

PREPARED STATEMENT OF  
THE FEDERAL TRADE COMMISSION ON

"THE JOINT FEDERAL-STATE ENFORCEMENT MODEL  
ESTABLISHED BY THE TELEMARKETING  
AND CONSUMER FRAUD AND ABUSE PREVENTION ACT"

*Before the*  
SUBCOMMITTEE ON HIGHWAYS AND TRANSIT  
of the  
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE  
UNITED STATES HOUSE OF REPRESENTATIVES

Washington, D.C.

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Mr. Chairman, I am Eileen Harrington, Associate Director for Marketing Practices of the Federal Trade Commission's Bureau of Consumer Protection.<sup>(1)</sup> Thank you for the opportunity to describe the joint federal-state enforcement framework established by the Telemarketing and Consumer Fraud and Abuse Prevention Act (Telemarketing Act). The Subcommittee has expressed interest in this framework as a potential model for law enforcement in the household goods moving industry.<sup>(2)</sup>

### **I. Background**

The Telemarketing Act was signed into law in August 1994. Its purpose was to bolster the FTC's ability to combat telemarketing fraud.<sup>(3)</sup> The FTC was the federal agency most actively engaged in law enforcement against this serious consumer problem. In the years leading up to the passage of this legislation, the FTC had challenged scores of fraudulent and deceptive telemarketing operations pursuant to its broad mandate under Section 5 of the FTC Act to take action against "unfair or deceptive acts or practices in or affecting commerce."<sup>(4)</sup> The Commission's enforcement program against fraudulent and deceptive telemarketing is one of a number of priority programs under the Commission's broad authority as the federal government's principal consumer protection agency. The Commission's authority does not, however, cover common carriers subject to the Interstate Commerce Act, as amended.<sup>(5)</sup>

As described in greater detail below, the Telemarketing Act strengthened the Commission's ability to combat telemarketing fraud, and brought some resources from the states and the Department of Justice into play. Specifically, the Telemarketing Act directed the Commission, within 365 days of enactment, to issue a rule defining and prohibiting deceptive and abusive telemarketing acts or practices. The Act also specified certain acts or practices that the FTC's Rule was required to address,<sup>(6)</sup> and authorized the Commission to consider including record keeping requirements in the rule.<sup>(7)</sup> But the aspect of the Act of greatest interest to the Subcommittee is that it authorized state

attorneys general, other appropriate state officials, and private persons to bring civil actions in federal district court to enforce compliance with the FTC's rule.<sup>(8)</sup>

## II. The Telemarketing Sales Rule

In accordance with the mandate of the Telemarketing Act, the FTC adopted the Telemarketing Sales Rule (Rule or TSR) on August 16, 1995, and the Rule became effective on December 31, 1995.<sup>(9)</sup> The Rule requires telemarketers to disclose specific information to consumers,<sup>(10)</sup> prohibits misrepresentations about the cost, quantity, and other material aspects of the offered goods or services,<sup>(11)</sup> and places time limitations on telemarketing calls to consumers.<sup>(12)</sup> The Rule also contains a number of other specific requirements to prohibit deceptive and abusive practices.<sup>(13)</sup> In addition, by authorizing the promulgation of the TSR, the Telemarketing Act added to the range of remedies available to the Commission.<sup>(14)</sup>

Through its specific requirements, the rule established a "bright line" both for legitimate telemarketers and for consumers. For example, by requiring telemarketers that use prize promotions to disclose that "no purchase or payment is required to win a prize or to participate in a prize promotion," the Rule provides clear-cut guidance for telemarketers as to what they must do to stay within the bounds of the law, and at the same time creates an easily-remembered rule of thumb for consumers, namely, "Don't fall for prize promotions that require you to 'pay to play.' "

But more important, the Telemarketing Act put many more cops on the telemarketing fraud beat. It did this by empowering the attorneys general of the states to bring civil actions on behalf of their residents in an appropriate federal district court to enjoin conduct prohibited by the TSR, and "to obtain damages, restitution, or other compensation on behalf of residents of such state."<sup>(15)</sup> Moreover, the Act greatly increased the impact of individual state law enforcement actions by giving each state the power to obtain nationwide injunctive relief -- an appropriate approach, given that telemarketing fraud is not confined within the boundaries of a particular state. A single state attorney general, taking action under the Telemarketing Act to enforce the TSR, could call a halt to a fraudulent telemarketer's unlawful activities in *every* state. To achieve that effect before the Telemarketing Act would have required either federal action or a separate action by each state's attorney general. Thus, the Telemarketing Act greatly increased the efficacy and efficiency of state law enforcement actions.

