Prepared Statement of

The Federal Trade Commission

Before the

House Committee on Energy and Commerce
Subcommittee on Commerce, Trade, and Consumer Protection
United States House of Representatives

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Chairman Rush, Ranking Member Whitfield, and members of the Subcommittee, I am Lois Greisman, Associate Director of the Division of Marketing Practices, Bureau of Consumer Protection at the Federal Trade Commission ("Commission" or "FTC").[1] I appreciate the opportunity to appear before you today regarding H.R. 1776, provisionally titled the "Call Center Consumer's Right to Know Act." The bill would require call center employees to disclose, in telephone calls with consumers, the physical location of the call center.

This testimony begins by describing the Commission's experience with fraud and abuse perpetrated over the telephone in order to assist the Subcommittee in its consideration of H.R. 1776.[2] This testimony also provides comments aimed at ensuring the bill meets its intended purpose.

I. FTC's Law Enforcement Experience

The Commission's experience with call centers is primarily based on its extensive program to battle fraudulent and abusive telemarketing practices through its vigorous enforcement of the Telemarketing Sales Rule ("TSR"), which includes enforcement of the privacy protections of the National Do Not Call ("DNC") Registry.[3]

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[1] The views expressed in this statement represent the views of the Commission. My oral presentation and responses to questions are my own and do not necessarily reflect the views of the Commission or any individual Commissioner.

[2] The FTC has broad law enforcement responsibilities under the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 41, *et seq*. The statute provides the agency with broad jurisdiction over most economic sectors. Certain entities or activities, however, such as depository institutions and companies engaged in common carrier activity, and companies engaged in the business of insurance, are wholly or partly exempt from FTC jurisdiction. In addition to the FTC Act, the agency has enforcement responsibilities under more than 50 other statutes and more than 30 rules governing specific industries and practices.

[3] In December 2002, the Commission adopted amendments to the TSR that, among other things, established the National Do Not Call Registry, prohibited call abandonment,

A. History of the FTC's Telemarketing Fraud Law Enforcement Program

The Commission has a strong and longstanding commitment to rooting out telemarketing fraud. From 1991 to the present, the FTC has initiated more than 375 telemarketing cases. The vast majority of these involved fraudulent marketing of investment schemes, business opportunities, sweepstakes pitches, and the sales of various goods and services, including health care products. One hundred and ten of those cases were brought prior to 1994, pursuant to Section 5 of the FTC Act, which prohibits "unfair or deceptive acts or practices in or affecting commerce."[4]

In 1994, Congress enhanced the Commission's enforcement tools by enacting the Telemarketing and Consumer Fraud and Abuse Prevention Act (the "Telemarketing Act").[5] This legislation directed the Commission to issue a trade regulation rule defining and prohibiting deceptive or abusive telemarketing acts or practices. Accordingly, the Commission promulgated the TSR in 1995. Since 1996, the Commission has filed more than 265 cases under the TSR. In most of these cases, the Commission sought preliminary relief to immediately halt ongoing law violations, and in virtually every case ultimately obtained permanent injunctions to prevent such

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required (where feasible) transmission of Caller ID identifying information, and established important new safeguards in situations where telemarketers use preacquired account information. 68 Fed. Reg. 4580 (Jan. 29, 2003). The TSR was also recently amended to, among other things, bar telemarketing calls that deliver pre-recorded messages (so-called "voice blasting" or "robo calls"), unless the consumer previously has agreed to accept such calls from the seller. Those amendments will become fully effective in September 2009. TSR Final Rule Amendments, 73 Fed. Reg. 51164 (Aug. 29, 2008).

[4] 15 U.S.C. § 45(a).

[5] 15 U.S.C. §§ 6101-6108.

conduct in the future.[6] In addition to injunctive relief, the Commission has secured orders providing for more than $500 million in consumer restitution or, where that was not practicable, disgorgement to the U.S. Treasury. During this period, the Commission, through cases filed on its behalf by the U.S. Department of Justice,[7] has obtained civil penalty orders totaling nearly $24 million.

