 of situation to receive marketing efforts. I think
12 that's got to be looked at in context.

13 MS. HARRINGTON: Linda and then Michael.

14 MS. GOLDSTEIN: I think what's troubling me,
15 and I think the last question really highlighted this,
16 is I think we're looking at this backwards. We're
17 talking about a group of consumers that have already
18 indicated to a business that they want to do business
19 with that entity. They've entered into some type of a
20 relationship or they have had some communication. They
21 have already, in effect, opted into that business by
22 establishing a relationship with that business. That's
23 the class of consumers we're talking about.

24 So, I think when we start from a premise of
25 what's wrong with, you know, going out and asking

1 consumers to tell you that they want to do business
2 with you, I would suggest to you that they've already
3 done that.

4 MS. HARRINGTON: Okay, got that point. Next
5 point?

6 MS. GOLDSTEIN: And secondly, you know, part of
7 what we're talking about here is a balance. I mean,
8 this rule has always been premised on a balance between
9 consumer privacy interests and the interests of
10 industry, and I would suggest to you that when we're
11 talking about customers who have an existing business
12 relationship and we're offering products or services
13 that we already know that this consumer is interested
14 in, I think the intrusion in receiving a telemarketing
15 call about that particular product or service where an
16 affinity already exists is less burdensome on the
17 consumer than depriving industry of the very category
18 of consumers who we know our data shows are likely to
19 be more responsive than the public at large.

20 And the last point I want to make, just to your
21 question, I think it would be very unfair to use as a
22 barometer of whether the customer wants to receive
23 those calls a general call from a business that says,
24 is it okay if we call you in the future, when you don't
25 have a specific offer. I mean, a consumer may say no

1 because they may be viewing that within the general
2 realm of telemarketing calls. That doesn't mean if you
3 were to call that consumer who's been a customer of
4 yours for 20 years and say, you know, we know you
5 happen to like this shoe design or we just got a whole
6 shipment in, we think you'll want to come down, that
7 that customer is going to be unhappy about receiving
8 that call.

9 So, I just don't think the proposal works in
10 terms of really trying to get at a realistic assessment
11 of what the consumer's reaction is going to be.

12 MS. HARRINGTON: Okay, Michael, then Mallory,
13 then Jerry.

14 MR. PASHBY: Michael Pashby, MPA.

15 We also had an example of where regular contact
16 has ended and how we would get permission to call the
17 consumer. One of the most successful uses of
18 telemarketing in the magazine industry is in the
19 renewal marketing. When subscribers are called well
20 after the subscription has expired, the mere fact that
21 those subscribers renew on a very high percentage basis
22 after receiving a telephone call shows that it has been
23 a successful contact with that consumer. That consumer
24 had a preexisting business relationship.

25 They were sent very often eight or ten letters

1 asking them to renew, but from some standpoint, inertia
2 stopped them from renewing, but the telephone call did.
3 You couldn't ask them prior to that from the end of the
4 subscription until that telephone call if you could get
5 permission to call them.

6 MS. HARRINGTON: Let me remind you, if you've
7 been called on, would you put your tents down? I can't
8 tell, some of you have had your tents up nonstop, and I
9 am not going to call on people whose tents are up all
10 the time.

11 MR. DUNCAN: Mallory Duncan, National Retail
12 Federation.

13 The original question you asked was about why
14 not have specific opt-in for calls, and I guess the
15 simple answer to that is that the Commission in that
16 approach is trying to do too much and that in doing too
17 much it is dramatically increasing costs for businesses
18 and reducing services for consumers.

19 The established business relationship is
20 something that, first of all, I had mentioned earlier
21 is a requirement if we're to have one list for it to be
22 workable. Secondly, as I mentioned, the states have
23 almost uniformly adopted the established businesses
24 relationship because they realize that marketing is
25 much more complicated than any of us sitting around

1 this table are likely to envision.

2 Now, what are we trying to achieve here? Let's
3 ask the basic question. We are trying to reduce the
4 plethora of calls that people don't want to receive.
5 Speaking just from personal experience, those kinds of
6 calls tend to be from companies that I've never heard
7 of. They tend to be calls from travel organizations,
8 perhaps the lawn care company or whatever else, that I
9 have not dealt with.

10 If we have a method for eliminating the vast
11 bulk of those calls, and the Commission's proposed rule
12 would do that by saying if you're in a national
13 database, you cannot be called by someone you don't
14 know, you have achieved a great portion of your goal
15 already. So, by eliminating the established business
16 relationship which all of the states have adopted, the
17 Commission has to try to achieve something more, and
18 that is at significant cost. That's the problem
19 over-regulation cost.

20 There are also very specific costs. If you
21 think about the operations, say, for a small business,
22 the very fact of setting itself up in order to comply
23 with the national database is for a small business a
24 very significant baseline cost. If, on the other hand,
25 they know they can call their existing customers and

1 they don't have to worry about the database except for
2 those customers who say don't call me, then you have
3 greatly reduced costs for that large range of small
4 businesses.

5 Number two, we went into some detail in our
6 comments, and I won't repeat it here, but clienteling.
7 Linda alluded to it. There are many, many, many
8 consumers who do want to receive calls telling them
9 that the size 5 shoes are in now, come down and get
10 them before they're gone. I mean, we just have to
11 accept that in marketing.

12 Number three, I think Katie asked the question,
13 do businesses want to call people who don't want to be
14 called? And the answer is yes, occasionally businesses
15 want to call individuals who don't know they want to be
16 called, and an easy example is you've received several
17 flyers that your subscription to the Shakespeare
18 Theater is about to expire. They call you the day
19 before and say, Eileen, your front row center tickets
20 are going to be given away tomorrow unless you renew.
21 Chances are consumers, when they sign up for the
22 do-not-call list, did not think, whoops, I better give
23 Shakespeare Theater a specific opt-in to call me, and
24 yet they very much will want that call.

25 And finally, there are enormous unintended

1 consequences of making the verified consent the primary
2 means by which we will determine who will get a chance
3 to call, and there are significant costs involved with
4 that, also mentioned in our comments, and I will not go
5 into that here.

6 MS. HARRINGTON: Thank you.

7 Jerry?

8 MR. CERASALE: Jerry Cerasale, Direct Marketing
9 Association.

10 I'll be very brief. I think not only the
11 states but the FCC in the TCPS rule has an established
12 business relationship. I think in answer to Katie's
13 question -- I think it was Katie's question -- think
14 of the nonprofit that uses telemarketing on an annual
15 campaign. They just don't have any other contact but
16 the annual campaign, and how you get the permission, it
17 just messes that up.

18 The other thing is, this is a customer
19 relationship that government is coming in and
20 interfering with. Now, telemarketing itself is not,
21 per se, abusive, and this is a customer relationship,
22 someone with whom you have done business, and so I
23 think that that's very important.

24 The other thing is you require three lists,
25 your national do-not-call list, let's assume it's all

1 together, your opt-in list, and your individual company
2 do-not-call list, and I think that that middle layer
3 that you have is an extra one, because you still have,
4 under both the TSR and under the TCPA, the
5 company-specific don't call, and for the person who has
6 done business with me, they just say don't call me
7 anymore, and they are on that list, and I think that is
8 the most efficient, least expensive way to do it.

9 Thanks.

10 MS. HARRINGTON: I have a note raising a
11 concern about heavy breathing.

12 Joel Obermyer -- where are you, Joel? -- from
13 National Public Radio reports that someone is leaning
14 close to their microphone when they are not speaking
15 and is breathing heavily. Joel, it could be I. So,
16 please, no heavy breathing close to the microphones.
17 We need to help Joel out. It's not that kind of show.
18 These aren't those kinds of calls.

19 Well, Art, let's hear from you.

20 MR. CONWAY: Art Conway, Dial America.

21 I think it was Eileen that asked the question
22 why would a telemarketer want to call someone who
23 didn't want to be called, and that cuts really to the
24 heart of some of our concerns here on a national
25 do-not-call list, because I think you have to finish

1 the question. Why would a telemarketer want to call
2 somebody who didn't want to be called by some other
3 telemarketer, because we think the problem here is not
4 that people necessarily don't want to be called by any
5 telemarketer, but there are telemarketers out there
6 that don't do it the right way. They have high abandon
7 rates, the dead air issue, Caller ID.

8 We believe if you do telemarketing in a
9 responsible way that the company-specific do-not-call
10 list will work. And I'll throw this out, too, is I
11 thought it was the FTC's job to make that work. So,
12 why doesn't that work? Is there no enforcement on
13 that? Do you get complaints on that? Are they
14 followed up on? Why doesn't that work? We think
15 that's the way to go. If a telemarketer makes a bad
16 call and a person says, "Don't call me anymore," that
17 seller or that telemarketer suffers, but why should we
18 suffer, particularly the way you have the rule now,
19 where we can't go back and call our customers, which is
20 the only way we can contact our customers in our
21 sponsor magazine program, because AT&T Wireless made a
22 bad call, and we have to suffer.

23 MS. HARRINGTON: Rex?

24 Oh, Joel, is the heavy breathing problem
25 better? Okay, thank you, everyone.

1 MR. BURLISON: Eileen, what we're missing here
2 is -- well, first of all, I haven't seen anyone be
3 able to quantify a definition of existing or
4 preexisting that would work for everyone. It seems to
5 me that it's going to have to come down to what's
6 reasonable in the eye of the reasonable consumer, and
7 that's what you have to look at. It's not the
8 consumers that get the call about the size 5 shoes or
9 the Shakespeare tickets that turn around and call and
10 report the violation. So, until we get to a report or
11 a complaint, we never see those calls, and we have to
12 give the consumer the benefit of the doubt that they're
13 not going to buy the Shakespeare and be all happy
14 because they didn't miss out on their first row tickets
15 and then their next call is to the FTC or the State and
16 say I want to prosecute them for calling me. I mean,
17 we don't see it in the 18,000 complaints we've had in
18 nine months, we don't see that happening.

19 So, it may end up that the definition has to be
20 looked at as to what's reasonable in a normal consumer,
21 and then when it gets to the enforcement part, if there
22 is a complaint, whoever's doing the enforcement has to
23 look at that, has to weigh it out when you contact the
24 industry and say, you made a bad call, and they say,
25 well, listen, we have got this relationship, we thought

1 it was reasonable. Whoever's enforcing that is going
2 to have to have the ability to make that call at that
3 point, but again, most consumers who benefit from that
4 phone call aren't turning around and reporting a
5 violation.

6 MS. HARRINGTON: Michael, do you have a
7 question?

8 MR. GOODMAN: Yes, Michael Goodman, FTC.

9 Rex had started to answer my question, but I
10 want to hear from Private Citizen and Junkbusters and I
11 want any other consumer groups to respond to Mallory's
12 standpoint, that with the existing business
13 relationship, there are things that the consumer is not
14 aware of when they sign up for the list that they are
15 going to miss out on, that they want to know. I want
16 to hear the response from the consumer groups to that
17 point that Mallory made.

18 MS. HARRINGTON: Okay, let's hear from Jason
19 and then Bob in response to Michael's question about
20 Mallory's point.

21 MR. CATLETT: Yes, I think this illustrates
22 that the FTC's position is entirely reasonable and
23 appropriate. Michael raised the case of the magazine
24 renewal, Mallory raised the case of the Shakespeare
25 Theater. At the time that I sign up to subscribe to

1 the Shakespeare Theater, they have adequate opportunity
2 to say, if you let your subscription lapse, may we call
3 you at home to remind you? Nonthreatening question, a
4 lot of people would say yes. That's the practical
5 solution, and it's entirely appropriate.

6 MS. HARRINGTON: Bob?

7 MR. BULMASH: My concern is as an example,
8 let's say somebody calls up the Shakespeare Theater to
9 find out how much the tickets are. Does that establish
10 the business relationship? Does that allow the
11 Shakespeare Theater to call? Does there need to be
12 under the Telephone Consumer Protection Act evidence by
13 the Shakespeare Theater of an established business
14 relationship, and indeed, an established business
15 relationship with not just the Shakespeare Theater, but
16 every theater that's affiliated and every association
17 that's affiliated with the theater? So, we have to
18 define what the theater is, and we have to define how
19 an established business relationship is created.

20 The fact is if somebody wants to do business
21 with an organization, they go into a contract or go
22 into an agreement with that organization, they have the
23 opportunity to have their ears opened, to answer the
24 question, "Will you allow us to call you in the future
25 for future offers?" It's well formulated as it stands

1 now.

2 MR. CATLETT: Well, could I --

3 MS. HARRINGTON: I'm sorry, Jason, go ahead.

4 MR. CATLETT: The industry's position doesn't
5 really pass the smell test here. They're saying we
6 don't have an opportunity to ask permission within six
7 months, but we have this great relationship. Well, you
8 know, if I didn't talk to my girlfriend for six months,
9 I don't think she would be satisfied with the quality
10 of my relationship with her. It doesn't make sense.

11 MS. HARRINGTON: Before we hear from Katie with
12 a question, let me just again ask, is everyone whose
13 tents are up wanting to be called on?

14 MR. PRIDGEON: Yes.

15 MS. HARRINGTON: Okay, Katie, your question,
16 and then we're going to go to Michael Rosen, then back
17 down to Stratis and then to Dennis McGarry.

18 MS. HARRINGTON-MCBRIDE: Something that Bob
19 Bulmash has said and something that Rex has said has
20 triggered this thought. In many of the comments, we
21 were encouraged to not only include an existing or in
22 some instances a prior business relationship exemption
23 but to have that exemption extend to affiliates,
24 subsidiaries and others with whom the primary contact
25 has relationships.

1 What impact would that have on consumers if,
2 for example, they have a relationship with the
3 Shakespeare Theater, but the Ford Theater is the one
4 calling them? Will that not create confusion?

5 MS. HARRINGTON: Let's see, who did I say?
6 Michael Rosen I think I said we were going to hear
7 from.

8 MR. ROSEN: Michael Rosen.

9 I want to point out on behalf of the
10 Association of Fundraising Professionals that there's a
11 fundamental qualitative difference between the
12 relationship between a donor and a charity and someone
13 who goes into a retailer to buy the cheapest rocking
14 chair they can find. Seventy-three percent, according
15 to a survey that was published last year by Independent
16 Sector, 73 percent of donors surveyed said that
17 receiving a telephone call was either important or very
18 important to their decision to give to a charitable
19 organization. That very qualitatively is different
20 than the person simply going in to a random retailer
21 and establishing a business relationship.

22 Charities receive most of their money not on
23 new donors but on repeat donors. They receive actually
24 very little on the first time gift and rely very
25 heavily on renewals. So, short-changing charities on

1 the renewal opportunity has a significant cost, and
2 it's not a matter of a consumer cost, it's a cost to
3 the services that are being provided to the needy
4 people. Frankly, I'd rather protect the needy in our
5 communities rather than the person who's afraid to
6 simply hang up on an unwanted telemarketing call.

7 Regarding the issue of communicating with our
8 donors and why don't we simply ask them if they want to
9 receive calls from us, there's a problem with that.
10 The most effective way that we can communicate with
11 them is through telemarketing, face-to-face
12 communication, the personal touch, and when you go in
13 to a solicitation with a dual purpose, you invariably
14 negatively impact the solicitation result. You will
15 come away with fewer gifts when you dilute the message
16 in the solicitation.

17 So, by asking us to solicit someone for a
18 renewal gift and say, oh, by the way, we have this
19 other bit of business we want to discuss with you, will
20 ultimately be detrimental to the amount of money that's
21 raised.

22 MS. HARRINGTON: Thank you.

23 Stratis, and then Dennis, and then we're going
24 to move to some different questions.

25 MR. PRIDGEON: I appreciate you staying on this

1 topic, because I think this is one of the major issues.
2 It's a major change in operation for most of the
3 businesses that operate in this industry.

4 I would agree with the -- and I forgot his
5 name, the gentleman from the Missouri AG's Office that
6 a definition is necessary in attempting to comply. As
7 a business and as a representative of businesses, we
8 rely on some sort of definition to make sure that we
9 are in compliance.

10 Let me give an example of one situation that I
11 think has kind of been alluded to that in it would be
12 quite confusing if we don't have a proper definition in
13 order to work with. A frequent flyer program, for
14 example, someone signs up with one of the airlines'
15 frequent flyer programs. The program says, would you
16 like to get greater value from your membership? The
17 person says yes. As part of that, as part of the
18 services and relationships that the airline has with
19 hotels, with rental car companies, with other vacation
20 companies, that person could be contacted.

21 I mean, it seems like that by signing up with
22 that program, that a person who is interested in travel
23 or a person who signs up with a bank who is interested
24 in more financial services would want to be contacted,
25 and I think by not having the exemption in there, I

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1 think we automatically assume that someone who is
2 interested in receiving that information would not want
3 to be contacted. I think by keeping the exemption in
4 here, like in many of the states, that we achieve the
5 balance that I think we're looking for.

6 MS. HARRINGTON: Thank you.

7 Dennis?

8 MR. MCGARRY: Yes, Dennis McGarry, Personal
9 Legal Plans.

10 I raised my card up when Eileen had asked a
11 question a little bit earlier, and so it has been some
12 times with other comments, and so I am going to bring
13 it up right now. The question, which is the \$64,000
14 question, is why would anyone get a call, want a call
15 from a telemarketer --

16 MS. HARRINGTON: No, why would a telemarketer
17 call somebody who said they didn't want to be called?

18 MR. MCGARRY: That's correct, yes, and if I had
19 taken a survey, and without pushing and stepping on
20 people's toes, I would say most people do not want a
21 call from a salesperson, period, nor do they want their
22 taxes increased or anything else, but that's the wrong
23 question in my mind to be addressed. It is not would
24 you like to have a call from a salesperson, because
25 telemarketing calls are all unwanted unless the

1 consumer has an interest in a specific product, and
2 that's the key point. All calls are unwanted unless
3 there's an interest in that specific call that has an
4 interest to that consumer.

5 Now, I'm a small business owner and I've been
6 in business for 20 years and I don't want to go through
7 the litany of what I do, but I make calls every day,
8 and only one-half of 1 percent of the people that I
9 call say put me on my do-not-call list. They do not
10 view me as a telemarketer. I don't view myself as a
11 telemarketer, because I sell a service that people
12 need, and 75 percent of adults in America do not have a
13 will. I have a legal service. They appreciate my
14 call, whether they use my service or not, and I help
15 people protect their family and property, and I educate
16 people.

17 I have no problems -- I have never had a
18 complaint with the Better Business Bureau, nor have I
19 ever had any inquiry from any state organization. So,
20 I'm in a dilemma if here I am closed out as a small
21 business owner to convey my products and services.

22 MS. HARRINGTON: I know that we could discuss
23 this existing business relationship issue all day, but
24 we're going to move on and talk about the nonprofit
25 issue, which is the last question on the agenda for

1 this portion and probably will bleed into the next
2 segment.

3 The question here is whether the do-not-call
4 provisions of the proposed amended rule should apply to
5 for-profit telemarketers who are calling on behalf of
6 nonprofits.

7 Let's talk about that question, and again, I
8 want to ask if people would please make sure that their
9 cards are not up unless they really want to be called
10 on, and if cards just stay up all the time, I'm not
11 going to call on you, because you can't talk all the
12 time. It just won't work.

13 Glenn?

14 MR. MITCHELL: Thank you, Eileen, Glenn
15 Mitchell again on behalf of the Coalition.

16 Our position is clear and simple, we do not
17 believe this amendment to the TSR should apply to
18 nonprofit organizations.

19 MS. HARRINGTON: What about for-profits calling
20 on behalf of nonprofits? That's our specific question.

21 MR. MITCHELL: And that's your specific
22 question, and we take the same position both directly
23 and indirectly. We would respectfully submit that
24 there is no jurisdiction of the FTC under any of the
25 statutes that relate to what we're doing here this

1 morning over nonprofits, and we would submit that an
2 extension of the nonprofits through a professional
3 fund-raiser is no different than reaching the
4 nonprofit. It goes to the heart of the nonprofit
5 organization's ability to provide services to the needy
6 --

7 MS. HARRINGTON: No, Glenn --

8 MR. MITCHELL: -- and to be able to raise funds
9 and to --

10 MS. HARRINGTON: Let me ask you a question
11 right there about your question on jurisdiction,
12 because the FTC has long asserted jurisdiction over
13 for-profit telemarketers calling on behalf of
14 nonprofits, and we have sued bunches of them.

15 MR. MITCHELL: That's correct, and when they
16 violate Section 5, they are not really a nonprofit
17 organization doing nonprofit work.

18 MS. HARRINGTON: We sue them under the
19 Telemarketing Sales Rule, as well.

20 MR. MITCHELL: You are relying on the Patriot
21 Act, but if you look at the legislative history of the
22 Patriot Act, you do not have jurisdiction over
23 nonprofits. Senator McConnell made it very clear in a
24 public statement that he never intended that his
25 statute, the Patriot Act, would permit the FTC to

1 promulgate a rule that requires a do-not-call list that
2 applies to nonprofit organization.

3 Now, any lawyer can make any argument based on
4 statutory language or statutory history, legislative
5 history, that there is jurisdiction here, and you've
6 made the argument in your questions to me and you've
7 made the argument in your commentary, but I would
8 submit that clearly nonprofits are beyond the reach of
9 the Federal Trade Commission, and I would submit that
10 both directly and indirectly, and the Supreme Court has
11 made it very clear that in the Constitutional context,
12 there is no difference between the nonprofit and the
13 nonprofit fund-raiser, the professional fund-raiser.

14 In the leading case, the Leary case, which has
15 been cited in our papers, and we had Mr. Copilevitz
16 who briefed and argued that case, and I hope he can
17 speak to the panel, the Supreme Court made it clear
18 that there is a Constitutional limitation on your
19 ability to restrain free speech, whether the nonprofit
20 organization is making it or whether a for-profit
21 professional fund-raising firm is doing it, and we
22 would submit the same argument applies to the
23 jurisdictional question.

24 MS. HARRINGTON: Okay, thank you.

25 MR. MITCHELL: Now, Eileen, what I want to do

1 here, since that question is should the do-not-call
2 provisions of the rule apply to for-profit
3 telemarketers on behalf of charities, I have somebody
4 from one of the charities here, and I want Patricia
5 Krebs to speak to the panel, because she knows
6 firsthand on behalf of Special Olympics what this rule
7 will do to the Special Olympics of Maryland, and I
8 would also like Mr. --

9 MS. HARRINGTON: You will have to switch people
10 out and I will ask them to speak, okay?

11 MR. MITCHELL: Fine.

12 MS. HARRINGTON: Thanks.

13 Michael?

14 MR. ROSEN: Michael Rosen.

15 I echo the comments down at the other end of
16 the table, and I would also like to add that the
17 nonprofit sector is already addressing this issue. In
18 the AFP Code of Ethics, we require our members to
19 maintain in-house do-not-call lists. There's no need
20 for our members to have interference from the Federal
21 Government on this matter.

22 What this rule would do would be establish two
23 different sets of rules for the same organization.
24 There is no fundamental difference between whether a
25 call is placed by a telemarketing company on behalf of

1 a charity or the charity itself using paid personnel.
2 What's important is what is the message, and the
3 message is identical in either case.

4 What happens with this rule would be that
5 nonprofit organizations that do not have the ability to
6 make the calls themselves would be penalized because
7 they have a smaller audience to approach than the
8 nonprofits that have the ability to make the call
9 themselves. So, it sets an unlevel playing field. It
10 also means that charities will raise less money, also
11 hurting the needy.

12 The other thing is if the rule were applied, it
13 would increase the costs of compliance for the
14 nonprofit sector, again hurting the needy, and
15 ironically, occurring at a time when both the White
16 House and the Congress are looking at ways through the
17 CARE Act to funnel more money to the charity sector,
18 and now we sit here talking about how the FTC wants to
19 cost the charity sector more money. So, it's a very
20 paradoxical situation.

21 So, we very firmly believe that the FTC does
22 not have jurisdiction over the nonprofit sector or
23 agents representing nonprofit organizations.

24 MS. HARRINGTON: Okay, we're coming up on our
25 break time. I am going to ask Tyler and Jeff to speak

1 very briefly, then we're going to take a break, and I
2 see that several of you want -- we are going to
3 continue this discussion into the next segment.

4 Tyler?

5 MR. PROCHNOW: Tyler Prochnow for the American
6 Teleservices Association.

7 I can be very brief. I just want to point --
8 I think by making a distinction between calls made by
9 nonprofits and calls made by for-profit marketers on
10 behalf of those charities, you're actually penalizing
11 the very entities you're seeking to protect. You're
12 penalizing the charities simply because they're
13 focusing on doing what they do and what they do well,
14 whether it's providing money for citizens or whether
15 it's fighting for a specific cause. You're penalizing
16 them simply because they're not equipped to do their
17 own fund-raising or make their own telemarketing calls.

18 They have chosen to go outside their
19 association, their charity, to find somebody who's a
20 professional, who knows how to work within the confines
21 of both the rules but also the industry. It's a
22 difficult industry to work in, and because they've
23 chosen to use outside help to fulfill their goals,
24 you're penalizing them.

25 MS. HARRINGTON: Okay, Jeff?

1 MR. KRAMER: Thank you, Jeff Kramer, AARP.

2 We would argue the opposite. We think that the
3 for-profit entities that are calling for
4 not-for-profits should be included under this rule. A
5 lot of the concern we have is -- well, it's not
6 necessarily on point, is that the charity scams that
7 have developed over the years, we've found a lot of
8 seniors are susceptible to that, those kind of things,
9 and there seems to be a lot of confusion when you have
10 people calling with like names and those kind of
11 things, and it's a much clearer distinction if the Make
12 a Wish Foundation calls for Make a Wish Foundation or
13 Red Cross calls for Red Cross than the for-profit
14 entities that call.

15 MS. HARRINGTON: Thank you, Jeff.

16 All right, we are going to take a 15-minute
17 break, and we are going to resume immediately, sharply
18 at 11:00. Thanks.

19 (A brief recess was taken.)

20 MS. HARRINGTON: We're going to continue
21 discussing the issue that we were on before the break
22 concerning for-profit telemarketers calling on behalf
23 of nonprofits.

24 Patricia, would you introduce yourself and
25 identify your organization for the record for our

1 stenographer?

2 MS. KREBS: Yes, thank you. I guess you can
3 hear me. My name is Patricia Krebs, and I am the
4 president and CEO of Special Olympics, Maryland.

5 We're a not-for-profit organization, and we
6 provide year-round sports training and competition in
7 over 23 sports to 9264 Special Olympic athletes in the
8 State of Maryland, and I'm here to hopefully give you a
9 little bit of an idea of the impact of the proposed
10 do-not-call registry and its regulations on a small,
11 one-state, not-for-profit organization like ours.

12 You need to first of all know that we do hire a
13 vendor outside of Special Olympics Maryland to call
14 residences on behalf of Special Olympics. We have
15 currently a donor base of about 75,000 donors in
16 Maryland that contribute to us, and they contribute to
17 us by calling, through telemarketing, sometimes once a
18 year, sometimes more than once a year, and we have
19 people that have been on this list for many, many
20 years. So, it's kind of hard for me to think that they
21 don't want to be called, number one.

22 We've also in the past year, through
23 telemarketing, we've been able to add slightly over
24 1000 new volunteers to our organization. We rely on
25 volunteers to provide the services that we provide to

1 those with mental retardation, children and adults, in
2 the State of Maryland. This past year, we've also
3 recruited 31 new athletes to Special Olympics strictly
4 through the results of telemarketing. So, we don't
5 just solicit for funds.

6 However, we do need to solicit for funds,
7 because the total revenue that we get from
8 telemarketing makes up one-third of our budget. We
9 have 22 staff members, full and part-time, in Special
10 Olympics Maryland who are specialists in providing
11 sports training to people with disabilities, and as I
12 said, we do 23 different sports. I cannot pull those
13 people off to do telemarketing, especially of the
14 magnitude that it's done.

15 We are very, very careful about the vendor that
16 we hire to do our telemarketing, and we're very happy
17 with our current vendor, who's been with us for four
18 years now, and I just want to give you an idea, they
19 made -- our vendor last year -- excuse me, in the
20 year 2000 made 260,000 contacts in the State of
21 Maryland. Now, that's actually talking to someone.
22 That's not calls but actually talking to someone,
23 regardless of the outcome.

24 Of those 260,000 contacts that were made, we
25 had and handled 111 complaints, because we handle the

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1 complaints ourselves. Now, that's a ratio of 0.043
2 percent -- I did calculate that ahead of time --
3 which to us we're very happy with that ratio. I have
4 had other vendors --

5 MS. HARRINGTON: What were the complaints
6 about, Patricia?

7 MS. KREBS: They varied. Some wanted us to --
8 we keep our own do-not-call list, and they had those
9 that asked they be put on a do-not-call list, which we
10 do. We had some that said that they -- of course,
11 called us and said that they never made the pledge, and
12 we have taken care of that. And sometimes actually a
13 spouse will call and say they never made the pledge
14 when actually their spouse made the pledge, that
15 happens. And we have occasionally a rude caller, rude
16 telemarketer calls, and we immediately deal with that,
17 and it has sometimes resulted in termination of that
18 telemarketer, but we deal with everything ourselves.

19 This, with what is being proposed, will have a
20 very devastating effect on us. We have our
21 75,000-member donor base, we have an attrition rate --
22 annual attrition rate of almost 10 percent. In other
23 words, in order to maintain that 75,000-member donor
24 base, we need to call and acquire new members
25 constantly to that donor base. So, this do-not-call

1 registry, whether it's state by state or whether it's
2 national, would really limit our ability, A, to acquire
3 new donors to Special Olympics Maryland, and B, if
4 there was an exemption for donors that we already have
5 a relationship with, I know people when they sign up
6 for that do-not-call registry, it's not that they don't
7 want to be called by us. It's that they don't want to
8 be called by others.

9 I found it very interesting in sitting here
10 that most of the conversation centered around
11 commercial and very little of the dialogue really
12 centered around legitimate not-for-profits, but we are
13 not abusive in our calling, and we are not fraudulent,
14 and I just get the feeling in sitting here this morning
15 listening to everything that we're kind of being drug
16 into this. Thank you.

17 MS. HARRINGTON: Patricia, thank you. Your
18 comments are really helpful to us.

19 MS. KREBS: Thank you very much.

20 MS. HARRINGTON: Jerry?

21 MR. CERASALE: Thank you, Jerry Cerasale,
22 Direct Marketing Association.

23 I just wanted to go to a couple points. First,
24 I would say that we agree that the umbrella of the
25 principles do cover the agent, and I want to go first

1 to a point that you brought up, Eileen, in that you
2 already cover for-profit entities under the current
3 TSR. The current TSR as we look at it is an anti-fraud
4 provision, and here's the speech that you must make,
5 not specific proscription, but here's a speech you must
6 make where you apply a do-not-call list, a national
7 do-not-call list, however, you're saying here's the
8 speech you can't make. You can't call. You can't
9 speak. It's a very different kind of coverage than the
10 antifraud coverage of the TSR.

11 I do think in answer to Jeff --

12 MS. HARRINGTON: But Jerry, how do you square
13 that with the existing do-not-call requirement? I
14 mean, the rule already says you may not call someone
15 who says don't call me.

16 MR. CERASALE: Yeah, well, I think any charity
17 that we represent, that's in the DMA, keep their own
18 do-not-call lists, so that's not something different
19 from the existing practice at least of the legitimate
20 charities that are members of the DMA, so that you
21 haven't -- even with the FTC TSR enforcement as you go
22 through, it really doesn't affect the existing
23 practice.

24 But when you go with a you can't call, that
25 really changes the operation, and it changes the

1 operation so much that in one sense, you are going to
2 make two tiers of charities. There are a vast majority
3 of charities who can't afford or don't have the
4 expertise to do the telemarketing, and they contract
5 out, whereas very large charities can set up their own
6 in-house operations. So, you're setting up a
7 two-tiered system of charities, depending on how large
8 you are.

9 There's also an interference -- I mean,
10 charities are under great pressure for how much do you
11 pay for overhead and how much is going to the
12 beneficiary, and if you're interfering with a decision
13 by a charity to make an economic argument that it's
14 cheaper or it's more efficient for me to hire someone
15 outside, and now you're putting another twist that says
16 it's adding a significant amount of cost to hire
17 someone outside potentially, because you have the
18 do-not-call list.

