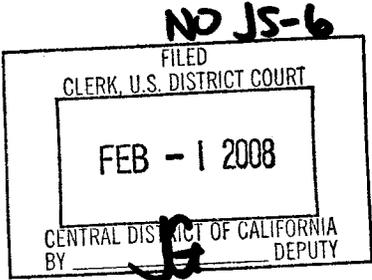


1 FAYE CHEN BARNOUW, Cal. Bar No. 168631  
2 JENNIFER M. BRENNAN, Cal. Bar No. 225473  
3 FEDERAL TRADE COMMISSION  
4 10877 Wilshire Blvd., Suite 700  
5 Los Angeles, CA 90024  
6 Telephone: (310) 824-4343  
7 Facsimile: (310) 824-4380  
8 e-mail: [fbarnouw@ftc.gov](mailto:fbarnouw@ftc.gov); [jmbrennan@ftc.gov](mailto:jmbrennan@ftc.gov)



9 Attorneys for Plaintiff  
10 FEDERAL TRADE COMMISSION

11 UNITED STATES DISTRICT COURT  
12 CENTRAL DISTRICT OF CALIFORNIA

13 FEDERAL TRADE COMMISSION,  
14  
15 Plaintiff,

16 v.

17 UNIVERSAL PREMIUM SERVICES,  
18 INC., a California corporation (also known  
19 as Premier Benefits, Inc.); CONSUMER  
20 REWARD NETWORK, INC., a California  
21 corporation; STAR COMMUNICATIONS  
22 LLC, a California limited liability  
23 company; MEMBERSHIP SERVICES  
24 DIRECT, INC., a Nevada corporation (also  
25 known as Continuity Partners, Inc.);  
26 CONNECT2USA, INC., a Nevada  
27 corporation; MERCHANT RISK  
28 MANAGEMENT, INC., a Nevada  
corporation; PANTEL ONE  
CORPORATION, a Nevada Corporation;  
ALL STAR ACCESS, INC., a Colorado  
Corporation; PRIME TIME VENTURES,  
INC., a Nevada Corporation; BRIAN K.  
MACGREGOR; HARIJINDER SIDHU;  
JOSEPH F. LAROSA, JR.; PRANOT  
SANGPRASIT; WILLIAM THOMAS  
HEICHERT; MICHAEL HOWARD  
CUSHING; PAUL P. TOSI; MANH D.  
CAO; MIDWEST PROPERTIES, INC.;  
and CHRISTINE MACGREGOR,

Defendants.

Case no. CV06-0849 GW OPx)

~~PROPOSED~~  
STIPULATED FINAL ORDER  
FOR PERMANENT INJUNCTION  
AND OTHER EQUITABLE  
RELIEF AGAINST DEFENDANTS  
UNIVERSAL PREMIUM  
SERVICES, INC. (ALSO KNOWN  
AS PREMIER BENEFITS, INC.),  
CONSUMER REWARD  
NETWORK, INC.,  
STAR COMMUNICATIONS LLC,  
ALL STAR ACCESS, INC.,  
PRIME TIME VENTURES, INC.,  
CONNECT2USA, INC.,  
MERCHANT RISK  
MANAGEMENT, INC., AND  
PANTEL ONE CORPORATION

1 Plaintiff Federal Trade Commission (“FTC” or “Commission”) and settling  
2 defendants Universal Premium Services, Inc. (also known as Premier Benefits, Inc.),  
3 Consumer Reward Network, Inc., Star Communications LLC, All Star Access, Inc.,  
4 Prime Time Ventures, Inc., Connect2USA, Inc., Merchant Risk Management, Inc.,  
5 and Pantel One Corporation (“Defendants”), without admission of liability, enter into  
6 this “Stipulated Final Order for Permanent Injunction and Other Equitable Relief  
7 Against Defendants Universal Premium Services, Inc. (also known as Premier  
8 Benefits, Inc.), Consumer Reward Network, Inc., Star Communications LLC, All  
9 Star Access, Inc., Prime Time Ventures, Inc., Connect2USA, Inc., Merchant Risk  
10 Management, Inc., and Pantel One Corporation” (“Order”) to resolve all matters of  
11 dispute between them in this action.

12 This action was commenced on February 14, 2006, when the FTC filed a  
13 Complaint for Permanent Injunction and Other Equitable Relief pursuant to Sections  
14 13(b) and 19(a) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C.  
15 §§ 53(b) and 57b(a), and the Telemarketing and Consumer Fraud and Abuse  
16 Prevention Act (“Telemarketing Act”), 15 U.S.C. §§ 6101 *et seq.*, and applied *ex*  
17 *parte* for a temporary restraining order and for an order to show cause why a  
18 preliminary injunction should not be granted against all defendants and a permanent  
19 receiver should not be appointed over the corporate defendants, pursuant to Rule 65  
20 of the Federal Rules of Civil Procedure. Plaintiff FTC’s First Amended Complaint  
21 was filed on May 8, 2006.

22 The Court appointed Robb Evans & Associates LLC (“Receiver”) as  
23 temporary receiver over Defendants and the other corporate defendants on February  
24 21, 2006. The Court ordered the Receiver to serve as Permanent Receiver over  
25 Defendants, the other corporate defendants, and related corporate entities on March  
26 21, 2006.

27 Defendants have not responded or otherwise appeared in this action. The  
28 Court Clerk entered default against Consumer Reward Network, Inc., Connect2USA,

1 Inc., and Star Communications LLC on April 3, 2006; Universal Premium Services,  
2 Inc. (also known as Premier Benefits, Inc.) on April 6, 2006; All Star Access, Inc.  
3 and Prime Time Ventures, Inc. on June 28, 2006; and Merchant Risk Management,  
4 Inc. and Pantel One Corporation on August 18, 2006.

5 IT IS THEREFORE STIPULATED, AGREED, AND ORDERED as follows:  
6

7 **FINDINGS OF FACT**

8 1. This Court has jurisdiction of the subject matter of this case and the  
9 parties pursuant to 15 U.S.C. §§ 45(a), 53(b), and 57(b), and 28 U.S.C. §§ 1331,  
10 1337(a) and 1345.

11 2. Venue in this District is proper under 15 U.S.C. §53(b) and 28 U.S.C.  
12 §§ 1391(b) and (c).

13 3. The activities of Defendants, as alleged in the First Amended  
14 Complaint, are in or affecting commerce, as defined in Section 4 of the FTC Act, 15  
15 U.S.C. § 44.

16 4. The First Amended Complaint states a claim upon which relief may be  
17 granted under Sections 5(a), 13(b), and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 53(b),  
18 and 57b.

19 5. Defendants were properly served with the Summons, Complaint, First  
20 Amended Complaint, Temporary Restraining Order, and Preliminary Injunction in  
21 this matter.

22 6. Entry of this Order resolves all matters of dispute between the FTC and  
23 Defendants arising from the First Amended Complaint in this action, up to the date  
24 of entry of this Order.

25 7. Defendants, in consenting to the entry of this Order, do not admit to the  
26 allegations of the First Amended Complaint other than the jurisdictional facts.

27 8. In light of the fact that the Receiver has shut down all operations of  
28 Defendants and the other Receivership Defendants, and the Receiver intends to

1 completely wind down the business of Defendants and the other Receivership  
2 Defendants pursuant to the preliminary injunction, it is appropriate for Defendants to  
3 consent to the entry of this Order to have a full and final settlement of this action  
4 against them.

5 9. Defendants waive all rights to seek judicial review or otherwise  
6 challenge or contest the validity of this Order. Defendants further waive and release  
7 any claim they may have against the Commission, its employees, representatives or  
8 agents.

9 10. Defendants waive any claims they hold under the Equal Access to  
10 Justice Act, 28 U.S.C. § 2412, amended by Pub. L. 104-121, 110 Stat. 847, 863-64  
11 (1996), concerning the prosecution of this action through the date of the entry of this  
12 Order.

13 11. This Order is remedial in nature and shall not be construed as the  
14 payment of a fine, penalty, punitive assessment, or forfeiture.