B. The FTC Enforces the Do Not Call Registry

To prevent telemarketers from making unwanted intrusions into the privacy of consumers' homes, the Commission amended the TSR in 2003 to strengthen its privacy protection provisions by, among other things, establishing the National Do Not Call Registry.[8]

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[6] In cases involving the anti-fraud provisions of the TSR, the Commission typically seeks and obtains *ex parte* temporary restraining orders ("TROs") halting defendants' illegal practices and freezing their assets for eventual restitution to defrauded consumers. In cases involving solely DNC and other privacy protection provisions of the TSR, the Commission generally seeks to negotiate a settlement before filing a complaint. In both anti-fraud and privacy protection TSR cases, however, the ultimate resolution is a permanent injunction with strong conduct prohibitions and consumer restitution or civil penalties, depending on the facts of the case.

[7] Civil penalty actions are filed by the Department of Justice ("DOJ") on behalf of the FTC. In general, under the FTC Act, the Commission must notify the Attorney General of its intention to commence, defend, or intervene in any civil penalty action under the Act. 15 U.S.C. § 56(a)(1). DOJ then has 45 days, from the date of the receipt of notification by the Attorney General, in which to commence, defend or intervene in the suit. *Id.* If DOJ does not act within the 45-day period, the FTC may file the case in its own name, using its own attorneys. *Id.* The Commission supports legislation that would expand the agency's independent litigating authority to allow the FTC to bring actions for civil penalties in federal court "in its own name by any of its attorneys" without requiring that DOJ have the option to litigate on the FTC's behalf. Federal Trade Commission Reauthorization Act of 2008, S. 2831, 110th Cong. § 3(1) (2008).

[8] The FTC promulgated the DNC provisions and other substantial amendments to the TSR under the express authority granted to the Commission by the Telemarketing Act. Specifically, the Telemarketing Act mandated that the rule – now known as the TSR – include prohibitions against any pattern of unsolicited telemarketing calls "which the reasonable consumer would consider coercive or abusive of such consumer's right to privacy," as well as restrictions on the hours unsolicited telephone calls can be made to consumers.

Consumers have registered more than 168 million telephone numbers since the Registry became operational in June 2003 and DNC has been tremendously successful in protecting consumers' privacy from unwanted telemarketing calls. A Harris Interactive® Survey conducted in October 2007 showed that 72 percent of Americans have registered their telephone numbers on the National Do Not Call Registry, and that more than 90 percent of those who registered their numbers report fewer unwanted telemarketing calls.[9] Many registrants (nearly 20 percent) report that they get no telemarketing calls at all. Discussing the effectiveness of Do Not Call just one year after the inception of the program, the chairman of The Harris Poll, Harris Interactive, stated, "In my experience, these results are remarkable. It is rare to find so many people benefit so quickly from a relatively inexpensive government program."[10] Similarly, an independent survey by the Customer Care Alliance[11] demonstrates that the Registry has been an effective means for consumers to limit unwanted telemarketing calls.[12]

While the Commission appreciates the high rate of compliance with DNC, it vigorously enforces compliance to ensure the program's ongoing efficacy. Violating DNC subjects telemarketers to civil penalties of up to $11,000 per violation.[13] The Commission has brought 43

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9 Harris Interactive, *National Do Not Call Registry: Seven In Ten Are Registered And All Of Them Will Renew Their Registration* (October 31, 2007), http://www.harrisinteractive.com/harris_poll/index.asp?PID=823).

10 Quote from Humphrey Taylor, Press Release, FTC, Compliance with Do Not Call Registry Exceptional (Feb. 13, 2004), http://www.ftc.gov/opa/2004/02/dncstats0204.shtm.

11 Customer Care Alliance is a consortium of companies involved in customer service, dispute resolution, and related activities. *See* www.ccareall.org.

12 *See* Customer Care Alliance, *National Do Not Call Study Preliminary Findings* (June 2004).

