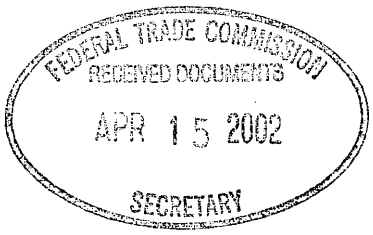
AMERIQUEST
MORTGAGE
COMPANY



Thomas J. Noto
General Counsel

April 15, 2002

Donald S. Clark
Office of the Secretary
Room 159
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington DC, 20580

Re: Telemarketing Rulemaking – Comment
FTC File No. R411001

Dear Secretary Clark:

Ameriquest Mortgage Company ("Ameriquest") appreciates this opportunity to comment on the Federal Trade Commission's (the "FTC" or the "Commission") proposal to amend its Telemarketing Sales Rule (the "TSR" or the "Rule").

Ameriquest is a mortgage lender headquartered in Orange, CA, and we operate in 48 states. As the Commission is well aware, mortgage lending is a highly regulated industry. Our customers therefore receive a variety of federal and state disclosures that outline the essential terms of the transaction. These include estimated and final Truth in Lending Act disclosures, estimated and final RESPA disclosures, and various disclosures required by other federal and state laws. In addition, Ameriquest provides its customers with certain "plain English" disclosures designed to provide a simplified picture of both the loan terms and the mortgage process generally. Finally, many of our borrowers have the right, under TILA, to rescind transactions for up to 3 business days after closing for any reason. In addition, Ameriquest provides such customers with a 7-day cancellation period during which we advise them to obtain credit counseling to ensure they are comfortable with the loan terms.

Most of our loans are originated through employee loan officers. These originators obtain leads through a variety of sources, including inbound calls from print, television, and internet advertising, and referrals from existing customers. We also obtain lists of potential customers from various list services, send mail advertisements to such persons, and follow these up with sales calls. In the event a potential customer indicates that he or she is not interested in receiving telephone solicitations, we immediately place that person on an internal do-not-call list. Moreover, we review our call lists against state do-not-call lists as well as the list maintained by the Direct Marketing Association before making any outbound telemarketing calls. We find that only approximately 1% of the people we contact ask to be placed on our do-not-call list.

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Accordingly, it does not appear that there is widespread dissatisfaction with receiving our sales calls.

Mortgage loans are sophisticated products that do not readily lend themselves to "canned" written solicitations. We strive to prepare loan proposals that meet the very diverse needs of our customers. To this end, we believe our customers benefit from the opportunity to discuss their financial needs with one of our representatives before determining whether or not they wish to proceed with an application. Moreover, telemarketing has proved to be a relatively efficient and non-obtrusive way of marketing our products. We estimate that it can be as much as 6 times as costly to originate a loan through alternative channels such as television advertising.

Our comments to the Commission's proposal are set forth in the following pages.

I. The Telemarketing Act Does Not Authorize the Creation of A National Do-Not-Call Registry

We respectfully submit that the Commission's proposal to create a national do-not-call registry is inconsistent with both the plain language and legislative intent of the Telemarketing Consumer Fraud and Abuse Prevention Act (15 U.S.C. §§ 6101 – 6108) (the "Telemarketing Act" or the "Act"). In the first instance, the Telemarketing Act contains no reference whatsoever to a national do-not-call registry. In 1991, three years before it enacted the Telemarketing Act, Congress passed the Telephone Consumer Protection Act. 47 U.S.C. § 227 (the "TCPA"). The TCPA specifically authorized the Federal Communications Commission ("FCC") to explore the feasibility of establishing a "single national database" of consumers who did not want to receive telephone solicitations. The TCPA further set forth a detailed list of requirements that would apply to such a database in the event that the FCC decided to require it. ***Id.*** The TCPA demonstrates that when Congress desires to empower an agency to adopt a do-not-call registry, it can do so by passing legislation expressly providing for it.