19 And then Jeff, on the scams -- and, you know,
20 let's go after the scams. They're awful, they're
21 terrible, they hurt everyone, but Section 5 and all the
22 anti-fraud laws in the states cover them, and I think
23 that that's the comment. Thanks.

24 MS. HARRINGTON: My understanding is that there
25 are a few states that do not exempt for-profit

1 companies who are calling on behalf of nonprofits.
2 That is my belief, although I can't tell you which
3 states those are.

4 MR. CERASALE: Indiana.

5 MS. HARRINGTON: Indiana I thought, okay. Is
6 there someone who could talk to me about -- and I'm
7 sorry, Patricia, maybe -- I don't know, Patricia, have
8 you talked to your counterpart in Indiana? Does
9 anybody know anything about Indiana?

10 MS. KREBS: Actually, Earl does.

11 MS. HARRINGTON: Do you know about Indiana, not
12 the legal arguments, but what's happens? Earl, what's
13 happening in Indiana? What is the experience of
14 nonprofits whose fund-raising calls are being placed by
15 for-profits and are therefore subject to the Indiana
16 do-not-call requirements?

17 MR. COPILEVITZ: My name is Earl Copilevitz,
18 and I'm here for the Nonprofit Coalition.

19 The experience in Indiana is that between 40
20 and 50 percent of the donor file of every major
21 charitable organization that raises money by the use of
22 telemarketing has been lost.

23 MS. HARRINGTON: Thank you.

24 MR. COPILEVITZ: And there are only a few
25 states that do not have an outright exemption for calls

1 on behalf of nonprofit organizations. Most of the
2 states clearly exempt calls by or on behalf of.

3 MS. HARRINGTON: I think that the experience in
4 the states that do not exempt them is probably
5 instructive, and I hope that if there is additional
6 factual information that it would be supplemented in
7 the record so that we can see what that is and see
8 whether -- you know, for each of these scenarios, I
9 think you would all agree with me that we hear dire
10 predictions. So, if the dire consequences have been
11 experienced someplace, it would be useful to have the
12 data. Otherwise, we just have dire predictions.

13 MR. COPILEVITZ: I can provide you with as many
14 letters as you would like from charitable organizations
15 that are either based in Indiana or that are undergoing
16 tremendous problems or national organizations and what
17 their experiences are and what they are losing in
18 Indiana from their normal base, from people who have
19 regularly supported them, and in some cases over a
20 number of years.

21 MS. HARRINGTON: Well, any specific and factual
22 information that cuts one way or the other would be
23 very useful.

24 Lisa, welcome to the table. Could you
25 introduce yourself for our reporter and tell us who you

1 represent and then tell us what you think?

2 MS. MYERS: Thank you very much, Eileen. I'm
3 Lisa Myers, president of the Electronic Retailing
4 Association, filling the very hot seat left by Linda
5 Goldstein temporarily. Congratulations on your article
6 in the Wall Street Journal this week, very well done.

7 One important aspect of this that we think is
8 being overlooked is that we don't think that the
9 distinction between an amateur telephone marketer on
10 behalf of a charity and a professional caller for a
11 nonprofit is a legitimate distinction to be made in
12 terms of the interruption to the consumer. In fact, a
13 professional caller may be a little more efficient, may
14 be a little less aggressive and assertive, because
15 there is some training or background. So, we'd
16 question the distinction.

17 And I surely, having sat up here, I surely
18 don't want to be branded as a poster child for
19 uncharitable, conspicuous consumption, but I would
20 rather get a call from Nordstroms on their sale on
21 children's shoes biannually than from some of the
22 charities that I am solicited by. So, we really
23 question the exemption for charities in general.

24 In fact, one of our greatest concerns in this
25 area is the proposed list of numerous exemptions

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1 resulting from the Federal Trade Commission's limited
2 jurisdiction in this area and the various exemptions
3 that seem to have been able to be put through at a
4 state level.

5 If the list is promoted as the one-stop shop to
6 avoid unwanted calls, many of the exempt entities, such
7 as telephone carriers, insurance companies, I'll
8 whisper not-for-profits, and political fund-raisers,
9 who are among the heaviest users of telemarketing, will
10 still be interrupting the consumer, wanted or not
11 wanted.

12 And in fact, I was quite intrigued by a study
13 that came out from Susan Grant's organization this week
14 that attempted to quantify what kinds of calls were
15 creating grievances from consumers, and at some point I
16 hope Susan will share some of that information with
17 you.

18 MS. HARRINGTON: Thank you, Lisa.

19 Earl?

20 MR. COPILEVITZ: I think if anything, case law
21 teaches us that it's the message that's the issue and
22 not the messenger, and if this is to protect
23 individuals' privacy, there can't be a distinction
24 between the same call with the same content based upon
25 who signs the paycheck for the telemarketer, whether

1 it's the charitable organization directly or whether
2 it's the professional telemarketing service.

3 The law is clear, and where you have
4 exemptions, you have problems, and in going back to the
5 Nordstroms example of the last speaker, I think you
6 also have to recognize inherently that the sale of
7 goods and services is a form of commercial speech. The
8 appeal for public support, whether done individually or
9 through the help of a professional representative, is a
10 form of fully protected speech, and it's entitled to a
11 far greater level of speech, and when you create
12 exemptions for religious groups, political groups and
13 for charities that make their own telephone calls, you
14 are talking about fully protected plenary speech, and
15 to deny that to organizations who don't have the
16 facility or the expertise in-house that they use their
17 time and resources for their program service rather
18 than for raising money is not going to be justifiable,
19 and I don't think it's legally sustainable.

20 MS. HARRINGTON: Okay, last word on this from
21 Bob Bulmash, and then we're going to move on to the
22 next subject.

23 MR. BULMASH: I think under the concept of an
24 abusive practice, I'd like to address the nonprofit
25 issue. For-profits that do telemarketing on behalf of

1 nonprofits generally chew up a lot of the money that
2 they collect. The New York Attorney General's website,
3 Pennies for Charities, shows that -- I think it was in
4 2000 -- that 75 percent of -- for-profit organizations
5 making collections on behalf of nonprofits, 75 percent
6 of those organizations turned over less than -- less
7 than -- 40 cents on the dollar under an abusive
8 marketing practice, since I believe that it's the
9 National Federation for the Blind, which is a case
10 which prohibits the pro-active statement by the
11 for-profit firm marketing on behalf of the nonprofit,
12 it allows that for-profit firm from disclosing
13 accurately the amount of money that's being actually
14 turned over to the charity.

15 So, there's no way to get them to tell you how
16 much amount is going to the charity. So, National
17 Federation for the Blind really cut that avenue off.
18 There's only one avenue left. People -- if I was a
19 person who walked into a tavern and told them that I
20 was with the police and I was looking for a donation, I
21 would likely be arrested for extortion. This is going
22 on on a daily basis in the homes of the elderly by
23 for-profit organizations that commonly go from one
24 metropolitan area to another contacting police unions
25 and saying to those police unions, how would you like

1 us to collect money for you? We will give you a
2 percentage of that money. And the police unions go
3 along with it, and they're synthetic nonprofits that
4 are created by for-profits.

5 This isn't all cases, but these are in the most
6 abusive cases, and there has got to be some way to stop
7 this. The elderly are being ripped to shreds
8 financially. I commonly get calls from adult children
9 of elderly parents asking for something to be done on
10 this, and it's not being done.

11 MS. HARRINGTON: Okay, we need to move on to
12 the safe harbor issue, and I know that there were
13 others of you who wanted to speak, but we just are
14 needing to move through our agenda.

15 Let me also just note that there is at the end
16 of the day a period for comments from people who are
17 attending and aren't participating. That will be at
18 4:30. Do we have a sign-up mechanism for that or are
19 we just going to have open mike?

20 MS. HARRINGTON-MCBRIDE: I believe it's at the
21 registration desk.

22 MS. HARRINGTON: At the registration desk,
23 there is a place to sign up if you think you want to
24 participate in the open mike part of the day. If you
25 want to participate but don't want to wait all day for

1 the open mike, you can also participate directly now.
2 We have a PC set up at the registration desk. If you
3 want to make comments, just take your little self right
4 out there and put your comment right into our forum
5 mailbox, and it will have the same effect and influence
6 as an oral comment made during the open mike period.

7 How many ways can I encourage you to use that
8 computer rather than the open mike period? In fact, I
9 think that's probably better, because we can read it
10 immediately. We don't have to wait for the transcript,
11 but if you want to participate during the open mike
12 session, don't let us discourage you.

13 Now, on to the safe harbor provisions, and by
14 that we mean that there would be some defenses, some
15 safe harbors for marketers based on the adequacy of
16 compliance and monitoring practices used. Were the
17 do-not-call requirement to be implemented, are those
18 adequate and sufficient to protect consumers, and are
19 they satisfactory from a marketing standpoint? Safe
20 harbors, are they satisfactory? How many think they're
21 satisfactory?

22 MR. CERASALE: From what standpoint?

23 MS. HARRINGTON: From the standpoint of
24 consumer protection. Is there anyone who thinks
25 they're not? Let's ask ten questions at once.

1 Is there anyone at the table who thinks that
2 the proposed safe harbors are unacceptable from a
3 consumer standpoint?

4 Is there anyone who thinks that they're
5 unacceptable from the business standpoint?

6 Mallory?

7 MR. DUNCAN: Yes, Mallory Duncan again,
8 National Retail Federation.

9 Again, the difficulty here is -- and I keep
10 going back to this -- the lack of an established
11 business relationship. If you look at what is required
12 for the safe harbor, there are a number of very
13 technical requirements that, for example, a small
14 business would have to comply with to take advantage of
15 the safe harbor.

16 In addition to the cost of complying with the
17 rule generally, these are additional enforcement or
18 protection costs I guess that they would have to
19 undertake. It would be better if there were an EBR for
20 the small business to simply limit itself to calling
21 only its own customers and not have to worry about
22 trying to comply with all of these on top of
23 maintaining the list.

24 MS. HARRINGTON: Okay. Would anyone else like
25 to speak to this very narrow point?

1 Okay, well, I don't think we're going to talk
2 about that issue anymore, then, since it doesn't seem
3 to be burning.

4 The next issue on the agenda concerns a
5 two-year trial period, and we've certainly read a lot
6 of comments, and I think I can safely say that the
7 staff view is that that's not a good idea. No one
8 thinks that a two-year trial period is a good idea.

9 What about a sunset, if this were to be
10 implemented, that would just accompany the ordinary
11 rule review schedule at the FTC? So, five years or ten
12 years out, you know, we sunset subject to review? Is
13 that better?

14 Is there anyone who has a serious problem with
15 the notion of a sunset?

16 Jeff?

17 MR. KRAMER: Jeff Kramer, AARP.

18 No, I don't have a problem with that, but I
19 think it goes to the fact that the rule shouldn't
20 preempt the states, because obviously the states don't
21 have that right now, and if, in fact, something were to
22 sunset, and once people believed they were on a
23 National Do-Not Call Registry, and if it were to
24 sunset, at least they would have protection at the
25 state level if that were to happen.

1 MS. HARRINGTON: Let me say that we are going
2 to continue this session until noon, and if we go
3 through the questions that we're going to cover, we are
4 going to return to some of the questions that people
5 had a lot more to say on in case you need incentives to
6 not say anything.

7 Susan?

8 MS. GRANT: Susan Grant, National Consumers
9 League.

10 I don't know whether a sunset is really
11 necessary. If the Commission is regularly reviewing
12 the rule anyway, then you'd be able to determine
13 whether or not that's an issue to raise.

14 And I just want to clarify one thing, and I
15 really appreciate the plug from Lisa for our National
16 Fraud Information Center. We have put our reports
17 about the top telemarketing scams that we hear about
18 every year and did so with telemarketing fraud not too
19 long ago, but we don't actually take complaints from
20 consumers about strictly do-not-call violations and
21 don't have any statistics to shed any light on that
22 particular issue.

23 I wish that somebody really did do an objective
24 survey about how consumers feel about telemarketing
25 calls from specific kinds of entities, for instance,

1 charities as opposed to other kinds of entities,
2 because I think that that might be really helpful for
3 this discussion. I really haven't seen such a thing,
4 but just listening to the charitable groups around the
5 table, it does seem as though they are sensitive to the
6 fact that there are at least some folks who don't want
7 to receive calls from them. They maintain their own
8 do-not-call list to respond to that.

9 I wonder how much of a burden it would be to
10 require the for-profit fund-raisers to get those lists
11 when they're acting on behalf of charities. I would
12 think that they would be acting for many charities at
13 the same time, and therefore, the costs of obtaining
14 those lists could be spread out among the charities so
15 that it wouldn't be the burden of each charity to pay
16 the full cost of scrubbing their list. That's a
17 question that I have.

18 MS. HARRINGTON: Lisa?

19 MS. MYERS: That's a question I think that we
20 all have. It was unclear to us in any case reading
21 your proposal on how this would be funded whether or
22 not a telemarketing agent could buy the list once and
23 scrub it for everybody.

24 MS. HARRINGTON: Right, we will get to that
25 this afternoon.

1 We want to go back to the earlier discussion
2 and see whether there's anyone who would like to talk
3 about the question of whether businesses should be able
4 to register their numbers on a national do-not-call
5 list. That is a question that we didn't get to, but
6 should B2B be covered by do-not-call? That's the
7 question.

8 Jerry?

9 MR. CERASALE: Jerry Cerasale, Direct Marketing
10 Association.

11 One of the things that -- the DMA has its list
12 and does not have businesses on it, and one of the
13 reasons it doesn't is a problem with who has the
14 authority. The numbers stay the same. If I left the
15 DMA tomorrow, the phone number for the Senior VP for
16 Government Affairs would be the same, and if I put that
17 number on the list, who knows if the next person wants
18 to be on the list?

19 You have PBXs, and if you do the ANI, if I
20 called up to put my number on a do-not-call list from
21 the business side, you're going to get a different
22 number. You're going to get the base number for the
23 DMA. So, there's a huge authority question that comes
24 up there, and I think that one of the things you look
25 at or we look at is is it a residential number or is it

1 a business number, and that also gets us over the
2 problem of people complaining about is this a small
3 business or whatever, and I'm not going to get into the
4 ethics of whether they should tell a phone company to
5 list a business or not as a residential, but if it's
6 listed as a residential, then I think if it's on the
7 do-not-call list, then that's what it is, but if it's a
8 business, then you add another layer of who has
9 authority, how long does it last, does that authority
10 stay, do you get the right number from the ANI if
11 you're going to use that or do you get the -- if you
12 don't do it, from the DMA standpoint, do we get the
13 name and address? Does it cover all the numbers of the
14 business? So, it really raises other issues, and we
15 think that it shouldn't be there. Businesses have, you
16 know, arm's length transactions. Thanks.

17 MS. HARRINGTON: Does anyone have any
18 information about state laws that include B2B and what
19 the experience has been there? That's a specific
20 question. Anybody have anything on that?

21 Okay, now, Jason, you've got your tent up
22 there.

23 MR. CATLETT: Thanks. Generally, businesses
24 should be able to opt out in the same way that
25 consumers do. Sole proprietors are basically

1 indistinguishable from individual consumers in many
2 ways, and we get a lot of e-mail from small businesses
3 who feel harassed by the telemarketing calls that they
4 get. They should be able to opt out just as well.

5 To Jerry's point, who do you take authority
6 from, anyone who controls the phone number you should
7 take the instructions from. If you're paying the bill
8 for the telephone subscription, you should be able to
9 opt out whether you're a business or a consumer.

10 MS. HARRINGTON: Thank you.

11 I want to talk about the existing business
12 relationship more, and for those who are proponents of
13 an exemption for business relationships, existing
14 relationships, how do you define those, and how are
15 they defined in a way that does not swallow the purpose
16 of a do-not-call registry?

17 We've looked at the state laws. They're all
18 over the place, and for those who say that there's too
19 much ambiguity in what we have proposed, as I think
20 George observed, I would say that there's even greater
21 ambiguity in the collection of existing exemptions.

22 Mallory?

23 MR. DUNCAN: I think it would be impossible for
24 me to write a definition of an existing business
25 relationship in the course of this meeting. I can tell

1 you, however, that in talking with a number of our
2 members how they treat the current exemption in the
3 state law, which is they look to those individuals who
4 have actually made purchases with them and have
5 interacted with them to the extent that they have
6 location information about them in the course of making
7 those purchases. It could be phone numbers, addresses
8 that kind of information.

9 That is not a complete definition. Obviously
10 there are cases, such as George mentioned earlier, that
11 go beyond that, but at least as a starting point,
12 that's where our larger members tend to -- how they
13 tend to use them.

14 MS. HARRINGTON: Linda? I see you're wearing a
15 different hat down there now.

16 MS. GOLDSTEIN: I am going to identify myself
17 now, I am representing the Promotion Marketing
18 Association.

19 MS. HARRINGTON: Okay.

20 MS. GOLDSTEIN: I am not going to attempt for
21 fear of the ambiguity that would ensue to suggest a
22 complete definition. We did in our comments provide
23 some definition, which was based on an amalgam of some
24 of the state laws that exist, but I guess two points we
25 wanted to make are that we don't think the definition

1 in any way should be based strictly on a purchase. We
2 think that would be far too narrow an approach to take,
3 and we're looking at something that would encompass the
4 concept of a consumer-initiated communication with the
5 business, and we would just urge the Commission to
6 think in those broader terms.

7 Secondly, we think from a timing standpoint, we
8 would like to see a minimum of two years, because I --
9 anecdotal industry data suggests that when you contact
10 customers with whom you've had a prior relationship
11 over a two-year period, they tend to be more
12 responsive, and then there seems to be a drop-off when
13 we go further down, but the two-year period should be a
14 minimum for that time frame.

15 MS. HARRINGTON: Susan?

16 MS. GRANT: Susan Grant, National Consumers
17 League.

18 Just to touch on a couple of the examples that
19 we've heard here, when you pay cash at Toys 'R Us, they
20 ask for your phone number. Would that be enough to
21 establish a preexisting relationship in order for them
22 to telemarket me? I don't think that it should be.
23 When you ask why they need the phone number, by the
24 way, they can't tell you.

25 I'm really concerned about opening up the

1 potential loophole even wider by saying that if you've
2 ever even inquired about a company's products or
3 services, that it means that you have implicitly
4 consented to receiving telemarketing calls from them.
5 I don't think that you can say that there's any
6 relationship there where the consumer hasn't
7 subsequently decided that they want to make a purchase
8 from you.

9 I'm just really concerned that this would have
10 to be -- if there was an exemption at all -- really
11 narrowly defined in order to protect consumers so that
12 if somebody had something that was ongoing, perhaps
13 like a subscription, maybe that would be in a different
14 category, and even that gives me some pause, but
15 certainly not just isolated incidents of transactions
16 or inquiries.

17 MS. HARRINGTON: Rex and Ann, what is the
18 Missouri law and what's your experience? Missouri's
19 got some sort of an exemption, doesn't it? Could one
20 of you speak to that?

21 MR. BURLISON: Sure. Missouri has both a
22 statute and a regulation that in enforcing Missouri's
23 law we've read together to apply it this way: If a
24 consumer complains about a call, we will contact the
25 business or the telemarketer and advise them of the

1 complaint. Once it's said that there's a -- that they
2 profess that this call would be existing business
3 relationship, we under the statute and the rule require
4 them to show us a written or oral verification to a
5 date and time that within 90 days of the call that that
6 consumer invited the call, whether it be taking their
7 car in for work or whether it was signing a card at the
8 mall.

9 Once the burden is shifted to the --

10 MS. HARRINGTON: Could I ask you a question?

11 MR. BURLISON: Yeah.

12 MS. HARRINGTON: Is the marketer permitted to
13 obtain proof of permission after the call has been
14 placed? Is that what you're saying?

15 MR. BURLISON: No, 90 days before --

16 MS. HARRINGTON: Before.

17 MR. BURLISON: -- the date of the call
18 complaining.

19 MS. HARRINGTON: So, you have a
20 permission-based definition that's not --

21 MR. BURLISON: If you read the regulation
22 that's designed to interpret the statute.

23 MS. HARRINGTON: So, it wouldn't really
24 conceptually be different than what the FTC is
25 proposing? It sounds to me like you've got this

1 existing business exemption, but in fact, what you're
2 requiring is that the marketer obtain advance
3 permission -- proof of consent.

4 MR. BURLISON: To prove that before we start
5 enforcing against that call, we tell them when the call
6 was made, and if they say it's an existing business
7 relationship, show us an oral or written authorization
8 within 90 days of the call and we won't prosecute that
9 call. The end result in Missouri is complaints of
10 existing business relationships are de minimus, because
11 as I said earlier, most people don't report the
12 Truelawn guy who calls them every year or, you know,
13 who they're doing business with.

14 MS. HARRINGTON: Keith, a question?

15 MR. ANDERSON: Yeah, a question, Rex. If I
16 bought something from company X two months ago and then
17 they called me but they don't have something that
18 specifically says I give you permission to call me, are
19 they still in trouble?

20 MR. BURLISON: If they're within 60 days and
21 they have a contact or a receipt for a purchase, I
22 wouldn't prosecute that, because I would think the
23 normal consumer, having done business within a 60-day
24 period, would not necessarily be outraged by that call.

25 MS. HARRINGTON: So, you wouldn't prosecute it

1 as a matter of prosecutorial discretion?

2 MR. BURLISON: Exactly.

3 MS. HARRINGTON: How would you interpret your
4 regulation, because I think we have to assume -- and I
5 really appreciate hearing your perspective as an
6 enforcer, but let me ask you to shift and put on your
7 regulator hat, because we need to assume I think that a
8 lot of businesses want to comply with the regulation as
9 the regulator understands its meaning.

10 How would you counsel a business doing
11 telemarketing in Missouri to comply with the Missouri
12 do-not-call requirement and what meaning should the
13 business give to the existing business relationship
14 exemption?

15 MR. BURLISON: Being very simple about it,
16 because enforcement -- you have to be simple in this
17 area. Again, you show me something written or oral
18 within 60 days, and I'm not going to drag you to court
19 on that phone call.

20 MS. HARRINGTON: But in your view, evidence of
21 a transaction is proof of consent?

22 MR. BURLISON: I would think that was
23 reasonable, and that's the position we've taken, and
24 even an oral inquiry, where someone mentioned earlier,
25 you called in and said how much is the air conditioner

1 at Sears, and they called you back within 60 days, I
2 don't think that's unreasonable or at least I'm not
3 going to enforce or take someone to court over that
4 call, but what we --

5 MS. HARRINGTON: Now, do you have people
6 complaining about receiving unwanted calls under those
7 circumstances, you know, where --

8 MR. BURLISON: Most of the complaints that come
9 in about the business relationship, that issue is not
10 raised by the consumer, because many times they had
11 forgotten that they called Sears, and then when I --
12 when we contact Sears and they say, well, we've got
13 this card from them, many of the consumers when you
14 call them back and say, oh, well, that's right, I did
15 do that.

16 But where this gets caught up in enforcement,
17 we don't look at a situation where there's five
18 complaints. We're dealing with 30 complaints or 50
19 complaints or 100 complaints, and by the time we get to
20 enforcing it, if half of those are existing business
21 relationships, we don't prosecute them, but we
22 prosecute aggressively the other 50, you can bet on
23 that.

24 So, what draws the attention to the enforcement
25 part is the numbers, and it's, again, de minimus

1 numbers that come from existing business relationships,
2 because people are fair about reporting that complaint.

3 MS. HARRINGTON: Okay, Jim?

4 MR. WARDEN: Jim Warden, New York State
5 Consumer Protection Division.

6 We have a situation, I think it's somewhat
7 similar to Missouri, only we have two separate
8 exemptions. Number one, if you have specific
9 permission to call, that's separate and above from a
10 prior business relationship. The second thing is a
11 prior business relationship, which we define as an
12 exchange of goods and services for consideration within
13 the preceding 18 months, which means a cash
14 transaction.

15 I don't see how that could be ambiguous, but
16 believe me, we have had a few cases where it was. For
17 instance, if somebody issues a credit card and they
18 don't charge a fee if they have an ongoing relationship
19 with them, how would you come out on that?

20 MS. HARRINGTON: Oh, I'm not going to answer
21 that.

22 MR. WARDEN: Okay, well, I'll tell you how we
23 came out on it. Did any dollars pass hands? Was that
24 card used? Those are the counter-arguments. The
25 arguments in favor are that person had established a

1 line of credit, they have a relationship, there clearly
2 was an intent there. We gave that to them. We said
3 that was a good, established business relationship.
4 That's right on the border where we had to interpret
5 the reg.

6 The other thing or problem that we ran into,
7 and we think the federal regulations have thrown back
8 to us, is does a mere inquiry constitute a business
9 relationship? And our answer to that is no, because we
10 have had some what I would say are really sleazy
11 operators. They will call up and leave a message on
12 your phone. They won't even identify who they are.
13 They will simply say, "Call us back, it's very
14 important." You call back out of curiosity or
15 whatever, okay, and then all of a sudden they feel free
16 to bombard you for the next few years with calls -- or
17 not the next few years, at least the next 18 months.
18 Those people we're coming down hard on.

19 The other thing we have, and I probably should
20 have added this at first, even within the 18-month
21 exemption, if you get one call from them and you decide
22 you don't want to hear back, notwithstanding the prior
23 business relationship, if you ask them not to call,
24 they can't call you again without violation. So, is
25 that perfect, does it free consumers from all

1 inquiries? No. Does it strike we think an appropriate
2 balance where consumers may want to get these calls?
3 You know, I'm not sure we have a perfect balance, but
4 at least we're trying to get there.

5 MS. HARRINGTON: I would ask New York and
6 Missouri folks whether you have enough sense of public
7 sentiment, that is one concern that we see and hear, is
8 that if there was some exemption for existing business
9 relationships, that there would be public outrage
10 caused by the disconnect between the consumer's
11 expectation that when they sign up on a do-not-call
12 registry, it means that they're not going to get calls,
13 and their actual experience of receiving calls from
14 entities that are permitted to call because of the
15 existing business relationship exemption. Do you have
16 enough experience with your systems to know whether
17 there is anger because of a disparity between the
18 expectation and the reality?

19 Ann or Rex or Jim or anybody who's in those
20 states? This is a very specific question. So, if
21 you've got an answer with information that's
22 responsive, like raise your hand. You can leave your
23 tent up if you still want to talk, but raise your hand
24 so I know that that's what you're going to talk about.

25 Jim?

1 MR. WARDEN: Occasionally what we would get,
2 and it would be tough to put a percentage on this, but
3 I would say for cases that we get where the companies
4 have successfully claimed a business exception,
5 somewhere from maybe 15 to 20 percent of the complaints
6 that we had against those companies, once we go back
7 and verify them, we find out there was a preexisting
8 business relationship and that those are invalid
9 complaints. We -- and a lot of times we find this out
10 --

11 MS. HARRINGTON: But the consumers are unhappy?

12 MR. WARDEN: Well, they're not, and a lot of
13 times they complain, and you could say they're prima
14 facie evidence they're unhappy. We call them back and
15 say, gee, did you have a transaction with these folks?
16 They claim you did on X, Y and Z, and they furnished us
17 this paperwork. And then they say, oh, yeah. They
18 don't seem to be mad. Then we go over with them all
19 the exceptions and we send them a booklet explaining
20 all the exceptions.

21 MS. HARRINGTON: Okay, thanks. Anything else
22 on that particular point?

23 Rex?

24 MR. BURLISON: Most people when you call them
25 back are delighted that 70 to 80 percent of their phone

1 calls have been caused to not come in, so when you
2 explain to them that you had a relationship or you
3 explain to them that some of these calls are exempt,
4 they understand when you explain that to them, and
5 they're delighted, because our anecdotal information
6 shows that 70 to 80 percent of the calls people had
7 been receiving, they're not receiving now.

8 MS. HARRINGTON: Okay, we have a new AARP
9 representative. Would you introduce yourself?

10 MS. POLACHEK: Yes, my name is Laura Polachek
11 with AARP, and we actually do have some information
12 about Missouri, because there was some allegation that
13 the law had some loopholes that allowed calls to still
14 reach consumers, and we did a survey actually in
15 conjunction with the Attorney General's Office which
16 found that three-fourths of consumers do not believe
17 that a business relationship exemption was justified
18 and they wanted to see that loophole closed.

19 We did release the results with the Attorney
20 General who agreed that there are some unacceptable
21 loopholes in the law, because essentially if you put
22 your name on a list, as has been said, you don't expect
23 to get calls again, and if you do want to hear from the
24 business, you can initiate the call, they can get
25 permission from you in several ways, but once you have

1 your name on a list and you open this loophole, we've
2 seen industry argue for the mere inquiry, you know, a
3 request for an application from several years ago, and
4 I don't think that that implies that there's an ongoing
5 voluntary relationship between the business and the
6 consumer.

7 And again, you know, I think the focus has been
8 lost on why there is a do-not-call list. The reason
9 for a do-not-call list is to protect consumers from
10 unwanted calls, and so the focus should be on how that
11 could be accomplished. So, by having this exemption
12 that could be interpreted extremely broadly I think
13 would really undermine the intent of the rule.

14 MS. HARRINGTON: Okay, Ann?

15 MS. SCHNEIDER: I think the AARP survey --

16 MS. HARRINGTON: Could you speak into your
17 microphone please, Ann?

18 MS. SCHNEIDER: I'm sorry, Ann Schneider of the
19 Missouri Attorney General's Office and on behalf of
20 NAAG.

21 The AARP survey speaks to the larger prevailing
22 consumer interest in this area that most consumers
23 don't perceive themselves of having an existing
24 business relationship, where many people at the table
25 construe them as doing so. I mentioned before the

1 California regulations, which have just been
2 promulgated, which take a more complex but a more
3 transaction-specific view of what may constitute an
4 existing business relationship under certain
5 circumstances, because there is a difference between an
6 inquiry for the price of tires at Sears and, you know,
7 a credit card arrangement or other, you know, long-term
8 extended leases and the like, and that would merit some
9 review in trying to define this.

10 MS. HARRINGTON: Okay, we're going to hear from
11 Tyler and then John.

12 MR. PROCHNOW: Tyler Prochnow with the American
13 Teleservices Association.

14 As a Missouri resident, I can tell you that not
15 only do I get many comments from the people that I work
16 with constantly who know what I do and who I represent
17 but also from people in my neighborhood, people that I
18 know around town and my in-laws, who all will take the
19 time to say something about the Missouri do-not-call
20 list. While I've heard comments, complaints about many
21 of the issues, none of them have ever been related to
22 the existing business relationship, and from that
23 standpoint, most often they are related to those
24 entities who are exempt, mostly politicians in the
25 state of Missouri, why they can still call.

1 MS. HARRINGTON: Well, they'll want to tune in
2 for our upcoming political rule.

3 MR. PROCHNOW: Absolutely.

4 MS. HARRINGTON: That's a joke. For the
5 record, the Federal Trade Commission is not considering
6 issuing a political rule.

7 John?

8 MR. MURRAY: Thank you, John Murray.

9 NAA does believe in a pretty broad exception
10 for existing business relationships, but to speak more
11 directly to the question earlier, we don't want to call
12 people who don't want to be called, and the definition
13 of a business relationship in our industry was brought
14 up earlier by an AARP representative of calling
15 somebody whose subscription is about to expire and
16 their service is going to be discontinued. I would
17 think that that would be a pretty clear business
18 relationship and a welcome call.

19 In fact, in my years of working at a newspaper,
20 I'm much more likely to get a call from a customer who
21 says you discontinued my service without calling me
22 first than I am to get a call from a consumer saying
23 why are you trying to sell me something. Once again,
24 maybe we're a unique industry and maybe that's why the
25 exception should be considered, because I can't

1 imagine, and I never conceived when we were writing the
2 comments, that a newspaper would call up, and perhaps
3 this is part of the answer to your question, and offer
4 another service.