15 12. Entry of this Order is in the public interest. There being no just reason  
16 for delay, the Clerk is directed to enter judgment immediately.

17  
18 **ORDER**

19 **Definitions**

20 For purposes of this Order, the following definitions shall apply:

21 1. **“Assets”** means any legal or equitable interest in, right to, or claim to,  
22 any real or personal property, including, without limitation, chattels, goods,  
23 instruments, equipment, fixtures, general intangibles, leaseholds, mail or other  
24 deliveries, inventory, checks, notes, accounts, credits, contracts, receivables, shares  
25 of stock, and all cash, wherever located.

26 2. **“Billing information”** means any data that enables any person to access  
27 a customer's or donor's account, such as a credit card, checking, savings, share or  
28 similar account, utility bill, mortgage loan account, or debit card.

1           3.     **“Customer”** means any person who is or may be required to pay for  
2 goods or services offered through telemarketing.

3           4.     **“Defendants”** means Universal Premium Services, Inc. (also known as  
4 Premier Benefits, Inc.), Consumer Reward Network, Inc., Star Communications  
5 LLC, All Star Access, Inc., Prime Time Ventures, Inc., Connect2USA, Inc.,  
6 Merchant Risk Management, Inc., and Pantel One Corporation.

7           5.     **“Document”** is synonymous in meaning and equal in scope to the usage  
8 of the term in Federal Rule of Civil Procedure 34(a), and includes writings,  
9 drawings, graphs, charts, photographs, audio and video recordings, computer  
10 records, and any other data compilations from which information can be obtained. A  
11 draft or non-identical copy is a separate document within the meaning of the term.

12           6.     **“Donor”** means any person solicited to make a charitable contribution.

13           7.     **“Material”** means likely to affect a person's choice of, or conduct  
14 regarding, goods or services or a charitable contribution.

15           8.     **“Negative option feature”** means, in an offer or agreement to sell or  
16 provide any goods or services, a provision under which the customer's silence or  
17 failure to take an affirmative action to reject goods or services or to cancel the  
18 agreement is interpreted by the seller as acceptance of the offer.

19           9.     **“Person”** means any individual, group, unincorporated association,  
20 limited or general partnership, corporation, or other business entity.

21           10.    **“Plaintiff”** means the Federal Trade Commission.

22           11.    **“Preliminary Injunction Order”** means the “Preliminary Injunction  
23 with Asset Freeze, Appointment of Permanent Receiver, and Other Equitable  
24 Relief,” filed on March 21, 2006 and entered on March 22, 2006.

25           12.    **“Receiver”** means Robb Evans & Associates LLC, the permanent  
26 receiver appointed over the Receivership Defendants in the Preliminary Injunction  
27 Order entered on March 22, 2006 in this case. The term “Receiver” also includes  
28 any deputy receivers as may be named by the permanent receiver.

1           13.    **“Receivership Defendants”** means Universal Premium Services, Inc.  
2 (also known as Premier Benefits, Inc.); Consumer Reward Network, Inc. (also  
3 known as Best Buy Alliance, Inc.); Star Communications LLC; Membership  
4 Services Direct, Inc. (also known as Continuity Partners, Inc.); Connect2USA, Inc.;  
5 Merchant Risk Management, Inc.; All Star Access, Inc.; Prime Time Ventures, Inc.;  
6 Pantel One Corporation; Mammoth Consulting Group, LLC; World Era  
7 Development Limited; Blitz Media, Inc.; Impact Marketing, Inc.; Synergy Marketing  
8 Group LLC; Utalk Unlimited, Inc.; and their affiliates and subsidiaries, and any other  
9 corporations or businesses under the control of any of the Defendants.

10           14.    **“Seller”** means any person who, in connection with a telemarketing  
11 transaction, provides, offers to provide, or arranges for others to provide goods or  
12 services to the customer in exchange for consideration.

13           15.    **“Telemarketer”** means any person who, in connection with  
14 telemarketing, initiates or receives telephone calls to or from a customer or donor.

15           16.    **“Telemarketing”** means a plan, program, or campaign which is  
16 conducted to induce the purchase of goods or services or a charitable contribution,  
17 by use of one or more telephones and which involves more than one interstate  
18 telephone call.

19           17.    **“Temporary Restraining Order”** means the “Temporary Restraining  
20 Order with Asset Freeze, Appointment of Temporary Receiver, and Other Equitable  
21 Relief, and Order to Show Cause Why a Preliminary Injunction Should Not Issue  
22 and a Permanent Receiver Should Not Be Appointed,” filed on February 21, 2007  
23 and entered on February 24, 2006.

24 //

25

26

27

28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**I.  
Prohibited Misrepresentations**

IT IS THEREFORE ORDERED that in connection with the advertising, promotion, offering or sale of goods or services by telephone or otherwise in commerce, Defendants, as well as their officers, agents, servants, employees, and attorneys, and all other persons or entities in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any corporation or other entity, subsidiary, division, or other device, including but not limited to, fictitious business names, and each such person, are hereby permanently restrained and enjoined from misrepresenting, expressly or by implication, orally or in writing, to any consumer or entity, any material fact, including, but not limited to, any misrepresentations that:

A. Defendants or any business under their ownership or control will send the consumers a free item if the consumers pay a shipping and handling fee;

B. Defendants or any business under their ownership or control provides a free trial period during which time the consumers will not be charged fees;

C. Defendants or any business under their ownership or control provide a cancellation period during which time the consumers may obtain a refund for fees already paid;

D. Consumers may cancel their memberships at any time in programs offered by Defendants or any business under their ownership or control; and

E. Defendants or any business under their ownership or control is affiliated with or endorsed or sponsored by a person or government entity.

**II.  
Prohibition Against Unauthorized Billing**

IT IS FURTHER ORDERED that in connection with the advertising, promotion, offering or sale of goods or services by telephone or otherwise in commerce, Defendants, as well as their officers, agents, servants, employees, and

1 attorneys, and all other persons or entities in active concert or participation with any  
2 of them who receive actual notice of this Order by personal service or otherwise,  
3 whether acting directly or through any corporation or other entity, subsidiary,  
4 division, or other device, including but not limited to, fictitious business names, and  
5 each such person, are hereby permanently restrained and enjoined from causing  
6 billing information to be submitted for payment, directly or indirectly unless the  
7 seller or telemarketer:

8 A. Obtains from the customer, at a minimum, the last four (4) digits of the  
9 account number to be charged;

10 B. Obtains from the customer his or her express agreement to be charged  
11 for the goods or services and to be charged using the account number pursuant to  
12 subsection II.A of this Order; and

13 C. Makes and maintains an audio recording of the entire telemarketing  
14 transaction.

15  
16 **III.  
Prohibition Against Violating Telemarketing Sales Rule**

17 IT IS FURTHER ORDERED that in connection with the advertising,  
18 promotion, offering or sale of goods or services by telephone or otherwise in  
19 commerce, Defendants, as well as their officers, agents, servants, employees, and  
20 attorneys, and all other persons or entities in active concert or participation with any  
21 of them who receive actual notice of this Order by personal service or otherwise,  
22 whether acting directly or through any corporation or other entity, subsidiary,  
23 division, or other device, including but not limited to, fictitious business names, and  
24 each such person, are hereby permanently restrained and enjoined from violating any  
25 provision of the Telemarketing Sales Rule, 16 C.F.R. Part 310, as currently  
26 promulgated (attached to this Order as *Appendix A*) or as hereinafter may be  
27 amended, including but not limited to:

28

1 A. Misrepresenting, directly or by implication, any material aspect of the  
2 nature or terms of the seller's refund, cancellation, exchange, or repurchase policies;

3 B. Misrepresenting, directly or by implication, a seller's or telemarketer's  
4 affiliation with, or endorsement or sponsorship by, any person or government entity;

5 C. Misrepresenting, directly or by implication, any material aspect of a  
6 negative option feature including, but not limited to, the fact that the customer's  
7 account will be charged unless the customer takes an affirmative action to avoid the  
8 charge(s), the date(s) of the charge(s) will be submitted for payment, and the specific  
9 steps the customer must take to avoid the charge(s);

10 D. Using threats, intimidation, or the use of profane or obscene language in  
11 a telemarketing call;

12 E. Initiating, or causing a telemarketer to initiate, any outbound telephone  
13 call to a person when that person previously has stated that he or she does not wish to  
14 receive an outbound telephone call made by or on behalf of the seller whose goods or  
15 services are being offered;

16 F. Causing any telephone to ring, or engaging any person in telephone  
17 conversation, repeatedly or continuously with intent to annoy, abuse, or harass any  
18 person at the called number; and

19 G. Providing substantial assistance or support to any seller or telemarketer  
20 when that person knows or consciously avoids knowing that the seller or  
21 telemarketer is engaged in any act or practice that violates Telemarketing Sales Rule  
22 Sections 310.3(a), (c), or (d) or 310.4.