The Act promotes coordination between the states and the Commission by requiring that a state provide prior written notice to the Commission of any complaint filed in district court under the Act, with a copy of the complaint, if feasible, or if not, "immediately upon instituting such action."<sup>(16)</sup> The Act also grants the Commission authority to "intervene in such action, upon so intervening, to be heard on all matters arising therein, and to file petitions for appeal."<sup>(17)</sup>

In addition, the likelihood of inconsistent decisions from state to state and court to court was minimized because the Telemarketing Act empowered the states to enforce the very

specific provisions of the TSR -- not the broad prohibition in Section 5 against unfair and deceptive practices.<sup>(18)</sup> Courts might take a range of positions as to whether a given practice fits the legal criteria for deception or unfairness. The possible range is much narrower, however, with respect to whether a defendant has engaged in specific misrepresentations prohibited by the TSR, or has failed to make specific material disclosures required by the TSR.

### **III. Practical Application of the Joint Federal-State Enforcement Scheme**

In accordance with the intent of Congress, as embodied in the Telemarketing Act, the FTC has pursued a joint strategy with the state attorneys general to enforce the TSR. An important tool in implementing this strategy is Consumer Sentinel, a web-based, searchable consumer complaint database and law enforcement investigative tool<sup>(19)</sup> for collecting and analyzing consumer complaint data.

#### ***A. Consumer Sentinel***

Consumer Sentinel grew out of a joint project of the FTC and the National Association of Attorneys General begun some years ago to develop a nationwide database of telemarketing fraud complaints. Today the FTC's Consumer Sentinel is a global database that receives complaints about many types of transactions, not just telemarketing. The complaints are entered into Consumer Sentinel from the FTC's Consumer Response Center ("CRC"), which processes about 12,000 telephone and mail inquiries and complaints a week.<sup>(20)</sup> They cover everything from complaints about get-rich-quick telemarketing scams and online auction fraud, to questions about consumer rights under various credit statutes and requests for educational materials. Counselors record complaint data, answer inquiries, and provide information to assist consumers in resolving their complaints. Consumer Sentinel also receives data from other public and private consumer organizations, including 64 local offices of the Better Business Bureaus across the nation, the National Consumers League's National Fraud Information Center, and Project Phonebusters in Canada.

The FTC provides secure access to this data over the Internet, free of charge, to over 300 U.S., Canadian, and Australian law enforcement organizations.<sup>(21)</sup> The Commission and other participating members can manipulate the data in Consumer Sentinel to reveal trends and newly emerging frauds, identify companies that should be targeted for enforcement action, and locate relevant witnesses.

#### ***B. Federal-State Law Enforcement Sweeps***

The Commission and its partners at the state level use Consumer Sentinel data to identify targets for coordinated enforcement "sweeps" against fraudulent and deceptive telemarketing operations. Sweeps are clusters of simultaneous law enforcement actions brought by the FTC and its partners<sup>(22)</sup> against specific types of unlawful conduct -- such as travel fraud, advance fee loan scams, bogus prize promotions, and the like. Sweeps can range from as small as 3 cases to 50 or more cases. Since promulgation of the TSR,

the FTC has spearheaded a series of 21 TSR sweeps against a broad range of telemarketing frauds. For example, in last year's "Operation Travel Unravel," the FTC and 19 state law enforcement agencies brought 85 actions for alleged violations that ranged from failure to disclose the actual cost of travel packages to misleading consumers by telling them they have won a free trip, and failing to tell travelers that they will be required to attend one or more timeshare presentations. Some of these actions were brought under the Telemarketing Act to enforce the TSR,<sup>(23)</sup> while others were brought by state authorities in state court under state consumer protection laws.

During the TSR's first five years, the Commission (or DOJ, acting on its behalf) brought 126 law enforcement actions alleging Rule violations, 109 of them in the context of joint federal-state sweeps.<sup>(24)</sup> Three-quarters have been concluded, resulting in injunctions against misrepresentations and future violations of the Rule, outright bans against some or all forms of telemarketing in some cases, and monetary judgments totaling more than \$152 million in consumer redress and \$500,000 in civil penalties. In connection with those sweeps, the states have brought more than 330 enforcement actions against fraudulent telemarketers, approximately 20 under the TSR and the remainder under state law. A chart of the sweeps coordinated by the FTC since adoption of the TSR is attached as [Appendix A](#).

The Commission believes that the joint federal-state enforcement model under the Telemarketing Act provides a practical framework for coordinating our efforts with those of the states, and results in an efficient and effective law enforcement program.

