

April 12, 2002

The Honorable Donald S. Clark
Office of the Secretary
Federal Trade Commission
Room 159
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

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

Dear Mr. Clark:

The Office of the Attorney General of Virginia has joined in the comments filed by the State Attorneys General regarding the Notice of Proposed Rulemaking issued by the Federal Trade Commission (the Commission or the FTC) to amend the FTC's Telemarketing Sales Rule (the TSR), 16 C.F.R. Part 310. While we are in general agreement with those comments, we hereby submit our own supplemental comments regarding the FTC's proposed changes to the TSR. Pursuant to the Telemarketing and Consumer Fraud and Abuse Prevention Act (the Telemarketing Act), 15 U.S.C. ' 6103, the Virginia Attorney General B like other State Attorneys General B is authorized to file enforcement actions on behalf of residents of the Commonwealth of Virginia to enjoin violations of the TSR and to obtain restitution for victims.¹ In addition, the Virginia Attorney General serves as Consumer Counsel for the Commonwealth and thereby represents the interests of the citizens of Virginia as consumers.² Accordingly, the Office of the Attorney General of Virginia has a significant interest in the FTC's proposed changes to the TSR.

We commend the Commission for proposing a national do-not-call registry to be maintained by the Commission. While telemarketing can provide a convenient vehicle for the sale of goods or services to consumers, some individuals do not wish to receive any telemarketing

¹ The Office of the Attorney General of Virginia has filed such suits under the Telemarketing Act alleging violations of the TSR as well as violations of various Virginia consumer protection statutes. *See, e.g., People of the State of Illinois, et al. v. Telecommunications Resources, Inc., a/k/a TRI d/b/a Credit Source, et al.*, United States District Court for the Central District of Illinois, Case No. 96-3153 (filed with Illinois, Missouri, and Tennessee as co-plaintiffs); *Federal Trade Commission, et al. v. The Tungsten Group, Inc., et al.*, United States District Court for the Eastern District of Virginia, Case No. 2:01cv773 (filed with the FTC, North Carolina, and Wisconsin as co-plaintiffs).

² *See* Va. Code ' 2.2-517.

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calls at home. The Commission's proposal for a national do-not-call registry has merit as an appropriate tool for these individuals to prevent unwanted telemarketing calls. In addition, we recognize the importance of also keeping in place the TSR's current prohibitions against calling someone who previously has stated that he does not wish to receive telemarketing calls made by, or on behalf of, a particular business. This company-specific approach in effect requires businesses to maintain and abide by their own do-not-call lists.

To maximize consumer benefit, any national do-not-call list should have few, if any, exemptions. While there are many consumers who do not mind and who benefit from the convenience of conducting transactions via telemarketing, there also are many other consumers who do not want to receive any telemarketing calls. A national registry that is riddled with exemptions will be of little benefit to these consumers. Expecting that some of the comments filed with the Commission regarding the proposed national do-not-call list may seek new exemptions, we urge the Commission to refrain from creating any more exemptions to the scope of the proposed national do-not-call list in any final rule.

Due to the limitations on the FTC's jurisdiction under the Telemarketing Act, 15 U.S.C. ' 6105, various businesses will not be subject to the prohibitions against calling individuals on the FTC's do-not-call registry. Accordingly, we encourage the Commission or its staff, as may be appropriate, to confer with the Federal Communications Commission (FCC) regarding the possibility of the FCC promulgating changes to its own do-not-call regulations to prohibit telemarketers from calling individuals duly registered on the national do-not-call list created and maintained by the FTC. While the FCC previously decided not to establish a national do-not-call registry after considering to do so at the direction of Congress in the Telephone Consumer Protection Act, 47 U.S.C. ' 227, the FCC should revisit this issue in light of the FTC's proposal. If nothing else, the FCC may benefit from the information learned by the FTC in establishing, operating, and enforcing its national do-not-call registry.

Furthermore, we urge the Commission to create a do-not-call registry that is readily and easily accessible by the Commission's state enforcement partners. While a number of states currently have state-maintained do-not-call registries, the majority of states including Virginia do not. For a variety of reasons, some states may never choose to create such databases. For those states without such registries, it is crucial that the state officials empowered by Congress to enforce the TSR be able to access the Commission's registry with the same ease and convenience as the Commission's own enforcement personnel. Among other things, we will need to confirm and have evidence of individual registrations in the course of investigating possible violations and before filing any enforcement actions. State enforcement officials also should have complete access to any consumer complaint database that may be established or used by the Commission (such as the existing Consumer Sentinel system) to track possible violations of the TSR's do-not-

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call registry provisions. Without sufficient and convenient access to the registry and reports of violations, we will not be in a position to effectively enforce the new do-not-call provisions.

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Moreover, we strongly discourage the Commission from making any modifications to its proposed rule or comments that might be construed as precluding states from incorporating the TSR-s new do-not-call protections into state law and utilizing state law remedies if the states so choose. In general, we have found that it is more effective for state officials to have enforcement options with respect to protecting consumers rather than being restricted in the actions we can take on behalf of our citizens.

In conclusion, we commend the Commission for its work in proposing a national do-not-call registry. The Office of the Attorney General of Virginia remains committed to enforcing the TSR, as well as our own Virginia consumer protection laws, on behalf of the citizens of the Commonwealth.

A black rectangular box containing a white handwritten signature that reads "Jerry W. Kilgore".

Jerry W. Kilgore