23  
24 **IV.  
Monetary Judgment**

25 IT IS FURTHER ORDERED that:

26 A. Defendants are ordered to pay to the FTC a monetary judgment in the  
27 total amount of **\$28,233,124 (twenty-eight million, two hundred thirty-three**  
28 **thousand, one hundred twenty-four dollars)**. Defendants are jointly and severally

1 liable for this monetary judgment. Defendants relinquish to the FTC all right and  
2 claim to their assets. In addition, Defendants waive all right and claim they have, if  
3 any, to the assets of all other entities placed into permanent receivership by the Court  
4 in the Preliminary Injunction Order.

5 B. Defendants agree that the facts as alleged in the First Amended  
6 Complaint filed in this action shall be taken as true in any subsequent litigation filed  
7 by the Commission to enforce its rights pursuant to this Order, including, but not  
8 limited to, a non-dischargeability complaint filed in any bankruptcy proceeding.

9 C. Proceedings instituted under this Paragraph are in addition to, and not in  
10 lieu of, any other civil or criminal remedies that may be provided by law, including  
11 any other proceedings the Commission may initiate to enforce this Order.

12 D. The FTC and the Receiver may take all necessary or appropriate post-  
13 judgment collection steps, including but not limited to obtaining and levying writs of  
14 execution and creating, perfecting, and enforcing judgment liens on any real or  
15 personal property of Defendants. The Clerk of the Court is hereby directed to accept  
16 this Order for the purpose of issuing writs of execution, abstracts of judgment and  
17 any other post-judgment process at the request of the FTC or the Receiver.

18  
19 **V.  
Commission's Use of Monetary Judgment**

20 IT IS FURTHER ORDERED that all funds paid to the Commission or its  
21 agent pursuant to Sections IV and XIII of this Order by Defendants may be deposited  
22 into a fund administered by the Commission or its agent to be used for consumer  
23 redress and any attendant expenses for the administration of any redress fund.  
24 Pursuant to the Court's November 30, 2007 "Order That Receiver Holds  
25 Receivership Defendants' Assets in Constructive Trust for the Benefit of the  
26 Receivership Defendants' Defrauded Consumers," filed on November 30, 2007, in  
27 the event that direct redress to consumers is wholly or partially impracticable or that  
28 funds remain after redress is completed, the Receiver shall establish a claims

1 procedure for the Receivership Defendants' pre-receivership non-consumer  
2 creditors; *provided, however*, that if the Receiver determines that the cost of  
3 administering a distribution to the Receivership Defendants' pre-receivership non-  
4 consumer creditors renders such a distribution impracticable or if any funds remain  
5 after such distribution, then the FTC may use the remaining funds for consumer  
6 education remedies or for disgorgement to the United States Treasury. Defendants  
7 shall have no right to challenge the Commission's choice of remedies under this  
8 Section.

9  
10 **VI.**  
**Cooperation with FTC Counsel**

11 IT IS FURTHER ORDERED that Defendants shall, in connection with this  
12 action or any subsequent investigations related to or associated with the transactions  
13 or the occurrences that are the subject of the FTC's First Amended Complaint,  
14 cooperate in good faith with the FTC and appear at such places and times as the FTC  
15 shall reasonably request, after written notice, for interviews, conferences, pretrial  
16 discovery, review of documents, and for such other matters as may be reasonably  
17 requested by the FTC. If requested in writing by the FTC, Defendants shall appear  
18 and provide truthful testimony in any trial, deposition, or other proceeding related to  
19 or associated with the transactions or the occurrences that are the subject of the First  
20 Amended Complaint, without the service of a subpoena.

21  
22 **VII.**  
**Customer Lists**

23 IT IS FURTHER ORDERED that Defendants, in connection with the  
24 advertising, promotion, offering or sale of goods or services by telephone or  
25 otherwise in commerce, or where any of the Defendants is a majority owner of the  
26 business or directly or indirectly manages or controls such a business, as well as the  
27 business' officers, agents, servants, employees, and attorneys, and all other persons  
28 or entities in active concert or participation with any of them who receive actual

1 notice of this Order by personal service or otherwise, whether acting directly or  
2 through any corporation or other entity, subsidiary, division, or other device,  
3 including but not limited to, fictitious business names, and each such person, are  
4 hereby restrained and enjoined from selling, renting, leasing, transferring, or  
5 otherwise disclosing the name, address, telephone number, electronic mail address,  
6 credit card number, bank account number, or other identifying information of any  
7 person who paid any money to any of the defendants named in the First Amended  
8 Complaint filed in this case, at any time prior to entry of this Order, in connection  
9 with the advertising, promotion, offering for sale, sale, or distribution of any goods  
10 or services. *Provided*, however, that such identifying information may be disclosed  
11 to a law enforcement agency or as required by law, regulation, or court order.

12  
13 **VIII.**  
**Acknowledgment of Receipt of Order**

14 IT IS FURTHER ORDERED that each Defendant, within five (5) business  
15 days of receipt of this Order as entered by the Court, shall execute and submit to the  
16 Commission a truthful sworn statement acknowledging receipt of this Order.

17  
18 **IX.**  
**Distribution of Order by Defendants**

19 IT IS FURTHER ORDERED that, for a period of five (5) years from the date  
20 of entry of this Order, Defendants shall deliver copies of the Order as directed below:

21 A. Each Defendant must deliver a copy of this Order to all of its principals,  
22 officers, directors, and managers. Each Defendant also must deliver copies of this  
23 Order to all of its employees, agents, and representatives who engage in conduct  
24 related to the subject matter of the Order. For current personnel, delivery shall be  
25 within (5) days of service of this Order upon Defendants. For new personnel,  
26 delivery shall occur prior to them assuming their responsibilities.

1 B. Defendants must secure a signed and dated statement acknowledging  
2 receipt of the Order, within thirty (30) days of delivery, from all persons receiving a  
3 copy of the Order pursuant to this Section.

4  
5 **X.**  
6 **Compliance Reporting**

7 IT IS FURTHER ORDERED that, in order that compliance with the  
8 provisions of this Order may be monitored:

9 A. For a period of five (5) years from the date of entry of this Order, each  
10 Defendant shall notify the Commission of any changes in corporate structure that  
11 may affect compliance obligations arising under this Order, including but not limited  
12 to a dissolution, assignment, sale, merger, or other action that would result in the  
13 emergence of a successor entity; the creation or dissolution of a subsidiary, parent, or  
14 affiliate that engages in any acts or practices subject to this Order; the filing of a  
15 bankruptcy petition; or a change in the corporate name or address, at least thirty (30)  
16 days prior to such change, *provided that*, with respect to any proposed change in the  
17 corporation about which Defendants learn less than thirty (30) days prior to the date  
18 such action is to take place, Defendants shall notify the Commission as soon as is  
19 practicable after obtaining such knowledge.

20 B. One hundred and eighty (180) days after the date of entry of this Order,  
21 Defendants each shall provide a written report to the Commission, sworn to under  
22 penalty of perjury, setting forth in detail the manner and form in which it has  
23 complied and is complying with this Order. This report shall include, but not be  
24 limited to:

25 1. A copy of each acknowledgment of receipt of this Order obtained  
26 pursuant to Section IX.B of this Order; and

27 2. Any other changes required to be reported under Paragraph A of  
28 this Section.