13 As noted above, DOJ files civil penalty actions on behalf of the FTC. The Commission's ability to protect consumers from unfair or deceptive acts or practices would be

telemarketing cases[14] alleging Do Not Call violations or unlawful call abandonment. Thirty-three of these cases have been resolved, resulting in court orders requiring total payment of nearly $16.7 million in civil penalties and $10.8 million in redress or disgorgement.

One example of the Commission's vigorous enforcement of DNC is its recent law enforcement crackdown on seven companies accused of violating the requirements of the National Do Not Call Registry.[15] Last November, the Commission announced six settlements that collectively imposed nearly $7.7 million in civil penalties along with an additional complaint for civil penalties against a company marketing financial products. More recent examples of the Commission's enforcement of the DNC provisions include consent agreements announced this past July with two companies that telemarket Dish Network satellite TV subscriptions, settling charges that they called consumers whose telephone numbers were on the National Do Not Call Registry.[16] Additionally, in May of 2008, the Commission announced the

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substantially improved by legislation, all of which is currently under consideration by Congress, that provides the agency with civil penalty authority in the areas of data security, telephone records pretexting, and spyware, similar to that provided under the Telemarketing Act. Civil penalties are important in these areas because the Commission's traditional remedies, including equitable consumer restitution and disgorgement, may be impracticable or not optimally effective in deterring these particular unlawful acts.

[14] These DNC cases are included in the more than 265 TSR cases noted above.

[15] http://www.ftc.gov/opa/2007/11/dncpress.shtm.

[16] *U.S.A. v. Planet Earth Satellite, Inc.*, No. 2:08-cv-1274-PHX (N.D. Tex. 2008); *U.S.A. v. Star Satellite, LLC*, No. 2:08-cv-00797-RLH-LRL (D. Nev. 2008). The latter consent agreement also settled charges that the defendants abandoned calls by conducting "voice blasting" campaigns that delivered prerecorded messages in cold calls to thousands of consumers. As part of its privacy protection, the TSR prohibits call abandonment – defined as failing to connect a call answered in person (not by an answering machine or service) with a live sales representative within two seconds of the person's completed greeting. 16 C.F.R. § 310.4(b)(iv). Voice blasting – telemarketing campaigns that deliver only prerecorded messages – violates this prohibition. *See* http://www.ftc.gov/opa/2008/07/dishtm.shtm.

filing of five complaints against telemarketers engaged in allegedly deceptive practices. These cases also charged the defendants with violating the DNC provisions of the TSR.[17]

C. The FTC Conducts Telemarketing Fraud Sweeps

A key feature of our telemarketing fraud law enforcement program is partnering with other law enforcement agencies whenever possible to leverage resources and protect American consumers from fraudulent telemarketers. The agency coordinates with various law enforcement partners to bring law enforcement "sweeps" – multiple simultaneous law enforcement actions – that focus on specific types of telemarketing fraud.[18] The agency also works to promote joint filing of telemarketing actions with state enforcers.

Another recent illustration of the agency's robust enforcement program is "Operation Tele-PHONEY" – the largest law enforcement sweep of the telemarketing industry ever coordinated by the FTC. Four months ago, together with the U.S. Department of Justice, the

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[17] *See* http://www.ftc.gov/opa/2008/05/telephoney.shtm.

[18] The following is a sampling of some of the sweeps that the FTC and its law-enforcement partners have conducted over the past several years: "Dialing for Deception" http://www.ftc.gov/opa/2002/04/dialing.shtm (a sweep by the FTC that targeted telemarketing fraud in connections with in-bound telephone calls); "Ditch the Pitch" http://www.ftc.gov/opa/2001/10/ditch.shtm (a sweep targeting fraudulent out-bound telemarketing brought by the FTC and 6 states); "Operation No Credit," http://www.ftc.gov/opa/2002/09/opnocredit.shtm (43 law enforcement actions, including criminal indictments, targeting a wide range of credit-related frauds brought by the FTC, the DOJ, the U.S. Postal Inspection Service, and 11 state and local authorities); "Operation Protection Deception" http://www.ftc.gov/opa/2000/10/protectdecpt.shtm (a sweep against telemarketers of fraudulent "credit card protection" services with extensive assistance from 5 states and the Federal Bureau of Investigation ("FBI")); "Senior Sentinel" http://www.ftc.gov/opa/1995/12/sen.shtm (a sweep targeting telemarketers who defraud the elderly coordinated by the DOJ and FBI, with 5 civil cases brought by the FTC, that led to hundreds of arrests and indictments across the country); "Project Telesweep" http://www.ftc.gov/opa/1995/07/scam.shtm (nearly 100 cases filed by the FTC, DOJ and 20 states targeting business opportunity fraud often promoted through slick telemarketing).

