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March 28, 2002

**VIA FEDEX**

Federal Trade Commission  
Office of the Secretary, Room 159  
600 Pennsylvania Ave., N.W.  
Washington, D.C. 20580.



Re: Telemarketing Rulemaking – FTC File No. R41101

Dear Sir or Madam:

The Utility, Cable & Telecommunications Committee of the City Council of New Orleans respectfully submits its Comments in the above-referenced matter. Per the *Notice's* instructions, I have enclosed six (6) additional copies and a computer diskette containing our Comments.

Also, I have enclosed one additional copy of our Comments that I kindly request you file/date stamp and return to my office in the self-addressed envelope that I have provided for you.

If you require any additional information, you may reach us at (504) 832-7204.

With kindest personal regards, I am

Very truly yours,

  
MARK C. CARVER

MCC/mc  
Enclosures

**BEFORE THE  
FEDERAL TRADE COMMISSION  
WASHINGTON D.C.**

In the matter of	)	
	)	
16 C.F.R. Part 310	)	FTC File No. R4 11001
Telemarketing Sales Rules: Notice of	)	
Proposed Rulemaking to Amend the	)	
Rule; Request for Public Comment on	)	
the Proposed Changes; and Invitation to	)	
Participate in Public Forum	)	

**COMMENTS ON BEHALF OF THE  
UTILITY, CABLE & TELECOMMUNICATIONS COMMITTEE  
OF THE CITY COUNCIL OF NEW ORLEANS**

These comments are filed on behalf of the Utility, Cable & Telecommunications Committee of the City Council of New Orleans (“CNO”).

**I. Introduction.**

The New Orleans City Council is the legislative branch of local government which enacts laws to protect the public health, safety and welfare of the citizens of New Orleans. The Utility, Cable & Telecommunications Committee of the City Council of New Orleans oversees the Council’s regulatory authority over utility, cable and telecommunication matters and makes recommendations to the full Council concerning rates and services. This Committee also reviews and sets policy concerning the granting and oversight of cable and telecommunications franchises in New Orleans; and oversees

the Council's involvement in Access Television, including Government Access and Community Access through the New Orleans Media Center.

In light of new technological advances, deregulation and other matters affecting telecommunications and subscribers to telecommunication services, CNO has begun to take an active role in telecommunication proceedings before the Federal Communications Commission and the Louisiana Public Service Commission. CNO has just recently learned of the Federal Trade Commission's proposed changes to the Telemarketing Sales Rules ("TSR")<sup>1</sup>, including the proposed "Do Not Call" registry

CNO believes that there is a legitimate public interest in protecting the privacy of subscribers who wish to avoid unsolicited and unwanted telephone solicitations. In fact, CNO played a significant role in the creation of the rules for Louisiana's Do Not Call Program.<sup>2</sup>

In this regard, CNO respectfully submits the following comments to the proposed changes to FTC's Telemarketing Sales Rules, particularly the "Do Not Call" registry.

## **II. Background.**

On January 22, 2002, the Federal Trade Commission announced proposed changes to the Telemarketing Sales Rules ("TSR")<sup>3</sup>, including the creation of a centralized national "Do Not Call" registry. According to the *Notice*, the Do Not Call

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<sup>1</sup> 16 C.F.R. part 310 *et seq.*

<sup>2</sup> La. R.S. 45:844.11 *et seq.*; Louisiana Public Service Commission General Order dated November 7, 2001.

registry would enable consumers to eliminate most telemarketing calls simply by making one call to the FTC. Additionally, the proposed amendments to the TSR are designed to enhance the Rule's ability to prevent deceptive telemarketing practices and to enable consumers to exert greater control over when and whether to receive telemarketing calls in their homes.

The Commission is also proposing changes to the TSR mandated by the recently enacted **USA PATRIOT Act**.<sup>4</sup> This legislation, among other things, directs the Commission to establish rules for calls that solicit charitable contributions. Currently the TSR covers only calls made to sell goods and services. *Also*, non-profit charitable organizations are exempt from the FTC's jurisdiction. However, the USA PATRIOT Act does enable the FTC to regulate for-profit companies that engage in fraudulent, deceptive, or abusive practices when they solicit charitable contributions on behalf of charities or purported charities.

In sum, the TSR presently achieves the following:

- prohibits specific deceptive and abusive telemarketing acts or practices;
- requires telemarketers to make specific disclosures of material information;
- prohibits misrepresentations;
- limits the hours that telemarketers may call consumers (**8 a.m. – 9 p.m.**);
- prohibits calls to a consumer who has asked not to be called again;

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<sup>3</sup> 16 C.F.R. part 310 *et seq.*

- sets payment restrictions for the sale of certain goods and services; and
- authorizes both the FTC and state attorneys general to enforce the TSR in federal court.

