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Federal Trade Commission  
600 Pennsylvania Avenue NW  
Washington, DC 20580

RE: Telemarketing Rulemaking Comment. FTC File No.  
R411001

Dear Sir or Madam:

1. Support for FTC "Do Not Call" Registry

I support the implementation of a national "Do Not Call" ("DNC") registry. The creation of a centralized DNC registry will provide a much needed level of relief for consumers currently besieged by telemarketing calls. The implementation of DNC registries by several states, and their enthusiastic reception by consumers, is evidence that such programs are necessary. The national scope of a DNC registry administered by the FTC is appropriate to address problems created by an industry that, without any dispute, functions in an interstate manner; using the long distance network to reach consumers in every area of the United States.

2. Support for classification of predictive dialers as an "abusive marketing practice."

The FTC's proposed rule and the comments thereto sufficiently state the case for a stricter regulatory approach to counter the widespread proliferation of predictive dialing technology in the telemarketing industry. The telemarketing industry's claimed inability to display Caller ID information on a T1 or trunk line should not enable it to successfully argue against a requirement that Caller ID information--sufficient to allow a residential customer to direct a DNC list request to the appropriate party--be displayed with each outgoing telemarketing call. While consumers can choose whether or not to block their outgoing Caller ID information, a business making telemarketing calls should have no such privacy interest. The very nature of a telemarketing business is supposedly presenting a purchase opportunity at the telephonic threshold of a telephone customer. What business so engaged would want to suppress identifying information?

In the alternative, predictive dialers should only allowed if predictive dialer use conforms with one or more of the following parameters:

- a) abandonment rate not higher than 2 percent
- b) two abandoned calls to a number in a month requires manual dialing;

c) abandoned calls should play a voice message providing a contact phone number (providing Do Not Call list contact at the beginning and end of the message);

d) when predictive dialers are used, the call MUST display a number to which a consumer can direct a DNC list request.

Widespread use of predictive dialers has spawned a growth industry in devices advertised to block telemarketing calls made by a predictive dialer. One such device, the "Telezapper," is marketed with the promised ability to reduce telemarketing calls by playing a portion of the first of the series of Special Information Tones ("SIT") to indicate an "out of service" or "disconnected" number.<sup>1</sup> To obtain results similar to those of a Telezapper, a consumer could obtain, from various websites, a .wav file of the Service Information Tones, and record them into their answering machine or voicemail greeting. The availability of such a device is very helpful to consumers, but its benefits may be short-lived. However, it is entirely possible that telemarketers using predictive dialers will adopt technology or dialing practices designed to thwart the benefits of devices such as the Telezapper (e.g., changing predictive dialer algorithms so as to not exclude numbers from the dialer's database for which the dialer records a "disconnected" Service Interruption Tone.) With just a few tweaks, a predictive dialer operator could negate the benefits consumers obtained by purchasing a \$40 product.

CallerID technology has provided consumers with a much-needed tool to fend off unwanted telephone calls. Private callers wishing to block their identity are allowed to do so, and, for an additional fee (as is the case with my local telephone company), telephone subscribers are able to purchase a feature that will block calls that have "unavailable," "anonymous," or "out of area" as their identifying information. However, all of the benefits proposed by a national do-not-call registry could be largely unobtainable if irresponsible telemarketers continue to use predictive dialers in tandem with CallerID blocking. Without CallerID information, consumers would not have the necessary information to register a complaint about violations of a do-not-call registry.

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<sup>1</sup> I quote the following from the Telezapper website (<http://www.telezapper.com/default.asp>):

How It Works

Ninety percent of all telemarketing calls are dialed by a computer at random. When you answer your phone, the computer connects you to a live telemarketer. Now you can protect your privacy and eliminate disruptive computer-dialed telemarketing calls with the TeleZapper™.

When you or your answering machine picks up a call, TeleZapper™ emits a special tone that tells the computer your number is disconnected. Within seconds, your phone number is deleted from the computer's list. As your number is eliminated from more and more lists, those annoying computer-dialed calls virtually stop altogether.

See U.S. Patent No. 5,920,623 "Method and apparatus for defeating a predictive telemarketing system" Inventors: Bensman, R. et al. It should not escape the FTC's notice that patent 5,920,623 is assigned to Ver-A-Fast, an Ohio business that provides "verification" of telephone directories, "refresh[ment]" of Do-Not-Call lists, "friendly" collection calls and other services that seemingly place it in the field of telemarketing. The Ver-A-Fast website <http://www.verafast.com> contains more information on their services. Ver-A-Fast appears to be shrewd in its ability to make money as it sells products and services that would appear to be at odds with one another.

In summary, the FTC should begin to consider how much of the burden of avoiding unwanted telemarketing calls should fall upon the consumer. From my personal perspective, the primary reason for paying the extra monthly fee for CallerID is to be able to screen out calls that I do not want, such as telemarketing calls, and such calls are without exception, identified as: "unknown," "out of area," or "anonymous." If I choose to speak with a telemarketer in order to request that I be placed on a Do Not Call list, then I will answer an "unknown" call. Predictive dialers do not allow me to communicate my wishes to the telemarketer, but depending on how the dialer is configured, might result in several additional calls from that telemarketer, some resulting in "dead air" or hangups. The purchase of devices such as the Telezapper, and services such as CallerID and anonymous call blocking should represent the full extent of expenditures that consumers are reasonably expected to make in order to avoid telemarketing calls and have sufficient information to request inclusion on Do Not Call lists or report telemarketing abuses. It is time for some of the financial burden and adoption of technological methods<sup>2</sup> to be shifted to the telemarketing industry.

Sincerely,

Scott McClure

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<sup>2</sup> Technological advances can, indeed, provide some solutions to the current woes that ail American consumers. A check of the United States Patent and Trademark ("USPTO") office website on April 12, 2002 revealed the following patents:

U.S. Patent No. 6,330,317 Call Blocking System (describing a "call blocking system" which, when installed on the central switching location, reviews calls outgoing calls by a telemarketer and compares them to DNC-lists and blocks calls, in real-time, to telephone numbers on the list.) This patent describes a device that could be used in conjunction with data stored in a national Do Not Call registry.

U.S. Patent No. 6,130,937 System and Process for Automatic Storage, Enforcement and Override of Consumer Do-Not-Call Lists (describing a system for integrating lists of numbers from do-not-call lists into a telephone dialing system.)

A search of "telemarketing" on the USPTO's website generated a list of 343 patents with "telemarketing" in at least one field.