5 I mean, that's exploiting the business
6 relationship, and I'd ask you to perhaps look in that
7 direction of what do you do with the business
8 relationship, if there's some way to craft in that --

9 MS. HARRINGTON: Well, for all of those
10 industries that are involved in cross-marketing and
11 affiliate marketing or whatever you call it, they would
12 go absolutely berserk at that distinction, so I can
13 anticipate that that might work for you, but it doesn't
14 work for everybody else, and it kind of gets us back to
15 the exceptions following the rule problem, and I just
16 point that out, not to provoke conversation on this,
17 but that this is very difficult.

18 We have five minutes left. Katie, you have a
19 question?

20 MS. HARRINGTON-MCBRIDE: I do, on this topic
21 and then one on a broader topic.

22 The first question about this topic is, with
23 the existing business relationship exemption, many
24 argue that it would be easier as a record keeping
25 matter to scrub lists of presumably all of the numbers

1 on the list and then reinstate numbers for those they
2 had an existing business relationship for than it would
3 be to do so under an express verifiable authorization
4 provision, which would require opt back in, and I'm not
5 sure I'm clear as to what the costs and benefits are as
6 to those approaches. It seems to me if someone could
7 explain how practically speaking that would work, it
8 would be very helpful.

9 MS. HARRINGTON: Now, if you have been called
10 on and your tent is still up, take it down so I know
11 who wants to be recognized.

12 Michael Rosen, you have been very patient. Do
13 you have a response to Katie's question? If you don't,
14 say what you want to say, but we have five minutes.

15 MR. ROSEN: Unfortunately, I do not have a
16 response to Katie's question, but much of the talk
17 about preexisting business relationship is focused on
18 the commercial sector, and I do want to touch on what
19 it means in the nonprofit sector. It's more than just
20 a financial transaction. The nonprofit sector can have
21 a business relationship with someone if they give money
22 as a contribution or give money to become a bona fide
23 member.

24 There can also be a business relationship if
25 the person volunteers, receives services, gives

1 services to the organization, the organization gives
2 money to the individual or organization. So, the
3 complexity as it relates to the nonprofit sector is
4 much deeper perhaps than it is with the commercial
5 definition, and also I'd like to point out that where
6 donors are concerned, a two-year horizon for when that
7 relationship erodes would not hold up in the nonprofit
8 sector where you may look at a three to five-year
9 horizon or even longer where lapsed donors will come
10 back into the fold depending on the nature of the
11 appeal and the nature of the cost.

12 MS. HARRINGTON: Thank you.

13 We're going to hear from Jerry, and then,
14 Mallory, you'll have the last word because you had the
15 first word this morning.

16 Jerry?

17 MR. CERASALE: Jerry Cerasale, DMA.

18 In response to Katie, using the experience of
19 the DMA list, the DMA list is -- you have this -- our
20 members have to scrub, culling out the prospects but
21 not the customers, so they have the business
22 relationship in there. You don't really scrub and then
23 add in. You have a campaign where you're looking for
24 prospects, new customers, new donors, and there you
25 would take whatever -- the list and scrub it.

1 You then have a campaign where you were going
2 to contact your existing customers, and that's a
3 separate list. So, you don't have to worry about
4 adding back in. You scrub, and then you have --
5 because we have two different campaigns. You call
6 customers usually differently than you would call
7 prospects, and so you have in a sense two different
8 lists that you just kept, so you never have to worry
9 about adding names back in. I hope that answers it.

10 MS. HARRINGTON: Mallory?

11 MR. DUNCAN: Jerry has just answered the
12 question I was going answer from Katie.

13 MS. HARRINGTON: Thank you.

14 Well, we have one minute left, so here's my
15 question: How are we doing? Is there anything about
16 this discussion that is concerning any of the
17 participants in terms of our need to make sure that we
18 have the information in this rule record that we must
19 have?

20 Susan?

21 MS. GRANT: Susan Grant, National Consumers
22 League.

23 We never really got to Katie's questions about
24 affiliates, and I just want to make a comment about
25 that. I think that in many cases affiliates don't sell

1 similar products and services. They often sell things
2 that are completely different. I don't think consumers
3 have any way of knowing what companies are affiliated
4 with what companies. So, to open up the preexisting
5 relationship, if there is an exemption for that, to
6 affiliates as well I think would cause tremendous
7 problems in terms of consumer expectations and further
8 evisceration of rule.

9 MS. HARRINGTON: Okay, I'm looking for feedback
10 on process as much as anything here.

11 Bob, did you have a --

12 MR. BULMASH: On process regarding?

13 MS. HARRINGTON: Yeah, this is a how are we
14 doing, are you being heard, does anyone have any --

15 MR. BULMASH: I'd like to just briefly mention
16 the reason we're all sitting here and people are in
17 back is because people are just fed up with
18 telemarketing, and I'm hearing a lot of comments of an
19 Alice in Wonderland world where people don't mind
20 getting calls, that they want to receive more,
21 regarding prior business relationship, so on and so
22 forth. People are fed up with this industry, and they
23 want to be left alone.

24 MS. HARRINGTON: Well, I am going to take the
25 pulse of the participants as time permits throughout

1 the day, but we are now out of time, so we are going to
2 end, because as I said, we're going to stay strictly on
3 schedule. We will resume at 1:00 sharp.

4 Thank you very much.

5 (Whereupon, at 12:00 p.m., a lunch recess was
6 taken.)

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1 AFTERNOON SESSION

2 (1:00 p.m.)

3 MS. HARRINGTON: This afternoon we're going to
4 take a look at implementation issues, that we would
5 like to hear more discussion on implementation should
6 the Federal Trade Commission amend its rule to create
7 the National Do-Not Call Registry and so forth.

8 David Torok is a member of the team from the
9 FTC who has been looking very carefully and
10 specifically at implementation questions, and he is
11 going to lead us through this first and really second
12 session this afternoon. We will begin with some
13 remarks from David explaining where we are and what we
14 are doing, and then we will have the same kind of
15 introductions of new participants only. We would ask
16 you to identify yourself, identify the organization
17 that you represent, and give us one sentence on your
18 principal concern with implementation questions.

19 So, David, do you want to begin?

20 MR. TOROK: Thank you very much, Eileen.

21 I will make these remarks as brief as possible.
22 I wanted to review for everybody where we stand at the
23 FTC on the possible implementation of a National Do-Not
24 Call Registry if one is, in fact, implemented.

25 In developing the proposal to implement a

1 national registry, the Commission conducted some
2 extensive research in determining implementation
3 feasibility. We contacted virtually every state that
4 has a state-wide do-not call registry to learn from
5 their experiences. We also tried to talk to the
6 contractors that worked for many of the states to,
7 again, see their experiences in the implementation
8 process. We also issued a request for information or
9 an RFI to vendors who might be interested in partnering
10 with the FTC in developing such a registry.

11 In planning for a possible registry, the FTC
12 really focused on five primary concerns. First and
13 foremost, we wanted to assure the accuracy and validity
14 of the consumer information that is going into the
15 register.

16 Secondly, we wanted to make sure if this is
17 implemented that we could build a system that could
18 handle the potential volume of calls or of requests to
19 be added to the registry. We learned from state
20 experiences that consumer sign-up rates have varied
21 from a few percentage of the consumers within the state
22 to over 40 percent of the consumers who are within a
23 state signing up for their state no-call lists.

24 Fourth, we wanted to make sure that the -- I'm
25 sorry, the third point, ensure the security of the

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1 implementation --

2 MS. HARRINGTON: He's testing to see if we're
3 awake after lunch.

4 MR. TOROK: I got a few people, that's great.

5 Security is a big point. We want to make sure
6 the information in the registry is secure and used in a
7 proper manner.

8 Fourth is to make sure the registry is easily
9 accessible, both by the telemarketers who use the
10 information as well as by law enforcement officials.

11 Finally, we want to try to develop a system
12 with the lowest possible costs. I think that's a
13 benefit to everybody overall.

14 To address these concerns, the FTC developed
15 one possible scenario for how a national registry would
16 operate. This scenario has three components; consumer
17 registration, telemarketer access to the consumer
18 registration information, and then finally, law
19 enforcement access to the registry.

20 The FTC anticipated that the entire system
21 could be fully automated to simplify the process and to
22 keep the costs to a minimum. For the consumer
23 registration component, we envisioned a process where
24 consumers could call a national number from the
25 telephone they wished to register. Their call would be

1 answered by an interactive voice response system or an
2 IVR.

3 After a brief introductory message, the
4 consumer would be asked to enter on their telephone
5 keypad -- like that one -- the telephone number of
6 the telephone they would like to register. At the same
7 time, that number would then be checked against the
8 automatic numbering information or ANI information that
9 is passed with the telephone call. If the numbers
10 matched, the consumer would be told that their number
11 is registered and the call would be ended. If the
12 numbers did not match or if the ANI information was not
13 passed with the call, then other options could be
14 offered to the consumer.

15 The only information to be gathered in this
16 proposed system would be the consumer's telephone
17 number. Based on our discussions with the states, we
18 have learned that their experiences with their
19 state-wide registries is that telemarketers
20 consistently ask only for that information, only the
21 telephone numbers.

22 In fact, in those states where they collect
23 more information from consumers and try to give that
24 information to telemarketers, often times they would
25 get requests, could you please purge all the other

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1 information and just give us a list of telephone
2 numbers? Now, of course, if the proposed rule is
3 implemented, it would require that telemarketers need
4 to access the system to scrub their lists of those
5 telephone numbers for consumers who ask not to be
6 called.

7 For the telemarketer access component to the
8 registry, as one alternative, we also developed the
9 following system, an automated, secure web-based system
10 that would be developed for the telemarketers. On
11 their first access to the system, the telemarketers
12 would have to register, providing some limited
13 identifying information for the system, their names,
14 their addresses, a contact person and that contact
15 person's information.

16 If they're accessing the registry on behalf of
17 another party, on behalf of a client, they would have
18 to provide that information as well, and they would
19 have to identify the portion of the database that they
20 would want to obtain.

21 Finally, they would have to pay the appropriate
22 annual fee via either a credit card or an electronic
23 fund transfer. After the payment is processed, the
24 telemarketer would be given an account number of some
25 kind to permit access to the registry, and that account

1 number could be used in future visits to shorten the
2 sign-on process and the access to the information.

3 Once access is granted, the telemarketer would
4 download that portion of the database that they
5 require. We anticipate that the registry could easily
6 be sorted by area code so that telemarketing customers
7 could take a piece of the database, and they could take
8 all the area codes in a certain state or from a certain
9 region of the country. We may be able to subset the
10 telephone number information even more finely. That is
11 a question we may discuss this afternoon, whether that
12 is necessary or not. Then obviously, on the other
13 hand, the telemarketer could access the entire national
14 registry list database if they so desire and need.

15 Telemarketers would only be permitted to
16 download the telephone numbers of the consumers, even
17 if we collected additional information from the
18 consumers, which is not anticipated in this proposed
19 scenario, but we would anticipate that telemarketers
20 would only get the telephone numbers of the consumers.

21 On subsequent visits to the website, we
22 anticipate that telemarketers may also be able to
23 download a more limited subset of the information,
24 that, in fact, only those numbers that have been added
25 or have been deleted since their last visit to the

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1 website, that information that we provided to them, so
2 that less information has to travel over the internet
3 on each subsequent visit by the telemarketer.

4 And then finally, there would have to be a law
5 enforcement access component to the registry, and for
6 this component we also anticipate providing a secure
7 internet website, to have automated access, and
8 possibly that access could be provided through our own
9 Consumer Sentinel website. Law enforcers would be able
10 to query the registry to determine if a particular
11 telephone number has been registered and when, and also
12 they could query the registry as to whether a
13 telemarketer signed up for access to the registry and
14 when they did that.

15 Now, as I previously stated, on February 28th
16 of this year, the Commission issued a request for
17 information to contractors capable of assisting the FTC
18 in developing, implementing and outrigging a national
19 registry. We issued the RFI in an effort to conduct
20 market research and to lay the groundwork for a
21 procurement process in the event we actually establish
22 a national registry.

23 In the RFI, the Commission set forth this one
24 possible alternative that I just described to you and
25 asked whether the system as proposed was feasible and

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1 practical and whether there were any alternative
2 systems that the vendors could offer which could
3 provide an equal or greater level of consumer
4 validation, registration security and registry
5 accessibility at a lower cost. We also asked for a
6 brief description of the system they would provide and
7 specific questions about the operation of that system
8 and the estimates of the cost.

9 I would like to report to you that 36 different
10 companies responded to the RFI. Virtually all of the
11 respondents, 34 of the 36, stated that the system as
12 proposed by the FTC was both feasible and practical and
13 overall they could not offer a complete lower-cost
14 alternative. A number offered thoughtful suggestions
15 on possible improvements that could be made to the
16 system, and we are studying those alternatives, and we
17 may discuss some of the issues they raise today.

18 Now, as a final matter, you should be aware
19 that the Commission recently issued a notice of
20 proposed rulemaking to further implement the
21 Telemarketing Sales Rule by establishing user fees for
22 telemarketers to access the national registry if one is
23 implemented. As the Commission stated in that NPRM,
24 even though the final determination about a national
25 registry has not been made, it is necessary to conduct

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1 that rulemaking proceeding now to consider funding for
2 the registry so that if the Commission ultimately
3 decides to establish the registry, it can be
4 implemented without undue delay.

5 You should be aware that the President's budget
6 does propose that user fees will be used to fund any
7 national registry if one is adopted and at least will
8 be used in the first year to fund a large portion of
9 this, so we must have the rulemaking proceeding to
10 establish such user fees.

11 The commentary for the user fee proposal closes
12 Friday, June 28th, 2002. The proposal has been
13 published in the Federal Register, and it is available
14 on our website. Now, since there has been insufficient
15 time for comments to be provided, we don't think the
16 user fee proposal is ripe for discussion today, but we
17 did want to bring this to your attention and make sure
18 everyone is aware of it and has the ability to comment
19 by the close of the comment period, June 28th, 2002.

20 So, that concludes my presentation on the
21 possible implementation of a national registry. I
22 think we would like to move on to the next portion of
23 our agenda.

24 MS. HARRINGTON: Okay, thank you, David.

25 Isn't he just wonderful?

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1 Let's do introductions, those who are new at
2 the table since this morning. I'll tell you what,
3 Earl, your organization isn't new, but would you
4 introduce yourself and tell us what your concern is
5 with implementation?

6 MR. COPILEVITZ: My name is Earl Copilevitz.
7 I'm here with the Nonprofit Coalition, and our concern
8 is the integrity of the process, which we need the
9 necessary safeguards in place if such a list is going
10 to be applicable to nonprofits, which, of course, we
11 hope that it won't be.

12 MS. HARRINGTON: Thank you.

13 Chris?

14 MR. HOOFNAGLE: My name is Chris Hoofnagle. I
15 am legislative counsel for the Electronic Privacy
16 Information Center here in Washington. We have argued
17 that there should be an opt-in standard for
18 telemarketing, that there should be real protections
19 for consumers in this regard.

20 MS. HARRINGTON: Thank you.

21 Daniel?

22 MS. FAGRE: My name is Daniel Fagre, and I work
23 for Metris, which is a financial services company
24 composed of a credit card bank and credit card
25 enhancement products. I'm here today on behalf of the

1 Consumer Choice Coalition.

2 My principal concern with this panel is the
3 same as the principal concern with every panel today,
4 every discussion today, which is that as of today, it
5 is almost impossible for honest actors to comply with
6 the 20-odd state lists without somehow messing up,
7 we've messed up, concerning state levels of compliance
8 programs. I think without a uniform national standard
9 and without addressing the very difficult timing issue
10 of how long we have to get each list and how long we
11 have to comply with it and how many times we have to
12 access it, it will be very difficult to comply. So, we
13 support a national list, but it should be a true
14 national list with uniformity.

15 MS. HARRINGTON: Jeffrey?

16 MR. SCRUGGS: Thank you. My name is Jeffrey
17 Scruggs. I'm with SBC Communications, executive
18 director of core communications in our R&D subsidiary,
19 and our primary issue is that we're concerned that
20 there's a lot of technical complexity and cost that
21 hasn't been anticipated in the development and
22 management of this kind of database, even though you've
23 laid out what is a simplistic and preferably an
24 automated way of doing such a database.

25 MS. HARRINGTON: Keith?

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1 MR. FOTTA: My name is Keith Fotta, I'm
2 president and CEO of Gryphon Networks. We provide a
3 network service that allows telemarketing firms to
4 instantly and automatically comply with all these state
5 and federal laws, requiring the purchase of no
6 equipment. We also provided the IT infrastructure for
7 the State of Texas' state do-not-call list management.

8 We have several concerns. One of them is that
9 we believe that there should be a certain amount of
10 accountability from the consumer as well. We heard a
11 statement that over 40 percent of consumers in certain
12 states will sign up. In fact, of states that are free
13 to consumers, that is indeed the case and 40 percent do
14 sign up, but in states where there is some type of fee,
15 as little as \$1, we see approximately 10 percent of the
16 population sign up.

17 Also, we also believe that with the American
18 consumer moving every 2.6 years, that it's
19 inappropriate to put any kind of a time frame
20 associated with a consumer staying on a list any
21 greater than two and possibly three years on the very
22 outside.

23 Thank you.

24 MS. HARRINGTON: Okay, Kim Miller?

25 MS. MILLER: My name is Kimberly Miller. I'm

1 with NeuStar, and we are a neutral third-party
2 administrator of several critical infrastructure
3 databases and registry services on a nationwide basis,
4 several of them through government contracts such as
5 what is contemplated here. We have developed them very
6 quickly from the ground up, and as a potential vendor
7 of the national do-not call list, if one is
8 implemented, I just want to say that we really
9 appreciate the opportunity to be here today, because I
10 think it benefits all of us to hear the concerns of the
11 parties today, and it will help me take this back so we
12 can propose a system that may address some of the
13 concerns.

14 MS. HARRINGTON: Thank you.

15 Joseph?

16 MR. SANSCRAINTE: Good afternoon. My name is
17 Joe Sanscrainte. I am the director of regulatory
18 affairs and general counsel for CallCompliance,
19 Incorporated. CallCompliance provides do-not-call and
20 do-not-fax solutions to the telemarketing industry.
21 We're the only company out there that provides a
22 solution via the telephone carrier's central office.

23 Our main concern is that in the implementation
24 of the national do-not-call list, that the FTC focus on
25 balancing the competing issues involved, accuracy of

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1 the data and cost-effectiveness as well.

2 MS. HARRINGTON: Linda?

3 MS. LINK: I'm Linda Link with NCS Pearson. We
4 are a potential vendor if this is chosen to go forward
5 and implemented. We also are a neutral administrator
6 in numbering databases in several areas. So, we have
7 quite a bit of experience in database administration.

8 Likewise, the same as NeuStar, I'm here to
9 listen to the issues to be able to come back and
10 incorporate some of the concerns, and also to be able
11 to -- concerned about the requirements of the
12 database, that it is I guess reasonable, can be
13 cost-effective, and rely on the security and the
14 accuracy certainly.

15 MS. HARRINGTON: Thank you.

16 Has everyone who's joined us now introduced him
17 or herself? I didn't skip over anyone, did I?

18 All right, David, did you want to lead the
19 discussion wholly or in part?

20 MR. TOROK: Sounds great, although I don't
21 think I can wholly take over for Eileen.

22 The first issue, consumer registration and the
23 use of ANI data for that consumer registration. As I
24 said, one of the concerns of the Commission is the
25 veracity of the information that is in the database.

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1 We want to make sure that the information and the
2 number that is registered is from the consumer who has
3 control over that telephone number.

4 The question is, how much information is
5 necessary to verify that the telephone number being
6 registered belongs to the person who's doing the
7 registration? And I'll give a few examples.

8 We did not in our scenario initially suggest
9 internet registration because of the difficulty in
10 obtaining adequate verification on the web without
11 gathering a consumer's payment information or a host of
12 other identifying information cross-referencing that
13 information. We had suggested telephone registration
14 because ANI verification is available. So, is ANI data
15 sufficient for this purpose?

16 And I do know there is an issue concerning
17 whether ANI data will be passed in all calls, so let's
18 hold those questions and discussions, we'll get to that
19 next, but now it's just, is ANI the right way to go?

20 MS. HARRINGTON: Linda?

21 MS. LINK: Linda Link, NCS Pearson.

22 Our position is that we would recommend, and I
23 realize that the payment issue is another issue, but
24 from a verification standpoint, we believe that payment
25 by the end user consumer is --

1 MS. HARRINGTON: Do we -- excuse me, could we
2 reduce that feedback, please?

3 MS. LINK: -- is important for verification,
4 and I think it also provides other opening -- will
5 open up to other alternatives, such as internet
6 registration, which certainly is the most
7 cost-effective alternative for registration. Certainly
8 ANI can be used. There's concerns in using IVR from a
9 volume standpoint, in the startup of it.

10 So, from a verification standpoint, I guess our
11 recommendation is that payment be required by the
12 consumer to register and that that's the ultimate
13 verification.

14 MS. HARRINGTON: Thank you.

15 Jason?

16 MR. CATLETT: Jason Catlett from Junkbusters.

17 The idea of getting consumers to pay for the
18 privilege of not receiving telemarketing calls is
19 offensive and unnecessarily burdensome. I'm already
20 paying for my telephone, and I should have that option.

21 To the principal question, is ANI good? When
22 it's available, yes, it's good, but it's not always
23 available. In the case of an auxiliary line, for
24 example, you have two telephone numbers, only one of
25 which can produce an outbound call, or --

1 MR. TOROK: And as I said, we will get to that
2 issue. We will discuss that next.

3 MR. CATLETT: So, you need to be cognizant of
4 that as well.

5 MR. TOROK: Right now it's just ANI as a
6 general matter.

7 MS. HARRINGTON: Chris?

8 MR. HOOFNAGLE: Yes, thank you, Chris Hoofnagle
9 from EPIC.

10 I think we need to question the premise of how
11 much verification, if any, is needed at all. If we
12 look at many other states, they allow enrollment over
13 the internet, and all you have to do is submit a phone
14 number. Colorado, for instance. We have a number of
15 states that offer internet enrollment online at
16 epic.org, and I would argue that verification in this
17 sense, excessive authentication in this sense, is not
18 necessary because the risk of being enrolled improperly
19 creates not much of a harm, but also more verification,
20 more authentication, sets up a barrier for consumers.
21 Thank you.

22 MS. HARRINGTON: Daniel?

23 MS. FAGRE: We would argue that more than just
24 the phone number would be needed. The call would have
25 to come from the phone number indicated, but the

1 billing individual should make the call, and it gets to
2 Jerry Cerasale's point this morning before lunch of who
3 has the authority to put themselves on the list? We
4 would argue it's the person who's named on the bill.
5 And a modest, de minimus payment might be a good way to
6 verify, because part of this whole proposal that the
7 FTC has made, which will be discussed tomorrow, is the
8 notion that a consumer doesn't really want to buy a
9 product unless they do that extra step of giving out
10 their account number. That's a real kind of a litmus
11 test of how serious they are about buying something.

12 So, we would argue if that's your position,
13 then maybe someone doesn't really want to be on the
14 list unless they're willing to give an extra piece of
15 evidence or be willing to trade that for the
16 pre-acquired account pull-out.

17 MS. HARRINGTON: Keith?

18 MR. FOTTA: To begin with, I think the ANI
19 system would work. One thing we see across several
20 states, though, is that web signup actually triples
21 call-in signups. So, where available, where consumers
22 can actually sign up on the web, we see those numbers
23 work out to about three to one.

24 The only way to provide the kind of
25 verification that you need, though, would require

1 consumers to pay some type of fee. If, in fact, that
2 is not an option, certainly the ANI situation as it's
3 set up is not only doable but technologically
4 relatively simple.

5 MS. HARRINGTON: Jeff and then Kimberly.

6 MR. KRAMER: Yeah, obviously we want to see a
7 system as easily accessible as possible for consumers,
8 and I think ANI would work, and, you know, I would even
9 go further and say it's not just the person in whose
10 the phone services name is but someone who lives in
11 that house, and I think we've mentioned in our contents
12 we find it hard to believe someone would go into
13 someone's house and use their phone and put themselves
14 on a do-not call list if someone didn't want to be on
15 it. So, I think if the call is made from that phone,
16 that's reasonable.

17 MS. HARRINGTON: Kimberly?

18 MS. MILLER: Thank you.

19 I echo what most of the panelists have said so
20 far on web access. It would be the most cost-effective
21 manner.

22 As far as ANI is concerned, as David has
23 brought up, that it's not always available, and as soon
24 as it's not always available, you allow exceptions for
25 consumers to sign up with other methods, then how

1 reliable is your verification process if you're relying
2 on ANI for your verification? There would always be
3 ways around it, exceptions to it. So, if you deviate
4 from ANI, you may want to go to your most
5 cost-effective method and go the with the web-based
6 access.

7 However, one possible proposal which may
8 implicate the prior business relationship discussion
9 that we had this morning is that the national call list
10 registry vendor could set up an automated call-back
11 system to ask people if they --

12 MR. TOROK: Let's not jump ahead.

13 MS. MILLER: -- meant to sign up. So, I
14 should save that remark until later?

15 MR. TOROK: I'd appreciate that.

16 MS. HARRINGTON: Rex and then Tyler?

17 MR. BURLISON: Eileen, again I'm echoing the
18 separation of registration and enforcement. This gets
19 us into the bigger picture of how we're -- if, in
20 fact, the state lists are going to be brought into the
21 federal list, the integrity of the state list, which in
22 Missouri and many other states are by the web, by mail,
23 by phone, the integrity of the list needn't only be at
24 the point of enforcement.

25 When someone calls, how we have it set up,

1 someone calls and files a complaint, the first thing we
2 do is punch in their phone number, and with that our
3 screen comes up and tells us, are they on the list?
4 Are they available to even file a complaint? So, we
5 make the integrity of our list at the enforcement level
6 and don't get into how accurate the master list or the
7 national list is once the registration is made, because
8 the point really is, the accuracy of the list becomes
9 important when you try to enforce it, and it's not how
10 you might make the list. It's how you start enforcing
11 the list that the accuracy has to be or the integrity
12 has to be made.

13 MS. HARRINGTON: Have you had any complaints in
14 Missouri from businesses who have found or would there
15 be a way for them to discover that numbers on your list
16 were inadvertently placed on the list, or from
17 consumers?

18 MR. BURLISON: Well, you know, let's look at
19 this. We have got a list with 970,000 numbers.
20 There's going to be inaccuracies. I don't care how
21 many people that you put on preserving the accuracy of
22 the list, there's going to be problems with the list,
23 and you have to accept that, especially when you go to
24 a national list with millions of numbers, you are going
25 to have a list that is imperfect, and it just doesn't

1 matter until it comes to when someone is trying to
2 enforce a violation. That's when it matters. Is that
3 person or is that number that you're enforcing against
4 accurately on the list and was it accurately given to
5 the industry to protect that consumer?

6 MS. HARRINGTON: Well, it matters from an
7 enforcement standpoint at that point, but from the
8 standpoint of regulatory burden, it matters to every
9 business that's trying to comply.

10 MR. BURLISON: Well, it matters only if they
11 get pinched on a phone call. They're making the calls.
12 They're making the calls, and whether that call is a
13 violation of the list they won't know until someone
14 files that complaint.

15 MS. HARRINGTON: Well, or they are not making
16 the calls; that is, they are refraining from calling
17 someone whose number is incorrectly on the list, and
18 that would be a cost that we would have some concern
19 with.

20 MR. BURLISON: Well, I would venture to say
21 that the cost of preservation of the list 100 percent
22 is you're never going to get to that, and if it's
23 unfair that the industry has additional numbers on that
24 list, you know, maybe then the industry needs to bear
25 the burden of that cost of preservation of the list or

1 help in that, but it's really not -- the issue really
2 isn't on the list. It really comes on the enforcement,
3 and you catch it by setting the software up that when
4 the number goes in, when you start to enforce it, it
5 will tell you whether they're on the list and whether
6 that was properly given to the industry.

7 MS. HARRINGTON: Thanks, Rex.

8 Tyler and then Michael and then Linda.

9 MR. PROCHNOW: Tyler Prochnow, American
10 Teleservices Association.

11 I love it when I don't have to bring the words
12 up for this discussion this time. I couldn't even do
13 justice to the eloquence of the FTC on this matter.

14 In an enforcement action several years ago, the
15 Commission stated, "ANI technology identifies the
16 telephone number from which the call originates but
17 cannot identify the caller and cannot determine whether
18 a caller is the line subscriber from the line for which
19 the call originates. Because of these shortcomings of
20 ANI," and it was in a billing situation for that,
21 "legally this is as indefensible as it would be for any
22 other retailer to bill a line subscriber for goods or
23 services delivered to some other caller's house simply
24 because the caller used the line subscriber's telephone
25 to place the order."

1 I mean, clearly you've already studied this
2 issue, and you've seen that ANI is not a sufficient
3 method for ensuring that the consumer who wants to be
4 on the list will be on that list and that inadvertently
5 consumers who don't have any desire to be placed on the
6 list are included on that.

7 MS. HARRINGTON: So, Tyler, how would you
8 propose that verification be had?

9 MR. PROCHNOW: I think there are a number of
10 acceptable solutions. The most effective one would be
11 a small dollar or less fee assessed against the
12 consumer.

13 MS. HARRINGTON: Michael?

14 MR. PASHBY: We don't believe that ANI is
15 sufficient to serve the purposes of the Commission.
16 There's one further thing here, which I haven't
17 actually read any of the comments on what we only
18 recently discussed, and that's an issue that could have
19 some fairly severe consequences.

20 Over a period of time, if there is no
21 expiration date on the registration, virtually every
22 residential number will come under the do-not call
23 list. If that is the case, then the Commission is
24 going to be placed in the very unfortunate position of
25 denying protected speech to the consumers who move into

1 or who are assigned to that number unless the consumers
2 do affirmatively request to receive that protected
3 speech.

4 MS. HARRINGTON: Linda?

5 MS. GOLDSTEIN: Linda Goldstein, Electronic
6 Retailing Association.

7 I wanted to first -- I feel that I have to
8 comment on two parallel comments that were made in this
9 discussion. One was that the risk of being enrolled
10 improperly creates not much harm, and the second was
11 that the integrity of the list in the enrollment
12 process is not important, that the integrity of the
13 list is only important in the enforcement process.
14 That suggests the notion that telemarketing is an
15 inherently unwanted form of communication. It's a very
16 sinister attitude towards telemarketing, and I don't
17 think it's a productive attitude.

18 This rulemaking, since its inception five years
19 ago, has always been premised on the notion that
20 telemarketing is a legitimate form of marketing and we
21 need to strike the appropriate balance, so we strongly
22 disagree with the notion that there is no harm if
23 persons are enrolled improperly because the integrity
24 of the system is at issue.

25 Tyler has stolen my thunder by quoting from the

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1 900 rulemaking proceedings wherein the Commission
2 itself acknowledged that ANI was not a reliable way to
3 ensure that the call, in fact, was being made by the
4 telephone subscriber, and we have stated in our
5 comments we don't believe ANI is reliable for that
6 reason. Something like a small consumer fee that would
7 require the capture of additional information is
8 something that we think would help.

9 We also believe we need to have a mechanism
10 whereby the list can be put through change of name and
11 address so that they can be kept current. Otherwise,
12 exponentially the number of consumers who think they're
13 on the list and, in fact, aren't, and conversely
14 consumers who don't want to be on the list and are,
15 because they have inherited a number that has
16 previously been registered, will just continue to
17 increase as the list continues to be in effect.

18 MR. TOROK: And that's another issue we are
19 going to talk about in the future.

20 MS. GOLDSTEIN: And let me just add that I know
21 we're talking about these issues in segments, but we
22 believe that the length of time that the consumer would
23 remain on the list has to be considered in light of the
24 enrollment process that would be utilized. So, if the
25 Commission for other reasons were to recognize that

1 there are cost issues associated with this as well were
2 to go with an ANI system, then the corresponding
3 trade-off I think would have to be a very short period
4 of time that the consumers would stay on the list and a
5 more frequent enrollment process.