U.S. Postal Inspection Service, 25 state attorney general offices and other state and local agencies, and Canadian authorities, the Commission announced more than 180 civil and criminal law enforcement actions targeting illegal telemarketing.[19] Contemporaneous with the announcement of these law enforcement actions, the FTC also announced "Who's Calling," a new consumer education campaign designed to help individuals identify telephone fraud and report such fraud to the FTC.

With Operation Tele-PHONEY, the Commission filed thirteen new actions against telemarketers alleging deceptive practices in violation of the TSR and Section 5 of the FTC Act. In many cases, the FTC also alleged abusive telemarketing practices including violations of the DNC provisions of the TSR. The Commission charged that these telemarketing defendants employed a variety of deceptive techniques to get consumers' money. Some allegedly misrepresented the usefulness of the products they hawked; others told consumers they had won or would receive some "free" products; and still others asserted they were calling from a trusted source, such as an entity affiliated with the government, a financial institution, or even a charity.

The vast majority of the Operation Tele-PHONEY cases were filed against telemarketers operating in the United States. For example, as part of the 2008 telemarketing sweep, the Florida Department of Agriculture and Consumer Services visited more than 100 telemarketing rooms located in five Florida counties. Of the 74 civil actions brought by state Attorney General's offices, approximately 70 were filed against domestic telemarketing entities.

Actions against fraudulent telemarketers operating abroad and targeting American consumers can pose significant law enforcement challenges because assets and evidence are

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19 http://www.ftc.gov/opa/2008/05/telephoney.shtm.

beyond the jurisdiction of United States courts. The Commission has worked to develop and maintain partnerships with Canadian law enforcement agencies, such as Canada's Bureau of Competition and various other law enforcement agencies.[20] Through these partnerships, agency staff share information and assist each other in law enforcement investigations and litigation. With Operation Tele-PHONEY the Commission announced several actions against foreign telemarketers that were brought by Canadian agencies.[21] As a further example of the close cooperation with its Canadian partners, the FTC benefitted from the assistance of a Senior Investigator from Canada's Competition Bureau who was assigned to work at FTC headquarters for several weeks on Operation Tele-PHONEY.

In addition, the agency recently entered into a Memorandum of Understanding with the Department of Justice's Office of Foreign Litigation designed to assist the Commission in obtaining evidence and assets located abroad. Made possible by the SAFE WEB Act, this is an important initiative that will further the Commission's ability to get monetary relief for American consumers who were defrauded by scam artists operating from other countries.

D. The FTC Refers Cases for Criminal Prosecution

Although the Commission does not have criminal law enforcement authority, it recognizes the importance of criminal prosecution to buttress deterrence and consumer confidence. Accordingly, the Commission routinely refers matters appropriate for criminal

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[20] The Commission participates in various partnerships, including the Toronto Strategic Partnership, Project COLT (Centre of Operations Linked to Telemarketing), Project Emptor, the Alberta Partnership, the Vancouver Strategic Alliance, and the Atlantic Partnership.