### **III. Proposed Amendments.**

The highlights of the FTC's proposed amendments to the TSR are provided below. Through the proposed rulemaking, the Commission is seeking to:

- Supplement the current telemarketer company-specific "Do Not Call" provision with an additional provision that will enable a consumer to stop calls from all companies within the FTC's jurisdiction by registering with a central "do-not-call" list maintained by the FTC;
- Permit a consumer who registers with the central "Do Not Call" list to receive telemarketing sales calls from an individual company or charitable organization to which the consumer has provided his or her express verifiable authorization to make telemarketing calls to the consumer;
- Modify 16 C.F.R. § 310.3(a)(3) to require express verifiable authorization for all transactions in which the payment method lacks dispute resolution protection or protection against unauthorized charges similar or comparable to those available under the Fair Credit Billing Act and the Truth in Lending Act;
- Delete 16 C.F.R. § 310.3(a)(3)(iii), the provision allowing a telemarketer to obtain express verifiable authorization by confirming the transaction in writing prior to submitting the customer's billing information for payment;
- Require, in the sale of credit card protection, the disclosure of the legal limits on a cardholder's liability for unauthorized charges;

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<sup>4</sup> *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001*, Pub. L. 107-56 (Oct. 25, 2001).

- Prohibit misrepresenting that a consumer needs offered goods or services in order to receive protections he or she already has under 15 U.S.C. § 1643 (limiting a cardholder's liability for unauthorized charges on a credit card account);
- Mandate, explicitly, that all required disclosures in 16 C.F.R. § 310.3(a)(1) and 16 C.F.R. § 310.4(d) be made truthfully;
- Expand upon the current prize promotion disclosures to include a statement that any purchase or payment will not increase a consumer's chances of winning;
- Prohibit the practices of receiving any consumer's billing information from any third party for use in telemarketing, or disclosing any consumer's billing information to any third party for use in telemarketing;
- Prohibit additional practices: blocking or otherwise subverting the transmission of the name and/or telephone number of the calling party for caller identification service purposes; and denying or interfering in any way with a consumer's right to be placed on a "Do Not Call" list;
- Clarify that the use of predictive dialers resulting in "dead air" violates the Rule;
- Narrow certain of the Rule's exemptions;
- Clarify that facsimile transmissions, electronic mail, and other similar methods of delivery are direct mail for purposes of the direct mail exemption; and
- Make all changes necessary to implement the **USA PATRIOT Act** amendments to the Telemarketing Act, specifically, expanding the TSR to cover the solicitation of charitable contributions by for-profit telemarketers.

**IV. Summary of CNO's Position.**

CNO generally supports the changes to the TSR, except as further discussed herein. The proposed amendments appear to strike a reasonable balance between protecting consumers without unduly restricting legitimate telemarketing practices.

Since CNO has just learned of this rulemaking proceeding, and due to the time restraints of the March 29, 2002 deadline in which to file comments, CNO will unfortunately limit its commentary to discuss only the proposed national "Do Not Call" registry.

**V. Direct Mail Exemption.**

The FTC seeks to clarify that facsimile transmissions, electronic mail, and other similar methods of delivery are direct mail for purposes of the direct mail exemption. CNO objects to unwanted solicitations by facsimile and electronic mail. CNO is concerned that expanding the direct mail exemption will increase the number of unwanted solicitations by facsimile and electronic mail that consumers are already experiencing. Furthermore, CNO is concerned that the exemption could create "loop holes" or other means for telemarketers to evade compliance with the Do Not Call registry.

**VI. CNO's Argument for a National "Do Not Call" Registry.**

CNO recognizes that becoming a telephone subscriber should not undermine or lessen a person's right of privacy and further finds that there is a compelling public interest to protect the privacy of such subscribers who wish to avoid unsolicited and

unwanted telephone solicitations. CNO respectfully requests that the FTC consider the Comments herein and that the FTC establish rules and regulations ensuring that telephone subscribers receive the optimum benefits of the Do Not Call registry.