The Telemarketing Act, the TSR, and the sweeps to enforce them have enabled the states and the Commission to maximize our collective resources, and to generate law enforcement projects with sufficient "critical mass" to draw much more media attention than isolated cases could ever do. This media attention, along with targeted consumer education campaigns, raises public awareness about particular types of deceptive or fraudulent telemarketing. For example, in connection with the advance fee loan sweeps, we designed a comprehensive public education campaign to alert consumers about that type of fraudulent telemarketing, and worked with an array of partners to implement it, including the Navy, Air Force, 21 state attorneys general, the District of Columbia Corporation Counsel, four state banking or securities departments, and private sector consumer organizations.<sup>(25)</sup> Such consumer education campaigns are an integral part of each of our joint federal-state sweeps to enforce the TSR.

#### **IV. Conclusion**

Thank you for this opportunity to describe the joint federal-state enforcement scheme established by the Telemarketing and Consumer Fraud and Abuse Prevention Act. I would be happy to answer any questions.

#### **Endnotes:**

1. The views expressed in this statement represent the views of the Commission. My oral statement and responses to questions you may have are my own and are not necessarily those of the Commission or any

Commissioner.

2. The FTC also shares jurisdiction with state authorities under the 1996 amendments to the Fair Credit Reporting Act (FCRA) and under the Telephone Disclosure and Dispute Resolution Act (TDDRA), which is the authority for the Commission's 900 Number Rule. Only one state has used its authority under the FCRA, to include an FCRA count in a federal district court complaint, and there has only been one state action (and that was dismissed) under TDDRA. In contrast, there have been a score of state actions under the Telemarketing Act.

3. 15 U.S.C. § 6101(2).

4. 15 U.S.C. § 45(a). The Commission also has responsibilities under more than 45 additional statutes, *e.g.*, the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.*, which governs the privacy, fairness, and accuracy of certain sensitive consumer information; the Truth in Lending Act, 15 U.S.C. §§ 1601 *et seq.*, which mandates disclosures of credit terms; and the Fair Credit Billing Act, 15 U.S.C. §§ 1666 *et seq.*, which provides for the correction of billing errors on credit accounts; 15 U.S.C. §§ 6801-6809; the Gramm-Leach-Bliley Act, to be codified in relevant part at 15 U.S.C. §§ 6801-6809, which, among other things, limits the instances in which a financial institution may disclose consumers' personal financial information; and the Identity Theft Assumption and Deterrence Act of 1998 (codified in relevant part at 18 U.S.C. § 1028 note), which makes the FTC a central clearinghouse for identity theft complaints. The Commission also enforces over 35 rules governing specific industries and practices, *e.g.*, the Used Car Rule, 16 C.F.R. Part 455, which requires used car dealers to disclose warranty terms via a window sticker; and the Franchise Rule, 16 C.F.R. Part 436, which requires the provision of information to prospective franchisees.

5. With certain significant exceptions, the FTC Act provides the Commission with broad law enforcement authority over virtually every sector of our economy. However, the FTC has limited or no jurisdiction over specified types of entities and activities. These include banks, savings associations, and federal credit unions; regulated common carriers; air carriers; non-retail sales of livestock and meat products under the Packers and Stockyards Act; certain activities of nonprofit corporations; and the business of insurance. *See, e.g.*, 15 U.S.C. §§ 44, 45, 46 (FTC Act); 15 U.S.C. § 21 (Clayton Act); 7 U.S.C. § 227 (Packers and Stockyards Act); 15 U.S.C. §§ 1011 *et seq.* (McCarran-Ferguson Act).

6. The Act required the Commission to include provisions relating to three specific "abusive telemarketing acts or practices:" (1) a requirement that telemarketers may not undertake a pattern of unsolicited telephone calls with the intent to coerce, harass, or intimidate a consumer; (2) restrictions on the time of day telemarketers may make unsolicited calls to consumers; and (3) a requirement that telemarketers promptly and clearly disclose in all sales calls to consumers that the purpose of the call is to sell goods or services, and make other disclosures deemed appropriate by the Commission, including the nature and price of the goods or services sold. 15 U.S.C. § 6102(a)(3)(A)-(C). Section 6102(a) also authorized the FTC to define and prohibit acts or practices that "assist or facilitate" deceptive telemarketing.

7. 15 U.S.C. § 6102(a)(3).

8. 15 U.S.C. § 6103.

9. 60 Fed. Reg. 43843.

10. In any outbound call, telemarketers must promptly tell the consumer: (1) the identity of the seller; (2) the fact that the purpose of the call is to sell goods or services; (3) the nature of the goods or services being offered; and (4) in the case of prize promotions, that no purchase or payment is necessary to win. 16 C.F.R. § 310.4(d). In any telephone sales call, whether outbound or inbound, telemarketers must also disclose cost and other material information before the consumer pays. 16 C.F.R. § 310.3(a)(1).