C. For the purposes of this Order, Defendants shall, unless otherwise

1 directed by the Commission's authorized representatives, mail all written  
2 notifications to the Commission to:

3 Associate Director for Enforcement  
4 Federal Trade Commission  
5 600 Pennsylvania Ave., NW, Washington, DC 20580  
6 Re: **FTC v. Universal Premium Services**  
7 C.D. Cal. Case No. CV06-0849 GW (OPx)

8 D. For the purposes of compliance reporting and monitoring required by  
9 this Order, the Commission is authorized to communicate directly with Defendants  
10 unless Defendants have notified the Commission that they are represented by  
11 counsel.

12  
13 **XI.**  
**Compliance Monitoring**

14 IT IS FURTHER ORDERED that, for the purposes of monitoring and  
15 investigating compliance with any provision of this Order:

16 A. Within ten (10) days of receipt of written notice from a representative of  
17 the Commission, Defendants each shall submit additional written reports, sworn to  
18 under penalty of perjury; produce documents for inspection and copying; appear for  
19 deposition; and/or provide entry during normal business hours to any business  
20 location in such Defendant's possession or direct or indirect control to inspect the  
21 business operation;

22 B. In addition, the Commission is authorized to monitor compliance with  
23 this Order by all other lawful means, including but not limited to the following:

24 1. Obtaining discovery from any person, without further leave of  
25 court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45;  
26 and

27 2. Posing as consumers and suppliers to Defendants, their  
28 employees, or any other entity that they manage or control in whole or in part,

1 without the necessity of identification or prior notice; and

2 C. Defendants shall permit representatives of the Commission to interview  
3 any employer, consultant, affiliate, independent contractor, representative, agent, or  
4 employee who has agreed to such an interview, relating in any way to any conduct  
5 subject to this Order. The person interviewed may have counsel present.

6 *Provided however*, that nothing in this Order shall limit the Commission's  
7 lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15  
8 U.S.C. §§ 49, 57b-1, to obtain any documentary material, tangible things, testimony,  
9 or information relevant to unfair or deceptive acts or practices in or affecting  
10 commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

11  
12 **XII.**  
**Record Keeping Provisions**

13 IT IS FURTHER ORDERED that, for a period of eight (8) years from the date  
14 of entry of this Order, Defendants, in connection with any business which is a seller  
15 or telemarketer or which receives payment from any customer through demand draft  
16 debits, electronic fund transfers, or credit card charges, and where any of the  
17 Defendants is a majority owner of the business or directly or indirectly manages or  
18 controls such a business, as well as the business' officers, agents, servants,  
19 employees, and attorneys, and all other persons or entities in active concert or  
20 participation with any of them who receive actual notice of this Order by personal  
21 service or otherwise, whether acting directly or through any corporation or other  
22 entity, subsidiary, division, or other device, including but not limited to, fictitious  
23 business names, and each such person, are hereby restrained and enjoined from  
24 failing to create and retain the following records:

25 A. Accounting records that reflect the cost of goods or services sold,  
26 revenues generated, and the disbursement of such revenues;

27 B. Personnel records accurately reflecting: the name, address, and  
28 telephone number of each person employed in any capacity by such business,

1 including as an independent contractor; that person's job title or position; the date  
2 upon which the person commenced work; and the date and reason for the person's  
3 termination, if applicable;

4 C. Customer files containing the names, addresses, phone numbers, dollar  
5 amounts paid, quantity of items or services purchased, and description of items or  
6 services purchased, to the extent such information is obtained in the ordinary course  
7 of business;

8 D. Complaints and refund requests (whether received directly, indirectly or  
9 through any third party), and any responses to those complaints or requests;

10 E. Copies of all promotional materials, sales scripts, training materials,  
11 websites, or other marketing materials;

12 F. Copies of all contracts entered into with third-party service providers;  
13 and

14 G. All records and documents necessary to demonstrate full compliance  
15 with each provision of this Order, including, but not limited to, copies of  
16 acknowledgments of receipt of this Order required by Sections VIII and IX of this  
17 Order and all reports submitted to the FTC pursuant to Section X of this Order.

18  
19 **XIII.  
Permanent Receivership Duties**

20 IT IS FURTHER ORDERED that, except as expressly stated in this Order, and  
21 notwithstanding the provisions of Section IV and V of this Order, this Order does not  
22 abridge or terminate the Receiver's authority and duties as set forth in the  
23 Preliminary Injunction Order, including the Receiver's authority to sell real property  
24 transferred to it pursuant to the Stipulated Final Order against Fraudulent Transfer  
25 Defendants Christine MacGregor and Midwest Properties, Inc. and the Receiver's  
26 authority to wind down the Receivership Defendants' business affairs. The Receiver  
27 shall file reports and accountings with the Court as necessary to keep the Court  
28 apprised of the progress of the receivership. Upon approval of the Receiver's final

1 report and accounting and Receiver's final application for fees and expenses, the  
2 receivership in this case shall terminate. Once the Receiver has been compensated in  
3 an amount approved by the court, all remaining receivership funds, including all  
4 remaining funds of Defendants, shall be transferred to the Commission subject to the  
5 conditions set forth in Sections IV and V of this Order.

6  
7 **XIV.**  
**Fees and Costs**

8 IT IS FURTHER ORDERED that each party to this Order hereby agrees to  
9 bear its own costs and attorneys' fees incurred in connection with this action.

10  
11 **XV.**  
**Retention of Jurisdiction**

12 IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this  
13 matter for purposes of construction, modification and enforcement of this Order.

14  
15 **XVI.**  
**Severability**

16 IT IS FURTHER ORDERED that the provisions of this Order are separate and  
17 severable from one another. If any provision is stayed or determined to be invalid,  
18 the remaining provisions shall remain in full force and effect.

19 //

20  
21  
22  
23  
24  
25  
26  
27  
28

**XVII.  
Complete Settlement**

The parties hereby consent to entry of this Order which shall constitute a final judgment and order in this matter. The parties further stipulate and agree that the entry of this Order shall constitute a full, complete, and final settlement of this action.

**SO STIPULATED:**

Dated: 1/14/08

Dated: January 28, 2008

Robb Evans & Associates LLC,  
Receiver

Kenton Johnson  
By: Kenton Johnson  
its Executive Vice President, on behalf  
of Defendants Universal Premium  
Services, Inc. (also known as Premier  
Benefits, Inc.), Consumer Reward  
Network, Inc., Star Communications,  
LLC, All Star Access, Inc., Prime Time  
Ventures, Inc., Connect2USA, Inc.,  
Merchant Risk Management, Inc., and  
Pantel One Corporation

Faye Chen Barnouw  
Faye Chen Barnouw  
Jennifer M. Brennan  
Attorneys for Plaintiff  
Federal Trade Commission

**APPROVED AS TO FORM:**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Gary O. Caris  
McKenna Long & Aldridge LLP  
Attorneys for Receiver  
Robb Evans & Associates LLC

**IT IS SO ORDERED.**

Dated: Feb. 1, 2008

George H. Wu  
The Honorable George H. Wu  
United States District Court Judge

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**XVII.  
Complete Settlement**

The parties hereby consent to entry of this Order which shall constitute a final judgment and order in this matter. The parties further stipulate and agree that the entry of this Order shall constitute a full, complete, and final settlement of this action.

**SO STIPULATED:**

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

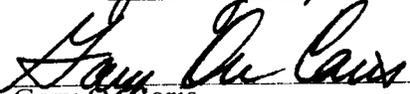
Robb Evans & Associates LLC,  
Receiver

\_\_\_\_\_  
Faye Chen Barnouw  
Jennifer M. Brennan  
Attorneys for Plaintiff  
Federal Trade Commission

By: Kenton Johnson  
its Executive Vice President, on behalf  
of Defendants Universal Premium  
Services, Inc. (also known as Premier  
Benefits, Inc.), Consumer Reward  
Network, Inc., Star Communications,  
LLC, All Star Access, Inc., Prime Time  
Ventures, Inc., Connect2USA, Inc.,  
Merchant Risk Management, Inc., and  
Pantel One Corporation

**APPROVED AS TO FORM:**

Dated: January 14, 2008

  
\_\_\_\_\_  
Gary O. Caris  
McKenna Long & Aldridge LLP  
Attorneys for Receiver  
Robb Evans & Associates LLC

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
The Honorable George H. Wu  
United States District Court Judge

Federal Trade Commission

§310.1

**PART 310—TELEMARKETING SALES  
RULE**

Sec.