6 MR. TOROK: Eileen, I would like to interject
7 here. We obviously know the ANI billing cases we have
8 brought, and our thought from the previous cases was
9 concerning the reliability of ANI data to bill a
10 consumer for a call that was made on that telephone
11 that the ANI data was transmitted with, and we do
12 believe there's some difference between billing a
13 consumer and the consumer registering to appear on a
14 do-not call list. I think there can be a distinction
15 made between those two types of calls.

16 MS. GOLDSTEIN: I mean, we certainly recognize
17 that there are certain transactions at issue, but I
18 think the fundamental principle, which is can you rely
19 on the fact that the person that's placing that call is
20 the authorized subscriber, and I think we're operating
21 from the premise that the appropriate person to
22 register the phone number should be the telephone
23 subscriber, those cases at least do stand for the
24 proposition that ANI is not a reliable way of verifying
25 that it is the telephone subscriber that's making the

1 call.

2 MS. HARRINGTON: Actually, I'm not sure that we
3 agree with that proposition. There are many, many
4 instances where more than one individual share a
5 telephone number, and each of those individuals receive
6 telemarketing calls, and each of them has a separate
7 right under the law to say don't call me anymore, and
8 it boils down to their phone number. So, I don't think
9 that we agree with the proposition that only the line
10 subscriber has the legal authority, even under the
11 present regime, to request that no calls be placed to
12 that number. So, I think we disagree.

13 MS. GOLDSTEIN: But I'll just --

14 MR. TOROK: Linda, again, this might actually
15 apply to you, I have just been handed a note, could you
16 please ask all panelists to speak up into the mikes,
17 it's difficult for the room to hear, and I'm sensing
18 that particularly your mike may not be picking up.

19 MS. HARRINGTON: But don't breathe.

20 MS. GOLDSTEIN: I was trying not to breathe.

21 MS. HARRINGTON: Okay, are we ready to move on?

22 MR. TOROK: Actually, if we could, I do have
23 this qualification for ANI data now, this follow-up
24 question. We do understand that some consumers'
25 telephones will not pass ANI information. We have

1 heard of PBX systems, we have heard of some small
2 telephone companies as a whole, I believe, the comments
3 have said do not pass ANI information.

4 The questions are, one, if we can get some idea
5 of the prevalence of that problem, and then two, a
6 possible solution, which Kimberly began to allude to,
7 was offered in some of the vendor responses to the RFI.
8 In an IVR situation, if ANI data is not passed -- a
9 consumer enters a telephone number. The system
10 realizes I don't have ANI data, it doesn't receive ANI
11 data. It informs the consumer, we did not get
12 identifying information for your call. We can place a
13 telephone call back to you in one minute if you would
14 like to be registered. If that is the case, please
15 hang up -- and it would ask a preference, one way or
16 the other, if they would like that to happen, and then
17 if they press the preference that yes, I would like
18 that to happen, within one minute, the system calls
19 them back.

20 If the call is answered and the IVR asks were
21 you the person or were you interested in registering
22 your number for a national no-call list, and if the
23 person says yes, the number is registered. That is a
24 way of getting verification for using an automated
25 system that relies on ANI data even if the ANI data

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1 isn't passed. I'd love to know your thoughts on that
2 possible solution.

3 MS. HARRINGTON: The first person we're going
4 to ask is Jeffrey, who very patiently was waiting
5 earlier. I hope you have thoughts on this point, but
6 if you've got some other thoughts, we'd be glad to hear
7 them.

8 MR. SCRUGGS: Well, I do have some thoughts on
9 that. The first point is relative to the do-not call
10 list where you are going to be collecting ANI
11 information, presumably you are going to be having a
12 large volume of people who are going to be wanting to
13 add their name to the list, and it will be key to
14 having satisfactory consumer reaction to it that you
15 have got a system that is sized appropriately for the
16 large volumes of calls that are going to be coming in,
17 and what you'll find is -- and I know several other
18 panelists here can speak to that, and we have certainly
19 experience with rolling out consumer-based telephone
20 services -- where you will have a large spike of
21 incoming calls in order to do this function, and now
22 you've added the potential complexity of then having to
23 also have outbound calls, and that will generally drive
24 up your cost for implementation in the front end of
25 your process, and that will be a key point, even though

1 if you look at your steady state costs, it would be a
2 very different call volume.

3 Related to the absence of ANI, one comment that
4 we would have is we have seen an increase in the number
5 of apartment buildings and other kind of multi-tenant
6 buildings that have now seen value to being able to say
7 that the tenant receives their telecommunications
8 services from the owner of the building. That's one of
9 the ways that they can show additional value. Some
10 anecdotal information that I've heard is that even some
11 of the assisted living organizations might have that
12 kind of arrangement, and in that particular case, you
13 very likely are to have a set of consumers who are
14 going to call -- potentially the ones that are very
15 susceptible to some types of telemarketing fraud --
16 who would not have their number presented to this
17 database.

18 MS. HARRINGTON: Thank you.

19 Susan? Let me see, we are going to hear from
20 Susan, Chris, Dennis, Jerry, Earl, Jason, and then we
21 are going to move on to a different question.

22 MS. GRANT: Susan Grant, National Consumers
23 League.

24 I am concerned about situations like that and
25 other situations where people would be excluded if you

1 were relying totally on ANI and also situations where
2 the number all of a sudden appears in USA Today and the
3 system is totally overloaded. So, it seems that there
4 will have to be some other ways that people can access
5 the system, even if the primary way that's promoted is
6 ANI.

7 I do also want to say that I think that there's
8 a major difference, all the difference in the world,
9 between a consumer being billed on the basis of ANI and
10 somebody being signed up for a do-not call, and I know
11 we'll talk about whether third parties should be able
12 to sign people up in a minute, but at the very least,
13 anybody in the household should be able to do so.
14 Unwanted telemarketing calls is a problem that affects
15 everyone in a household, and it should be possible for
16 anybody in that household to sign up if there's also a
17 way that people can unregister if they don't want to be
18 signed up easily once they discover that they have
19 been. If a husband signs the household up and the wife
20 wants to get those calls, as long as there's an easy
21 way of them dealing with it, I think that resolves the
22 problem.

23 MS. HARRINGTON: Thank you.

24 Chris?

25 MR. HOOFNAGLE: Susan has addressed my

1 concerns.

2 MS. HARRINGTON: Chris, I want to compliment
3 you. Let's take an object lesson here. Chris declined
4 to say more because what he wanted to say had already
5 been said. Very good.

6 Dennis?

7 MR. MCGARRY: Dennis McGarry.

8 First and foremost in my mind, when I came up
9 here for this meeting, it was to ensure that the
10 Federal Trade Commission has integrity in what they do
11 in regards to particularly the name list that is being
12 collected, and accurate, consistent, and also concern
13 for the consumer about ease and flexibility in their
14 part. So, I'm trying to have a balanced approach, but
15 being a business person, obviously I have some views.

16 The Commission has recognized in years past,
17 and this is a repeat, but has recognized in years past
18 that verification is important. Ten years of
19 regulation in dealing with that pay-per-call has seen a
20 standard that you have professed. I likewise see -- I
21 don't take any more like to that than the integrity of
22 a name that's put on that list, is that the person on
23 that list is a valid person and once made a request,
24 and otherwise it would be a violation of commercial
25 speech and my ability to market to someone who has made

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1 no preference whatsoever.

2 Now, I do have alternatives to give to you, and
3 I've looked at it and tried to evaluate it, I don't
4 know how practical they are, but I think it's quite
5 simple, and this is ease to the consumer, ease to the
6 consumer, looking at it from the consumer's standpoint,
7 ease. I don't believe that -- first thing, one has
8 been suggested a number of times, is a problem, but I
9 have options. One is not -- is to charge the consumer
10 a nominal fee. I don't see that, looking at the State
11 of Florida and Georgia, Florida being the longest for
12 over ten years, that has been a problem on their part,
13 but that being said, there are other -- in terms of
14 charging a nominal fee. I don't believe they are upset
15 about paying that, they have that preference.

16 But that being the case, another way it could
17 be done is the consumer can call in and key in the
18 number and then a letter is sent by the Federal Trade
19 Commission or whoever's managing this to the consumer
20 with a pass code. Then that pass code would then --
21 well, either the consumer -- you send a letter back to
22 them, they have written authorization, yes, that that
23 name is on the list, I requested it, and they send it
24 back, or they use a phone call method with this pass
25 code, but you would need to verify that the person who

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1 is making that call is the valid person. Any of those
2 approaches is easy to the consumer, but you'd need to
3 verify the accuracy.

4 MS. HARRINGTON: Thank you, Dennis.

5 Art?

6 MR. CONWAY: Art Conway, Dial America.

7 The concern we have is ANI is one of, okay,
8 where are they going to get the number from to call the
9 FTC? Are they going to get it from a newspaper article
10 that says are you tired of getting calls from your
11 landscaper, here, call this number and get on the FTC
12 list? Or are you tired -- and I saw this in the Times
13 in the editorial a couple weeks ago -- "Got a call
14 from a window cleaner, I can't wait until the FTC comes
15 out with its rules."

16 Well, you can sign up on the FTC list, but
17 you're still going to get the call from the landscaper,
18 you are still going to get the call from the window
19 cleaner, particularly, you know, intrastate. ANI,
20 there is no substance there for the consumer. It's
21 just a phone call with a short message, punch in the
22 number. We would be sort of opposed to ANI and more in
23 favor of where you can put some substance behind the
24 registration process, so the consumer has opportunity
25 right there and then to say, okay, here's what I'm

1 signing up for, here's the calls that should stop, but
2 here's the calls I can continue to expect, because if
3 the consumer doesn't understand the calls that they
4 should continue to expect, it seems to me you're going
5 to get a ton of complaints.

6 The second point, ANI call-back, there's some
7 kids that are going to have an absolute blast with
8 that, with their little computer at home. Do some
9 dialing into your 800 number, and you're calling them
10 all back in a minute, because you can stop the delivery
11 of ANI from a home phone for, I don't know, \$3.9 --
12 how much does that cost to stop doing that?

13 MR. CATLETT: No, no, no, you --

14 MR. SCRUGGS: You are talking about CPN, not
15 ANI.

16 MR. CONWAY: Okay, you can stop delivering CPN.

17 MR. SCRUGGS: Yes, but they are talking about
18 using ANI information, not CPN.

19 MR. CONWAY: Can't I turn off ANI?

20 MR. SCRUGGS: Actually there is a technical
21 distinction between ANI and CPN, call party number.
22 Call party number is used to deliver technical
23 information, and ANI is the billing information that
24 will be delivered to the carrier.

25 MR. CONWAY: I can still see some way where

1 kids with computers could have a ball calling in there
2 and punching in the number and listening to the
3 call-back.

4 MR. SCRUGGS: You certainly have the potential
5 for denial of service attack by saying I want to add a
6 bunch of numbers to the FTC list and asking for
7 dial-backs, and you would have to design against that,
8 which is part of the complexity of having to do that
9 particular service.

10 MR. CONWAY: It's just a concern I would have
11 on ANI call-back off the top of my head.

12 MS. HARRINGTON: Jerry?

13 MR. CERASALE: Jerry Cerasale, Direct Marketing
14 Association.

15 The DMA runs a national do-not call list, and I
16 wanted to raise a few things that we've seen. We do
17 have to collect address in order to try and maintain an
18 accurate list.

19 MS. HARRINGTON: Is that because of the mail
20 preference component of your program?

21 MR. CERASALE: No, it's because of the -- 16
22 percent of phone numbers change every year, to try and
23 use the national change of address system. I know
24 we're coming up to that later.

25 The other -- and that keeps the -- it also

1 helps match when you just have numbers and not
2 addresses with a name, you have name and address, that
3 helps us match to make sure we don't make errors as
4 well, and we find in our national databases that large
5 telemarketers and the service bureaus want the name and
6 address -- let me pull that back from me -- want the
7 name and address for matching purposes, so that they
8 can make sure they do not make errors instead of just
9 having numbers to do the match.

10 The other thing that we find in running -- in
11 large part in running some of the state lists that we
12 do for the states is that small telemarketers want
13 information of neighborhoods and street addresses, area
14 codes too great, even the exchange numbers, too large
15 an area, they want to try to get it nailed down so they
16 can cut the costs that they have. So, the name and
17 address help us respond to them from our national list.
18 So, we have both large and small wanting more than just
19 the number.

20 MS. HARRINGTON: Earl and then Jason?

21 MR. COPILEVITZ: From the nonprofit
22 perspective, if this is going to apply to nonprofits,
23 then we look at the payment of a nominal fee as the
24 best form of verification, and one of the comments that
25 was submitted, it was estimated that consumers spent

1 \$1.6 billion a year arming themselves with Caller ID,
2 Privacy Doctors and the like to defend themselves from
3 telephone calls that they don't want.

4 It seems to me that imposing a nominal fee in
5 exchange for giving up the necessity for all of these
6 devices that the telephone company makes who is not
7 subject to all of this is not too big a price to pay.

8 From the charities' perspective, we've also got
9 to deal with the right of freedom of association, and
10 you can take a household with two parents and two adult
11 children that are still living at home, and somebody
12 calls in on the ANI and puts the whole house on there,
13 and they have now been cut off. The individual who
14 supports the American Cancer Society, American Heart,
15 Salvation Army or whatever, has been a regular
16 supporter, can no longer be reached by telephone for
17 that individual, because that telephone number is on
18 there.

19 I think that those kinds of considerations have
20 got to go into the Commission's thinking as to how to
21 put these numbers on and who it covers. Does anybody
22 in that household have a right to dial the number and
23 take everybody else out of their normal relationship
24 with nonprofit organizations that they have customarily
25 supported in the past?

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1 MR. TOROK: I need to follow up with a question
2 on that. Regardless of the registration process, if we
3 used the internet, if a household has only one
4 telephone number, even if you ensure that it was the
5 person who is responsible for the bill in the household
6 to enter that telephone number, the number is off the
7 list, so that number is on the registry and it's no
8 longer available for the telemarketer to call anyone in
9 the household. So, how would the method of
10 registration have any effect on your concern that the
11 nonprofit needs to contact more than one person in the
12 house?

13 MR. COPILEVITZ: Well, how does one member of
14 the house, if you have a husband and a wife that
15 equally share in the income and the expenses, how does
16 one have the authority to bind the other and deny that
17 person their access to those organizations? I mean, it
18 seems to me that's one of the dilemmas that you've got
19 to face in this process.

20 MS. HARRINGTON: The last word, Jason?

21 MR. CATLETT: Thanks, Jason Catlett.

22 Internet registration is good. ANI
23 registration is good when it's available. Where ANI
24 registration is not available, the call-back scheme is
25 fine. It's possible to put anti-abuse provisions in

1 that to prevent the kids scenario. It's not a burden
2 to have a call-back scheme. Inbound and outbound rates
3 are approximately the same. It's a little additional
4 capital cost, but not a large variable cost.

5 I'd like to address the statement by Michael
6 and others that numbers will get on the list and stay
7 on forever and eventually the entire population of the
8 United States will be on a do-not call list, which I
9 think basically concedes the fact that telemarketing is
10 universally despised, but it's easy to prevent this
11 scenario from happening simply by buying disconnect
12 information from the local exchange carriers.

13 A telephone number gets disconnected for
14 nonpayment or they moved, the local exchange company
15 knows about it, they sell to a variety of parties
16 information, very recent, about what numbers are
17 disconnected, and you say that the opt-out survives
18 until the number is disconnected. After it gets
19 disconnected and reconnected, it's free game again.

20 MS. HARRINGTON: Okay, we are going to have a
21 30-second stand-up stretch, and those of you who are up
22 on the platform, be careful when you stand up, because
23 you could fall off, but let's just take 30 seconds to
24 stand and stretch before we move on.

25 (Pause in the proceedings.)

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1 MS. HARRINGTON: The question was asked, does
2 this mean that we're in the seventh inning? The answer
3 is, oh, no. We're in the bottom of the first.

4 Okay, we have someone who's joined us. Would
5 you introduce yourself, tell us who you're with and
6 tell us what your principal concern is in the do-not
7 call implementation area.

8 MR. O'CONNELL: My name is Greg O'Connell, and
9 I'm with TellMe Networks, and I'm responsible for our
10 government operations, and we provide voice-based
11 services in a network capacity for people who want to
12 call in through an 800 number to add themselves to the
13 registry.

14 I don't have any specific issues to speak of
15 except to say that the technology is available to make
16 this possible.

17 MS. HARRINGTON: Thank you. I'm glad that
18 you're here.

19 We're going to move on to a different question
20 now, and that is a question about third-party
21 registrars. Should third parties be permitted to
22 register on behalf of individuals in a National Do-Not
23 Call Registry?

24 Mallory?

25 MR. DUNCAN: By and large, I think the Retail

1 Federation would say the answer to that is no. We have
2 just, before the stretch, completed debate about
3 whether anyone in a household may call to register or
4 whether it should only be limited to the line
5 subscriber. If you extend that difficult debate on to
6 third parties, you're going to complicate this issue
7 exponentially. It really has to be kept to the
8 household involved.

9 There is the second question, which I didn't
10 address earlier, which is the slight distinction
11 between verification and accuracy of the persons who
12 are putting together such a list. How does one know if
13 a third party, who is desiring to put numbers on, in
14 fact, has the authority to place those numbers on
15 there, as opposed to, for an outrageous example,
16 someone with an axe to grind taking the middle 50 pages
17 from the phone book and trying to input those on?

18 So, we think there would be a very high burden
19 having third parties do it, with a notable exception of
20 the states perhaps taking their lists and combining
21 those names onto the FTC list, where you already trust
22 the method by which the numbers were collected.

23 MS. HARRINGTON: Joe?

24 MR. SANS CRAINTE: Joe Sanscrainte,
25 CallCompliance.

1 As the focus should be on the validity of the
2 information that's on the list, if we open it up for
3 access by third parties, we're opening up a potential
4 for data corruption, and this actually, it ties into
5 what some of the people have been saying about charging
6 consumers a fee. If we charge consumers a fee, then
7 we're going to be helping to prevent attempts by third
8 parties to register numbers of people who actually
9 don't want to be put on such a list.

10 MS. HARRINGTON: Tyler?

11 MR. PROCHNOW: I think you've already seen a
12 potential problem that allows third parties to register
13 people occur in the State of Georgia. When Georgia
14 first enacted their list, about the same time the State
15 was going through energy de-reg, also, and there was a
16 natural gas company in Georgia that made a deal with
17 their customers if you sign up for natural gas with us,
18 we'll put you on the state do-not call list.

19 Well, there's a perfect deal. You had an
20 existing customer, there's an existing business
21 relationship exemption in Georgia state law, and they
22 were now the only people who were able to contact those
23 customers, and it created an incredible competitive
24 disadvantage in the energy market in the State of
25 Georgia, and I think you'll see the exact type of

1 situation here, not to mention I'm not quite sure given
2 what we've heard today how you would transmit ANI
3 information through a third party. Not having heard
4 anything on that, I don't even know how you would do
5 that technically.

6 MS. HARRINGTON: Susan?

7 MS. GRANT: At our telemarketing fraud hotline,
8 we get calls from family members and caregivers calling
9 on behalf of people to make complaints about
10 telemarketing fraud and in the course of that often
11 asking for advice about what more help they can offer
12 the person in terms of keeping them from continuing to
13 get calls, and we would like a system that's flexible
14 enough to allow people with those kinds of concerns to
15 help their friends, relatives accomplish that.

16 MS. HARRINGTON: So, Susan, would you draw a
17 distinction between a need to have one person register
18 on behalf of one other person or one other person's
19 number and a third-party registrar collecting and
20 attempting to register numerous, multiple numbers or
21 individuals?

22 MS. GRANT: I have a concern about third-party
23 registration services that might charge consumers for
24 something that they or someone close to them could do
25 for free, so that's one concern, but I want to make

1 sure that there are no undue impediments for people
2 being able to get on that list who need to be.

3 MS. HARRINGTON: Jason?

4 MR. CATLETT: Thanks.

5 I think the Commission should allow third-party
6 lists to be added to the database. The concept of
7 agency is very basic, and you can certainly have
8 enforcement and monitoring to detect if there are
9 systematic abuses, but as a principle, certainly it
10 should be allowed.

11 MS. HARRINGTON: Jim?

12 MR. WARDEN: We would generally be in favor of
13 third-party registrations --

14 MS. HARRINGTON: Jim, could you use your
15 microphone, please?

16 MR. WARDEN: Yes, although they are sometimes
17 fraught with problems, so we're in the situation is the
18 benefit -- does the benefit outweigh the problems, and
19 on balance, we would say it does.

20 For instance, once our do-not-call passed or
21 law was passed, a lot of our legislators started
22 sending out letters with various facsimiles of
23 registration forms for our do-not call program. Some
24 of these forms were perfect; others didn't have all the
25 information. They were doing the same thing at county

1 fairs, okay?

2 When they finally came back to us -- and
3 sometimes there was a delay on them. In other words,
4 they would sit in a box in the legislator's office for
5 a month or two, and people thought they were registered
6 but they were not and they were making complaints,
7 okay? That's the bad news.

8 The good news is, we're currently up to 2.1
9 million members registered on our registry, and I don't
10 think we would have achieved that without the benefits
11 of those legislators doing that. Did it create a
12 problem for us? Yes, a lot of times we had to contact
13 the consumers, get additional information and things
14 like that, so it certainly is a mixed bag, but on
15 balance, we would be in favor of third-party
16 registrations.

17 MS. HARRINGTON: Char?

18 I'm sorry, was your tent up?

19 MS. PAGAR: I'm sorry, my tent was not up,
20 because Tyler made my comment for me.

21 MS. HARRINGTON: Thank you, though, brownie
22 points to Char.

23 Chris?

24 MR. HOOFNAGLE: Thank you.

25 There was a poll in USA Today back on June

1 30th, 2000. It found that 75 percent of respondents
2 object to telemarketing and find it to be an invasion
3 of their home. We think with numbers like that,
4 opt-out drives would be very popular, and it would be a
5 great service that public interest organizations and
6 businesses could offer to the public.

7 Currently, there are already three opt-out
8 programs for direct mail. Jason Catlett at
9 junkbusters.com operates an excellent one called
10 Junkbusters Declare. CDT, the Center for Democracy and
11 Technology, operates one, and then there are also
12 services that are run by responsible parties. Bob
13 Bulmash, Private Citizen is his business, where people
14 can pay a subscription fee to remove themselves from
15 marketing lists.

16 So, in summary, we think it's very important
17 that third parties be given the right to opt out other
18 people. It can be done responsibly, and I think it
19 would be a popular option.

20 MS. HARRINGTON: Keith?

21 MR. FOTTA: Yeah, I'd just like to make a
22 couple of -- Keith Fotta from Gryphon Networks. I'd
23 like to clarify just one thing on ANI, and there's a
24 lot of discussion about it's unreliable and -- you
25 know, I'm the president of a technology company dealing

1 very, very heavily in telecommunications, and if an
2 individual dials an 800 number, you will see that ANI
3 number unless they're sitting behind a PBX, and if
4 anybody wants to challenge me on that, I'm happy to do
5 that. The real question here is how many consumers in
6 the United States are actually sitting behind PBX?

7 Now, we support mechanisms that support the
8 telemarketing industry, but when we get into the ANI
9 debate, I wonder why we question that, because my
10 greatest concern is that people take a New York City
11 phone book and dump it into the web. If we are at
12 least requiring people to call from the home that they
13 demand to be protected in, at least certainly there's
14 some quality control involved there.

15 As far as third party is concerned, I know
16 we've seen it in Texas, it's probably happened in a lot
17 of other states. In Texas we have a lot of groups
18 going out there and advertising they will sign you up
19 for the State of Texas do-not call list for 20 bucks
20 when, in fact, you could have done it for \$2.25 by
21 picking up the phone and dialing our 800 number or
22 hitting the web. So, third-party signups are an
23 absolute nightmare, and, you know, our feeling is that
24 they shouldn't be utilized.

25 Thank you.

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1 MS. HARRINGTON: Thank you.

2 Dennis?

3 MR. MCGARRY: Looking from the consumer side on
4 this, the points you've made, Eileen, about having
5 maybe one person being able to register another person
6 makes some sense for those that maybe have elderly
7 parents and so forth. Again, though, as the validity
8 side and part of the service end, if you had, again,
9 this small fee, then third parties such as children for
10 grandparents and so forth, could do so, and you would
11 have the validity factor there, because someone assumes
12 if they pay a small fee, they are doing something in
13 earnest.

14 MS. HARRINGTON: Thank you.

15 Earl?

16 MR. COPILEVITZ: I don't have so much a problem
17 with the one-on-one, but en masse, you get into a
18 problem with reliability and adding to the cost, but I
19 also want to remind you that we don't come to this
20 subject with a blank slate. The Telephone Consumer
21 Protection Act and the Federal Communications
22 Commission has been dealing with this and rendered a
23 written opinion saying that third parties couldn't do
24 it and pointed to the potential of abuse in making that
25 ruling. So, there's an agency out there already that's

1 had the experience and has taken a position on this.

2 MS. HARRINGTON: Michael? Michael Rosen, you
3 have your tent up -- he's not there. You switched
4 seats.

5 John, okay.

6 MR. MURRAY: This is John Murray from the
7 Newspaper Association.

8 Getting back to the direct question, should
9 third parties be allowed to register on behalf the
10 consumers, the answer from the newspaper association is
11 no. Verification just becomes significantly more
12 complicated if individuals can register others for the
13 do-not call list without calling themselves. I think
14 the opportunities would be here for third parties to
15 create new consumer problems, fees and enterprises that
16 are not really justified or real, but more importantly,
17 we don't like the opportunity for any third parties to
18 come between us and our subscribers who are dependent
19 on us being able to call them.

20 Particularly with having not yet fully defined
21 the existing relationship, I'm uncomfortable that even
22 someone in my household could put me on the list. I
23 mean, I'm the one who's paying the bill, it's my phone.
24 So that anybody in my household has the right to do
25 that I don't think is right, but particularly third

1 parties who do so collectively, I just think there's
2 too many opportunities for us to have situations where
3 the consumer is not getting what they expect to get,
4 and two, create too many opportunities for new
5 enterprises that none of us like to think about that
6 could go into business. That's it.

7 MS. HARRINGTON: We are going to move on in
8 just a second off of this topic. I know there are many
9 more who wanted to speak to it, but we have got some
10 more questions.

11 Allen, did you have a question?

12 MR. HILE: I had a question for Chris and Jason
13 and anybody else who advocates third-party signups.

14 You mentioned, Chris, that this could be done
15 responsibly. I'd like to know what protections or
16 procedures or monitoring you might put in place to make
17 sure it is done responsibly.

18 MR. HOOFNAGLE: Sure, I'll give an example. I
19 don't want to speak on behalf of Bob Bulmash, but just
20 as an example, when an individual signs up for Private
21 Citizen, they sign an agency agreement with Bob
22 Bulmash, and then from there Bob goes out and opts out
23 the individual from the lists, but in addition, I think
24 that people who live in the same house have a
25 significant enough relationship that they can opt out

1 for the entire household.

2 We heard the concern earlier that perhaps a
3 wife could opt out a husband. Perhaps spouses can opt
4 each other out, and --

5 MR. HILE: I'm really talking about the mass
6 third-party compilations.

7 MR. HOOFNAGLE: Sure. I think there are
8 technological barriers to using, for instance, an
9 internet enrollment scheme from putting in number after
10 number in order. I think there are a number of
11 technological barriers that could be put in to stop
12 them from doing that.

13 I would also say that we have to question the
14 very need for excessive verification and
15 authentication. I think the risks are so low that it
16 does not warrant such concern.

17 Thank you.

18 MS. HARRINGTON: David --

19 MR. CATLETT: I'm sorry, could I answer Allen's
20 question, please?

21 MS. HARRINGTON: No.

22 MR. CATLETT: Okay.

23 MR. TOROK: Moving on to the next issue,
24 because I think the next issue is also going to result
25 in a lot of discussion, the question on the agenda is

1 how long should numbers stay on the registry? The
2 comments, many comments pointed out that large numbers
3 of consumers move every year, and after a certain
4 period of time, if the numbers aren't refreshed, their
5 registry can become stale.

6 Let me phrase this question, though, in a few
7 ways. Let's assume there could be a relatively
8 fullproof method of removing numbers for consumers that
9 have moved, that have changed telephone numbers. Could
10 then the national registry be a once and done,
11 permanent registration?

12 And then I lead to the question of, is there
13 such a method of finding the telephone numbers of
14 consumers who have moved? We have a number of vendors
15 who said that such lists exist out there. They might
16 be costly, but they're available, that telephone
17 companies have this information and they could provide
18 that information to us, of the telephone numbers that
19 have changed. We could purge the list if a number has
20 changed, if someone has stopped service on a telephone
21 number and that number is registered, that number could
22 be taken from the list. What do you think, is that a
23 doable service?

24 Okay, if the person seated in the spot just
25 vacated by Joe, you're next on my list. Who are you?

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1 MR. GARFINKEL: I'm Dean Garfinkel for
2 CallCompliance and Genma Company, and I handle the IT
3 section.

4 MS. HARRINGTON: Okay.

5 MR. GARFIELD: Today there is no disconnect
6 database, and there are a lot of carriers in this
7 country, and there's nothing that makes everybody
8 report that information. So, our biggest concern is
9 the validity of the database with the number of the
10 people that move annually, that compounded we're going
11 to end up with a list that's going to be worthless if
12 we keep people on for extended periods of time.

13 At some time in the future, when a disconnect
14 database is adopted, which will probably happen over
15 the next couple years, as L&P proceeds to wireless and
16 wireline, then it could be changed.

17 MS. HARRINGTON: Thank you.

18 Art?

19 MR. CONWAY: We think there should be an annual
20 renewal of this, and again, given the problem with
21 people moving and such a high percent of people moving,
22 plus you've got to make it easy for people to sign up.
23 I mean, that's the gist I get here, whether it's
24 through an ANI or whatever. To go through and do an
25 annual sign-up again I don't think is asking too much

1 of the consumer, and plus maybe another annual fee for
2 signing up, again, as part of the way of funding.

3 The consumer is getting the benefit out of
4 this, and the consumers are already spending a ton of
5 money now on these various devices and Caller ID and
6 whatever aimed at trying to cut it down.

7 MS. HARRINGTON: Linda Link?

8 MS. LINK: Yeah, Linda Link, NCS Pearson --

9 MS. HARRINGTON: Speak into your microphone,
10 please.

11 MS. LINK: I am. I'm not sure it's turned on.

12 MS. HARRINGTON: Yeah, it is.

13 MS. LINK: I think just to reiterate, no more
14 than two years for registration, one being ideal,
15 although if there is payment or a nominal fee for
16 payment and most of the payments would be credit card,
17 the cost of credit card processing gets to be excessive
18 for a dollar payment versus a two -- you know, let's
19 say it's a dollar a year or something for signing up,
20 you know, gets to be costly to do it that way if we
21 were to have a payment. Because of the lack of a
22 disconnect list, you would have to limit it to ideally
23 one year to two years max just to purge the list.

24 MS. HARRINGTON: Allen, do you have a question?

25 MR. HILE: I do. I want to ask Dean, when you

1 say there's no database now, no disconnect database,
2 you mean there's no single database, but each LEC has
3 its own. I mean, this information must be available
4 somewhere in some form.

5 MR. GARFIELD: Well, right now if you take
6 Verizon, for example, and one of their customers turns
7 off the phone service, they will report that number's
8 been disconnected only to the long distance carrier
9 that has subscribed to the line, assuming it's not
10 themselves, but they do not report it to a centralized
11 location. Then we get into all the CLECs, which are
12 competing against the Baby Bells, and they work
13 differently.

14 So, we're probably looking at about 2000
15 companies that would have to report some uniform
16 standard of this data, and today that's not the case.

17 MR. SCRUGGS: That's correct. We do not have
18 -- I'm sorry.

19 MS. HARRINGTON: Would you speak up and
20 identify yourself?

21 MR. SCRUGGS: My name is Jeff Scruggs with SBC
22 Communications.

23 In our systems today, while there are orders
24 that flow to do disconnects, there's a couple of key
25 points about that. First of all, our orders are

1 flowing automatically, and there is no provision for
2 dropping them out to third parties in the way that
3 there's been no defined interface in your proposed
4 system to say how you would be able to gather that
5 information.