Telephone subscribers have a fundamental right of privacy. That right of privacy, however, has been significantly eroded by the rapid evolution of information technology, which enables unwanted telephone solicitations targeted to people in their homes. The use of telephones for commercial solicitation is rapidly increasing. This form of communication offers unique benefits, but also entails special risks and the potential for abuse. Many consumers and businesses have lost money or suffered harm primarily as a result of telemarketing abuse. Such unwanted telephone solicitations can be an intrusive and disruptive nuisance, resulting in an invasion of the sanctity of the home, interrupting and disturbing the time individuals spend with their families and friends, and disrupting the lives of persons who work non-standard hours and who care for small children, infants and the sick. For the general welfare of the public and in order to protect the integrity of the telemarketing industry, such a Do Not Call registry is necessary.

In Louisiana, consumers are apparently frustrated over unwanted telephone solicitations. Since the inception of Louisiana's Do Not Call Program on January 1, 2002, over 217,000 Louisiana subscribers have already registered. Obviously, Louisiana consumers have expressed a strong desire to avoid unsolicited and unwanted telephone solicitations.

## **VII. The Proposed National “Do Not Call” Registry**

Under the FTC’s proposed change to the TSR<sup>5</sup>, consumers could contact one centralized registry to effectuate their desire not to receive telemarketing calls. The FTC would maintain this registry. By using the registry, consumers could eliminate all telemarketing calls from all sellers and telemarketers covered by the TSR. However, after being placed on the registry, a consumer could still choose to receive calls from specific sellers or telemarketers, if the consumer provides such seller or telemarketer with an express verifiable authorization.

## **VIII. The Objectives of an Effective “Do Not Call” Registry.**

The rules that the FTC adopt must fully facilitate the subscribers’ ability to protect their right of privacy and avoid unsolicited and unwanted telephone solicitations.

The rules should achieve the following objectives:

- (1) Being placed on the Do Not Call registry should be effortless and uncomplicated;
- (2) Remaining on the Do Not Call registry should be continual and perpetual; and
- (3) Avoiding telephone solicitations should be realized and achieved;

Once these objectives are recognized, the rules can then be formulated to obtain those objectives. CNO proposes several recommendations to accomplish these goals.

These recommendations are discussed in further detail herein, to-wit:

- The subscriber should pay no charge or fee to be placed on the Do Not Call registry.

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<sup>5</sup> Proposed 16 C.F.R. § 310.4(b)(1)(iii).

- The subscriber's telephone number should remain on the Do Not Call registry until his phone is disconnected or until he requests his number to be removed from the registry.
- The subscriber should be able to place his telephone number on the Do Not Call registry by using an Internet Online application, a toll-free telephone number, U.S. Mail or facsimile.
- There should be very limited exemptions to the TSR.
- Telemarketers should be required to obtain updated Do Not Call lists every month.
- Telemarketers should have access to the Do Not Call registry either by the Internet, printed copies or CD-roms.

**IX. The Subscriber Should Pay No Charge Or Fee To Be Placed On The Do Not Call Registry.**

Upon CNO's review of the proposed changes to the TSR, it is CNO's understanding that there will be no charge or fee to be placed on the Do Not Call registry. Since the rules of the Do Not Call registry should be most advantageous to the subscriber, a telephonic subscriber should not be required to pay a fee or charged to be placed on the Do Not Call registry.

Unfortunately, several States, having a Do Not Call Program, require a charge or fee from the subscriber, and CNO objects to such fees.

Arkansas: An initial fee of \$10.00 and \$5.00 renewal fee.<sup>6</sup>

Florida: An initial fee of \$10.00 and \$5.00 renewal fee.<sup>7</sup>

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<sup>6</sup> Act 1465 of 1999 Regular Session; [www.donotcall.org](http://www.donotcall.org)

<sup>7</sup> [doacs.state.fl.us/~cs/tmkfaq3.html](http://doacs.state.fl.us/~cs/tmkfaq3.html)

- Georgia: A \$5.00 registration fee.<sup>8</sup>
- Idaho: An initial fee of \$10.00 and \$5.00 renewal fee.<sup>9</sup>
- Oregon: An initial fee of \$6.50 and \$3.00 renewal fee.<sup>10</sup>

However, many other States, having a Do Not Call registry, do not require such a fee or charge, to-wit:

- Alabama: There is no charge for residential customers to be included on its Do Not Call Register.<sup>11</sup>
- Colorado: There is no cost for a residential subscriber to provide notification that such subscriber objects to receiving telephone solicitations.<sup>12</sup>
- Connecticut: There is no charge for residential customers to be placed on the Do Not Call List.<sup>13</sup>
- Indiana: The Do Not Call program is provided free of charge to Indiana residents.<sup>14</sup>

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<sup>8</sup> [www.ganocall.com](http://www.ganocall.com)

<sup>9</sup> [www2.state.id.us/ag/consumer/DNC/consumer\\_information\\_page.htm](http://www2.state.id.us/ag/consumer/DNC/consumer_information_page.htm)

<sup>10</sup> [www.ornocall.com](http://www.ornocall.com).