- 310.1 Scope of regulations in this part.
- 310.2 Definitions.
- 310.3 Deceptive telemarketing acts or practices.
- 310.4 Abusive telemarketing acts or practices.
- 310.5 Recordkeeping requirements.
- 310.6 Exemptions.
- 310.7 Actions by states and private persons.

- 310.8 Fee for access to the National Do Not Call Registry.
- 310.9 Severability.

AUTHORITY: 15 U.S.C. 6101-6108.

SOURCE: 68 FR 4669, Jan. 29, 2003, unless otherwise noted.

**§310.1 Scope of regulations in this part.**

This part implements the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. 6101-6108, as amended.

**§ 310.2****16 CFR Ch. I (1-1-07 Edition)****§ 310.2 Definitions.**

(a) *Acquirer* means a business organization, financial institution, or an agent of a business organization or financial institution that has authority from an organization that operates or licenses a credit card system to authorize merchants to accept, transmit, or process payment by credit card through the credit card system for money, goods or services, or anything else of value.

(b) *Attorney General* means the chief legal officer of a state.

(c) *Billing information* means any data that enables any person to access a customer's or donor's account, such as a credit card, checking, savings, share or similar account, utility bill, mortgage loan account, or debit card.

(d) *Caller identification service* means a service that allows a telephone subscriber to have the telephone number, and, where available, name of the calling party transmitted contemporaneously with the telephone call, and displayed on a device in or connected to the subscriber's telephone.

(e) *Cardholder* means a person to whom a credit card is issued or who is authorized to use a credit card on behalf of or in addition to the person to whom the credit card is issued.

(f) *Charitable contribution* means any donation or gift of money or any other thing of value.

(g) *Commission* means the Federal Trade Commission.

(h) *Credit* means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(i) *Credit card* means any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.

(j) *Credit card sales draft* means any record or evidence of a credit card transaction.

(k) *Credit card system* means any method or procedure used to process credit card transactions involving credit cards issued or licensed by the operator of that system.

(l) *Customer* means any person who is or may be required to pay for goods or services offered through telemarketing.

(m) *Donor* means any person solicited to make a charitable contribution.

(n) *Established business relationship* means a relationship between a seller and a consumer based on:

(1) the consumer's purchase, rental, or lease of the seller's goods or services or a financial transaction between the consumer and seller, within the eighteen (18) months immediately preceding the date of a telemarketing call; or

(2) the consumer's inquiry or application regarding a product or service offered by the seller, within the three (3) months immediately preceding the date of a telemarketing call.

(o) *Free-to-pay conversion* means, in an offer or agreement to sell or provide any goods or services, a provision under which a customer receives a product or service for free for an initial period and will incur an obligation to pay for the product or service if he or she does not take affirmative action to cancel before the end of that period.

(p) *Investment opportunity* means anything, tangible or intangible, that is offered, offered for sale, sold, or traded based wholly or in part on representations, either express or implied, about past, present, or future income, profit, or appreciation.

(q) *Material* means likely to affect a person's choice of, or conduct regarding, goods or services or a charitable contribution.

(r) *Merchant* means a person who is authorized under a written contract with an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution.

(s) *Merchant agreement* means a written contract between a merchant and an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution.

(t) *Negative option feature* means, in an offer or agreement to sell or provide any goods or services, a provision under which the customer's silence or failure to take an affirmative action to reject goods or services or to cancel the agreement is interpreted by the seller as acceptance of the offer.

**Federal Trade Commission****§ 310.3**

(u) *Outbound telephone call* means a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution.

(v) *Person* means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.

(w) *Preactquired account information* means any information that enables a seller or telemarketer to cause a charge to be placed against a customer's or donor's account without obtaining the account number directly from the customer or donor during the telemarketing transaction pursuant to which the account will be charged.

(x) *Prize* means anything offered, or purportedly offered, and given, or purportedly given, to a person by chance. For purposes of this definition, chance exists if a person is guaranteed to receive an item and, at the time of the offer or purported offer, the telemarketer does not identify the specific item that the person will receive.

(y) *Prize promotion* means:

(1) A sweepstakes or other game of chance; or

(2) An oral or written express or implied representation that a person has won, has been selected to receive, or may be eligible to receive a prize or purported prize.

(z) *Seller* means any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration.

(aa) *State* means any state of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, and any territory or possession of the United States.

(bb) *Telemarketer* means any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor.

(cc) *Telemarketing* means a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call. The term does not include the solicitation of sales through the mailing of a catalog

which contains a written description or illustration of the goods or services offered for sale; includes the business address of the seller; includes multiple pages of written material or illustrations; and has been issued not less frequently than once a year, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the catalog and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term "further solicitation" does not include providing the customer with information about, or attempting to sell, any other item included in the same catalog which prompted the customer's call or in a substantially similar catalog.

(dd) *Upselling* means soliciting the purchase of goods or services following an initial transaction during a single telephone call. The upsell is a separate telemarketing transaction, not a continuation of the initial transaction. An "external upsell" is a solicitation made by or on behalf of a seller different from the seller in the initial transaction, regardless of whether the initial transaction and the subsequent solicitation are made by the same telemarketer. An "internal upsell" is a solicitation made by or on behalf of the same seller as in the initial transaction, regardless of whether the initial transaction and subsequent solicitation are made by the same telemarketer.

**§ 310.3 Deceptive telemarketing acts or practices.**

(a) *Prohibited deceptive telemarketing acts or practices.* It is a deceptive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:

(1) Before a customer pays<sup>1</sup> for goods or services offered, failing to disclose

<sup>1</sup>When a seller or telemarketer uses, or directs a customer to use, a courier to transport payment, the seller or telemarketer must make the disclosures required by § 310.3(a)(1) before sending a courier to pick up payment or authorization for payment, or

*Continued*

**§ 310.3****16 CFR Ch. I (1-1-07 Edition)**

truthfully, in a clear and conspicuous manner, the following material information:

(i) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of the sales offer;<sup>2</sup>

(ii) All material restrictions, limitations, or conditions to purchase, receive, or use the goods or services that are the subject of the sales offer;

(iii) If the seller has a policy of not making refunds, cancellations, exchanges, or repurchases, a statement informing the customer that this is the seller's policy; or, if the seller or telemarketer makes a representation about a refund, cancellation, exchange, or repurchase policy, a statement of all material terms and conditions of such policy;

(iv) In any prize promotion, the odds of being able to receive the prize, and, if the odds are not calculable in advance, the factors used in calculating the odds; that no purchase or payment is required to win a prize or to participate in a prize promotion and that any purchase or payment will not increase the person's chances of winning; and the no-purchase/no-payment method of participating in the prize promotion with either instructions on how to participate or an address or local or toll-free telephone number to which customers may write or call for information on how to participate;

(v) All material costs or conditions to receive or redeem a prize that is the subject of the prize promotion;

(vi) In the sale of any goods or services represented to protect, insure, or otherwise limit a customer's liability in the event of unauthorized use of the customer's credit card, the limits on a cardholder's liability for unauthorized use of a credit card pursuant to 15 U.S.C. 1643; and

(vii) If the offer includes a negative option feature, all material terms and

directing a customer to have a courier pick up payment or authorization for payment.

<sup>2</sup>For offers of consumer credit products subject to the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR 226, compliance with the disclosure requirements under the Truth in Lending Act and Regulation Z shall constitute compliance with § 310.3(a)(1)(i) of this Rule.

conditions of the negative option feature, including, but not limited to, the fact that the customer's account will be charged unless the customer takes an affirmative action to avoid the charge(s), the date(s) the charge(s) will be submitted for payment, and the specific steps the customer must take to avoid the charge(s).

