

March 27, 2002

Office of the Secretary
Federal Trade Commission
Room 159
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

Re: Telemarketing Rulemaking – Comment. FTC File No. R411001

Dear Mr. Clark:

The American Society of Travel Agents, Inc. (“ASTA”) welcomes this opportunity to respond to the Federal Trade Commission’s request for comments with respect to the Notice of Proposed Rulemaking to amend the Telemarketing Sales Rule, 16 CFR Part 310.

ASTA is the world's largest trade association of professional travel agents, with over 24,000 members in more than 140 countries. ASTA's purpose is the promotion and advancement of the interests of the travel agency industry and the safeguarding of the traveling public against fraud, misrepresentation and other unethical practices.

ASTA has provided testimony to numerous legislative committees and fact finding bodies and has appeared in various legal proceedings; it is widely recognized as responsibly representing the interests of its members and the travel agency industry.¹ It also has a long and proud history of cooperating with the FTC and other governmental agencies in furtherance of the public interest, particularly in connection with the protection of consumers.²

ASTA strongly supports the actions of the FTC to date under the Telemarketing Sales Rule as well as proposals to strengthen it on the occasion of its periodic review and amendment to conform it to the requirements of the USA PATRIOT Act. The predominant sense among

¹ See, e.g., *Investigation into the Competitive Marketing of Air Transportation*, C.A.B. Docket 36595, *aff'd*, *Republic Airlines, Inc. v. C.A.B.*, 756 F.2d 1304 (8th Cir. 1985); *In re Domestic Air Transportation Antitrust Litigation*, 148 F.R.D. 297, 61 USLW 2610, 1993-1 Trade Cas.(CCH) &70,165 (N.D.Ga., 1993); *U.S. v. Airline Tariff Publishing Co.*, 1993-1 Trade Cas. (CCH) &70,191 (D.D.C., 1993); *Spiro v. Delmar Travel Bureau, Inc.*, 591 N.Y.S.2d 237 (A.D. 3 Dept. 1992); *Crowder v. Kitagawa*, 81 F.3d 1480 (9th Cir. 1996); and *In re Airline Ticket Commission Antitrust Litigation*, 268 F.3d 619, 2001-2 Trade Cases P 73,446 (8th Cir. 2001).

² See for example FTC publication, “Renting a Car,” Revision to Car Rental Guide. ASTA is also pleased to have participated with the FTC in developing and distributing the consumer educational materials issued in connection with the FTC’s 1997 enforcement action, “Operation Trip-Up.” See also Comments of the American Society of Travel Agents, Inc. In the Matter of: Gramm-Leach-Bliley Act Privacy Rule, 16 CFR Part 313–Comment, March 31, 2000.

ASTA members is that, perhaps second only to consumers, this industry has been especially subject to victimization at the hands of those who rely upon abusive telemarketing practices.

ASTA does, nevertheless, wish to take issue with respect to one aspect of the proposal before the Commission, and to express concern with respect to another.

ASTA strongly urges the Commission to consider providing a limited prior business or personal relationship exception to the disclosure requirements of §310.4(d)(2) and (3). We simply do not believe that situations in which there is a prior business or personal relationship between the parties, are, in practice, subject to the same sort of abuses that the Rule seeks to address by way of these particular requirements. ASTA is concerned that failure to provide for such an exception, coupled with an inflexible approach to the “promptly” requirement, will have an unnecessarily stultifying effect upon existing relationships with customers without any concomitant gain in avoidance of abusive practices.

Where a previous business relationship between caller and customer exists, and the customer has declined to avail himself of the Do-Not-Call option, ASTA believes it appropriate for the caller to have some latitude in making an appealing presentation.

Moreover, ASTA believes that failing to provide for such an exception is at least somewhat inconsistent with the rationale for declining to ban the sale of lists of known victims of telemarketing scams, whereas ASTA supports such a ban. The Commission there has asserted that it is highly unlikely that any telemarketer attempting to defraud those on a list of previous scam victims could do so without violating one or more other provisions of the Rule. ASTA similarly believes that it would be highly unlikely for anyone to attempt to defraud a customer with whom there was a previous business relationship without violating §310.3(a), regardless of the point in the conversation at which disclosures are made.

Finally, ASTA would like to share with the Commission its concerns regarding adoption of the proposal for the National Do-Not-Call Registry. We believe that any such requirement must be preceded by a very clear understanding of the mechanics of how, and upon what terms, such a registry would be accessed, particularly by small businesses.

As always, ASTA appreciates the opportunity to have its views considered by the FTC. Any comments or requests for further information may be addressed to the undersigned.

Respectfully submitted,

AMERICAN SOCIETY OF TRAVEL AGENTS, INC.

By _____
Burton J. Rubin
General Counsel