6 The other thing to note is that because of the
7 way the telecommunications industry has now developed,
8 it isn't as simple as saying the local exchange
9 carriers are going to have that information, because an
10 example in California, there are 80-plus companies that
11 inventory their telephone numbers, so you can't just go
12 to a single small set of companies and say, I'm going
13 to get disconnect information relative to those
14 information.

15 The other thing is that the systems that are
16 used by those companies are going to vary widely. Some
17 of the smaller carriers are going to have systems that
18 may or may not be very amenable to gathering and
19 dropping that information out, and you'll need to do
20 quite a bit of work on requirements and interfaces to
21 be able ensure that you can get the information in some
22 standard way.

23 MS. HARRINGTON: Okay, thank you, Jeffrey.

24 Jeff?

25 MR. KRAMER: Well, my comments are actually

1 regarding the whole disconnect. If, in fact, you can't
2 do it, I guess that changes my response, but if, in
3 fact, we see in a year or two where you can do
4 disconnect, then I would say answer yes to David's
5 question, I think people should remain on the list, and
6 disconnect numbers are obviously off the list, and when
7 a person gets that number, he or she can choose to put
8 their name on the list, but absent that, the person
9 keeps the same number at the same address, they should
10 remain on the list.

11 MS. HARRINGTON: Kimberly?

12 MS. MILLER: We agree that there may not be a
13 reliable centralized database at this time for
14 disconnects, as the other panelists have said, so we
15 suggest that a one to two-year expiration of the
16 consumer's number on the list would be a valid way of
17 purging the list.

18 Going back to a call-back system, at the time
19 the consumer registers for the list, we can notify that
20 consumer that at the end of your expiration, you will
21 receive a call 30 days ahead of time, some fixed amount
22 of time, that alerts you that you can renew, and that
23 can be done automated, and that goes back to Art's
24 earlier comment, that he could see kids using a
25 computer or something to that effect to get numbers to

1 be called back quite a bit, and that can also be
2 incorporated into the automated system to where if
3 there's abuse along that level, after a certain amount
4 of calls, it can be cut off, and no more calls could be
5 made.

6 MS. HARRINGTON: Susan?

7 MS. GRANT: Susan Grant, National Consumers
8 League.

9 Actually, Kim just made some of my point. I do
10 think that if the consumer is going to be obliged to
11 renew, that there will have to be some kind of notice
12 to the consumer that it's time to do that. That's one
13 of the requirements of the Telemarketing Preference
14 Service right now.

15 And also, to satisfy concerns about
16 verification that somebody signed up to begin with and
17 to kill another bird with the same stone, that is,
18 consumer education to make sure that people understand
19 how it all works, who they can expect calls from and
20 who not, there could be some form of verification
21 information that goes back to consumers, whether it's
22 an automated call that gets made to them or a postcard
23 that gets sent to them.

24 MR. DUNCAN: I wanted to ask Susan if people
25 had to opt in for that.

1 MS. HARRINGTON: Mallory, you have to use your
2 microphone. That was just a humor note.

3 MR. CERASALE: Jerry Cerasale, DMA.

4 Of course, we have a national do-not call list,
5 and we collect name and address as well as phone
6 number, and then we run the name and address against
7 the national change of address system of the United
8 States Postal Service, and if someone moves out of the
9 area, not just moves, doesn't keep the same exchange,
10 then we drop them, and 20 percent of Americans move and
11 16 percent of the phone numbers change, because some
12 people move within the exchange area, and people are on
13 the list for five years. As you go longer and longer,
14 as you go permanent, information does become stale, and
15 errors get compounded and so forth. So, that's what we
16 have found.

17 MS. HARRINGTON: Linda?

18 MS. GOLDSTEIN: Yeah, I just wanted to respond
19 to these recent suggestions of a call-back system or
20 notification system back to the consumer to notify them
21 of the renewal. It wasn't something we addressed in
22 our comments because it wasn't a proposal on the table.
23 It's somewhat alarming to hear at this point, and I
24 wanted to state for the record that that's something we
25 don't think would be appropriate, particularly if

1 industry is being asked to fund this list. That kind
2 of a call-back system will necessarily increase the
3 cost of administering the system.

4 If we operate from a premise that this system
5 will be relatively easy for consumers to use and it
6 will be consumer education and that's going along with
7 the system, I don't think it's unreasonable to ask the
8 consumer to take the initiative to renew themselves on
9 that list, particularly when this is occurring at
10 industry expense.

11 MR. TOROK: But Linda, that leads to a question
12 and actually one I would like to put to the whole
13 table. Obviously consumer renewal, having to recall
14 the system if that's the system that's implemented, is
15 high cost as well. In fact, it's probably the highest
16 cost of the entire system, is that call to register.

17 Does that have any effect on the length a
18 consumer should stay on the list or the possibility of
19 having some type of purge to clean up the list rather
20 than a renewal?

21 MS. HARRINGTON: Okay, Keith, you get the first
22 crack at that.

23 MR. FOTTA: Yeah, according to the latest
24 industry study, the average telemarketing call's about
25 \$3.20 per call. I think that people would be willing

1 to spend, you know, spend the little extra money to
2 have the consumers put back into the overall market.

3 Just one other little point I'd like to make
4 quickly, and that is that, you know, we believe
5 consumers move around a lot. That point's been made.
6 I think anything over two years is excessive, but more
7 importantly, we have a tremendous amount of really
8 great people here trying to craft this thing
9 appropriately, and what would be wrong with having the
10 first-year renewal be a one-year deal? That way even
11 mistakes that could be made along the way could be
12 rectified.

13 Thank you.

14 MS. HARRINGTON: Dean?

15 MR. GARFINKEL: I would think that there are
16 some ways, although the disconnect database doesn't
17 exist, where we could get some level of accuracy, and
18 one concept would be that after the first year, we
19 would move to a LEC billing process for the consumer.
20 What basically that would mean is that the FTC
21 would -- the service bureau would have the LEC do the
22 billing, and what that would do -- even though it
23 would be a nominal charge and it's an expensive
24 process, but we would absorb the charge -- if that LEC
25 no longer correlates to an actual, verifiable consumer

1 bill, then it would be a discarded number.

2 MS. HARRINGTON: Jeffrey?

3 MR. SCRUGGS: Yeah, my comment on that would be
4 that --

5 MS. HARRINGTON: Jeffrey, speaking for the
6 LECs.

7 MR. SCRUGGS: Oh, I'm sorry, I apologize, Jeff
8 Scruggs with SBC Communications.

9 My concern in that particular environment would
10 be that that represents yet another complication of the
11 system, and you'd have more data flowing, but also a
12 large number of the people who are on the list may not
13 be our customers, and we would not put any kind of
14 information onto our bills until we could verify very
15 precisely that this is the correct person that we are
16 doing billing for, and none of the indications that
17 you've given would end up doing that.

18 MR. GARFINKEL: Cross-reference it against an
19 L&P database to determine who the LEC was for those
20 particular numbers and send the appropriate billing
21 tapes to those LECs to do the billing.

22 MR. SCRUGGS: But if the LEC is not in a
23 position to be able to do that particular set of work,
24 perhaps something that NeuStar could do through their
25 NPAAC process, but certainly the LECs would not be --

1 we run into a substantial amount of problem where
2 people question our bills, and we would hate to be in a
3 position of your number was on a database, did you
4 remember registering for that particular database? If
5 you don't have a name, you don't have an address, you
6 don't have any way of verifying that that particular
7 person actually made that call, that would be an
8 untenable position for us.

9 MS. HARRINGTON: Char?

10 MS. PAGAR: I just want to say I think if you
11 look at the picture as a whole and you look at the fact
12 that it's going to be fairly easy for consumers to sign
13 up, that we have the ANI issue, that we have the
14 household signup issue, and a number of people in a
15 household may be signed up for a do-not call list who
16 may not have intended to be signed up for that do-not
17 call list, when you look at that whole entire picture
18 and you look at the fact that there's no disconnect
19 database currently, as far as we can tell, I think the
20 fact of an annual renewal requirement is really not
21 that burdensome on the consumer once you look at, you
22 know, all of the costs and benefits that would be
23 associated with it.

24 MS. HARRINGTON: Chris?

25 MR. HOOFNAGLE: Yes, let me make a point here,

1 is we've been involved in the issue of the sale of CPNI
2 or Customer Proprietary Network Information, and let me
3 say the LECs have no problem selling customer
4 information, and telemarketers have no problem finding
5 our phone numbers, buying lists and making new lists.
6 I would point out that LECs sell lists of new movers.
7 There's new movers databases, they sell just the phone
8 number, and if you go to any number of LECs' websites,
9 you'll find these databases being sold. Those
10 databases could be provided to scrub the list.

11 I would make the point that I do think the
12 number should stay on the list indefinitely until
13 there's a move or disconnect. Take people like my
14 parents, who have lived in the same phone for 25 years
15 and have had the same phone number for 25 years.
16 Should they have to call back every year or every two
17 years?

18 MS. HARRINGTON: We are going to hear from
19 Dennis, Jason and Linda.

20 MR. MCGARRY: Dennis McGarry.

21 Yes, they do need to update it annually. I
22 just want to -- ironically, as I left the airport to
23 come up to Washington, D.C. yesterday, in the Charlotte
24 Observer, on the front page of the newspaper it says
25 half of us moved between 1995 to '00. Over 58 percent

1 of the residents in the -- in Charlotte, Mecklenburg
2 County, had moved, people from one address to another
3 or moving within the state. The Chamber of Commerce,
4 head of research, made this comment: "'We're a bunch
5 of gypsies,' jokes Tony Cumby, research director of the
6 Charlotte Chamber. 'we're always moving.'".

7 So, even while we have a national average of
8 whatever it may be, 15-16 percent, certain growth areas
9 of this country have very, very rapid changes in names.
10 That's why we have annual phone books, not five-year
11 and ten-year phone books. That's why telemarketing
12 service companies buy lists once a year, not every
13 three and five years, because the data is outdated.

14 MS. HARRINGTON: Jason, Linda?

15 MR. CATLETT: Jason Catlett.

16 This proposal that consumers should pay every
17 year to protect their privacy would be denounced as an
18 extortion by the Federal Government. It's just an
19 outrageous idea. You should have no cost to get on the
20 do-not call list, and --

21 MS. HARRINGTON: Tell us how you really feel
22 about this, Jason.

23 MR. CATLETT: -- and it should stay on
24 forever.

25 Now, on the disconnect data, it's true that

1 there is not just a small number of data sources that
2 you would have to be infused in order to do that, but I
3 can tell you in 1995 when I worked on AT&T on trying to
4 win back customers who had disconnected from AT&T, we
5 would buy data from a large number of sources, infuse
6 them. The data from the LECs was not perfect. LECs
7 have a chronic problem with data quality, but it was
8 good enough for our marketing purposes, and I think an
9 operation can be done that's good enough for the
10 purposes of opting out.

11 One final point, I think it's not a good thing
12 to have the LECs billing for an opt-out service. It
13 might be a good thing if the LECs reflected on the bill
14 the fact that this number had been opted out and if you
15 want to opt back in, call this FTC number. I think
16 that would be a fine thing to do, and that's a way of
17 getting the feedback on whether there was any abuse or
18 unwanted signups.

19 Finally, it would be a good thing if LECs, at
20 the time of provisioning service, asked the customer,
21 do you want to be on the do-not call list? They ask,
22 do you want 900 numbers, do you want to allow collect
23 calls, do you want to be on the do-not call list? That
24 could be a good thing for the LECs to provide at low
25 cost and pass on to the FTC.

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1 MS. HARRINGTON: Linda?

2 MS. GOLDSTEIN: I actually wanted to get back
3 to respond to David's question about the relative costs
4 of having the consumer call back to renew versus the
5 call-back, and I don't have any data on this, but
6 intuitively I think the call-back mechanism would
7 necessarily involve a higher cost. You don't
8 necessarily know that you are going to reach a person
9 on the first try, so there may be multiple attempts to
10 cover that process, each of which would have a cost,
11 where if it's a consumer-initiated operation, the
12 consumer makes the decision, they call and it's a
13 one-shot deal.

14 In addition, because of the fact that the
15 number will block anyone in the household, when you
16 call back, you don't necessarily know that you're
17 speaking to the person that made the election in the
18 first place to be on the do-not call list. So, in
19 fact, you may get a change in opinion not respecting
20 the wishes of the person who elected to put themselves
21 on the do-not call list in the first place.

22 MS. HARRINGTON: Joe, Kimberly and Mallory.

23 MR. SANSCRAINTE: I would just like to expand
24 upon the thought that we are a very mobile society. In
25 any given year, we are going to be looking at somewhere

1 in the range of 17 million numbers that will have been
2 disconnected because of people moving. I think that's
3 a very large number.

4 As for charging consumers being extortion by
5 the Government, I think it's clear that this is a
6 service that doesn't exist now, it's going to cost a
7 great deal of money to implement it, and the goal
8 should be a balancing of some very legitimate competing
9 interests involved, and I think one very good way of
10 doing that is to implement some kind of small consumer
11 charge to get them into play, to act as a qualifier.

12 MS. HARRINGTON: Kimberly?

13 MS. MILLER: I also wanted to respond to
14 David's original question regarding costs. If
15 disconnect, if purging the list based upon disconnects
16 is an important policy that the FTC wanted to pursue,
17 then either a consumer registering with an expiration
18 date, whether it be a year, two years, three years,
19 whatever would be the appropriate decision, would be
20 cheaper, as well as a call-back option would be cheaper
21 than trying to work out a new billing system or a
22 disconnect database and trying to incorporate it in the
23 solution.

24 Someone mentioned that NeuStar, who is the
25 administrator of the NPAAC, and that's the National

1 Affordability Administration Center, may be able to
2 handle some of the billing. My understanding at this
3 time is the NPAAC is not set up to do something like
4 that and it would be very expensive to be able to
5 accommodate that type of billing arrangement.

6 MS. HARRINGTON: Mallory and then Linda Link,
7 and Jeffrey, did you want to speak again?

8 MR. SCRUGGS: Yes, I do.

9 MS. HARRINGTON: Okay, then we are going to
10 move on to the last question in this after Jeffrey.

11 MR. DUNCAN: Mallory Duncan, National Retail
12 Federation.

13 I won't repeat what's in our comments, which
14 encapsulates the more accurate the information, the
15 longer it should stay on the list, but I do have a
16 question back for David.

17 When he was making his presentation and
18 describing how it would work, the first time you would
19 download a large number of numbers, and on subsequent
20 visits you only download the added numbers. How would
21 this issue that we're discussing now play into that
22 system where numbers were deleted? Would you have to
23 then capture the entire field of numbers again or what?

24 MR. TOROK: I thought initially the possibility
25 -- again, none of this is written in stone -- but the

1 possibility was you would basically get a changed
2 database. You would be adding numbers as well as
3 dropping numbers. So, both lists would be downloaded
4 so you could run them both ways, saying here are the
5 new numbers we have to add in, here are the numbers you
6 have to take off.

7 MS. HARRINGTON: Linda Link?

8 MS. LINK: I just wanted to make a point, Linda
9 Link, NCS Pearson.

10 Someone suggested that the national change of
11 address list be used to purge numbers from the do-not
12 call list. If you were to do that, you would have to
13 have the total name and address on the list to be able
14 to match against it, and based on the current proposal
15 of just having the telephone number in the database,
16 that wouldn't work.

17 MS. HARRINGTON: Jeffrey, last word on this
18 issue.

19 MR. SCRUGGS: I just wanted to comment on the
20 comment relative to the 1995 AT&T activity to re-engage
21 customers. That was before the Telecom Act, which
22 introduced substantial changes within the industry, and
23 now there are many more sources of those disconnects
24 within the industry that would need to be coordinated
25 by the national databases.

1 The other issue that I just want to point out,
2 as I said in my opening, one of our concerns was the
3 cost and the complexity that would come up. A lot of
4 the discussions that we've had here are going to add
5 complexity beyond the relatively simplistic system
6 which covered a large portion of the cases but a
7 relatively simplistic system that now you're going have
8 to add more interfaces, you're going to have to add
9 more costs to be able to handle some of these new
10 suggestions.

11 MS. HARRINGTON: All right, we're going to move
12 on to talk very briefly about what particularly the
13 state experience has been in handling complaints. How
14 will and should consumers report violations of their
15 do-not call preferences and rights, and what has been
16 the states' experience in complaint handling?

17 Daniel?

18 MR. FAGRE: Thank you, Daniel Fagre, director
19 of government affairs for Metris on behalf of Consumer
20 Choice Coalition.

21 Eileen, you said earlier today that there is
22 greater ambiguity in these laws at the state level, and
23 this is very true and it speaks to the need for
24 uniformity, which I am still going to answer your
25 question, but it points out that there should be one

1 harmonized list with one harmonized cost to purchase
2 and one harmonized date to purchase it and one
3 harmonized business relationship exemption so it at
4 least looks similar to every state law that's out there
5 except Indiana, and one harmonized place for consumers
6 to report violations -- one or two, I suppose it could
7 be at the states as well -- but one harmonized penalty
8 for violations.

9 I think we want to comply with this, but it's
10 so difficult, and I think that it will better protect
11 consumers to have those types of issues harmonized in
12 this national list.

13 MS. HARRINGTON: Jim?

14 MR. WARDEN: Jim Warden, New York State
15 Consumer Protection Board.

16 MS. HARRINGTON: Jim, into the microphone,
17 please.

18 MR. WARDEN: Generally we allow the violations
19 to come either through the mail, we get them online, or
20 if they call our complaint representatives, we will
21 take them down over the phone. One interesting
22 statistic that may surprise you, approximately 25
23 percent of the complaints that we get in are invalid
24 because they're not on our registry. They're not on
25 the registry or they will get on the registry and they

1 won't be picked up until the following quarter, but
2 they will call in the next day after they have
3 registered.

4 We've found that that cuts down about a quarter
5 of the complaints. The rest of them we typically tend
6 to negotiate with the companies and work a solution,
7 and we're in the process now of moving to some
8 administrative hearings where that hasn't worked, but
9 that's been our general scheme of enforcement.

10 MR. TOROK: Jim, when you implemented your
11 do-not call system, did you notice a large increase in
12 the number of complaints concerning do-not call
13 problems?

14 MR. WARDEN: Yes, and again, you can't presume
15 too much here, because when we first -- our law wasn't
16 effected until the 1st of April, 2001. We started a
17 preregistration process before then, and we had about a
18 million people on our registry before our law was even
19 in effect. We had something like 7000 or 8000
20 complaints come in before the law even became
21 effective, which, of course, we had to notify the
22 complainants that they were invalid.

23 MS. HARRINGTON: And I would ask Missouri to
24 comment on this, too, if you can -- as the system is
25 in place longer, do the complaints drop off? Was there

1 --

2 MR. WARDEN: Yes, for --

3 MS. HARRINGTON: -- a flush of complaints when
4 expectations were raised initially, and what's the
5 drop-off been?

6 MR. WARDEN: Well, there was, and virtually
7 anything that hits the newspapers about do-not call
8 will trigger an increase in complaints. For instance,
9 when you make your announcement about a federal
10 registry, we got an increase in both registrations as
11 well as complaints regarding New York.

12 MS. HARRINGTON: Well, that's because we told
13 everyone to complain to you.

14 MR. WARDEN: Yeah, even though the two are not
15 linked.

16 MS. HARRINGTON: I just want to state for the
17 record, that's a joke, let the record reflect,
18 ha -ha-ha.

19 MR. WARDEN: The other thing, of course, is
20 compliance has spread, and even with the best
21 information outreach in the world, there were a lot of
22 telemarketers that did not get the word that we even
23 had a law, and as that gets more and more picked up and
24 the registry, we find that compliance increases, the
25 number of complaints go down, and also, with a safe

1 harbor provision, a lot of times when we would go to
2 the second round of complaints with the same
3 complainant, we would find they would qualify for the
4 safe harbor, where they wouldn't have originally
5 because they hadn't bought our registry, which is one
6 of the requirements for safe harbor.

7 MS. HARRINGTON: Ann?

8 MS. SCHNEIDER: Ann Schneider, Missouri
9 Attorney General's Office and on behalf of NAAG.

10 I think our principal concern on this overall
11 is to make sure consumers do know where to go and to
12 make sure that any complaint intake systems, whether it
13 is respective attorneys general offices or the other
14 state agencies that handle the no-call systems, can
15 work with any complaint intake of the Commission,
16 whether it's Consumer Sentinel or some stand-alone
17 database.

18 In Missouri we did create a unique database
19 that's tailored to help us track the accumulation of
20 complaints against specific companies, specific 800
21 numbers that they use and the like. We did have, you
22 know, kind of an onslaught of complaints with some
23 early confusion when we got started, because people
24 didn't fully understand when the list on which they
25 would be included would take effect, but my sense is

1 that that has somewhat tailored, and that's what I
2 wanted Rex to speak to.

3 MR. BURLISON: Well, we're coming up on one
4 year of enforcement at the end of June. We have had
5 19,000 complaints. We had 5800 the first month -- I'm
6 sorry, the first month last July, 5300 the second
7 month. We're down the last four months of this year to
8 about 50 calls a day, which is about a thousand a
9 month.

10 MS. HARRINGTON: That's 19,000 and some
11 complaints and how many numbers registered?

12 MR. BURLISON: Right now we're registered at
13 970, so it's --

14 MS. HARRINGTON: 970,000?

15 MR. BURLISON: 970,000. It started out at
16 400,000 because of the preregistration. We feel that
17 the numbers are down because, as somebody pointed out,
18 because of awareness and aggressive enforcement and the
19 attempts of the industry to comply, which we've seen
20 throughout the year an attempt to comply.

21 Now, out of those 19,000, about 4000 of those
22 are exempt companies in Missouri, which are the phone
23 companies and the banking industry, and another 4000 of
24 those are complaints that for some reason or another we
25 can't enforce, whether it be there was an irregularity

1 on registration when we got to the enforcement part, we
2 found that out; whether it would be that the consumer
3 couldn't give us enough information on exactly who made
4 the call.

5 So, we have seen a dramatic decrease in the
6 number of complaints, and again, it's because of
7 education within the industry and with compliance
8 within the industry and enforcement.

9 MS. HARRINGTON: Thank you.

10 We are going to take our 2:45 break now, and we
11 will resume at 3:00 sharp.

12 (A brief recess was taken.)

13 MS. HARRINGTON: It's time to resume. Thank
14 you, everyone has done so well up until now in being
15 back at their space. Jerry's here. All of the members
16 of the Direct Marketing Association have an exemption.
17 Are we back on the record? Okay, well, that's another
18 joke. In parentheses, "ha-ha-ha."

19 Okay, I think we're ready to resume. We are
20 going to continue discussing implementation of a
21 possible National Do-Not Call Registry with a
22 particular focus on the industry perspective, and
23 within that, a particular focus on a discussion of
24 costs, burdens and benefits.

25 I think that the only new participant at the

1 table this afternoon, looking all around, is the former
2 Chairman of the Federal Trade Commission, the Honorable
3 Jim Miller.

4 Jim, would you introduce yourself, tell us who
5 you're representing, and before we get to the substance
6 of the discussion, give us one sentence on your
7 principal concern with implementation and do-not call.

8 MR. MILLER: Madam Chairman, my name is Jim
9 Miller. I am here today -- representing I guess is the
10 right word -- the Consumer Choice Coalition, and my
11 concern with the proposal is that while it may be a
12 very cost-effective approach standing alone, if it is
13 on top of the additional do-not call regimes of the 24
14 or so states, it would be an inferior choice to a
15 program of having individual devices that could be
16 installed by consumers themselves.

17 We just finished a report by Capital Economics
18 and LDCG Economics Finance where we tried to estimate
19 something of the cost of the do-not call provision and
20 other proposed amendments as well, and we tried to
21 balance the benefits and costs, and would like to
22 submit that report for the record, Madam Chairman.

23 MS. HARRINGTON: That would be good, and let me
24 remind everyone that if you have filed a comment and
25 want to supplement the comment with additional written

1 material, we would welcome that, particularly material
2 that goes to the numerous cost and benefit questions
3 that were raised in the Commission's Federal Register
4 notice.

5 Chairman Miller, let me turn back to you. You
6 mentioned that you have done a study or a study has
7 been done for the Consumer Choice Coalition that
8 focuses at least in part on costs and benefits of
9 alternatives to protecting consumer privacy and choice
10 in this area. Can you talk more about what your report
11 finds in terms of costs and benefits?

12 MR. MILLER: I'd be glad to.

13 First of all, as you know, Madam Chairman, the
14 amount of information available is limited, so our
15 report is based on publicly available information,
16 whatever that is, including what is contained in the
17 FTC's proposal, plus some information given to us on a
18 confidential basis by members of this Coalition.

19 What we find is that in the do-not call area,
20 that a national do-not call program would cost in the
21 neighborhood of \$6 or \$7 million per year, which is the
22 more cost-effective way of going about meeting this
23 objective, though if you didn't preempt the state
24 programs, probably the cost would be in the
25 neighborhood of \$100 million a year or so.

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1 Opposed to that would be just a simple scheme
2 of Telezappers or other names of blocking unwanted
3 calls, which would cost maybe half of that.
4 Telezappers, 10 percent of the households using
5 Telezappers, for example, \$50 apiece amortized over ten
6 years or something like that would be about \$77 million
7 per year.

8 We also addressed some other matters, other
9 amendments, proposed amendments, and tried to quantify
10 to some extent the cost there. As we found, it was
11 with some difficulty that you could estimate the costs
12 of some of these various provisions. Estimating the
13 benefits, not surprisingly, it is very, very difficult
14 to do a quantifying of those benefits.

15 We did find that applying the regime of
16 requirements that presently apply to outgoing calls to
17 incoming calls would be very, very expensive, and the
18 time restrictions, for example, is an example of one
19 area where it doesn't seem that the benefits are
20 evident. I mean, if someone calls and you do an
21 up-sell, they've already indicated that no matter what
22 time of the day they call, it's an acceptable time for
23 them to be discussing commercial matters.

24 MS. HARRINGTON: I think we should probably
25 clarify, too, there, Chairman Miller, that it was not

1 our intent, as I understand it, to impose those time
2 requirements on up-sells on inbound calls.

3 Isn't that right? I'm turning to my sidekick
4 here, Katie Harrington-McBride, who is the head of our
5 team and not related to me. We have an abundance of
6 Harringtons here, but we are not related.

7 MR. MILLER: I may have that incorrectly, but
8 --

9 MS. HARRINGTON: No, I think we may not have
10 been sufficiently clear.

11 MR. MILLER: Well, there is one thing that I
12 wanted to point out, maybe because I have a special
13 interest in these mathematical kind of models. To
14 essentially enforce a zero rate of abandonment in this
15 use of predictive dialers would essentially eliminate
16 that technology altogether. I mean, it's a
17 mathematical model for the purpose of predicting.
18 That's like telling someone that engages in
19 forecasting, if you don't forecast accurately 100
20 percent of the time, then you shouldn't be in this
21 business. Well, the nature of a forecast is that
22 you're not going to be perfect every time.

23 From the data I have seen, these predictive
24 dialers have generated great savings for the industry,
25 and one thing that I think it's very important for us

1 all to realize is when we're talking about cost impacts
2 on the industry, since it's a very competitive
3 industry, those costs will be passed on to consumers.
4 So, it's really trading the benefits that consumers
5 derive from some of these restraints on certain kinds
6 of behaviors versus the increased costs that they will
7 bear because of the extra costs that would be borne by
8 the firms that would then be passed on to consumers.

9 So, it really is a weighing of benefits and
10 costs to the consumers, and I think your challenge is
11 to go through this list of proposals, proposed changes,
12 and see those that make sense and those that don't on
13 some kind of quantification of those benefits and
14 costs, but it seems to me that on the predictive dialer
15 basis, 18 percent, according to what we found out, is
16 that above an 18 percent abandonment rate, which is a
17 large abandonment rate, there's very little gain, but
18 below 5 percent or 4 percent or 3 percent, you're
19 really beginning to raise costs that ultimately be
20 borne by consumers.

21 So, the standard that I guess the DMA adopted
22 of a 5 percent abandonment rate seems to me, based on
23 the numbers I have seen, about correct. So, I would
24 urge you to within the statutory license that you have
25 not to affirm that zero abandonment rate is required by

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1 the present rule, or if it is, to make some exception
2 to that, because I think the predictive dialers do
3 generate substantially lower costs that are passed on
4 to consumers, and if that technology is eliminated,
5 they would pay a great deal in return.

6 MS. HARRINGTON: Thank you, and thank you for
7 previewing the submission that you're making today.
8 We'll be talking a great deal more about predictive
9 dialers in a future session, and I'm assuming that
10 whoever is occupying the Consumer Choice Coalition's
11 chair will be able to expand beyond your preview of the
12 assessment of costs and benefits and predictive dialer
13 use and abandonment rate.

14 Let me go back, if I may, to the do-not call
15 analysis that you've done and ask whether the estimate
16 of costs absent preemption goes primarily to
17 acquisition costs of all of the various lists. We
18 spoke some this morning about an option to harmonize
19 all of the lists so that marketers would have to go to
20 one place only to get a list that they could use
21 everywhere. That's a hypothetical, but if that were
22 the case, would the cost estimate come down
23 significantly?

24 MR. MILLER: Oh, you might be able to have an
25 institutional arrangement where there's cooperation

1 among the various state agencies and the FTC that you
2 could bring that cost down. In the analysis that I
3 did, I mean just frankly, the thing that stands out of
4 the two extremes, the do-not call regime seemed to be,
5 for the purpose of giving people the option of blocking
6 telemarketing calls that they do not want to receive,
7 the most cost-effective of the various provisions,
8 whether it's a national scheme or even allowing people
9 to choose an instrument that they attach to their own
10 telephone.

11 The other extreme was the notion of ending the
12 predictive dialer technology or basically effectively
13 outlawing it. The other proposals are in between. I
14 would say for all of those additional proposals, I
15 think serious questions have to be raised since they
16 are significant in their costs, and just trying to get
17 your arms around the benefits is like something that
18 keeps escaping. You have some anecdotal things. It
19 doesn't mean those benefits are unreal or unimportant.

20 It means that -- I think that it's just --
21 you don't have good evidence of benefits there, and you
22 do have -- whether you adopt one set of assumptions or
23 another set of assumptions, for example, we show that
24 there are two sets of -- we have -- there are two
25 sets of assumptions that we might use in terms of

1 showing the overall effects on sales. Whether you use
2 the FTC's numbers or the Coalition's numbers, they are
3 still very large numbers.

4 So, the effects are quite dramatic of these
5 proposals, and I think that the question, though, is
6 getting your arms around the benefits to consumers,
7 because after all, they will be the ones that are
8 eventually paying the cost.

9 MS. HARRINGTON: Okay, thank you.

10 All right, again, we're focused on the industry
11 perspective on implementation and particularly on cost
12 issues, specifically whether the prohibition against
13 selling, purchasing or using the registry for any
14 purpose other than to comply with the rule is overly
15 burdensome for businesses.

16 Jerry?

17 MR. CERASALE: Yes, Jerry Cerasale, DMA.

18 We, of course, as I said before, we have a
19 list, and we have a requirement that marketing
20 information, in our guidelines, can't be used for
21 anything other than marketing purposes, and so from a
22 point of view of looking just straight at the
23 prohibition, we don't see a problem. We do seed our
24 lists so that we can see if anyone's using it for other
25 purposes and so forth. So, we end up doing that.

1 The thing that I -- I do have one question, I
2 think it applies here. In the presentation from staff,
3 you talk about law enforcement getting it, and I don't
4 know, we haven't -- if you could expand on that, what
5 law enforcement are we looking at? How are you going
6 -- is it really for FTC enforcement? Do you allow
7 states to try to enforce what FTC has and so forth?
8 And I think that is a question as far as what law
9 enforcement are we looking at, because that would be a
10 use outside of the purposes just stated for the list of
11 not calling.

12 MR. TOROK: Well, clearly under the
13 Telemarketing Sales Rule both the FTC and the states
14 have the authority to enforce the rule in federal
15 court. So, at a minimum, it would be the FTC and the
16 state law enforcers who have the power under the Act
17 itself would need access to the registry information to
18 determine whether a violation has occurred or not.