(2) Misrepresenting, directly or by implication, in the sale of goods or services any of the following material information:

(i) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of a sales offer;

(ii) Any material restriction, limitation, or condition to purchase, receive, or use goods or services that are the subject of a sales offer;

(iii) Any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer;

(iv) Any material aspect of the nature or terms of the seller's refund, cancellation, exchange, or repurchase policies;

(v) Any material aspect of a prize promotion including, but not limited to, the odds of being able to receive a prize, the nature or value of a prize, or that a purchase or payment is required to win a prize or to participate in a prize promotion;

(vi) Any material aspect of an investment opportunity including, but not limited to, risk, liquidity, earnings potential, or profitability;

(vii) A seller's or telemarketer's affiliation with, or endorsement or sponsorship by, any person or government entity;

(viii) That any customer needs offered goods or services to provide protections a customer already has pursuant to 15 U.S.C. 1643; or

(ix) Any material aspect of a negative option feature including, but not limited to, the fact that the customer's account will be charged unless the customer takes an affirmative action to avoid the charge(s), the date(s) the charge(s) will be submitted for payment, and the specific steps the customer must take to avoid the charge(s).

**Federal Trade Commission****§310.3**

(3) Causing billing information to be submitted for payment, or collecting or attempting to collect payment for goods or services or a charitable contribution, directly or indirectly, without the customer's or donor's express verifiable authorization, except when the method of payment used is a credit card subject to protections of the Truth in Lending Act and Regulation Z,<sup>3</sup> or a debit card subject to the protections of the Electronic Fund Transfer Act and Regulation E.<sup>4</sup> Such authorization shall be deemed verifiable if any of the following means is employed:

(i) Express written authorization by the customer or donor, which includes the customer's or donor's signature;<sup>5</sup>

(ii) Express oral authorization which is audio-recorded and made available upon request to the customer or donor, and the customer's or donor's bank or other billing entity, and which evidences clearly both the customer's or donor's authorization of payment for the goods or services or charitable contribution that are the subject of the telemarketing transaction and the customer's or donor's receipt of all of the following information:

(A) The number of debits, charges, or payments (if more than one);

(B) The date(s) the debit(s), charge(s), or payment(s) will be submitted for payment;

(C) The amount(s) of the debit(s), charge(s), or payment(s);

(D) The customer's or donor's name;

(E) The customer's or donor's billing information, identified with sufficient specificity such that the customer or donor understands what account will be used to collect payment for the goods or services or charitable contribution that are the subject of the telemarketing transaction;

<sup>3</sup>Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR part 226.

<sup>4</sup>Electronic Fund Transfer Act, 15 U.S.C. 1693 *et seq.*, and Regulation E, 12 CFR part 205.

<sup>5</sup>For purposes of this Rule, the term "signature" shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law.

(F) A telephone number for customer or donor inquiry that is answered during normal business hours; and

(G) The date of the customer's or donor's oral authorization; or

(iii) Written confirmation of the transaction, identified in a clear and conspicuous manner as such on the outside of the envelope, sent to the customer or donor via first class mail prior to the submission for payment of the customer's or donor's billing information, and that includes all of the information contained in §§310.3(a)(3)(ii)(A)-(G) and a clear and conspicuous statement of the procedures by which the customer or donor can obtain a refund from the seller or telemarketer or charitable organization in the event the confirmation is inaccurate; *provided*, however, that this means of authorization shall not be deemed verifiable in instances in which goods or services are offered in a transaction involving a free-to-pay conversion and preacquired account information.

(4) Making a false or misleading statement to induce any person to pay for goods or services or to induce a charitable contribution.

(b) *Assisting and facilitating*. It is a deceptive telemarketing act or practice and a violation of this Rule for a person to provide substantial assistance or support to any seller or telemarketer when that person knows or consciously avoids knowing that the seller or telemarketer is engaged in any act or practice that violates §§310.3(a), (c) or (d), or §310.4 of this Rule.

(c) *Credit card laundering*. Except as expressly permitted by the applicable credit card system, it is a deceptive telemarketing act or practice and a violation of this Rule for:

(1) A merchant to present to or deposit into, or cause another to present to or deposit into, the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant;

(2) Any person to employ, solicit, or otherwise cause a merchant, or an employee, representative, or agent of the merchant, to present to or deposit into

**§310.4****16 CFR Ch. I (1-1-07 Edition)**

the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant; or

(3) Any person to obtain access to the credit card system through the use of a business relationship or an affiliation with a merchant, when such access is not authorized by the merchant agreement or the applicable credit card system.

(d) *Prohibited deceptive acts or practices in the solicitation of charitable contributions.* It is a fraudulent charitable solicitation, a deceptive telemarketing act or practice, and a violation of this Rule for any telemarketer soliciting charitable contributions to misrepresent, directly or by implication, any of the following material information:

(1) The nature, purpose, or mission of any entity on behalf of which a charitable contribution is being requested;

(2) That any charitable contribution is tax deductible in whole or in part;

(3) The purpose for which any charitable contribution will be used;

(4) The percentage or amount of any charitable contribution that will go to a charitable organization or to any particular charitable program;

(5) Any material aspect of a prize promotion including, but not limited to: the odds of being able to receive a prize; the nature or value of a prize; or that a charitable contribution is required to win a prize or to participate in a prize promotion; or

(6) A charitable organization's or telemarketer's affiliation with, or endorsement or sponsorship by, any person or government entity.

**§310.4 Abusive telemarketing acts or practices.**

(a) *Abusive conduct generally.* It is an abusive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:

(1) Threats, intimidation, or the use of profane or obscene language;

(2) Requesting or receiving payment of any fee or consideration for goods or services represented to remove derogatory information from, or improve, a

person's credit history, credit record, or credit rating until:

(i) The time frame in which the seller has represented all of the goods or services will be provided to that person has expired; and

(ii) The seller has provided the person with documentation in the form of a consumer report from a consumer reporting agency demonstrating that the promised results have been achieved, such report having been issued more than six months after the results were achieved. Nothing in this Rule should be construed to affect the requirement in the Fair Credit Reporting Act, 15 U.S.C. 1681, that a consumer report may only be obtained for a specified permissible purpose;

(3) Requesting or receiving payment of any fee or consideration from a person for goods or services represented to recover or otherwise assist in the return of money or any other item of value paid for by, or promised to, that person in a previous telemarketing transaction, until seven (7) business days after such money or other item is delivered to that person. This provision shall not apply to goods or services provided to a person by a licensed attorney;

(4) Requesting or receiving payment of any fee or consideration in advance of obtaining a loan or other extension of credit when the seller or telemarketer has guaranteed or represented a high likelihood of success in obtaining or arranging a loan or other extension of credit for a person;

(5) Disclosing or receiving, for consideration, unencrypted consumer account numbers for use in telemarketing; *provided*, however, that this paragraph shall not apply to the disclosure or receipt of a customer's or donor's billing information to process a payment for goods or services or a charitable contribution pursuant to a transaction;

(6) Causing billing information to be submitted for payment, directly or indirectly, without the express informed consent of the customer or donor. In any telemarketing transaction, the seller or telemarketer must obtain the express informed consent of the customer or donor to be charged for the

**Federal Trade Commission****§310.4**

goods or services or charitable contribution and to be charged using the identified account. In any telemarketing transaction involving preacquired account information, the requirements in paragraphs (a)(6)(i) through (ii) of this section must be met to evidence express informed consent.

(i) In any telemarketing transaction involving preacquired account information and a free-to-pay conversion feature, the seller or telemarketer must:

(A) obtain from the customer, at a minimum, the last four (4) digits of the account number to be charged;

(B) obtain from the customer his or her express agreement to be charged for the goods or services and to be charged using the account number pursuant to paragraph (a)(6)(i)(A) of this section; and,

(C) make and maintain an audio recording of the entire telemarketing transaction.