<sup>11</sup> [www.psc.state.al.us/nocall](http://www.psc.state.al.us/nocall)

<sup>12</sup> Colorado Revised Statute 6-1-905(3)(b)(I); [www.coloradonocall.org](http://www.coloradonocall.org)

<sup>13</sup> Connecticut Public Act 00-118; [www.state.ct.us/dcp/nocall.htm](http://www.state.ct.us/dcp/nocall.htm)

<sup>14</sup> [www.state.in.us/attorneygeneral/telephoneprivacy/Index.htm](http://www.state.in.us/attorneygeneral/telephoneprivacy/Index.htm)

- Kentucky: The Consumer Protection Division of the Office of the Attorney General shall charge a fee calculated to defray costs of the no telephone solicitation calls program to the telemarketing companies.<sup>15</sup>
- Louisiana: The Do Not Call Program is free to all residential phone subscribers.<sup>16</sup>
- Missouri: There shall be no cost to the subscriber for joining the database.<sup>17</sup>
- New York: Inclusion on the Do Not Call registry is free to New York consumers.<sup>18</sup>
- Tennessee: The Do Not Call Program is free to all residential telephone customers.<sup>19</sup>

The FTC should not collect any fee or charge from residential subscribers. The costs of administering the Do Not Call registry should be borne by the telephone solicitors. Residential subscribers should not be required to pay for their own privacy. If businesses want to use the telephone as a means to solicit customers, then they should bear the costs of respecting a residential telephone subscriber's right of privacy. Thus, telephone solicitors should subsidize the cost of the Do Not Call registry.

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<sup>15</sup> Kentucky Revised Statute 367.46955; [www.law.state.kv.us/cp/nocall.htm](http://www.law.state.kv.us/cp/nocall.htm)

<sup>16</sup> Louisiana Public Service Commission General Order dated November 7, 2001

<sup>17</sup> Missouri Revised Statute 407.1101.1(2)(1); [www.ago.state.us.mo.nocallrule.htm](http://www.ago.state.us.mo.nocallrule.htm)

<sup>18</sup> [www.nynocall.com](http://www.nynocall.com)

<sup>19</sup> T.C.A. Section 65-4-401 et seq; [www2.state.tn.us/tra/nocall.htm](http://www2.state.tn.us/tra/nocall.htm)

**X. The Subscriber's Telephone Number Should Remain On The Do Not Call Registry Until His Phone Is Disconnected Or Until He Requests That His Number Be Removed From The Registry.**

Again, being placed on the Do Not Call registry, and remaining on the registry, should be effortless and uncomplicated. Once more, analysis of other states' legislation shows that this objective can be accomplished, for example:

Colorado: The phone number will remain on the Do Not Call List until the phone is disconnected or until the subscriber requests the number be removed from the list.<sup>20</sup>

Connecticut: A subscriber only needs to register once. If the subscriber changes his address or phone number, then the subscriber must re-register.<sup>21</sup>

Indiana: Once a subscriber is registered on the Do Not Call List, the phone number will be included on **all** future lists unless the subscriber requests to have it removed.<sup>22</sup>

Kentucky: The phone number stays on the Do Not Call list until the subscriber requests that it be removed.<sup>23</sup>

Missouri: A notice of objection to receiving telephone solicitations shall remain in effect for two years, but the notice of objection shall be automatically renewed.<sup>24</sup>

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<sup>20</sup> [www.coloradonocall.org](http://www.coloradonocall.org)

<sup>21</sup> Connecticut Public Act 00-118; [www.state.ct.us/dcp/nocall.htm](http://www.state.ct.us/dcp/nocall.htm)

<sup>22</sup> [www.state.in.us/attorneygeneral/telephoneprivacy/Index.htm](http://www.state.in.us/attorneygeneral/telephoneprivacy/Index.htm)

<sup>23</sup> Kentucky Revised Statute 367.46955

<sup>24</sup> 15 Missouri Code of State Regulations 60-13.030

Naturally, requiring a person to register his telephone number only once would facilitate the subscriber's ability to avoid unsolicited and unwanted telephone solicitations. If the above states can afford their citizens the protection of a permanent Do Not Call registry, then the FTC should be able to do the same.