19 MR. CERASALE: And are there more that you're
20 thinking of?

21 MR. TOROK: There is always a possibility of
22 more. I think that's an open issue. Those that have
23 the authority to enforce the rule should have access to
24 the information.

25 MS. HARRINGTON: Well, and, you know, we talked

1 earlier, Jerry, about one possible approach, which
2 would be to have a combined list without preempting
3 state enforcement of existing state laws. So, for
4 example, if there's some administrative enforcement
5 mechanism in the State of New York -- and I don't know
6 actually what your enforcement mechanism is -- but if
7 all parties with responsibility for registration under
8 state and federal laws were to share one list but
9 enforce separately, then I would think that that would
10 be the expanded enforcement scenario that David alludes
11 to.

12 Is that an answer to your -- do you understand
13 the answer?

14 MR. CERASALE: Yes, no, I understand the
15 answer. It's basically just law enforcement for
16 enforcement of --

17 MS. HARRINGTON: Right, do-not call, right.

18 MR. CERASALE: -- of do-not call laws, and no
19 other law enforcement?

20 MS. HARRINGTON: Right, I think that would be
21 our intent. It's hard for me right here or hard for us
22 to anticipate any other kind of law enforcement that
23 would be appropriate, but I don't think that we would
24 want to slam the door without further thought.

25 Is there anyone who thinks that it would be

1 appropriate to permit the use of a registry for any
2 purposes other than the ones that we're discussing
3 right now? Does anyone -- Michael and Linda?

4 MR. PASHBY: Michael Pashby, the MPA.

5 I just want clarification on that really,
6 because as this list is growing, we expect it to be
7 about 40 percent of the country. If a marketer
8 purchases a list -- I'm sorry, rents a list and then
9 scrubs that list against the registry, 40 percent of
10 the names and phone numbers are going to be removed
11 from that for telemarketing purposes.

12 Would you consider that if the marketer then
13 mailed to the 40 percent who were excluded from that
14 list, would you consider that using the list for a
15 purpose other than suppressing those names?

16 MS. HARRINGTON: I think that's an interesting
17 question for the record that you've raised.

18 Jason?

19 MR. CATLETT: Yeah, as a privacy advocate, I'm
20 generally in favor of a use limitation and purpose of
21 specificity, that you should only use the information
22 for the specified purpose, but I think you should
23 consider allowing businesses a couple of obvious
24 liberties. One would be a sublicensing scheme, such as
25 the NCOA uses, where you can have a designated

1 sublicensee who can then for the same purpose provide
2 that information to another for reasons of cost saving
3 and administrative convenience.

4 And you should also allow summary statistics on
5 the information to be developed that don't have any
6 privacy impact and don't relate to a single phone
7 number. Growth in certain areas, for example, can be
8 used for planning purposes. There's no reason to deny
9 that.

10 MS. HARRINGTON: Okay.

11 MR. CATLETT: Oh, at some point I would like to
12 comment on Chairman Miller's statement, but you choose
13 the right time.

14 MS. HARRINGTON: Go ahead.

15 MR. CATLETT: Chairman Miller said the cost of
16 state DNC lists annually might be \$100 million and the
17 cost of consumers buying individual devices might be
18 \$77 million amortized, and 100 is a lot larger than 77,
19 so you might conclude that was a lower cost option, but
20 that concludes who was paying for it. The DNC list
21 cost is borne by the telemarketer, which is the
22 appropriate place, \$100 million, and the Telezappers
23 are paid for directly by the consumers, and it's unfair
24 to equate those two on the argument that costs are
25 passed on to the consumer. I don't accept that someone

1 should have imposed on them the costs for services that
2 they do not want to receive.

3 Furthermore, briefly, on the predictive dialer
4 issue, the FTC rightly construes the statute as saying
5 abandoned calls are violative, and the question of cost
6 is irrelevant if it's a violation of the law. You
7 know, if the Ten Commandments say thou shalt not commit
8 adultery, and the preacher says, well, try to keep the
9 number of adulterous relationships to a minimum and no
10 more than 5 percent of your sexual activity, that's
11 abandoning all moral authority in interpreting the law,
12 and to indulge in a cost argument when you have a plain
13 prohibition is irrelevant.

14 MS. HARRINGTON: Chairman Miller, on the
15 subject of the Ten Commandments and the economics of
16 the Ten Commandments?

17 MR. MILLER: Well, in the rank ordering of
18 importance, I would not place the question of
19 abandonment measures in direct cause on the same plane
20 with the Ten Commandments, and as I think, if you will
21 examine the record, I had said to the extent permitted
22 -- something like the extent permitted by law, whether
23 that can be done, and I guess it would be up to the
24 Federal Trade Commission to interpret judgment there.

25 On the question of the cost, it is an

1 interesting point you raise, and I mentioned that in
2 the study that was completed by, among other authors,
3 Richard Higgins, who was the deputy director of the
4 Federal Trade Commission some years ago. You could
5 turn it around and say arguably, an advantage of the
6 use of the personal blocking devices is that then the
7 cost is borne by the person who wishes not to receive
8 the telemarketing telephone call, because with the
9 do-not call list regime, all consumers will pay for it
10 in the end, because those costs will be passed on to
11 consumers irrespective of whether they prefer not to
12 receive telemarketing calls or prefer to receive
13 telemarketing calls.

14 MS. HARRINGTON: Joe?

15 MR. SANSCRAINTE: Just very briefly in terms of
16 the prohibition, the prohibition in the TSR really just
17 brings the TSR in line with what the states have been
18 doing, and my company hasn't experienced any issues at
19 the state level with people having problems with that
20 prohibition.

21 MS. HARRINGTON: Katie?

22 MS. HARRINGTON-MCBRIDE: I think that Joe has
23 covered it. I was going to ask if the states in
24 particular, but certainly anyone else at the table, has
25 any evidence that these lists have been used in any

1 inappropriate ways that might help us with drafting.

2 MS. HARRINGTON: Dennis?

3 MR. MCGARRY: I just want to comment, because
4 the subject was brought up, and that's in regards to
5 the cost factor, and I'm not promoting zappers or
6 anything else, but there is a lot of history already
7 out there with regards to small fees that consumers do
8 pay for a benefit of a service, and I just want to make
9 note for record, and that is the 9-1-1 service, which
10 the American publicly pays for on a monthly basis,
11 which is about \$8 to \$9 a year.

12 There is also consumers are required to pay to
13 get information -- consumer Freedom of Information Act
14 requests, even though all taxpayers have that
15 information, it's public. There's driver's license
16 fees, to ride on airplanes of \$10, toll roads and
17 everything else. So, small fees I think we already
18 have in present and past endeavors.

19 MS. HARRINGTON: Chris?

20 MR. HOOFNAGLE: Yes, I'll be brief. I wanted
21 to comment on the former Chair's study as well. I
22 think that in studies of costs to consumers, Bob
23 Gellman really has put forth a great paper that was
24 recently published this year, and he has noted that
25 many economists do not actually record the true costs

1 to consumers. That study is available online at
2 epic.org.

3 The other day I was surfing around the call
4 center website, and I noticed that one of the call
5 centers said that they did 300 million calls a year at
6 a 5 percent abandonment rate. I'd like us all to think
7 about how many people would be interrupted in their
8 daily lives, and are those costs afforded in this study
9 presented by the former Chair?

10 We've also heard that predictive dialers reduce
11 costs to consumers. Well, I don't know -- we've said
12 that, but I'm not sure that that's true. Is there, in
13 fact, any study showing that products have become
14 cheaper because of predictive dialers? Has that profit
15 instead just been pocketed?

16 John Kenneth Gilbreath once said that
17 mainstream economics essentially comprises what rich
18 people need poor people to believe, and I think that
19 these studies exemplify that, completely ignoring costs
20 to consumers, the costs to our time and the costs in
21 our lives.

22 MR. MILLER: Of course, I think it's unfair for
23 you to characterize a study that you have not seen, and
24 I hope that you will read the study, and our economists
25 have been quite good at trying to incorporate all costs

1 relating to time.

2 My first major book by the Brookings
3 Institution was based in part on a model of waiting
4 time, and the answer is, yes, we did look at the costs
5 both in terms of the effects on consumers and the costs
6 in terms of the eventual reduction in prices that they
7 receive because of the efficacy of these predictive
8 dialers.

9 MS. HARRINGTON: Now, I would ask, I was just
10 noticing that we don't have the Consumer Choice
11 Coalition listed as a participant tomorrow morning when
12 we talk about predictive dialers, and I think that we
13 need to get someone from the Coalition at the table to
14 make sure that we can fully delve into the material
15 that has been prepared, if somebody who's here -- I
16 don't know if there are a number of people, but I'm
17 sure someone will do it.

18 David, do you have a question?

19 Okay, Jim, and then we're going to go to David
20 for a further question.

21 MR. WARDEN: Jim Warden, New York State
22 Consumer Protection Board.

23 Just on the narrow question of the use or
24 misuse of the list, first of all, we have had a request
25 from a county tax authority to use our list to help run

1 down deadbeat taxpayers they couldn't otherwise locate.
2 We turned it down simply because our rules specify that
3 the list is supposed to be only for the use and
4 furtherance and purposes of the registry.

5 Second, when we do the registrations, we get
6 the name, telephone number, postal zip code and date of
7 registration. We do not link the address with the
8 name; however, we've been told anecdotally that there
9 are a lot of programs out there that can mix and match
10 lists and put these two together, and we've also heard
11 anecdotally, some people are using our do-not call list
12 as, A, a call list, taking the chance, or B, using it
13 as a mailing list, but all our information on that is
14 anecdotal, and we haven't had enough to really take an
15 enforcement action against that yet.

16 MS. HARRINGTON: David?

17 MR. TOROK: At this time, I was going to move
18 on to the next question, the next issue.

19 MS. HARRINGTON: I am also going to excuse
20 myself at this point, but I will be back with you all
21 tomorrow morning, and Katie Harrington-McBride will be
22 moderating for the remainder of the day.

23 MS. HARRINGTON-MCBRIDE: The only announcement
24 I would want to make about that is that Eileen has
25 already become so adept at this that she knew your

1 names before she got here, and I really need to see
2 your names on your tent, so if you will put it before
3 me when you put it up so I can call you by name. Thank
4 you.

5 MR. TOROK: Katie, if I can move on to the next
6 question on the agenda, it's listed as should the rule
7 explicitly require telemarketers to purchase the list?
8 To put some flesh on those bones, right now, the
9 proposed rule would find it a violation if a
10 telemarketer called someone whose name appears on the
11 do-not call registry. It would require, before any
12 enforcement action, that the call be made, that the
13 consumer makes a complaint to us and we confirm that
14 and then an enforcement action is taken.

15 There is an alternative liability that could be
16 imposed, and that is simply saying it is unlawful to
17 call any consumer, for a telemarketer to call the
18 consumer without having purchased the list. I'd like
19 to just present that for the table for discussion.

20 MS. HARRINGTON-MCBRIDE: Okay, Joe?

21 MR. SANSCRAINTE: I'd like to say that our
22 company, where states mandate this sort of compliance,
23 we do require our clients to sign an affidavit
24 indicating that they are, in fact -- that they have
25 registered and they have purchased the list. The

1 question of whether or not the FTC should explicitly
2 require this, I think if that's going to be the policy,
3 then yes, the FTC should do that.

4 An alternative would be something that New York
5 is doing where if you don't purchase the list, you
6 don't have access to the safe harbor provisions under
7 the list -- under the rule, sorry.

8 MS. HARRINGTON-MCBRIDE: Linda?

9 MS. GOLDSTEIN: Yeah, we actually disagree with
10 that position. We actually think on this one the
11 Commission got it right the first time. If you look at
12 the purpose, I mean I think we have to step back and
13 look at what is the consumer protection goal here? The
14 consumer protection goal is to assure that consumers
15 have a mechanism by which they can opt out of receiving
16 unwanted calls. Whether or not a telemarketer directly
17 purchases that list or industry, through service
18 bureaus and relationships between service bureaus and
19 telemarketers, ensure that that goal is achieved, I
20 think that should be left to industry to determine how
21 to most efficiently achieve that consumer protection
22 goal, and to require each telemarketer to purchase this
23 list makes this proposal sound like a revenue-generator
24 rather than a consumer protection attribute.

25 MR. SANSCRAINTE: Just to clarify, I don't want

1 anything in my statements to be interpreted as if
2 CallCompliance is coming out in favor of the FTC
3 charging telemarketers to access the list. I think
4 some of my prior statements have indicated that we
5 certainly think it's something that the FTC should put
6 on the table the option of charging consumers.

7 MS. HARRINGTON-MCBRIDE: Tyler?

8 MR. PROCHNOW: I would just echo Linda, so I'll
9 pass.

10 MS. HARRINGTON-MCBRIDE: Okay, Jason?

11 MR. CATLETT: It seems to me an organization
12 that had a customer base for which it has permission to
13 telemarket to those customers and doesn't prospect in
14 any way would not have any obligation to get the list.
15 It would be a needless expense if they have permission.
16 If they get it wrong, then they face the enforcement
17 penalty.

18 MS. HARRINGTON-MCBRIDE: Can we use our
19 microphones? I have heard a couple of comments from
20 the floor that it's particularly hard to hear,
21 especially when you're soft spoken, so please use the
22 mike.

23 MR. CATLETT: Just to repeat, for a company
24 that doesn't prospect, markets only to its customers, I
25 don't see why they should be compelled to market the

1 list, even though they are doing outbound telemarketing
2 to existing customers.

3 MS. HARRINGTON-MCBRIDE: Jerry?

4 MR. CERASALE: Yes, Jerry Cerasale with DMA.

5 With our national do-not call list, we allow
6 service bureaus to purchase the list and to run that
7 list and scrub all their clients' lists, so that we try
8 and encourage people to not call, and it works. The
9 DMA list works, and that's a very cost-effective way.
10 To force each telemarketer to come in and try and have
11 to purchase is just -- as Linda says, that's a revenue
12 generator and not something to try and protect
13 consumers or to give consumers their choice of not
14 getting phone calls.

15 MS. HARRINGTON-MCBRIDE: Mallory?

16 MR. DUNCAN: To some extent this gets into some
17 of the questions that are raised in the Commission's
18 next comment period coming up on June 28th, so it's a
19 bit premature for us to give you an industry view
20 obviously at this point.

21 With that caveat, I want to say that the
22 National Retail Federation, at least preliminarily, we
23 want to associate itself with the comments of Linda,
24 Jerry and surprisingly Jason, and we agree that there
25 should not be an absolute requirement that a company

1 purchase the list, but rather, you should look at the
2 goal, which is not to make the calls if people's names
3 are on the list.

4 A subset of that, and I'm afraid I have to keep
5 coming back to these, is our insistence that if there's
6 a list developed, there be an established business
7 relationship, and if there is an established business
8 relationship and calls are made only to those
9 individuals, there is no need to purchase the list.

10 MS. HARRINGTON-MCBRIDE: David has a question.

11 MR. TOROK: Actually not a question but a
12 clarification, because Mallory, you hit the nail on the
13 head, this does merge somewhat into the user fee NPRM,
14 which I promise is not on the table, and that
15 discussion is premature, but I would encourage you as
16 you comment on that proposal to keep in mind that if
17 the number of individuals who have to pay a set fee
18 shrinks, obviously the fee to each of those individuals
19 is going to increase, and there is some interplay
20 between service bureaus scrubbing on behalf of others
21 and only one entity paying for what could be done on
22 behalf of many people, many entities, that has an
23 effect on the costs to the entities that are acquiring
24 the list.

25 No need for discussion at the table, just

1 something to keep in mind as you're thinking of
2 comments on the user fee proposal.

3 MS. HARRINGTON-MCBRIDE: Jim?

4 MR. WARDEN: Yes, Jim Warden, New York State
5 Consumer Protection Board.

6 I think there's really two questions subsumed
7 in one there --

8 MR. HILE: Please use your microphone.

9 MR. WARDEN: The first is whether there ought
10 to be a requirement for telemarketers to purchase the
11 list. There is no such requirement in New York;
12 however, as was indicated earlier, if you don't
13 purchase the list, then you can't avail yourself of the
14 safe harbors, that would be the first question.

15 The second question would be if you don't
16 purchase the list, can you use the information
17 contained on that list for purposes of list scrubbing
18 and other things? Our rules prohibit that. So, if you
19 use the information contained on the New York list,
20 whether you are engaged in selling a scrubbed list or
21 buying a scrubbed list, then we require that you do buy
22 our list.

23 MS. HARRINGTON-MCBRIDE: Michael, you've been
24 waiting patiently.

25 MR. PASHBY: Thank you, Michael Pashby.

1 To buy a national list for a small magazine or
2 a small company who is operating nationally would
3 probably be cost-prohibitive. The good model out there
4 is the national change of address system, where the
5 personal service will satisfy a number of fulfillment
6 or service bureaus, and they will work on behalf of a
7 number of marketing companies, and that will work for a
8 period of time, and it is beneficial for the companies
9 to use it through their service bureaus, so I would
10 urge you to look at that system.

11 MS. HARRINGTON-MCBRIDE: Linda?

12 MS. GOLDSTEIN: Yeah, the last comment just
13 brought something to mind that came up in the earlier
14 session, and that had to do with the safe harbor, and
15 we seemed to all agree that the safe harbor provisions
16 were sufficient, but as I think it through,
17 assuming -- and I hope the Commission would go in this
18 direction -- that we would not require the
19 telemarketer to actually purchase the list but that
20 they could rely on the service bureau, we may need some
21 adjustments to the safe harbor provisions, because that
22 telemarketer would not itself have the procedures in
23 place for purchasing that list, and maybe it would be
24 something similar to what you have in the record
25 keeping provisions where the telemarketer, as long as

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1 they by contract allocated responsibility to the
2 service bureau or whomever they're allocating
3 responsibility to to scrub that list, that that would
4 be sufficient, but I think on further reflection we
5 would have to rethink that.

6 MS. HARRINGTON-MCBRIDE: Is there any other
7 discussion of this? Jason, I see your tent is up now.

8 MR. CATLETT: Yes, I just wanted to respond to
9 the concern that if you allowed sublicensing, then
10 revenues would decline, but you can write license terms
11 that would charge appropriate to the volume that is
12 handled. So, I think that's entirely appropriate, and
13 I would hope, for example, the DMA's TPS could have a
14 fee from the national list, and you would have some
15 appropriate revenue sharing.

16 Indeed, I believe, Jerry, the DMA charges its
17 members for the TPS, correct?

18 MR. CERASALE: Those that subscribe, Jason.

19 MR. CATLETT: Right, right. So, you could have
20 a flow of money in one direction and a flow of data in
21 the other direction and make it appropriate to
22 basically cover the cost of the FTC's operation.

23 MS. HARRINGTON-MCBRIDE: Any other comments on
24 this proposed change?

25 All right, the next issue we want to talk about

1 is the frequency that the list should be updated by
2 purchasing it, and we had proposed a monthly update,
3 and we would like to hear comment by business on this
4 update, the impact to consumers if that has changed,
5 and any practical information that those of you who are
6 running these lists already might be able to give us
7 about what your experience has been.

8 Why don't we start with Dennis since he's been
9 good enough to give us the candy.

10 MR. MCGARRY: Yes, I'm a small business owner.
11 Monthly lists for individuals, one, two, three, four,
12 five-person firms, is -- I would say is almost
13 impossible. They don't have the technology to scrub
14 these lists, frequently they are going to rely on
15 outside service bureaus, which is going to add more
16 expense, and quarterly I think is the minimum of any
17 other state, and I think the states have got a lot of
18 history in that area. That seems reasonable to me.

19 MS. HARRINGTON-MCBRIDE: Rex, what do you have
20 to say to us?

21 MR. BURLISON: Well, I'd kind of parrot that.
22 It's been our experience -- we by statute pay
23 quarterly, and the consumers in Missouri are satisfied
24 with that, although some tried to file a complaint the
25 day after they registered, and when I explained to them

1 that there has to be an offset in order to get the list
2 out to the industry, they're satisfied, so we found
3 that the quarterly update works well and is
4 satisfactory to consumers.

5 MS. HARRINGTON-MCBRIDE: Art?

6 MR. CONWAY: Art Conway, Dial America.

7 We also agree that monthly would be
8 prohibitive. We have got centralized inventories. We
9 keep all our inventory that we call all in one, in
10 effect, database in our headquarters. We send the
11 leads out one at a time. For us to go in on a monthly
12 basis and start purging out of those live inventories
13 names that ordinarily would go through a calling cycle
14 would be extremely difficult for us. We have had a
15 tough time doing that.

16 We particularly had a tough time doing that
17 with Indiana, because that was like -- you had to
18 comply day one with that. There wasn't any grace
19 period. For companies that have decentralized
20 inventories out in branches where the inventories lie
21 out in the branches, I think it would be impossible for
22 them to comply with this.

23 Now, while that may be good for us and bad for
24 them, that's bad for the industry. At a minimum,
25 you've got to give us at least a quarter.

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1 MS. HARRINGTON-MCBRIDE: Can you tell us any
2 more about how you ended up complying with Indiana's
3 law?

4 MR. CONWAY: What we did was we found -- we
5 took the Indiana list, instituted it against
6 inventories before they had been selected for calling.
7 What we found was -- and we purged out all the do-not
8 calls. What we found was we still had live names in
9 the calling, the active inventories, that we hadn't
10 purged out.

11 Now, normally we have some kind of a grace
12 period with states to work through, okay, they give you
13 the list, you have got 30 days maybe, you can't call
14 them after 30 days. Indiana, there was zero tolerance
15 there.

16 We called two people and realized we had a
17 problem -- we got two complaints from Indiana. We
18 called two people that were on the do-not call list,
19 and we had to shut Indiana down and to purge it out of
20 all of our inventories.

21 It's very difficult when you're dealing with
22 these live inventories when there's no grace period.
23 We in effect had to shut down, purge out. Now, we were
24 able to do that because it was one state. To do that
25 on a national level, we would just have to shut down.

1 So, maybe we would have to shut down for a day and
2 purge it all out of the live inventories.

3 We need some time to let it work through the
4 system so that we can update it in a normal fashion and
5 not try and update live inventories that are currently
6 under promotion.

7 MS. HARRINGTON-MCBRIDE: And you're saying it
8 would take a day to do that?

9 MR. CONWAY: Pardon?

10 MS. HARRINGTON-MCBRIDE: You're saying you
11 would shut down for a day to do that?

12 MR. CONWAY: It's going to take a day or two
13 days to do that. That's a lot of processing and
14 processing -- well, it depends on how big the file is
15 how big our inventories are. I mean, we're talking
16 millions and millions of records here, and we can't
17 just shut down a state. We have to shut down the
18 country, because yours is a national list.

19 MS. HARRINGTON-MCBRIDE: Chairman Miller?

20 MR. MILLER: Yes, could I say I think we ought
21 to think of the correct perspective here, the
22 analytical framework, and that ought to be from the
23 standpoint of the consumer, what is the cost for having
24 less frequent updates versus the additional price
25 reduction, because the costs will be lower to the

1 industry, those costs being passed on to the industry.

2 The second point I would make is a qualitative
3 one, and that is that I think it would be more
4 important to update the list more frequently when
5 there's turmoil in those lists, and I think you would
6 find more turmoil in the list early on in setting up
7 the list. After a while, there would be stability,
8 equilibrium, equal to those people who don't want
9 telemarketing calls pretty much would have put their
10 names on the list and those who have a different point
11 of view would not have so alerted or called in their
12 reservations for it.

13 MS. HARRINGTON-MCBRIDE: Yes, we have a
14 question here.

15 MR. HILE: Chairman Miller, does that mean that
16 you might think that more frequent updating at the
17 beginning of the program would be better and then maybe
18 shift after a year or some other period to quarterly?
19 Is that what you would advocate?

20 MR. MILLER: Yes, or even twice a year. I
21 don't know what the numbers would be, but
22 qualitatively, I do recognize that the cost element
23 from what this gentleman was saying might be much
24 higher at the beginning, and that ought to be taken
25 into consideration, but everything else equal, you

1 would have more frequent updating at the beginning of
2 the period and then less as time went on.

3 MS. HARRINGTON-MCBRIDE: John?

4 MR. MURRAY: Yes, Katie, John Murray with the
5 Newspaper Association.

6 I, too, would recommend quarterly as opposed
7 to, say, monthly. When you put it in terms of what we
8 were talking about earlier as far as renewing a list or
9 where consumers are to renew every year or every two
10 years, you're really only impacting the consumer that
11 first time by making it quarterly, because after that,
12 as long as you notify before their time so that their
13 expiration, when they would come up, is three months
14 before they actually do, you really only impact them
15 one time.

16 So, when you do a cost-benefit in my mind,
17 although there might be a delay, worst case, 90 days
18 that first time of capturing some people, from there on
19 it really doesn't matter, and so cost-benefit, the
20 benefit to the consumer I would think would be
21 minuscule compared to what you're hearing is really
22 arduous for in our case the newspapers.

23 MS. HARRINGTON-MCBRIDE: Keith?

24 MR. ANDERSON: I wanted to follow up on Art's
25 comment and see if I'm understanding it correctly. It

1 sounded to me like what you were telling me was there
2 needs to be a period of time after the time when you
3 purchase the list, when you take access to the list.
4 You have to have three days or a week or whatever to
5 work through the process that purging out -- of
6 getting the names that are now on the list out of your
7 system, and that -- but -- and that would occur each
8 time that you had access, right?

9 So, if it was a quarterly -- if you got access
10 on January 1, what you're telling me is you've got to
11 have a week -- between January 1 and January 8, you
12 may be making some violations.

13 MR. CONWAY: No, no, I'd like 30 days on that,
14 because I'm running programs where the inventories are
15 residing out in live inventories for 30 days. Now, if
16 I have to purge out of those inventories, not the
17 inventories I have sitting over here that are not under
18 promotion yet, but these that are under promotion, I
19 have to shut down everything to go do that.

20 In other words, I can't do that while I'm
21 calling. I can do it for a state, but I can't do it
22 nationally. For a state, I'll just say -- well, like
23 in Indiana. We just said, okay, put something in
24 there, we're not calling Indiana. If an Indiana
25 telephone number comes up, we're not calling it, purge

1 it out, and as we go through the cycle, we will purge
2 everything out that's Indiana, put it up against a
3 do-not call list and put it back in.

4 On a national list, now I'm going to put
5 something in that says if it's in the United States,
6 purge it out, but when I do that, I've just effectively
7 shut down. I can get around a state, but I can't get
8 around a country without shutting down.

9 MR. ANDERSON: Okay, but what if the rule said
10 something like you have to purchase -- you have to
11 access the list once a month, but you've got a
12 month -- you know, you have to access the list the
13 first of each month, but it's not until the first of
14 the next month that you'd be held in violation --

15 MR. CONWAY: That's not going to be nearly,
16 nearly as costly to us as it would be if we had to --
17 if we got the list every quarter, but on the -- what,
18 the 91st day or whatever, the 92nd day, we're in
19 violation if we call somebody.

20 MR. ANDERSON: It's the lag between when you
21 get the list and when you have got to comply with it?

22 MR. CONWAY: The biggest cost component would
23 be if we don't have that lag between when we receive
24 the list and when we are going to be held in violation.
25 We need to have time to purge it out without bringing

1 the whole business down. If we bring the system down
2 for three days, that's just huge. That's like having
3 three Christmases in a row. We don't make money at
4 Christmas.

5 MS. HARRINGTON-MCBRIDE: Although I don't think
6 any of us would object to three Christmases in a row.

7 MR. CONWAY: Try to explain the third day of
8 Christmas to the kids when there's no toys.

9 Try to figure out the costs on a monthly basis
10 rather than a quarterly basis. It's going to be less
11 costly to run an update once a quarter than it is once
12 a month, but a bigger cost would be if we had to shut
13 down the whole country to purge out of active
14 inventories, and we can do that. We can do that. The
15 guys out there, the service bureaus out there that had
16 decentralized -- we have one massive inventory, it's
17 all on one computer.

18 The people out there that have -- the service
19 bureaus that have decentralized inventories, they would
20 have to send it all back, send all these files back in,
21 you have to go through the purge process, then you have
22 to send them all back out again. We can sort of do it
23 all together there in one location and not have to deal
24 with the logistics of a decentralized system out there
25 with all the inventories residing in a whole bunch of

1 offices.

2 MR. ANDERSON: Let me make sure I understand
3 you. You know, you're using the lingo of your
4 industry. What you're telling me is that you do
5 something like -- at the beginning of the day, you
6 send the numbers to the office in Lincoln, Nebraska or
7 wherever you've got an office, these are the numbers
8 you're to call today, but it's done day by day, whereas
9 some other office --

10 MR. CONWAY: It's done lead by lead. We do it
11 lead by lead.

12 MR. ANDERSON: Really?

13 MR. CONWAY: Really. Lincoln, Nebraska uses a
14 lead and it sends it back to the home office and we
15 send another one out, because we want all the
16 inventories -- we want to control the inventories.

17 MR. HILE: An inventory is an individual
18 consumer that you're going to call, that's a live
19 inventory?

20 MR. CONWAY: That's inventory records, yes, and
21 records representing individual consumers. We do it
22 differently, but because we do it that way, it's easier
23 for us to comply with this stuff probably than it is
24 for a decentralized inventory, where you say, all
25 right, I'm going to send you out your group of leads

1 that you're going to call for the next week or two
2 weeks. Then you're getting into a situation where if
3 you had to purge out of the live inventories out there,
4 the promotion inventories, they've got to pull those
5 back in, run the purges and send them back out again.

6 MS. HARRINGTON-MCBRIDE: Do we have anybody at
7 the table who can speak to the impact on a
8 decentralized inventory?

9 MR. CATLETT: Well -- can I --

10 MS. HARRINGTON-MCBRIDE: Jason?

11 MR. CATLETT: -- comment? We're not living in
12 the 1950s here. We don't have batch processing on
13 cards and -- we do have realtime databases. So, when
14 I order something from a company, they usually manage
15 to figure out that I should be billed within less than
16 30 days, and they don't have an operational problem
17 with this.

18 Now, from a consumer point of view, it would be
19 great if the thing were effective the day before the
20 request or 1991 or some earlier time, but you have to
21 look at what's operationally reasonable, and I think 30
22 days is more than operationally reasonable given
23 today's computer technology.

24 If you look at, for example, the prohibitory
25 order that the Post Office supplies, there's 90 days

1 from the date of the filing of the prohibitory order
2 before the criminal liability on the mailer takes
3 place. Now, that's a much more severe standard. I
4 think 30 days is very generous; 90 days is grossly
5 excessive.

6 MR. CONWAY: Well, Jason, I'm only talking
7 about, okay, we get the list to -- your point, we get
8 the list. We just want 30 days to let everything sort
9 of clear out of the inventory without having to bring
10 everything down to purge it out. Now, if you give us
11 the list once a month and then give us 30 days after
12 that to let everything clear out of the system, that
13 works. That's going to be more costly than if you give
14 us the list once a quarter. I'm sure you can
15 appreciate it costs you more to process lists once a
16 month than it does once a quarter.

17 The key thing is, I want to let it clear out of
18 the system without having to bring the whole system
19 down to run the purge or the scrubbing aspect.

20 MR. TOROK: Just to clarify, David Torok, from
21 an implementation standpoint, so you understand our
22 vision of the system, you keep using the term we will
23 give you the list, and I know a lot of states may work
24 that way, but we're --

25 MR. CONWAY: I can acquire it.

1 MR. TOROK: -- you can acquire the list
2 anytime, 24 hours a day, seven days a week, whenever
3 you wanted to from the website. It's the rule that
4 will say how frequently you have to do that
5 acquisition, make that acquisition.

6 MR. CONWAY: Right. So, if I have to make that
7 -- if I have to make that on a monthly basis -- well,
8 okay, now you're sort of losing me here.

9 MS. HARRINGTON-MCBRIDE: Art, if I can jump in,
10 it seems to me that there are two issues. One is how
11 often you ought to have to obtain the list so you stay
12 current with people who are filing their preference not
13 to be called. The other is how long a grace period we
14 give you before you're liable for any violation, for
15 calling anyone on that list.