(ii) In any other telemarketing transaction involving preacquired account information not described in paragraph (a)(6)(i) of this section, the seller or telemarketer must:

(A) at a minimum, identify the account to be charged with sufficient specificity for the customer or donor to understand what account will be charged; and

(B) obtain from the customer or donor his or her express agreement to be charged for the goods or services and to be charged using the account number identified pursuant to paragraph (a)(6)(ii)(A) of this section; or

(7) Failing to transmit or cause to be transmitted the telephone number, and, when made available by the telemarketer's carrier, the name of the telemarketer, to any caller identification service in use by a recipient of a telemarketing call; *provided* that it shall not be a violation to substitute (for the name and phone number used in, or billed for, making the call) the name of the seller or charitable organization on behalf of which a telemarketing call is placed, and the seller's or charitable organization's customer or donor service telephone number, which is answered during regular business hours.

(b) *Pattern of calls.* (1) It is an abusive telemarketing act or practice and a

violation of this Rule for a telemarketer to engage in, or for a seller to cause a telemarketer to engage in, the following conduct:

(i) Causing any telephone to ring, or engaging any person in telephone conversation, repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number;

(ii) Denying or interfering in any way, directly or indirectly, with a person's right to be placed on any registry of names and/or telephone numbers of persons who do not wish to receive outbound telephone calls established to comply with §310.4(b)(1)(iii);

(iii) Initiating any outbound telephone call to a person when:

(A) that person previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the seller whose goods or services are being offered or made on behalf of the charitable organization for which a charitable contribution is being solicited; or

(B) that person's telephone number is on the "do-not-call" registry, maintained by the Commission, of persons who do not wish to receive outbound telephone calls to induce the purchase of goods or services unless the seller

(i) has obtained the express agreement, in writing, of such person to place calls to that person. Such written agreement shall clearly evidence such person's authorization that calls made by or on behalf of a specific party may be placed to that person, and shall include the telephone number to which the calls may be placed and the signature<sup>6</sup> of that person; or

(ii) has an established business relationship with such person, and that person has not stated that he or she does not wish to receive outbound telephone calls under paragraph (b)(1)(iii)(A) of this section; or

(iv) Abandoning any outbound telephone call. An outbound telephone call is "abandoned" under this section if a person answers it and the telemarketer

<sup>6</sup> For purposes of this Rule, the term "signature" shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law.

**§310.4****16 CFR Ch. I (1-1-07 Edition)**

does not connect the call to a sales representative within two (2) seconds of the person's completed greeting.

(2) It is an abusive telemarketing act or practice and a violation of this Rule for any person to sell, rent, lease, purchase, or use any list established to comply with §310.4(b)(1)(iii)(A), or maintained by the Commission pursuant to §310.4(b)(1)(iii)(B), for any purpose except compliance with the provisions of this Rule or otherwise to prevent telephone calls to telephone numbers on such lists.

(3) A seller or telemarketer will not be liable for violating §310.4(b)(1)(ii) and (iii) if it can demonstrate that, as part of the seller's or telemarketer's routine business practice:

(i) It has established and implemented written procedures to comply with §310.4(b)(1)(ii) and (iii);

(ii) It has trained its personnel, and any entity assisting in its compliance, in the procedures established pursuant to §310.4(b)(3)(i);

(iii) The seller, or a telemarketer or another person acting on behalf of the seller or charitable organization, has maintained and recorded a list of telephone numbers the seller or charitable organization may not contact, in compliance with §310.4(b)(1)(iii)(A);

(iv) The seller or a telemarketer uses a process to prevent telemarketing to any telephone number on any list established pursuant to §310.4(b)(3)(iii) or 310.4(b)(1)(iii)(B), employing a version of the "do-not-call" registry obtained from the Commission no more than thirty-one (31) days prior to the date any call is made, and maintains records documenting this process;

(v) The seller or a telemarketer or another person acting on behalf of the seller or charitable organization, monitors and enforces compliance with the procedures established pursuant to §310.4(b)(3)(i); and

(vi) Any subsequent call otherwise violating §310.4(b)(1)(ii) or (iii) is the result of error.

(4) A seller or telemarketer will not be liable for violating §310.4(b)(1)(iv) if:

(i) the seller or telemarketer employs technology that ensures abandonment of no more than three (3) percent of all calls answered by a person, measured per day per calling campaign;

(ii) the seller or telemarketer, for each telemarketing call placed, allows the telephone to ring for at least fifteen (15) seconds or four (4) rings before disconnecting an unanswered call;

(iii) whenever a sales representative is not available to speak with the person answering the call within two (2) seconds after the person's completed greeting, the seller or telemarketer promptly plays a recorded message that states the name and telephone number of the seller on whose behalf the call was placed<sup>7</sup>; and

(iv) the seller or telemarketer, in accordance with §310.5(b)-(d), retains records establishing compliance with §310.4(b)(4)(i)-(iii).

(c) *Calling time restrictions.* Without the prior consent of a person, it is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer to engage in outbound telephone calls to a person's residence at any time other than between 8:00 a.m. and 9:00 p.m. local time at the called person's location.

(d) *Required oral disclosures in the sale of goods or services.* It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer in an outbound telephone call or internal or external upsell to induce the purchase of goods or services to fail to disclose truthfully, promptly, and in a clear and conspicuous manner to the person receiving the call, the following information:

(1) The identity of the seller;

(2) That the purpose of the call is to sell goods or services;

(3) The nature of the goods or services; and

(4) That no purchase or payment is necessary to be able to win a prize or participate in a prize promotion if a prize promotion is offered and that any purchase or payment will not increase the person's chances of winning. This disclosure must be made before or in conjunction with the description of the prize to the person called. If requested by that person, the telemarketer must disclose the no-purchase/no-payment

<sup>7</sup>This provision does not affect any seller's or telemarketer's obligation to comply with relevant state and federal laws, including but not limited to the TCPA, 47 U.S.C. 227, and 47 CFR part 64.1200.

**Federal Trade Commission****§310.6**

entry method for the prize promotion; *provided*, however, that, in any internal upsell for the sale of goods or services, the seller or telemarketer must provide the disclosures listed in this section only to the extent that the information in the upsell differs from the disclosures provided in the initial telemarketing transaction.

(e) *Required oral disclosures in charitable solicitations.* It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer, in an outbound telephone call to induce a charitable contribution, to fail to disclose truthfully, promptly, and in a clear and conspicuous manner to the person receiving the call, the following information:

(1) The identity of the charitable organization on behalf of which the request is being made; and

(2) That the purpose of the call is to solicit a charitable contribution.

[68 FR 4669, Jan. 29, 2003, as amended at 69 FR 16373, Mar. 29, 2004]

**§310.5 Recordkeeping requirements.**

(a) Any seller or telemarketer shall keep, for a period of 24 months from the date the record is produced, the following records relating to its telemarketing activities:

(1) All substantially different advertising, brochures, telemarketing scripts, and promotional materials;

(2) The name and last known address of each prize recipient and the prize awarded for prizes that are represented, directly or by implication, to have a value of \$25.00 or more;

(3) The name and last known address of each customer, the goods or services purchased, the date such goods or services were shipped or provided, and the amount paid by the customer for the goods or services;<sup>8</sup>

(4) The name, any fictitious name used, the last known home address and telephone number, and the job title(s) for all current and former employees

<sup>8</sup>For offers of consumer credit products subject to the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR 226, compliance with the recordkeeping requirements under the Truth in Lending Act, and Regulation Z, shall constitute compliance with §310.5(a)(3) of this Rule.

directly involved in telephone sales or solicitations; *provided*, however, that if the seller or telemarketer permits fictitious names to be used by employees, each fictitious name must be traceable to only one specific employee; and

(5) All verifiable authorizations or records of express informed consent or express agreement required to be provided or received under this Rule.

(b) A seller or telemarketer may keep the records required by §310.5(a) in any form, and in the same manner, format, or place as they keep such records in the ordinary course of business. Failure to keep all records required by §310.5(a) shall be a violation of this Rule.