11. 16 C.F.R. § 310.3(a)(2).

12. The Rule prohibits telemarketers from calling before 8:00 a.m. or after 9:00 p.m. (in the time zone where the consumer is located), and from calling consumers who have said they do not want to be called by or on behalf of a particular seller. 16 C.F.R. §§ 310.4(c), and 310.4(b)(1)(ii).

13. For example, the Rule requires telemarketers to obtain consumers' express verifiable authorization before debiting their checking accounts, 16 C.F.R. § 310.3(a)(3), bans telemarketers who offer to arrange loans, provide credit repair services, or recover money lost by a consumer in a prior telemarketing scam from seeking payment before rendering the promised services, 16 C.F.R. §§ 310.4(a)(2)-(4), and prohibits credit card laundering and other forms of "assisting and facilitating" deceptive telemarketers. 16 C.F.R. §§ 310.3(b) and (c).

14. Before passage of the Telemarketing Act, the Commission could obtain traditional equitable remedies: preliminary and permanent injunctions, asset freezes, appointment of receivers, accountings, restitution of consumer victims, and disgorgement of ill-gotten gains. The Telemarketing Act expanded this list to include civil penalties of up to \$11,000 per Rule violation. It also enabled the Commission to refer Rule enforcement cases seeking civil penalties to the Department of Justice for filing and litigation.

15. The Telemarketing Act does not empower the states to seek or obtain civil penalties for violation of the Telemarketing Sales Rule.

16. 15 U.S.C. § 6103(b).

17. *Id.*

18. The Act also simplified the Commission's evidentiary task in its law enforcement actions. The Commission need only prove that a telemarketer engaged in a practice prohibited by the Rule; it need not prove that the practice is deceptive or unfair, as would be required in actions brought under Section 5 of the FTC Act. To prove deception, the Commission must show a representation or omission that is likely to mislead consumers acting reasonably under the circumstances about a material fact. *Cliffdale Associates, Inc.*, 103 F.T.C. 110, 165, *appeal dismissed sub nom., Koven v. FTC*, No. 84-5337 (11th Cir. 1984). Similarly, to prove unfairness, the Commission must show that the practice in question causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition. 15 U.S.C. § 45(n).

19. See [www.consumer.gov/sentinel](http://www.consumer.gov/sentinel).

20. For those consumers who prefer the online environment, an electronic complaint form at [www.ftc.gov](http://www.ftc.gov), first available in May of 1998, permits consumers to channel information directly to the CRC and the fraud database.

21. Among the organizations participating in Consumer Sentinel are DOJ, U.S. Attorneys' offices, the Federal Bureau of Investigation, the Securities and Exchange Commission, the Secret Service, the U.S. Postal Inspection Service, the Internal Revenue Service, the offices of all 50 state attorneys general, local sheriffs and prosecutors.

22. Other federal agencies, such as the Office of the Postal Inspectors, the Secret Service, and the Securities and Exchange Commission, have also joined with the FTC in various sweeps.

23. The FTC brought 3 TSR cases in this sweep. In two of them, *FTC and Virginia v. Med Resorts International, Inc.*, No.00 C4893 (N.D. Ill. 1999), and *FTC and Wisconsin v. First Impressions, Inc.*, No.

99-6941-Civ-Jordan (S. D. Fla. 1999), state attorneys general joined the FTC as co-plaintiffs.

24. None of the remaining 17 cases was part of any TSR enforcement sweep.

25. The Commission produced a variety of print and online consumer materials for the effort, including a brochure, a Consumer Alert, a bookmark, a poster, a campaign web page and a web banner PSA. The FTC staff gave our partners copies of all of the print materials for distribution and together we widely promoted the campaign web page ([www.ftc.gov/bcp/online/edcams/advfee/index.html](http://www.ftc.gov/bcp/online/edcams/advfee/index.html)), which includes links to all the materials. The Commission staff also developed and distributed classified advertisements alerting consumers about advance-fee loan scams. The Commission staff sent the ads to more than 6,000 advertising sales managers at newspapers across the country with a request that they run the ads in the classifieds as a public service. Additionally, the Commission posted a campaign download page ([www.ftc.gov/bcp/online/edcams/advfee/download.htm](http://www.ftc.gov/bcp/online/edcams/advfee/download.htm)) containing the files for all the print and electronic materials and instructions on how to download the materials so that individual partners can add their organization's name to materials and print copies of their own.