

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

Telemarketing Sales Rule Review

**SUPPLEMENTAL COMMENTS OF THE
ILLINOIS ATTORNEY GENERAL'S OFFICE**

FTC File No.: R411001

Please accept this submission as Illinois' Supplemental Comments to the Comments previously submitted by all 50 states, the Northern Mariana Islands, Puerto Rico, the Virgin Islands, and Washington, D.C. regarding the Notice of Proposed Rulemaking issued by the Federal Trade Commission to amend the Telemarketing Sales Rule, 16 C.F.R. Part 310. The purpose of these Supplemental Comments is to provide data and specific information illustrating the need for and the importance of the proposed rulemaking banning pre-acquired account telemarketing.

As noted in the Comments submitted by the states, our offices have received a high number of consumer complaints regarding unauthorized credit card charges since the year 2000. These unauthorized charges normally result from pre-acquired account telemarketing. In 2000, 285 such complaints were reported, rising to 412 complaints in 2001. In these complaints, consumers report that they did not consent to the charge when solicited, or, in the worst case scenario, consumers do not remember a solicitation taking place. These consumers have no idea who is placing the charge on their account or why they are being charged. It may very well be true that no solicitation has taken place. Telemarketers who have access to a consumer's billing information may find it easier to put through a charge without obtaining the consumer's consent and realize their commission.

As a result of the increase in complaints, our office has taken enforcement action against two companies engaging in pre-acquired account telemarketing. In December, 2001, our office filed a lawsuit against Blitz Media, Inc., alleging the placement of unauthorized charges on consumers' credit and debit card accounts. The charges were purportedly for a discount buyer's club, although our office has no evidence supporting the existence of this service. The Blitz case illustrates the need for increased consumer protection against pre-acquired account telemarketers, given the wide scope of their business. Blitz Media has charged approximately 45,000 Illinois residents for their discount buying service. Of these, approximately 8,000 remain "active" members, being charged for membership on an annual basis.

The Blitz case also reveals how pre-acquired account telemarketers may circumvent the credit card chargeback process. Companies operating through pre-acquired account telemarketing potentially have

a high percentage of chargebacks, running the risk of losing merchant accounts. Without merchant accounts, it is difficult for telemarketers to stay in business. Pre-acquired account telemarketers have found ways to circumvent the chargeback monitoring system used by merchant banks. Blitz Media is an example. After having one merchant account terminated due to high chargebacks and a high amount of consumer complaints, it is alleged that Blitz paid two people \$5,000.00 each to establish fake merchant bank accounts with a second bank. According to a federal lawsuit filed against Blitz by Compass Bank, Blitz submitted falsified application forms for nine merchant accounts with Compass Bank. Blitz established the accounts through the assistance of a Compass Bank employee who entered false information into the Compass files and computer system. After incurring a high volume of chargebacks on a particular account, Blitz would cease using that account and simply switch to another of the nine fraudulent accounts. Compass has identified millions in losses.

Another notable defendant that Illinois brought suit against is Triad and its affiliated companies, who operated under more than 20 different buying club names. Numerous membership cancellations / refund requests from consumers resulted in a large volume of chargebacks to Triad's merchant account. Triad eventually lost its credit card merchant account and was unable to secure an alternate merchant account, which then led Triad to seek the protection of bankruptcy courts. Due to Triad's bankruptcy filing, the 11,000 Illinois consumers (more than 220,000 nationwide) will recoup less than sixty percent (60%) of the amount that was allegedly charged to their credit cards without authorization. A second named defendant in the Triad lawsuit is International Brands Marketing, Inc. (IBMI). More than fifty percent (50%) of the 2,700 Illinois consumers charged by IBMI requested refunds for alleged unauthorized charges.

In summary, the two cases mentioned above demonstrate that although our offices receive a large number of complaints regarding unauthorized charges resulting from pre-acquired account telemarketing, a far greater number of consumers are affected by this practice than our complaint databases reflect. In the Triad / IBMI matter, Illinois initially received 146 consumer complaints, yet more than 13,700 Illinois consumers were affected by their buying club scheme. Likewise with Blitz, our office received 30 consumer complaints, constituting a small fraction of the 45,000 Illinois residents charged by this company. It is our belief that this difference in numbers can be attributed, in part, to consumer confusion surrounding pre-acquired account telemarketing. Consumers are not expecting charges to appear from these companies because, in many cases, consumers either did not consent to the charge or do not remember a solicitation for the charge. When the mysterious charges do appear, consumers are forced to invest their own time and energy in an attempt to determine the origin of the charge. This confusion about the workings of pre-acquired account telemarketing results in a disparity between consumer complaints and affected consumers. In turn, this disparity adversely affects law enforcement's ability to fully police this industry.

The thousands of Illinois consumers that have been negatively impacted by this practice request your attention in implementing the Proposed Telemarketing Sales Rule.