16 MR. CONWAY: Right.

17 MS. HARRINGTON-MCBRIDE: Okay. Who at the end
18 of the table is it who has their card up, is it Char or
19 is it Jeff?

20 MS. PAGAR: That would be Char.

21 MS. HARRINGTON-MCBRIDE: Okay, Char, you're up.

22 MS. PAGAR: I just wanted to add one more
23 comment in favor of the quarterly updates. A lot of
24 marketing campaigns that I'm aware of last a couple of
25 months. You're talking about 60 days or 90 days to

1 begin with. So, it really would be burdensome I think
2 to expect a marketer to have to scrub its list, you
3 know, two or three times during one campaign, whereas
4 having to do it once during a 60-day campaign is -- it
5 may be a more reasonable burden to impose.

6 MS. HARRINGTON-MCBRIDE: George?

7 MR. WALLACE: I wanted to reiterate, there's a
8 difference between --

9 MR. CATLETT: You need a mike.

10 MR. WALLACE: I'm sorry, George Wallace.

11 I wanted to reiterate there's a difference
12 between the grace period and frequency of update issue,
13 and I think that's been lost in this discussion, and I
14 appreciate your clarification there. If you give us a
15 30-day grace period, we can do more things.

16 But on top of that, I'm very concerned that the
17 discussion in the last ten minutes has focused upon a
18 highly mechanized or a highly sophisticated operator,
19 but there's an awful lot of companies out there, and
20 our members include those, that just don't have that
21 kind of sophistication. They don't run things at that
22 kind of level, I'm sorry, and it's going to take a long
23 time.

24 You need to have a quarterly update system,
25 because that's the kind of system -- now, these folks

1 are back in -- I don't want to say the horse and
2 buggy, but they are moving more slowly, and I don't
3 know why we have this agency, the FTC, which is in
4 charge of reinforcing competition in this country in
5 some areas, would want the Consumer Protection Bureau
6 to try to develop a system that really hurts the
7 competitiveness of smaller businesses. I just don't
8 think that's what you want to do.

9 So, I would recommend something along the lines
10 of a 30-day grace period and a quarterly update system,
11 not because there aren't operators out there that can't
12 do it once a month but because there are operators out
13 there that can, and that's the point that needs to be
14 made here.

15 MS. HARRINGTON-MCBRIDE: Mallory?

16 MR. DUNCAN: My comments follow along the lines
17 of what George was just saying. I want to draw a
18 distinction between companies who are in the business
19 of telemarketing, such as --

20 MR. HILE: Closer to the mike, Mallory.

21 MR. DUNCAN: -- companies who are in the
22 business of telemarketing and companies for whom
23 telemarketing just happens to be part of their
24 business, and that most of our members fall into the
25 second category, so that they are not set up as

1 sophisticated telemarketing operations. Most of them,
2 one month is the absolute minimum period of time, and
3 only the largest of them, that they can do an in-house
4 program. Most of them require three months to do an
5 in-house program.

6 So, to provide them and require them to obtain
7 updates once a month for a program that can only run
8 within a quarter is overkill and doesn't make any
9 sense. So, a quarterly program at a minimum makes
10 sense if you're trying to cover the broad swath of
11 those retailers who are not telemarketers, per se.

12 MS. HARRINGTON-MCBRIDE: Jerry?

13 MR. CERASALE: Yes, Jerry Cerasale, DMA.

14 With our Telephone Preference Service, the
15 standard, the industry standard is the minimum is
16 quarterly. I mean, we charge \$465 a year for a
17 quarterly update. We do allow, if someone wants
18 monthly, they can get it. It's significantly more
19 expensive, but the industry standard on updates is
20 quarterly.

21 MS. HARRINGTON-MCBRIDE: Tyler?

22 MR. PROCHNOW: I did want to support what
23 George had said earlier. Most of the companies that
24 I'm familiar with or at least the majority of them do
25 have, as Art has alluded to, a noncentralized calling

1 database. So, pulling those records in and out would
2 be extremely burdensome for most of the industry that
3 I'm familiar with.

4 Also, in support of Jerry's comment, just I
5 think it's worth noting that of the 24 states out there
6 that have do-not call programs right now that have
7 established what their requirements would be, 22 of
8 those 24 states have a quarterly update requirement.
9 There is one monthly state, one annual state, but by
10 and large it is a quarterly update program, and the
11 vast majority of those have a 30-day grace period for
12 implementation from receipt of the list to having it
13 effective.

14 MS. HARRINGTON-MCBRIDE: I have a question. In
15 some of the comments it was noted that in complying
16 with the state lists, it was sometimes difficult
17 because they have different interfaces, so there are
18 different ways to match your list with theirs, and I'm
19 wondering if you particularly in industry can speak to
20 the optimum way that a list could be constructed so
21 that we, at the very least, whatever time frames we
22 come up with, we can minimize your time in merging the
23 two lists.

24 MR. PROCHNOW: I'm not sure I'm prepared to
25 speak on what the optimal format would be, but I know

1 certainly the biggest issue that comes up in that is
2 not that there's one format or form that may be better
3 than the other, it's the fact that there are so many
4 different ones, that all of them take time to be
5 integrated into the same language or format that your
6 existing database is so that they can actually be
7 scrubbed and washed.

8 So, the idea of having a single database,
9 whether it was harmonized, prepped, whatever it is,
10 certainly would be a step in the right direction in
11 that area.

12 MS. HARRINGTON-MCBRIDE: Jerry, do you have
13 anything else on that?

14 MR. CERASALE: Yeah. DMA, for its TPS, offers
15 marketers who subscribe a series of four or five
16 options in form to receive the list so that they can
17 match the company's equipment or however it is, and so
18 we solve that problem by having multiple formats from
19 us to give out to marketers.

20 MS. HARRINGTON-MCBRIDE: Linda?

21 MS. GOLDSTEIN: Yeah, I really had my card up
22 just on the former discussion, that I'm a little
23 troubled that we perhaps seem to be settling on 30 days
24 as a minimum grace period, and we're hearing that from
25 the experience of a, you know, very large, very

1 technologically sophisticated telemarketer, and there
2 is some guidance to be found on this in the Deceptive
3 Mail Prevention and Enforcement Act, which did have an
4 amiable system attached to it, and in that instance
5 there was a model for some of what we're talking about,
6 where there was a grace period of 60 days allowed to
7 have, not to have, to have the name removed from the
8 list which would then be selected for solicitation.

9 So, there is some precedent already for a
10 longer grace period in case you have the sense that
11 that's unfair somehow, inherently unfair to a consumer
12 or too long a period of time. That's the closest
13 parallel I can think of.

14 MS. HARRINGTON-MCBRIDE: Dennis?

15 MR. MCGARRY: I'm going to speak not only for
16 my business but other small businesses that are in
17 America.

18 One, you have to have in my mind multiple
19 formats to get it, and while we may not be in the stone
20 age, many of these people do have little cardex files.
21 We're talking about one and two people firms. In my
22 case I use a lot of referrals and so forth. I can say
23 really looking at a printed list is my basis of not to
24 call. If I got a name from someone over here that I
25 can call or I think I can call, it's a friend of

1 someone else, I'll look at that printed list and say,
2 ah, I can't call that person.

3 So, I think it needs to be -- the flexibility
4 for the small business owner, the ability to have a
5 printed list, and again, quarterly, with a 30-day grace
6 period seems certainly reasonable.

7 MS. HARRINGTON-MCBRIDE: Art?

8 MR. CONWAY: Art Conway, Dial America.

9 I just want to make it clear, we're not
10 advocating 30 days. We would rather have a 60-day
11 grace period. We're not sitting here trying to say 30
12 to the detriment of others. The longer that grace
13 period, obviously the less expensive it is of dealing
14 with that problem of purging them out.

15 MS. HARRINGTON-MCBRIDE: What do the consumer
16 advocates around the table have to say about this?

17 Susan, anything?

18 MS. GRANT: Susan Grant, National Consumers
19 League.

20 We want something that will work well for both
21 consumers and businesses and are sympathetic to the
22 descriptions that people are giving about what will be
23 entailed for them to comply. It's hard to know,
24 because I'm not in the business and don't have the
25 technical expertise, whether a shorter time to make the

1 changes would be possible, but I think the problem for
2 consumers will be that a quarter to them is a long
3 time.

4 If they sign up for the registry and they're
5 still getting calls from companies a couple of months
6 later, it will be hard for them to understand that it's
7 because it hasn't kicked in yet, and so I would urge
8 the Commission to get more technical information from
9 the experts and try to find what is the absolute
10 shortest time that it can actually work.

11 MS. HARRINGTON-MCBRIDE: Jeff?

12 MR. KRAMER: Yeah, I agree with Susan. That's
13 really why I haven't commented so far, because I'm not
14 really sure what the best method is, but I do have a
15 question about the quarterly. Does that mean that you
16 would designate the quarter as like March 31st or June
17 30th, or would the companies do it when they start, 90
18 days from when they start to access the list? I'm not
19 sure how the quarterly thing works.

20 I guess looking at it from a consumer point of
21 view, with education, I guess if we knew there was a
22 certain deadline, if you get on on March 15th, then in
23 two weeks or so, they'll be scrubbing lists, but I
24 don't know how that works exactly.

25 MS. HARRINGTON-MCBRIDE: Rex, how have you

1 handled this?

2 MR. BURLISON: Our quarter is established by
3 statute. It's the same every year. What we have done
4 in Missouri is allowed a 60-day lag time. We cut off
5 the registration 60 days before the enforcement date.
6 Then it takes us about two weeks to process the new
7 list and get it out to the industry. It gives them
8 about six weeks to implement it.

9 Unfortunately, a consumer, if they try to sign
10 up the day after the cut-off, they may be off for five
11 months, but once they call and make a complaint and
12 their number is punched in the system, our operators
13 are then able to tell them, well, we're sorry, but you
14 signed up after the deadline, and your enforcement date
15 is this date, and we can't take that complaint, and
16 really we have seen no frustration over the fact that
17 there is -- and we think it's fair to the industry.

18 We also even offer to the smaller businesses
19 our technological people to help them get our list in
20 their system. The smaller computers we were crashing
21 for a while. We changed into the -- originally we had
22 one list, and then we broke it down to six zip codes
23 just to help the small businesses. So, I think there's
24 a sufficient trade-off with the 60 days now.

25 MS. HARRINGTON-MCBRIDE: Jim?

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1 MR. WARDEN: Jim Warden, New York State
2 Consumer Protection Board.

3 I think we've had essentially the same
4 experience as Rex, and also I didn't think I'd find an
5 awful lot to agree with Arthur, but I think most of
6 what he said I agree with at this point. We go
7 quarterly, and we go 30-day grace period, and we find
8 that if you try and cut it any finer than that on the
9 theory that you're giving consumers more help quicker,
10 it tends to backfire on you, because the little mom and
11 pops simply can't comply if they have too much data to
12 run through too quickly, okay?

13 So, what happens? You get a lot more
14 violations coming down the road that you really, if you
15 looked at, did not want to generate in the first place,
16 and if you could avoid that, giving them a reasonable
17 time to get their systems up, if they even have
18 systems, as opposed to using printed lists, I think
19 it's better for all concerned.

20 MS. HARRINGTON-MCBRIDE: We'll hear from Keith
21 and then we're going to move on to the next question.

22 MR. FOTTA: Just a couple of quick points.
23 Number one, I think we all pretty much agree that
24 quarterly's the way to go, and we as a company would
25 also advocate that. This is more from a planning point

1 of view, is if this national list ultimately gets off
2 the ground, and that is that even though we all agree
3 that quarterly is the right way to go, and I think we
4 should think about that, it's going to create a pattern
5 that you will see develop that nobody signs up for, you
6 know, 89 days, and on the 90th day, you know, the skies
7 open up.

8 So, whatever technology is deployed to manage
9 the national do-not call list, we should all be mindful
10 that people don't react until the last couple of days
11 of each quarter. So, you get hammered, you go to sleep
12 for 90 days, you get hammered, you go -- you know, so
13 certainly there's planning associated with that, and I
14 just want to make that point.

15 Thank you.

16 MS. HARRINGTON-MCBRIDE: Keith, it sounds like
17 what you're proposing is that we cure that defect in
18 human nature, that procrastination thing, and I think
19 that it may be within the scope of this, but it is
20 certainly beyond our powers, I can promise you that.

21 Okay, we would like to go on. David, do you
22 have one more question on this?

23 Okay, we would like to go on then to ask a
24 question that I think we were just getting to, which is
25 something Rex mentioned. We're asking here, would it

1 be acceptable to have the vendor who operates the
2 registry scrub telemarketers' lists rather than
3 providing the data directly to telemarketers, and what
4 benefits might that bring? It sounds like in Missouri,
5 at least, there's been some benefit for folks who would
6 have a difficult time dealing with the data in one
7 format or another.

8 MR. BURLISON: Well, in the Attorney General's
9 Office, our goal is to stop, as James pointed out, the
10 goal is to stop the complaints, and if you take this
11 too high-handed, all you're going to get is complaints,
12 and then that's going to generate more need for more
13 lawyers, more staff.

14 So, we took the position that if you need some
15 help to implement the list, if it's not in the format
16 that you need, then we hook the business people up with
17 our IT guys or whoever does that to help the consumer.
18 Again, it's a process.

19 Also, I don't get caught up in whether or not
20 -- the resale of the list, because again, I want the
21 list in as many hands as possible. We're not trying to
22 support the State of Missouri on charges to the
23 industry. So, if one vendor is going to do it for a
24 number, I don't get caught up in that, just as long as
25 that list keeps going out and my phone calls and

1 complaints are down. So, I mean, that's essentially
2 what we do.

3 MR. TOROK: Just a clarification here, just to
4 make sure everyone understands, this question is going
5 to whether or not a vendor, the company chosen to run
6 the national no-call list, should either offer the
7 option or possibly be the only mechanism, that instead
8 of sending numbers out to telemarketers so they can
9 purge their lists, instead doing it in the other
10 direction, telemarketers send lists in and purge. It
11 was a proposal in some of the vendors' offers, and I
12 thought your comments would be useful.

13 MS. HARRINGTON-MCBRIDE: George?

14 MR. WALLACE: Well, we would be concerned about
15 quality control, and that's basically the issue here, I
16 think. We're just a little bit skeptical that your
17 vendor, wonderful as I know it's going to be, would be
18 able to do the quality control that we would want to
19 have, and we're the ones who get hanged I assume if the
20 errors are there or maybe not, maybe that's within the
21 safe harbor, I don't know, maybe we need to amend the
22 safe harbor.

23 I would rather control it myself. You have
24 given me time limits within which I've got to perform.
25 I'd like to be responsible. I'd like to be able to

1 manage that. If you start cuing me up and start
2 delaying me three or four weeks on my updates because
3 I'm scrubbing with you, I don't like that at all, and
4 you're really putting me in a difficult position.

5 MS. HARRINGTON-MCBRIDE: Linda?

6 MS. LINK: Linda Link, NCS Pearson.

7 I would guess that in the direct marketing
8 world, there's a lot of inputs that go into any of
9 these kind of scrubbing of lists, not only just the
10 do-not call list, but especially for larger
11 telemarketers, and I don't believe that in most cases
12 the vendor selected, if they were a company that does
13 this as a business, would get unfair competitive
14 advantage to that particular vendor that offers that
15 service, number one.

16 Number two, for vendors that don't currently
17 offer -- potential vendors that don't offer that
18 service, I guess I would say that there's a lot of
19 other inputs that could go into scrubbing the lists
20 that the vendor would not necessarily have.

21 MS. HARRINGTON-MCBRIDE: Okay, Jeffrey?

22 MR. SCRUGGS: Yeah, Jeff Scruggs with SBC
23 Communications.

24 I guess this gets to some of the discussion we
25 started today on the implementation panel. We're going

1 to make a very simple list and we're going to have a
2 very straightforward, very automated way of doing
3 things, and it has a set of costs that are relatively
4 low. As we've gone through today, we've added more and
5 more functionality. We started out saying, you know,
6 it's just going to be TNs, but now in order to do
7 scrubs of the lists, you need to do TNs, you need to
8 have names, you need to have addresses. There's a lot
9 more functionality that starts to need to go into that.

10 That also implies that you need to be able to
11 anticipate from the industry basis, here are the
12 interfaces for a small business that may be dealing
13 mostly with paper. How would you generate something
14 for a paper office? Versus here's Dial America with a
15 very sophisticated system, and they say I would like to
16 have it in this particular format. So, I'm concerned
17 that all of a sudden you've taken this simple thing to
18 make it very complex, which will drive up your costs
19 ultimately, which you're going to try and push back to
20 the telemarketing industry.

21 In addition, you're going to raise a lot of
22 security and privacy information, because now here's
23 this one list that ties telephone numbers, some of
24 which may be unpublished, unlisted, to a name. In
25 addition, suddenly you will know who, for example, the

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1 broadband subscribers of an SBC might be, or you might
2 know who, you know, who gets a particular magazine from
3 a magazine publisher. Those are all things that raise
4 very serious concerns about how you do a relatively
5 simple database that has relatively low costs for you
6 to manage on a going-forward basis.

7 MS. HARRINGTON-MCBRIDE: Kimberly?

8 MS. MILLER: Actually, Jeff took most of my
9 comments, so I have to echo what he has to say, that
10 any additional interfaces that you build into the
11 system will add costs to the system.

12 However, we could accommodate printouts,
13 CD-ROMs, web access, all of those types of interfaces,
14 but we propose that, going back to your original
15 question, whether the vendor should scrub the list for
16 the telemarketers, I do think that it opens up quite a
17 few cans of worms to mandate that. So, we suggest that
18 you allow the vendor to offer that service as a
19 separate service if that vendor decides to do that and
20 the telemarketers want to avail themselves of that
21 service, and it would be a separate price, a separate
22 cost structure and not necessarily mandated by the FTC.

23 MS. HARRINGTON-MCBRIDE: Chairman Miller?

24 MR. MILLER: Madam Chairman, a point of
25 clarification. Were the proposals from the vendors to

1 offer the scrubbing service for purposes of protecting
2 the property rights on the list?

3 MR. TOROK: That is one reason for the offer.
4 I think another is simply it was a service that could
5 be offered, that, in fact, the belief was they might be
6 able to simplify the scrubbing of the lists on behalf
7 of the telemarketers.

8 MR. MILLER: It might be also a reverse
9 property rights problem with people turning their list
10 over to a separate vendor. I don't know how to
11 quantify those separate effects, but I do believe they
12 ought to be taken into consideration.

13 MS. HARRINGTON-MCBRIDE: Art?

14 MR. CONWAY: Art Conway, Dial America.

15 We can see this as an option, but to make it so
16 only your vendor can scrub the lists just is
17 unacceptable. I don't even want to imagine what the
18 turnaround time would be on that. You don't want to
19 get into that business. You absolutely do not want to
20 get into that business. You are not going to do this.
21 I just know there is no way you are going to make that
22 absolutely have to be done. You are just not going to
23 do this.

24 MS. HARRINGTON-MCBRIDE: Dennis?

25 MR. MCGARRY: All of a sudden, I'm blank here.

1 I'll come back, my mind is blank.

2 MS. HARRINGTON-MCBRIDE: Keith?

3 MR. FOTTA: Keith Fotta, Gryphon Networks.

4 A lot of points have been made, I think they're
5 all valid, and I would just like to say, you know, kind
6 of a broad statement, there's not enough technology in
7 any one place in the world to scrub all these lists in
8 all their different formats and get them turned around
9 fast enough to make them effective. NASA couldn't do
10 it, nobody in this room could do it. So, I don't think
11 it's even a possibility to consider.

12 MS. HARRINGTON-MCBRIDE: All right, Joe?

13 MR. SANSCRAINTE: Really, just I'd like to
14 second, third and I guess fourth one of the comments
15 that were made here. The format and the liability
16 issues are just too complex.

17 MS. HARRINGTON-MCBRIDE: Jason?

18 MR. CATLETT: Thanks.

19 From a consumer perspective, there's really no
20 problem here, provided that only the number is used as
21 anticipated. If there are names, then it could be a
22 privacy problem. In the case of e-mail opt-out lists,
23 scrubbing can be preferable, because then you're not
24 disclosing the e-mail address, which is not easily
25 guessed, but phone numbers are in a regular format, and

1 I don't see a privacy advantage here.

2 It's simply a commercial question, and the
3 choice should be in the company buying the service to
4 do it either way. Certainly you should not create a
5 monopoly, which is a bottle-neck on the process of
6 implementing the list. I think you should allow
7 sublicensees to offer all sorts of value-added
8 services, such as web access for small business, such
9 as printing and so forth. That's entirely up to the
10 market to do.

11 The FTC should just concentrate on providing
12 the core data and then licensing out the value-added
13 services to whatever appropriate parties wish to
14 provide them.

15 MS. HARRINGTON-MCBRIDE: Okay.

16 This is the five-minute warning. We at 4:30
17 will begin our open microphone time when members of the
18 audience who have been sitting here patiently and
19 listening to us, to the best of their ability depending
20 on how well we've used our microphones, will actually
21 get a chance to test their prowess with the microphone
22 and tell us what they're thinking about the proposed
23 rule and the comments we've received on it. I wanted
24 to let everyone in the audience who's already signed up
25 to do that know that we will be calling on you in about

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1 five minutes and everyone at the table know that we
2 will be wrapping up this discussion.

3 Laura?

4 MS. POLACHEK: I just want to make a point. We
5 have had discussions about the fact that there should
6 be quarterly updates, it might take 60 days to scrub
7 the list, and that there should be a yearly renewal,
8 and if you do that, a consumer signs up four months
9 before the list is effective, 6 months for compliance,
10 we are effectively on the list for half of a year.

11 So, I think it's very important, if you're
12 going to say there should only be quarterly updates and
13 it will take a while to scrub the list, it's absolutely
14 essential that the consumer stays on the list for a
15 reasonable amount of time, because otherwise, it's
16 minimally effective.

17 MS. HARRINGTON-MCBRIDE: John, you are having a
18 reaction to that.

19 MR. MURRAY: Well, what you would do is you
20 wouldn't have them renewed the day that they came off
21 the list. You would send out your renewal or would
22 instruct them to renew, you know, 90 days prior to when
23 their expiration would be, so you would always be
24 rolling it 90 days, whether you have an annual or an
25 every two years. So, you really would only have that

1 delay time, which worst case would be 90 days, median
2 would be 45 days, and from what I'm hearing around here
3 from the automated telemarketers would probably be
4 considerably less.

5 But it is an opportunity just to remind
6 everybody, because I think we are biased towards the
7 most technologically advanced people, and we tend to
8 think that way. I know in talking to my newspapers
9 that statistically, just to throw out a number,
10 one-third of the newspapers who do telemarketing don't
11 own a predictive dialer. They don't have the
12 technology to do it. And that also includes those who
13 don't contract with somebody to use a predictive
14 dialer.

15 So, to echo the comments made about small
16 business, we really need to think that way, because I
17 think we're doing a good job addressing the high-tech,
18 but we need to also think about the low-tech.

19 MS. HARRINGTON-MCBRIDE: Linda?

20 MS. GOLDSTEIN: Yeah, I actually wanted to --

21 MS. HARRINGTON-MCBRIDE: We will do both
22 Lindas. We will start with Linda Goldstein.

23 MS. GOLDSTEIN: I wanted to address two points
24 on the discussion we were just on in terms of, you
25 know, having the vendor scrub. I agree with, you know,

1 all of the points that were made regarding the
2 technological feasibility, but I wanted to also raise
3 some additional concerns relating to the liability
4 issue, and I'm not sure that the Commission has thought
5 through all of the potential liability nightmares that
6 might inure from that kind of a proposal.

7 Yes, you could certainly within the rule grant
8 a safe harbor to the telemarketer in the event that
9 your vendor didn't properly scrub the list, but I will
10 tell you anecdotally that more often than not, when we
11 receive a letter on behalf of a client from an Attorney
12 General's Office because of a consumer complaint, the
13 letter doesn't only address the fact that there was a
14 potential violation of the do-not call list. More
15 often than not the office will go on to look at what's
16 the nature of the solicitation, and oh, by the way, we
17 think we have problems with your solicitation as a
18 whole, and the inquiry tends to mushroom into something
19 more.

20 There is also the potential for class action
21 litigation in the event that the scrubbing doesn't
22 occur properly. I think if you're going to set up this
23 system, you have to let the telemarketer be the master
24 of their domain, that there's a potential liability
25 from areas that you can't control and can't grant safe

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1 harbor to, and they are just too great to put that in
2 the hands of someone with which we have no contractual
3 relationship with.

4 The other just very brief point that I wanted
5 to make in response to Susan Grant's comment that in
6 determining what the time period should be, you should
7 look for the shortest period of time possible. I would
8 suggest to you that I don't think that's the
9 appropriate standard that should guide the Commission
10 in this decision. I think we also have to consider the
11 cost-effective aspects of this, and we have to balance
12 the costs to the industry, for example, of scrubbing 12
13 times as opposed to four times.

14 Obviously, regardless of what the number is, we
15 know if it's four times it's great, and we have to
16 consider whether the benefit of those additional two
17 months to the consumer justifies the incremental cost
18 to the industry.

19 MS. HARRINGTON-MCBRIDE: Linda Link?

20 MS. LINK: Linda Link, NCS Pearson.

21 This is basically a compliant measurement
22 question basically, two scenarios. I think it was
23 Missouri that has a -- one of the states that has a
24 cut-off date, so they have an updated list at a certain
25 quarter, and then it goes out, and they have a certain

1 grace period to install. So, you can easily say that
2 this is the effective date for the end user if they
3 were to call.

4 Now, my understanding of the FTC is it's saying
5 that it's more like a realtime database, and the
6 telemarketing firms or service bureaus can pick up this
7 database at any point in time, and then they have a
8 certain grace period to implement it. So, how do you
9 measure compliance under that scenario to tell either
10 your consumers when it's effective, because it will be
11 effective differently for different telemarketers, and
12 if it's sold to a service bureau, you know, and they
13 are scrubbing the list for multiple customers, you
14 know, just the compliance and measurement of compliance
15 I guess.

16 MS. HARRINGTON-MCBRIDE: Okay, I think we'll
17 finish up with Jerry and then Dennis.

18 MR. CERASALE: Jerry Cerasale, DMA.

19 On the last comment today, if we have a list,
20 if we are going to have a list -- and we haven't
21 really discussed whether we should or not, that's in
22 the written comments -- you have not really set up
23 this discussion to have that, and we don't necessarily
24 agree that this is necessary, but if you're worried on
25 the scrubbing, that someone's going to use the list for

1 some other purpose and that's the worry you have, the
2 scrubbing is going to create a bottleneck, which is a
3 disaster. I agree with everybody else at the table
4 here.

5 We seed our list. That's how we're able to do
6 a check. You have to consider, if you have that kind
7 of concern, that you were thinking about forcing
8 everybody to go to the vendor scrub, you have to think
9 about a lot of other things, and seeding it is one way
10 to find out whether or not someone's using the list for
11 the wrong purposes.

12 MS. HARRINGTON-MCBRIDE: Okay, Dennis?

13 MR. MCGARRY: Yes, as a small business owner
14 and -- small business owners, it would really be
15 beneficial to them to have both the name and address in
16 addition to the phone number in order for ease of them
17 to operate and use a list. In regards to
18 confidentiality and privacy, big corporations can take
19 that number and match it to some address and phone
20 number. Small businesses don't have that ability, I
21 would have to assume.

22 One thing that was not brought up -- it was
23 brought up earlier but was not really discussed, and
24 that is clarity. The consumer, if you tell them in
25 advance what to expect in terms of the beginning date,

1 then they know, and you just need to communicate that
2 to them. If it starts on January 31st or March 31st,
3 whatever it is, then they know when it is expected.
4 So, you have got to communicate that to them as well as
5 other disclaimers, limitations and exclusions, so they
6 fully understand the decision that they're making.

7 Thank you.

8 MS. HARRINGTON-MCBRIDE: All right, I think
9 that's a good note to end on. We have covered an awful
10 lot of ground today, and I think, you know, as Jerry
11 notes, there are certainly some things that we have not
12 discussed here at the table. As Eileen noted, this is
13 an opportunity for us, the Commission, to sit down
14 around the table with you in the way that we have done
15 before in this proceeding and others to really get
16 clarity on some issues that we're still not sure about
17 having read through all of your comments.

18 It's been I think a very productive day from
19 our perspective, I hope from yours as well,
20 particularly because we'll expect to see many of you
21 back here tomorrow at 9:00 to talk about predictive
22 dialers and Caller ID and in the afternoon to talk
23 about even more fun stuff, pre-acquired account
24 telemarketing, cross-selling and up-selling. So, if
25 you think you're going away with a headache today, be

1 sure to bring your medication for tomorrow.

2 We are going to take a one-minute stretch, and
3 -- seriously a one-minute stretch -- so that we give
4 plenty of time to the folks who would like to speak at
5 open mike time, and then we will get started in one
6 minute.

7 (Pause in the proceedings.)

8 MS. HARRINGTON-MCBRIDE: Okay, we're going to
9 go ahead and get started with our public commenters.
10 It looks as though some folks have taken Eileen up on
11 her offer to use the computer that we have out at the
12 registration table to file their comments. Others of
13 you may be taking advantage of the special e-mail
14 address we have set up for this, which is
15 tsrforum@ftc.gov. You can also submit comments during
16 the next four days, pretty much through the weekend, to
17 that address if you have comments or questions about
18 what you've heard here at the forum or simply want to
19 register an opinion.

20 Today we have with us five individuals who
21 would like to speak at open mike. We would begin with
22 Mr. Ed Satell.

23 MR. SATELL: Thank you.

24 Ladies and gentlemen of the Commission, thank
25 you for the opportunity to participate in this very

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1 important hearing which can impact the economic lives
2 of so many. My brief comments I've directed at the
3 do-not call list, and after my comments, I invite
4 questions from the staff.

5 I make these comments with the understanding
6 that the Commission has not yet made up its mind as yet
7 on the issues and on the proposals. I wish to raise
8 two issues.

9 First, let's be honest here. This is a
10 proposal not to regulate but to prohibit speech, not
11 because it's deceptive or abusive but because it's
12 unpopular. As was said here, there is public sentiment
13 against telemarketing, per se. Some people are mad.
14 Some people are fed up. Some people just hate such
15 calls, but freedom of speech, our most cherished
16 freedom, means the freedom to speak when it's against
17 public sentiment.

18 In 1976, the Supreme Court declared that
19 commercial speech is so essential, so indispensable to
20 our free enterprise system that it gave such speech
21 First Amendment protection as long as it was lawful
22 speech.

23 When government was disallowing commercial
24 speech, the Court told the governmental body, the
25 Supreme Court told the governmental body, that the

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1 average consumer, the price of X compared to the price
2 of Y was even more essential than the most urgent
3 political debate. Thus, the drug companies were
4 allowed to advertise.

5 Free enterprise, the backbone of our economic
6 system, means the freedom to initiate, the freedom to
7 send information, the freedom to be creative, as long
8 as it's not coercive and not deceptive.

9 Free speech is not to protect the majority, but
10 rather, to protect the minority, to protect the
11 dispersion of ideas, commercial and otherwise, and this
12 freedom has made us the number one country in the world
13 both in liberties and prosperity.

14 Free speech is so important, it is so
15 important, that we tolerate some -- we tolerate the
16 following: We tolerate some distasteful pornography,
17 which most of us don't like. We tolerate distortions
18 and perceptions of a free press, which most of us don't
19 like. We tolerate some content on TV which some of us
20 would prefer not to be there. And the nuance -- we
21 also must tolerate the nuance of receiving
22 telemarketing calls that disperse information about a
23 commercial transaction which some people don't like or
24 don't want to hear.

25 I remind the Commission that many of us don't

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1 like junk mail or we don't like speeches or speakers on
2 the corner, we don't like the press camping out across
3 the street from our home, but the First Amendment
4 requires it, and for good and noble reasons.

5 Consumers who object to such speech -- and
6 that's what it is, speech -- have options. They have
7 options to opt out already. They can use a call
8 monitor or Caller ID to opt out and not answer the
9 call. They can hang up at any time. That is their
10 right if they don't want to listen.