(c) The seller and the telemarketer calling on behalf of the seller may, by written agreement, allocate responsibility between themselves for the recordkeeping required by this Section. When a seller and telemarketer have entered into such an agreement, the terms of that agreement shall govern, and the seller or telemarketer, as the case may be, need not keep records that duplicate those of the other. If the agreement is unclear as to who must maintain any required record(s), or if no such agreement exists, the seller shall be responsible for complying with §§310.5(a)(1)-(3) and (5); the telemarketer shall be responsible for complying with §310.5(a)(4).

(d) In the event of any dissolution or termination of the seller's or telemarketer's business, the principal of that seller or telemarketer shall maintain all records as required under this Section. In the event of any sale, assignment, or other change in ownership of the seller's or telemarketer's business, the successor business shall maintain all records required under this Section.

**§310.6 Exemptions.**

(a) Solicitations to induce charitable contributions via outbound telephone calls are not covered by §310.4(b)(1)(iii)(B) of this Rule.

(b) The following acts or practices are exempt from this Rule:

(1) The sale of pay-per-call services subject to the Commission's Rule entitled "Trade Regulation Rule Pursuant

**§310.7**

to the Telephone Disclosure and Dispute Resolution Act of 1992," 16 CFR Part 308, *provided*, however, that this exemption does not apply to the requirements of §§310.4(a)(1), (a)(7), (b), and (c);

(2) The sale of franchises subject to the Commission's Rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures," ("Franchise Rule") 16 CFR Part 436, *provided*, however, that this exemption does not apply to the requirements of §§310.4(a)(1), (a)(7), (b), and (c);

(3) Telephone calls in which the sale of goods or services or charitable solicitation is not completed, and payment or authorization of payment is not required, until after a face-to-face sales or donation presentation by the seller or charitable organization, *provided*, however, that this exemption does not apply to the requirements of §§310.4(a)(1), (a)(7), (b), and (c);

(4) Telephone calls initiated by a customer or donor that are not the result of any solicitation by a seller, charitable organization, or telemarketer, *provided*, however, that this exemption does not apply to any instances of upselling included in such telephone calls;

(5) Telephone calls initiated by a customer or donor in response to an advertisement through any medium, other than direct mail solicitation, *provided*, however, that this exemption does not apply to calls initiated by a customer or donor in response to an advertisement relating to investment opportunities, business opportunities other than business arrangements covered by the Franchise Rule, or advertisements involving goods or services described in §§310.3(a)(1)(vi) or 310.4(a)(2)-(4); or to any instances of upselling included in such telephone calls;

(6) Telephone calls initiated by a customer or donor in response to a direct mail solicitation, including solicitations via the U.S. Postal Service, facsimile transmission, electronic mail, and other similar methods of delivery in which a solicitation is directed to specific address(es) or person(s), that clearly, conspicuously, and truthfully discloses all material information listed in §310.3(a)(1) of this Rule, for any

**16 CFR Ch. I (1-1-07 Edition)**

goods or services offered in the direct mail solicitation, and that contains no material misrepresentation regarding any item contained in §310.3(d) of this Rule for any requested charitable contribution; *provided*, however, that this exemption does not apply to calls initiated by a customer in response to a direct mail solicitation relating to prize promotions, investment opportunities, business opportunities other than business arrangements covered by the Franchise Rule, or goods or services described in §§310.3(a)(1)(vi) or 310.4(a)(2)-(4); or to any instances of upselling included in such telephone calls; and

(7) Telephone calls between a telemarketer and any business, except calls to induce the retail sale of non-durable office or cleaning supplies; *provided*, however, that §310.4(b)(1)(iii)(B) and §310.5 of this Rule shall not apply to sellers or telemarketers of non-durable office or cleaning supplies.

**§310.7 Actions by states and private persons.**

(a) Any attorney general or other officer of a state authorized by the state to bring an action under the Telemarketing and Consumer Fraud and Abuse Prevention Act, and any private person who brings an action under that Act, shall serve written notice of its action on the Commission, if feasible, prior to its initiating an action under this Rule. The notice shall be sent to the Office of the Director, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, and shall include a copy of the state's or private person's complaint and any other pleadings to be filed with the court. If prior notice is not feasible, the state or private person shall serve the Commission with the required notice immediately upon instituting its action.

(b) Nothing contained in this Section shall prohibit any attorney general or other authorized state official from proceeding in state court on the basis of an alleged violation of any civil or criminal statute of such state.

**§310.8 Fee for access to the National Do Not Call Registry.**

(a) It is a violation of this Rule for any seller to initiate, or cause any

**Federal Trade Commission****§ 310.8**

telemarketer to initiate, an outbound telephone call to any person whose telephone number is within a given area code unless such seller, either directly or through another person, first has paid the annual fee, required by § 310.8(c), for access to telephone numbers within that area code that are included in the National Do Not Call Registry maintained by the Commission under § 310.4(b)(1)(iii)(B); *provided*, however, that such payment is not necessary if the seller initiates, or causes a telemarketer to initiate, calls solely to persons pursuant to §§ 310.4(b)(1)(iii)(B)(i) or (ii), and the seller does not access the National Do Not Call Registry for any other purpose.

(b) It is a violation of this Rule for any telemarketer, on behalf of any seller, to initiate an outbound telephone call to any person whose telephone number is within a given area code unless that seller, either directly or through another person, first has paid the annual fee, required by § 310.8(c), for access to the telephone numbers within that area code that are included in the National Do Not Call Registry; *provided*, however, that such payment is not necessary if the seller initiates, or causes a telemarketer to initiate, calls solely to persons pursuant to §§ 310.4(b)(1)(iii)(B)(i) or (ii), and the seller does not access the National Do Not Call Registry for any other purpose.

(c) The annual fee, which must be paid by any person prior to obtaining access to the National Do Not Call Registry, is \$62 per area code of data accessed, up to a maximum of \$17,050; *provided*, however, that there shall be no charge for the first five area codes of data accessed by any person, and *provided further*, that there shall be no charge to any person engaging in or causing others to engage in outbound telephone calls to consumers and who is accessing the National Do Not Call Registry without being required under this Rule, 47 CFR 64.1200, or any other Federal law. Any person accessing the National Do Not Call Registry may not participate in any arrangement to share the cost of accessing the registry, including any arrangement with any telemarketer or service provider to

divide the costs to access the registry among various clients of that telemarketer or service provider.

(d) After a person, either directly or through another person, pays the fees set forth in § 310.8(c), the person will be provided a unique account number which will allow that person to access the registry data for the selected area codes at any time for twelve months following the first day of the month in which the person paid the fee ("the annual period"). To obtain access to additional area codes of data during the first six months of the annual period, the person must first pay \$62 for each additional area code of data not initially selected. To obtain access to additional area codes of data during the second six months of the annual period, the person must first pay \$31 for each additional area code of data not initially selected. The payment of the additional fee will permit the person to access the additional area codes of data for the remainder of the annual period.

(e) Access to the National Do Not Call Registry is limited to telemarketers, sellers, others engaged in or causing others to engage in telephone calls to consumers, service providers acting on behalf of such persons, and any government agency that has law enforcement authority. Prior to accessing the National Do Not Call Registry, a person must provide the identifying information required by the operator of the registry to collect the fee, and must certify, under penalty of law, that the person is accessing the registry solely to comply with the provisions of this Rule or to otherwise prevent telephone calls to telephone numbers on the registry. If the person is accessing the registry on behalf of sellers, that person also must identify each of the sellers on whose behalf it is accessing the registry, must provide each seller's unique account number for access to the national registry, and must certify, under penalty of law, that the sellers will be using the information gathered from the registry solely to comply with the provisions of

**§ 310.9**

**16 CFR Ch. I (1-1-07 Edition)**

this Rule or otherwise to prevent telephone calls to telephone numbers on the registry.

[68 FR 45144, July 31, 2003, as amended at 69 FR 45585, July 30, 2004; 70 FR 43280, July 27, 2005; 71 FR 43054, July 31, 2006]

**§ 310.9 Severability.**

The provisions of this Rule are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.