**XI. The Subscriber Should Be Able To Place His Telephone Number on The Do Not Call Registry By Using An Internet Online Application, A Toll-Free Telephone Number, U.S. Mail or Facsimile.**

Since registering phone numbers to the Do Not Call registry should be effortless and uncomplicated, subscribers should have available to them as many options as possible to take advantage of the Do Not Call registry.

Methods of registration should include the following: an Internet online application, a toll-free telephone number, U.S. mail and facsimile. The opportunities to participate in this program should be plentiful. States, like Louisiana, Colorado, Alabama, Kentucky, Tennessee, New York, Missouri, Connecticut, Indiana, Idaho, Oregon and Georgia, utilize most of these registration methods – and some states use all four methods. Several of these states have developed websites whereby subscribers can:

- register their residential phones at no cost,
- get a detailed explanation of the Do Not Call registry and how it works,
- get answers to frequently asked questions,
- verify that their number is on the list,
- view the legislation establishing the Do Not Call registry, and

- file complaints when they receive telemarketing calls.

Naturally, the Do Not Call registry will only be successful if telephone subscribers are adequately notified of the registry and are given sufficient opportunity to participate and enroll.

## **XII. There Should Be Very Limited Exemptions to the TSR.**

CNO realizes that the FTC lacks jurisdiction, in whole or in part, over the calls of entities such as banks, telephone companies, airlines, insurance companies, credit unions, charities, political campaigns, and political fundraisers. However, broad exemptions from compliance with the Do Not Call registry would surely diminish the value and benefit of the registry and further undermine or lessen a person's right of privacy.

In compliance with the authority and jurisdiction of the FTC, there should be narrow exceptions to the TSR. That is, if a consumer is listed on the Do Not Call registry, then only the following telephone solicitations to that consumer should be permitted:

- (1) In response to an express request of the person called.
- (2) Primarily in connection with an existing debt or contract, payment or performance of which has not been completed at the time of such call.
- (3) To any person with whom the telephonic solicitor has an existing business relationship, or a prior business relationship that was terminated or lapsed within six months of such call.
- (4) On behalf of an organization which has nonprofit status under Section 501(c)(3) or (6) of the Internal Revenue Code, unless such organization utilizes the services of a paid professional solicitor.

- (5) For the purpose of conducting marketing research, public opinion polling, or similar activities that do not involve telephonic solicitation or selling.
- (6) Constituting political activity.

These exceptions are consistent with most other Do Not Call programs. CNO recommends narrow exceptions to the TSR.

**XIII. Telemarketers Should Be Required To Obtain Updated Do Not Call Lists Every Month.**

Subscriber's should be able to receive the immediate benefit and protection of the Do Not Call registry. The FTC should update the Do Not Call registry on a monthly basis, and telephone solicitors should be required to obtain an updated list each month.

**XIV. Telemarketers Should Have Access To The Do Not Call Registry Either By Internet, Printed Copies or CD-Roms.**

In order for the Do Not Call registry to be effective, telephone solicitors will need to have quick and easy access to the registry. Means of access to the Do Not Call List database could be the creation of an online database whereby, via a password, telephone solicitors could have unlimited electronic access to the database for an annual fee.

**XV. The Need for Effective Enforcement.**

Obviously, telephone solicitors will only abide by the Do Not Call list if they are sufficiently deterred and if violations are effectively enforced. Efficient complaint procedures and specific penalties for violations of the TSR are necessary to ensure compliance with the rules for telemarketing sales.

Additionally, without a national Do Not Call registry and the assistance of the FTC, issues of personal jurisdiction could seriously hinder a particular State Commission's ability to address violations of its own Do Not Call laws by an out-of-state telephone solicitor. A national registry could alleviate such enforcement problems for violations by an out-of-state seller or telemarketer.

**XVI. Conclusion.**

The FTC should adopt the suggestions herein which are based on other states' solutions to avoiding unwanted and unsolicited telephone solicitations and craft rules with significant advantages for subscribers. The Do Not Call registry can only be beneficial to consumers if the process accomplishes the objectives discussed herein. Furthermore, violations of the Do Not Call registry should be strongly deterred through strong, aggressive enforcement.

**XVII. Public Forum.**

Lastly, it is CNO's understanding that the FTC staff will conduct a public forum on June 5, 6 and 7, 2002, to discuss the written comments received in response to the Notice. The purpose of the forum is to afford the Commission staff and interested parties a further opportunity to discuss the issues raised by the proposal and in the comments. The Utility, Cable & Telecommunications Committee of the City Council of New Orleans is interested in participating in the public forum and desires to be considered for participation.

Respectfully submitted:



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