11 For the Government to prohibit such speech is a
12 dramatic intrusion on speech and enterprise, which it
13 seems to me the Supreme Court has made clear it will
14 not tolerate.

15 Now, my second and more briefer point deals
16 with jobs. There are several --

17 MS. HARRINGTON -MCBRIDE: Excuse me, Mr.
18 Satell, I just need to tell you because of our time
19 constraints, we're going to have to cut you off in
20 about one more minute, so I would ask you to wrap it
21 up.

22 MR. SATELL: I will try to keep this to one
23 minute, it's a much briefer point.

24 MS. HARRINGTON-MCBRIDE: All right, thank you.

25 MR. SATELL: There are several million people

1 employed in the telemarketing business, and if the
2 economy, which is not so robust and people are having
3 trouble with jobs, the overwhelming number who are
4 employed in this business are lawful, patriotic and
5 normal Americans, and for the Government to cut out a
6 series of these jobs is a very serious matter.

7 But these jobs also have a unique social
8 utility, value beyond other jobs for many people,
9 because they provide for many flexible hours, in a way
10 a more greater flexibility than almost any other job,
11 and this is so important to women with families, young
12 children, to retirees and to others who need to take
13 tomorrow off or the next day off on an unscheduled way,
14 who want to go to Florida for two weeks, who need to
15 work only at intermittent times. Few other jobs offer
16 this kind of flexibility.

17 These are millions of people, millions of small
18 people, who need these jobs, count on these jobs, and
19 frequently they take place not in urban centers, but in
20 rural centers that used to have factories, and those
21 factories are gone, and telemarketers come in to give
22 life to the community, to give jobs to the community,
23 and we should take very seriously those kinds of things
24 which go ahead and cut into enterprise, cut into jobs,
25 when it's honest and not deceptive.

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1 Thank you very much for the opportunity to
2 present these comments.

3 MS. HARRINGTON-MCBRIDE: Thank you, Mr. Satell.
4 (Applause.)

5 MS. HARRINGTON-MCBRIDE: If next we could hear
6 from Diana Mey.

7 MS. MEY: Thank you.

8 My name's Diana Mey. I'm a housewife and
9 stay-at-home mom. I have three teenaged sons. I live
10 in Wheeling, West Virginia.

11 Telemarketing impacted me about two years ago
12 when I had, as I said, three sons and we were running
13 in a bunch of different directions, and I was wanting
14 to get us all together at one time to have dinner
15 together at night, and I found that with increasing
16 frequency our dinners were being interrupted by
17 telemarketing calls, and I heard about the law that
18 regulated telemarketing, and I thought this would be a
19 way that I could -- I didn't want to be rude, but I
20 thought the law would be my best answer.

21 So, I tried to enforce the law, asking
22 companies to not call me back, and over a period of
23 about six months, I had a telemarketer for Sears call
24 me repeatedly over and over despite my request to stop
25 calling. To make a long story short, I filed a small

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1 claims suit after writing to the company, and they
2 continued to call. In fact, the last call they placed
3 to my home, I grabbed a tape recorder and I taped it
4 and I wrote the company, I told them, I said, look, you
5 know, you keep calling, I can prove it, I've got the
6 proof.

7 I filed a small claims suit, and the next thing
8 I knew, Sears' lawyers turned around and countersued me
9 for \$10,000 saying I violated state and federal wiretap
10 statutes -- and by the way, it is legal in my state to
11 tape my own calls. They also threatened punitive
12 damages. I was very afraid.

13 I ended up having to get a lawyer, got the
14 dispute dismissed. You might recall I was here a
15 couple years ago, and the lawyers for Sears ended up
16 flying into my home town in Wheeling and personally
17 apologized to me for my countersuit.

18 My point is that that case got a tremendous
19 amount of publicity. I was on the Today Show and
20 interviewed by Matt Lauer about how I was able to put a
21 stop to telemarketing calls.

22 The reason I'm bringing it up is I want to go
23 back to something you talked about this morning and the
24 existing business relationship exemption. That case
25 got so much publicity, I was on Court TV, MS/NBC. You

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1 would think that I would be the last person that Sears
2 would want to call.

3 I should mention that as a part of that
4 settlement, Sears gave us gift cards, and my husband
5 had been wanting an air compressor for a really long
6 time. Sears said we want to try to earn your trust
7 back, here are some gift cards. We went into the store
8 and we bought an air compressor. Two years later when
9 the regular warranty was up on that air compressor,
10 telemarketers for Sears solicited us again to ask us to
11 buy another warranty or a new warranty on that air
12 compressor.

13 So, my point is, I would like to see no
14 exemptions for existing or ongoing business
15 relationships. If Sears would call me, a person who
16 went on the Today Show and said don't -- Sears, I
17 don't want to hear from you, and they continued to
18 call, then I don't know what the average consumer is
19 going to do.

20 Sears said in response to my letter, after
21 these latest calls, that because I went back in the
22 store and made a purchase, I re-established a new
23 business relationship with Sears, thereby voiding my
24 last do-not call request. Go figure.

25 In fact, I even wrote the DMA about it to seek

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1 their help, because everything I read on the DMA's
2 website says that they tell their members, even in the
3 face of an ongoing relationship with a consumer, don't
4 call these people again. The DMA says that the
5 industry can self-regulate. The DMA did nothing to
6 Sears over this situation.

7 I have a friend that lives in Columbus who gets
8 the Columbus Dispatch on the weekends. He does not
9 want the other five days a week, but do you know the
10 Dispatch telemarketed him over and over and over again
11 to try to get him to buy the other five days, and when
12 he said stop, they said basically we can keep calling
13 you. So, he couldn't get those -- the other -- the
14 telemarketers for the Dispatch to quit calling him
15 unless he cancelled his weekend subscription. Now,
16 that's ridiculous.

17 I have a credit card company that -- Discover
18 Card that I said quit calling me. I want to use the
19 card, but I don't want you to call me to sell me credit
20 card insurance or all this other add-on stuff. So,
21 does that mean I have to quit using the card altogether
22 to quit getting the telemarketing calls? I don't think
23 so.

24 So, that's why I'd ask you to look at that
25 ongoing business relationship. I think consumers like

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1 me who don't want to be called on the phone, send me a
2 letter, send me a postcard.

3 I would ask you one other thing. When you
4 consider any kind of enforcement, and I would hope that
5 it would be strong, because as fast as you come up with
6 something, telemarketers are getting creative. I got
7 some calls in the past couple months from a company
8 called Voicemail Central out of Texas, and what they've
9 done is they call up consumers who have a Caller ID
10 unit, and they ring your phone once and hang up just
11 long enough to get displayed on your Caller ID unit an
12 ad. My ad on one occasion said, Free Pagers, another
13 occasion said Free Vacation and Free Money.

14 Now, they're claiming that they're not making
15 solicitation calls, but on all those three occasions I
16 got the calls, I was in the middle of doing something
17 with my family, stopped to go to the phone, picked it
18 up and there was no one there, and then I found out
19 later that this is what this company's doing, ringing
20 your phone once and hanging up so they can display
21 their ad on your Caller ID box.

22 That's all I have, and I thank you for your
23 time.

24 MS. HARRINGTON-MCBRIDE: Thank you very much.

25 (Applause.)

1 MS. HARRINGTON-MCBRIDE: Next, Abraham Chen.

2 MR. CHEN: My name is Abraham Chen of Avinta
3 Communications, founder of the company in Sunnyvale,
4 California.

5 Being an engineering company, we look at things
6 slightly different from most of the people, so what I
7 am going to say is quite different from everything that
8 has been discussed here today. Since tomorrow morning
9 we will start talking about predictive dialer, Caller
10 ID, I think what I'm going to talk about has a little
11 bridging effect about the subject.

12 We started looking at TSR not because we were
13 involved with the subject or we were distracted by
14 telemarketers or political parties, but it's just by
15 accident one day we find out FTC had activity on TSR,
16 but after we look at this, we realized that the subject
17 can be generally divided into two parts.

18 The first part is making a call to disturb
19 somebody, that's making a call. Once the connection's
20 made, there's a deceptive and abusive sales tactic.
21 So, the two parts are not exactly connected, but they
22 are related, okay?

23 But along this line, we start looking and we
24 say, hmm, if a -- before a call is connected, the
25 caller had no idea what's going on, isn't this pretty

1 much like obscene call, stalker call, everything else
2 like that? So, basically just an unwanted call type of
3 situation. So, if you start looking at it this way,
4 the subject goes more into a technical side. That is,
5 we start looking at why hasn't enterprises ever had any
6 problem with telemarketer or unwanted calls?

7 The problem becomes more clear is that because
8 enterprises use PBX, the term used earlier, private
9 branch exchange, which use receptionists and basically
10 block unwanted callers. In a small business, in a
11 residential environment, people are still using age-old
12 telephone called POTS. Those in the phone business
13 known the O stand for old, plain-old telephone set, and
14 with the advance of predictive dialer, these POTS is
15 just not a competing type of device, and that's where
16 people start to get disturbed with the phone calls and
17 so forth and so on.

18 So, what we start saying is if we can have this
19 PBX kind of capability installed on private phone
20 lines, residential and small business, wouldn't we sort
21 of defuse the whole subject?

22 Okay, now, this would be blue sky dream, okay,
23 ten years ago. In 1997, we have obtained a U.S. patent
24 on the PBX system, which is on single line, single
25 phone basis, okay? Currently, they are add-on units

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1 you can put on a telephone set to perform this, but
2 telephone manufacturers are already making this kind of
3 circuitry inside of phones. There are quite a few
4 models already in the process that basically does not
5 change the housing, that tells you how little the extra
6 cost is. It doesn't even change the power adapter,
7 which means it doesn't use much more power, okay?

8 So, this process is a little awkward, because
9 we are the party who figured this out, and then we are
10 the party trying to promote this, and in a sense the
11 best way to put it is that we are a teacher and at the
12 same time we are trying to sell something. So, that's
13 why we're here, trying to open this information for
14 everybody, because one thing I think in our process of
15 studying this, we find out that it was very difficult
16 even for us to understand why in 24 states people had
17 so many different experiences relating to
18 telemarketing.

19 One of the reasons we believe is that in
20 different states, they have different regulation, and
21 in different states they have different type of Caller
22 ID, call management services from phone company.
23 There's no place with a centralized comparison table.
24 So, when you say I'm happy in New York, your relative
25 in New Jersey says, no, I don't, I have lots of

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1 problems, but if there's a central place to compare
2 this, everybody would realize, well, one of the state's
3 regulations differ from the other state, or the service
4 from one area, say from SPC, is different from Verizon,
5 and that will help out.

6 So, the reason we want to propose this
7 information through the FTC's process is that, for
8 example, people talk about the calling time between 8
9 a.m. and 9 a.m., and among the comments, we come across
10 people who work in the evening, night shifts, and that
11 time is exactly when they sleep. So, if you allow the
12 registry to carry that kind of information, there will
13 be other people who will have other information, so
14 that registry, as we talked about towards end of day,
15 becomes more and more sophisticated and very, very
16 expensive.

17 MS. HARRINGTON-MCBRIDE: Excuse me, Mr. Chen, I
18 need to give you the one-minute warning.

19 MR. CHEN: Yes, I am just about at the last
20 paragraph.

21 MS. HARRINGTON-MCBRIDE: Okay.

22 MR. CHEN: So, our intention here is to hope
23 that everybody start thinking that maybe there is some
24 alternative ways to move ahead as a whole nation, that
25 there are some technologies -- sort of compatible

1 technology called customer premise equipment, okay, the
2 predictive dialer is the originating part. The
3 technology we're talking about here is the terminating
4 part. If they are pretty much the same type of
5 technology, the users, both on the predictive dialer
6 telemarketer side as well as the consumer side, be much
7 happier, and we will not have so much opposing views to
8 each other, yet I can tell there's certain opposing
9 views, both are valid, and there is no immediate
10 solution.

11 So, I thank you for your time, and I will be
12 around next couple of days if anybody would like to
13 discuss some details, because obviously this is off
14 track from the plan.

15 Thank you.

16 MS. HARRINGTON-MCBRIDE: Thank you very much.

17 (Applause.)

18 MS. HARRINGTON-MCBRIDE: If we could hear now
19 from Richard Smith.

20 MR. SMITH: Yes, hi, my name's Richard Smith,
21 and I'm an internet security and privacy expert, but
22 I'm actually coming here today to talk as a consumer,
23 who is someone who receives too many telemarketing
24 calls and would like to do something about it.

25 I want to address the issue -- two quick

1 issues here, the importance of an FTC national list and
2 then also how this would interact with a state list.

3 My first comment is about the FTC national
4 do-not call list, and it's been suggested by the Direct
5 Marketing Association that they're already in the
6 market of providing one, and it's unnecessary for the
7 FTC to do the same thing, and I'd like to provide some
8 statistics here why I think that's not a valid
9 argument.

10 The Direct Marketing Association makes the
11 claim that they have 4 and a half million people in
12 their database, which on the surface sounds like a lot
13 of people, but if we assume that there's 80 to 100
14 million households in the United States, that says less
15 than 10 percent or maybe even less than 5 percent of
16 the people signed up, and for an organization trying to
17 get a monopoly on this, that's pretty low market
18 penetration.

19 If we take a look at the state lists that have
20 been out there, we're hearing penetration rates,
21 acceptance rates in the 30, 40 or 50 percent range,
22 which is what the FTC -- I understand it's around 40
23 percent. So, I would assume that the Direct Marketing
24 Association would say that they have done an extremely
25 poor job at marketing their list, to call it the

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1 Telephone Preference Service. You have to be a
2 marketing guru to understand what that means. I don't
3 know why it's not called the do-not call list, which is
4 much more easy to understand. So, I would encourage
5 the FTC to continue on with their effort for a national
6 list.

7 The second thing is interplay with the state
8 list. I'm very much against preemption. I think
9 states should have a right to choose other categories,
10 particularly businesses not involved in interstate
11 commerce, to be blocked on an individual state basis,
12 but I would very much encourage some kind of merging
13 between the national list and the state lists so that a
14 business only has to go one place to get the numbers.

15 Now, whether that's done by the FTC, by the
16 states or by service bureaus or, you know, private
17 businesses, you know, it doesn't really matter, but
18 there's really got to be -- this has got to be easy
19 for businesses.

20 Now, putting my businessman hat on, I at one
21 time did a lot of business-to-business telemarketing,
22 and this idea that I would have all these different
23 rules to go after would be problematic, but one list to
24 work from would be a very important thing.

25 Thank you very much.

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1 MS. HARRINGTON-MCBRIDE: Thank you.

2 (Applause.)

3 MS. HARRINGTON-MCBRIDE: Now, Steve Brubaker,
4 please.

5 MR. BRUBAKER: Hi, I'm Steve Brubaker with
6 InfoCision Management Corporation. We are a call
7 center service agency. We've been in business since
8 1982. We have 20 call centers with nearly 3000 people
9 employed, and I would ask today why do we need another
10 national do-not call list? We already have the DMA
11 list. We feel it works.

12 We also feel that more importantly the
13 company-specific do-not call lists give consumers the
14 right to choose which calls they want to receive and
15 which calls they don't. We feel that works as well.

16 We represent nonprofit organizations as well as
17 consumer companies. We have been recognized, received
18 awards as having the highest quality standards in the
19 industry, and I'm concerned that today the discussion
20 has focused on the nuances of implementing the list,
21 and I think it should be initially focused on why this
22 is even necessary.

23 Customer-specific lists work. The Federal
24 Trade Commission has said on several occasions that
25 complaints have decreased. At InfoCision, in our work

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1 with nonprofits, we have always utilized
2 customer-specific lists, even before the law required
3 us to do so. We think that makes sense.

4 Six million people are employed by the
5 industry, you have heard that figure, that's a big
6 number and very important to our economy, and as
7 nonprofits, our clients that we work for, we just feel
8 that they should not be covered, and whether a call is
9 from a volunteer at the organization or from a
10 professional fund-raiser at InfoCision or another
11 company, the Supreme Court has clearly pointed out that
12 there is no distinction between the nonprofit and the
13 agent of the nonprofit.

14 So, I encourage the FTC to focus on the issue
15 of whether a do-not call list is even necessary and not
16 to make up your mind before the hearings are over. I
17 respectfully ask you not to put legitimate companies
18 like ours out of business or at least significantly
19 reduce our business while asking us to foot the bill.

20 Thank you.

21 MS. HARRINGTON-MCBRIDE: Thank you.

22 (Applause.)

23 MS. HARRINGTON-MCBRIDE: Michael Worsham?

24 MR. WORSHAM: Hi, my name's Michael Worsham.

25 I'm a consumer attorney in Maryland and a panelist on

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1 Friday on the prison-based telemarketing. I want to
2 make a quick review of some comments that came in today
3 and during tomorrow's session, which I am not on the
4 panel, wanted to briefly set up a few things.

5 I was going to mention the Constitutional issue
6 which another earlier speaker talked about. I think
7 that the friction between commercial free speech for
8 nondeceptive speech, commercial speech, and the right
9 to privacy has already been resolved by the Supreme
10 Court about 30 years ago in a case called Rowan v. Post
11 Office, looking at a pandering mail statute, and I
12 don't have the quote with me, so I'm paraphrasing, but
13 what the Supreme Court said basically was that there's
14 no Constitutional right to force ideas, even valid,
15 meritorious ideas, on an unwilling listener essentially
16 in their own home.

17 So, I say that to sort of empower the FTC to
18 realize that there is really no legal or Constitutional
19 limit. I think Congress could pass laws to stop all
20 telemarketing tomorrow. It's not going to, but it has
21 that Constitutional ability because of the distinction
22 between free speech in a public area versus speech that
23 comes into one's own private home.

24 That relates to my next comment on the costs,
25 which I've said already my comments should be borne by

1 not the person wanting to be the on the list but rather
2 by the industry, and that's because it's basically a
3 privilege that the telemarketing industry has been
4 granted to infringe on people's privacy, and for that
5 they should be -- if there is a cost to be involved
6 here, it should be borne by the industry.

7 A second reason, and this goes to the heart of
8 why the FTC proposed this rule, which is to reduce
9 fraud and abusive practices, is I think that the most
10 susceptible population of people to fraud and abuse --
11 and I could be wrong, I'm sure the FTC has statistics
12 and data on this -- is perhaps people who are lower
13 income and where a small charge may be, you know,
14 prohibitive to them or discouraging to them to get them
15 on a national do-not call list registry.

16 Now, another issue that bothers me, in some of
17 the discussion today, and it does relate more I think
18 to tomorrow's discussions on predictive dialing, is the
19 existing Telemarketing Sales Rule is pretty clear to me
20 about the requirement of all disclosures identifying
21 the seller and the person on the call and so forth.

22 If, as we've heard today, that the
23 telemarketing industry has saved a lot of money using
24 predictive dialers, for the obvious reason that it's a
25 lot cheaper to use a machine than a human being to make

1 calls, and those hangup calls that we -- or dead
2 ringers, however you want to phrase them, those are
3 illegal, because there was no identification provided,
4 and if anything, the FTC should be initiating maybe a
5 disgorgement or action to get those profits back rather
6 than debating whether we should allow a 1 percent
7 abandonment rate.

8 Also, I'd add that the FCC's regulations under
9 the Telephone Consumer Protection Act also make an
10 initiation of a telephone solicitation that doesn't
11 provide identification, which is what an abandoned or
12 dead ringer call does, is also illegal under that rule.

13 And I had one other point here, and that --
14 oh, two -- one quick point is I didn't hear any
15 discussion today when the issue came up what if a
16 spouse or a family member puts a number on the do-not
17 call registry list, but the other spouse doesn't want
18 to be on the list, what do we do? I didn't hear any
19 discussion about, well, is there a mechanism for which
20 you can take your number off the list?

21 I think that the industry is really concerned
22 about either that there's no mechanism to do that or
23 that if there was, once on the list, the swaddling
24 spouses would say, well, okay, just leave it on there,
25 and they have lost the one spouse out of the two that

1 might be interested in receiving calls. Again, I just
2 didn't hear that there was a discussion of how a person
3 should, if they wanted to, put their number back on the
4 list.

5 MS. HARRINGTON-MCBRIDE: Mr. Worsham, if you
6 could finish up in about a minute, we'll be in good
7 shape.

8 MR. WORSHAM: I am just about done.

9 The final point I want to make is as a consumer
10 attorney, the thing that I hear most from clients,
11 prospective clients, just people generally and myself
12 is the Caller ID issue and the lack thereof in a large
13 number of calls, and for tomorrow's discussion, which
14 I'm not on, and I said this is my comments, where the
15 big issue is going to be the cost. There should be --
16 there is a distinction. I don't know the technical
17 cost figures, but between caller-specific ID, for
18 instance, actually getting the caller of sales agent
19 Jane Doe in Pod 3-A at a call center, versus the caller
20 number of that company as a whole, it would be
21 preferable to have the very specific, down to the
22 caller Jane Doe, but at the minimum, and I think it's
23 not cost prohibitive, we should be able to get the
24 company, generically their number, but that's something
25 that the FTC's going to have to look more at. I don't

1 have that data. I just, you know, anecdotally know
2 from others.

3 Thank you for the time.

4 MS. HARRINGTON-MCBRIDE: Thank you very much.

5 (Applause.)

6 MS. HARRINGTON-MCBRIDE: Okay, we are down to
7 our final two public mike speakers. Michael Turner
8 will be next.

9 MR. TURNER: Hi, my name is Michael Turner. I
10 am with the Information Policy Institute. We are a
11 nonprofit, nonpartisan think tank focusing on the
12 regulation of information.

13 We would like to submit -- in fact, I think
14 I've circulated to a number of the staff working on
15 this a study that was released yesterday that gauges
16 consumer attitude and behavior toward telemarketing and
17 policy issues surrounding the medium right now, and so
18 in a sense I have the distinct pleasure of engaging in
19 wish fulfillment for Susan Grant's request for
20 objective data on consumer attitudes toward calls from
21 all sources.

22 We examined calls from commercial entities and
23 distinguished between local and national, existing
24 business relationship and no prior relationship, as
25 well as politicians, political parties, nonprofits and

1 charitable organizations.

2 Essentially the impetus for the study was a
3 puzzle we saw. On the one hand, this perceived
4 antipathy toward the medium and just a widespread
5 disdain, and basically we operated under the assumption
6 that people respond to inbound calls the same way I do,
7 which is to say remove my name or hang up, but on the
8 other hand, the magnitude of the industry, the sheer
9 volume of sales and the frequency of purchases.

10 So, we targeted essentially six states that
11 have enacted and implemented do-not call registries,
12 and we surveyed 1000 citizens in those six states, and
13 the results were very counter-intuitive and I think
14 somewhat -- well, should be hopefully informative and
15 instructive for these deliberations.

16 We found that eight in ten respondents had
17 responded to a call to the household either by
18 purchasing a good or service, contributing to a charity
19 or giving their support, financial support, to a
20 politician. Five in ten bought a good or a service
21 over the past year, and very interestingly, in fact,
22 three in ten, a full 30 percent of all those surveyed,
23 made at least three transactions in goods and services.

24 The average purchase order for a product, and
25 we had to exclude services because of the difficulty in

1 quantifying the value of a service, the extension of a
2 line of credit, a tip from a stockbroker, et cetera,
3 but the average purchase order was \$50; however, there
4 was considerable distribution, in fact, a full 10
5 percent of those who made a purchase spent between \$250
6 and \$500, while another 10 percent spent more than
7 \$500. So, there are some big ticket items being sold.

8 We asked them if they were satisfied with their
9 shopping experience, and in fact, more than seven in
10 ten indicated that they were satisfied with the
11 experience. Only one in ten indicated a degree of
12 dissatisfaction with the difference being neutral.

13 Now, what we did find quite interesting was we
14 asked about the likelihood to purchase in the future,
15 and only one in seven said they were likely to
16 purchase, and we asked them, in fact, why this was the
17 case, and I expected that it would be a privacy-related
18 answer, but, in fact, the number one response was, and
19 with 25 percent, we like to see the product. I like to
20 see a product before I buy it, or it depends on the
21 offer. I can't predict ex ante, and not to mix words,
22 of course, but what the offer will be. I didn't know I
23 was going to buy something in the past, because I
24 didn't know the call was coming in.

25 Interestingly, and we only recorded responses

1 of 3 percent and above, the lowest registered response
2 was the privacy response, was the it's an intrusion,
3 and that was 7 percent, and that fell below, I have
4 everything I need, which got 10 percent. So, that we
5 found quite interesting.

6 With respect to state regulations, we asked
7 about awareness of the do-not call list, and in fact,
8 awareness was quite high, above 80 percent in Indiana.
9 It was higher in states that have recently debated the
10 issue and have recently and actively promoted as well.

11 Now, in terms of those who were aware of the
12 list, we asked them if they registered on the list, and
13 in fact, we had quite a range, with nearly 45 percent
14 of those who were aware in Indiana registering to quite
15 a bit less in Florida and Georgia.

16 Now, it should be mentioned, Florida had
17 enacted their do-not call in the late eighties, so it's
18 more of a mature issue in that state.

19 MS. HARRINGTON-MCBRIDE: We're at the
20 one-minute warning stage.

21 MR. TURNER: I'll wrap it up.

22 So, we went on to ask, in fact, overall, what
23 were the anticipation rates, and we benchmarked them by
24 making calls to the actual Attorney General's Office,
25 and we were within the margin of error. So, we feel

1 very comfortable with the data that we've secured. And
2 eight of ten of those who registered on the list said
3 their calls to the household had been reduced
4 substantially. So, it seems that the state do-not call
5 lists are quite effective.

6 Now, we asked about their support for a variety
7 of different legislations, including permitting local
8 and community companies to call but only during certain
9 hours, local and community companies with existing
10 relationships to call, and in both cases, more than 50
11 percent or five in ten said, in fact, we would support
12 that proposal.

13 And similarly, with national, national
14 companies with prior business relationships, there was
15 broad support for permitting those companies to call
16 consumers as well. So, we basically have interpreted
17 from the data that, A, there's no clear mandate for a
18 national do-not call list. Consumer preferences are
19 complex and nuanced, and not just for a blanket
20 solution. They want to restrict some calls but not all
21 calls.

22 B, both in terms of behavior and in public
23 opinion, there's clear support for an existing business
24 relationship exemption, and I would like to just say
25 copies of the study are posted on our website, which is

1 www.the-ipi.org. I have a few copies available. I
2 will be around for questions today and tomorrow.

3 Thank you.

4 MS. HARRINGTON-MCBRIDE: Mr. Turner, we will
5 certainly accept this submission for the record. It
6 sounds like a very interesting study. Of course, I
7 just got it today, so I have not had a chance to look
8 at it, it's hot off the presses. Can you tell us how
9 this study was funded?

10 MR. TURNER: The funds for the study come from
11 our general fund, which is tax-deductible
12 contributions. We are, as you know, a very new think
13 tank. Our revenues right now are contributions from
14 trade associations, corporations, and we have got
15 applications in for foundation money currently.

16 Of course, foundation money has funding cycles,
17 and that usually is a more involved process, but we are
18 developing a balanced portfolio of contributors.

19 MS. HARRINGTON-MCBRIDE: All right, thank you
20 very much.

21 (Applause.)

22 MS. HARRINGTON-MCBRIDE: Our last speaker will
23 be Bob Bulmash.

24 MR. BULMASH: Bob Bulmash with Private Citizen,
25 Incorporated.

1 I would like to thank Mr. Brubaker of
2 InfoCision for making it crystal clear during his
3 comments just now in open mike that a relationship
4 between an agent and a principal of that agent, he
5 referred to it as the telemarketing for -- the
6 for-profit telemarketing form and nonprofit, are one
7 and the same under the eyes of the law. So, therefore,
8 a third party may act in any fashion to indeed include
9 people on a do-not call list, because they are indeed
10 under the law one and the same.

11 Now, I'd also like to talk about the comments
12 that we just heard from the gentleman who had the
13 survey that was funded by corporations and trade
14 associations that found that there was some vagueness
15 as far as whether or not there was a need for a
16 national do-not call list. I'm wondering what those
17 figures would have shown 20 years ago if the same
18 survey was done, if not the purchases -- purchase
19 levels that were shown, would have been not doubled but
20 maybe tripled, because at the time people weren't as
21 fed up with junk phone calls -- I'm sorry,
22 telenuisance calls as they are today, so I just wanted
23 to make sure the timeliness of that should be compared
24 to a time frame prior to see if, indeed, telemarketing
25 has diminished in its effectiveness over the years.

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1 Now, there's a number of other things I wanted
2 to mention. We talked extensively about opt-out
3 verification, and there seemed to be quite a bit of
4 concern about opt-out verification, making sure that
5 one spouse didn't opt out for another spouse. I've got
6 here something from SBC, it's their CPN, call party
7 identification -- if that's what CPN I stands for --
8 and opt-out plan, and all I had to do to opt out from
9 SBC's CPNI list is call. I could have had a 40-person
10 family living in my house. All I had to do is call,
11 and I opted out for everybody that used that phone at
12 my home.

13 It didn't seem like SBC was too concerned about
14 opt-out verification at that time. All of a sudden,
15 many people within the telemarketing industry are
16 concerned about opt-out verification, whether or not
17 the proper person requested to be opted out. That's
18 really not a concern when it comes right down to it.
19 Here's the CPNI opt-out form for SBC, one of the
20 largest corporations in the United States.

21 Okay, a couple of other things that I want to
22 talk about --

23 MS. HARRINGTON-MCBRIDE: About a minute,
24 because they are going to kick us out of this hotel
25 room.

1 MR. BULMASH: Okay, we have abandonment rates
2 and predictive dialers. Abandonment rates isn't the
3 only issue, we have also got short ring, hangs up
4 before the phone is answered, and also answering
5 machine detection error, where you pick up the phone
6 and say, hello, this is the Bush residence. The
7 predictive dialer thinks you're an answering machine,
8 hangs up on you.

9 We have also got the answering machine
10 computational period, which is a period of time the
11 answering machine has to take to determine whether or
12 not you're a person. That's about -- World.com is
13 asking for four seconds for that in its California
14 Public Utilities Comments. Somebody's going to hang up
15 on the answering machine or on the predictive dialer
16 within that four seconds. Those are not counted as
17 abandoned calls, but indeed, they are virtual abandoned
18 calls to the calling party. That's what we're
19 concerned about. We're talking about the people in our
20 homes that are being abused by the telemarketing
21 industry, and that's what we should consider to be an
22 abandoned call.

23 One last thing, we were also talking about the
24 need for name, address and phone number or name and
25 phone number or name and address, the way you get a

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1 person off the list is taking his number and putting it
2 on a do-not call list for purging. My name is Robert
3 Stuart Bulmash. Is it Bob Bulmash, R. S. Bulmash,
4 R. Stuart Bulmash, Robert Bulmash? There are so many,
5 variations in a name.

6 As far as my address, if you put my address
7 together, there are 1500 permutations of my name and
8 address. There is no permutation of my phone number.
9 The way you purge somebody from a list is through a
10 phone number. If you want to make sure that the list
11 is ineffective, do it by name, address and phone number
12 or any combination of the two.

13 Thank you very much for your time.

14 MS. HARRINGTON-MCBRIDE: Thank you very much.

15 (Applause.)

16 MS. HARRINGTON-MCBRIDE: All right, we are
17 adjourned. I'll see you all tomorrow at 9:00.

18 (Whereupon, at 5:15 p.m., the session was
19 adjourned.)

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1 C E R T I F I C A T I O N O F R E P O R T E R
2 DOCKET/FILE NUMBER: R441001
3 CASE TITLE: TELEMARKETING WORKSHOP
4 DATE: JUNE 5, 2002
5

6 I HEREBY CERTIFY that the transcript contained
7 herein is a full and accurate transcript of the notes
8 taken by me at the hearing on the above cause before
9 the FEDERAL TRADE COMMISSION to the best of my
10 knowledge and belief.

11

12 DATED: 6/17/02

13

14

15

16 SUSANNE BERGLING, RMR

17

18 C E R T I F I C A T I O N O F P R O O F R E A D E R

19

20 I HEREBY CERTIFY that I proofread the
21 transcript for accuracy in spelling, hyphenation,
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