[21] The press release announcing Operation Tele-PHONEY includes links to charts listing all actions taken as part of the sweep. *See* http://www.ftc.gov/opa/2008/05/telephoney.shtm.

prosecution to federal and state prosecutors through its Criminal Liaison Unit. Since October 1, 2002, federal and state criminal authorities have charged 271 persons with crimes involving telemarketing fraud arising from acts investigated or prosecuted by the Commission. Of those 271 persons charged, 165 were convicted or pleaded guilty. The rest are awaiting trial, are in the process of extradition from a foreign county, or are fugitives from justice.

E. The FTC Pursues Third Parties That Facilitate Telemarketing Fraud

Telemarketers' deceptive and abusive practices often are aided or made possible by third parties such as list brokers who sell personal information about consumers to shady telemarketers, or by unscrupulous payment processors, who enable fraudulent telemarketers to reach into consumers' bank accounts.

List brokers can play an important role in facilitating telemarketing fraud. The FTC has brought a number of cases challenging the sale of such databases to fraudulent telemarketers. In December 2007, the FTC sued one such information broker, Practical Marketing, Inc., charging that it assisted telemarketers by selling "full data leads" – lists that include a consumer's financial account numbers – to telemarketers perpetrating advance-fee loan scams in violation of the TSR.[22] To halt this operation, the FTC joined forces with the U.S. Postal Inspection Service and the United States Attorney's Office for the Southern District of Illinois, which brought federal criminal charges against Practical Marketing for identity theft. In addition to

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[22] *FTC v. Practical Marketing, Inc.*, No. 3:07 cv-00685 JPG-DGW (N.D. Ill. 2007), http://www.ftc.gov/opa/2007/10/listbrokers.shtm.

bringing cases against list brokers,[23] the FTC seeks orders against telemarketing defendants to ban or severely restrict them from selling, renting, leasing, transferring, or otherwise disclosing their customer lists.

The FTC also has targeted other third-party actors such as payment processors, without whose assistance telemarketers would not be able to gain access to consumers' bank accounts.[24] Generally, the FTC has alleged that these payment processors knew or consciously avoided knowing that they were facilitating fraudulent telemarketing operations in violation of the TSR,[25] and, where appropriate, also has alleged direct violations of Section 5 of the FTC Act. A case announced with Operation Tele-PHONEY against Your Money Access, LLC ("YMA"), a payment processor, provides a recent illustration of the Commission's enforcement in this area.[26]

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[23] In 2002, the FTC sued three other information brokers that allegedly knew or consciously avoided knowing that they supplied lists of consumers to telemarketers acting in violation of the TSR. The FTC charged that Listdata Computer Services, Inc., Guidestar Direct Corporation, and NeWorld Marketing LLC knowingly supplied lists to telemarketers that were engaging in per se violations of the TSR. The orders obtained by the FTC permanently barred the list brokers from providing lists to telemarketers engaging in illegal business practices and required them to pay nearly $200,000 combined in consumer redress. *FTC v. Listdata Computer Services, Inc.*, No. 04-61062 (S.D. Fla., stipulated final order entered Aug. 17, 2004); *FTC v. Guidestar Direct Corp.*, No. CV04-6671 (C.D. Cal., stipulated final order entered Aug. 13, 2004); *FTC v. NeWorld Marketing LLC*, No. 1:04cv159 (W.D. N.C., stipulated final order entered Aug. 12, 2004); *see also* http://www.ftc.gov/opa/2004/08/guidestar.shtm.

[24] *See, e.g., FTC v. Global Marketing Group, Inc.*, No. 8:06CV- 02272 (JSM) (M.D. Fla., filed Dec. 11, 2006) (litigation ongoing); *FTC v. First American Payment Processing, Inc.*, No. CV-04-0074 (PHX) (D. Ariz, stipulated final order entered Nov. 23, 2004); *FTC v. Electronic Financial Group*, No. W-03-CA-211 (W.D. Tex., stipulated final order entered Mar. 23, 2004); *FTC v. Windward Marketing, Ltd.*, No. 1:06-CV-615 (FMH) (N.D. Ga., stipulated final order against certain payment-processors entered June 25, 1996, summary judgment order against remaining payment-processors entered Sept. 30, 1997).

[25] 16 C.F.R. § 310.3(b).

[26] *FTC, State of Illinois, State of Iowa, State of Nevada, State of North Carolina, State of North Dakota, State of Ohio, and State of Vermont v. Your Money Access, LLC*, No. 07

In this case, the Commission joined forces with seven state attorneys general to sue the payment processor, charging that YMA took millions of dollars from consumers' bank accounts on behalf of fraudulent telemarketers and Internet-based merchants. The complaint alleged that by providing access to the banking system and the means to extract money from consumers' bank accounts, the defendants played a critical role in their clients' fraudulent and deceptive schemes.[27]

II. H.R. 1776

This section discusses four aspects of the bill that raise concerns. First, the bill's underlying purpose is to provide members of the public with a way to know when they are dealing with an overseas call center. As currently drafted, however, the obligation to disclose physical location would apply broadly to all entities that have telephone contact with consumers, whether operating in the United States or abroad. This would likely include local pizza parlors, flower shops, or even doctors' offices. To reduce unnecessary compliance burdens upon domestic entities that do business by telephone, the disclosure requirement could be tailored more precisely to apply only to call centers operating outside the United States.[28]

The second issue is ambiguity in a key definition that delimits the bill's scope of coverage. Specifically, the term "call center" is defined in Section 2(d) of the bill as "a location

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5147 (E.D. Pa. 2007). *See also* http://www.ftc.gov/opa/2007/12/yma.shtm.

[27] Another recent case against a payment processor is *FTC v. Interbill*, No. 2:06-CV-01644-JCM-PAL (D. Nev., filed Dec. 26, 2006).

[28] Similarly, the requirement, in Section 2(a) of the bill, to disclose "the physical location" of sales or service representatives handling calls would likely be less burdensome and more effective in achieving its intended purpose if it required the disclosure of only the city and country in which those representatives are working.

that provides customer-based service and sales assistance or technical assistance and expertise to individuals located in the United States via telephone, the Internet, or other telecommunications and information technology." It is unclear whether the reference to the Internet is intended to bring within the bill's scope all on-line transactions, including on-line service assistance. Resolution of this ambiguity would facilitate enforcement of the bill, if enacted, and would also help those entities potentially subject to the bill's requirements to understand what they must do to comply.

Third, the requirement in Section 2(b) of the bill for annual certification by every U.S. corporation or subsidiary that "utilizes a call center to initiate telephone calls to, or receive telephone calls from, individuals located in the United States" represents a potentially costly burden for any agency tasked with enforcement of this bill. Additionally, as drafted, the bill provides no apparent enforcement mechanism for failure to comply with the certification requirement.

Fourth, jurisdictional issues could significantly complicate FTC enforcement of this bill's requirements. As noted above, the proposed legislation would impose disclosure burdens on all entities that communicate with consumers by means of a call center. The entities that currently utilize call centers overseas – presumably the key concern of this bill – include depository institutions, airlines, and insurance companies, among others. Under the FTC Act, the FTC has limited or no jurisdiction over many of these large users of overseas call centers. Moreover, the Commission would encounter significant practical, legal, and logistical problems enforcing this bill against overseas call centers, and would not be able to reach the exempt U.S. entities that engage those third-party overseas call centers. The Committee might want to consider assigning enforcement of this bill to an agency without these jurisdictional challenges. Importantly, it should also be noted that the FTC's expertise derives from its enforcement against "unfair or deceptive acts or practices" under Section 5 of the FTC Act and related regulations. As described above, that experience is broad and robust but does not touch upon the kinds of labor and foreign trade issues that are at the heart of H.R. 1776. An agency well-versed in labor and foreign trade issues would likely be better suited than the FTC to administer and enforce H.R. 1776.

III. Conclusion

The Commission would be happy to provide further assistance as may be relevant in the drafting of this legislation to achieve the result that best serves the public interest. The Commission will continue to enforce vigorously the laws that protect American consumers from fraud and from unwanted telemarketing calls, and looks forward to working with the Committee as it considers H.R. 1776.