Furthermore, Congress is currently considering legislation that would explicitly authorize the FTC to create no-call lists for each state, along with a telephone solicitor self-regulated no-call list. ***S. 1881, 107th Cong. (2001).*** The enacted bill would require the FTC to maintain state do-not-call lists, and update them quarterly. ***Id.*** The TCPA and S.1881 clearly demonstrate that when Congress desires to empower an agency to adopt a do-not-call registry, it can do so by passing legislation expressly providing for it. Further, since Congress did not consider such a registry when it passed the Telemarketing Act, it is clear Congress did not intend the Federal Trade Commission to enact such measures on its own initiative.

In contrast to the authority that Congress granted to the FCC when passing the TCPA, or to the authority which Congress is contemplating granting to the FTC in S.1881, the Telemarketing Act does not empower the Commission to adopt, or to even consider adopting, a national do-not-call registry. Rather, the Act limits the Commission's authority to prescribe rules that prohibit ***"deceptive . . .*** and other ***abusive*** telemarketing acts or practices." 15 U.S.C. § 6102(a)(1) (emphasis added). In other words, the Commission does not have authority to regulate any telemarketing practice unless the practice is either "deceptive" or "abusive."

The Commission has not attempted to characterize its national registry proposal as an effort to regulate against "deceptive" or "abusive" practices. Instead, it claims that the proposal is justified by the Telemarketing Act's "emphasis on privacy protection." ***See, e.g.,*** 67 Fed. Reg. 4511 (Jan. 30,2002). Contrary to this assertion, however, the Act does ***not*** emphasize or even specifically address privacy protection. In fact, the word "privacy" appears only ***once*** in the entire statute. Similarly, in the Telemarketing Act's

floor statements, the term "fraud" appears 222 times, "abuse" appears 52 times and "deception" appears 74 times. In contrast, the term "privacy" is used in the floor statements only a total of four times. Furthermore, the Act does not, as the Commission suggests, use the term "privacy" as part of a broad grant of regulatory authority. Rather, the term is tied to a provision designed to eliminate telemarketing abuse. Specifically, the Act directs the Commission to include within its prohibition on abusive practices a provision prohibiting telemarketers from undertaking "a *pattern* of unsolicited telephone *calls* which the reasonable consumer would consider *coercive* or *abusive* of such consumer's right to privacy." 15 U.S.C. § 6102(a)(3)(A) (emphasis added). This provision does not authorize the Commission to issue regulations generally protecting consumer privacy; it is expressly limited to regulating against a *pattern* of unsolicited *calls* that rise to the level of being characterized as "coercive or abusive."

Under the Commission's proposal, a telemarketer would be prohibited from making even one call to a consumer listed on the Commission's registry. This result is not supported by the text of the Telemarketing Act. As indicated above, the Act authorizes the Commission to regulate against a pattern of abusive or coercive calls. Further, by using the words "pattern of unsolicited telephone calls," the statute clearly anticipates that more than one call would be placed before a violation occurred. The text of the Act simply does not empower the Commission to prohibit a telemarketer from making a single, non-deceptive call.

The Commission's proposal not only violates the plain language of the Telemarketing Act, it also conflicts with Congress's legislative intent. The legislative history of the Act reveals that Congress's objective in enacting the statute was not to impede legitimate telemarketing or provide generalized privacy protections, but rather to "prevent deceptive and abusive telemarketing practices." House Report No. 103-20. In this regard, the Committee on Energy and Commerce indicated in the House Report that:

> *Regulating legitimate, mutually-beneficial activities is not the purpose of this legislation.* Instead, the Committee has focused the legislation on *unscrupulous activities* from which no one benefits but the perpetrator. The legislation strikes an equitable balance between the interest of *stopping deceptive (including fraudulent) and abusive telemarketing activities* and not unduly burdening legitimate businesses.

Id. (emphasis added). The House Report further provides that:

> [I]n directing the FTC to prescribe rules prohibiting abusive telemarketing activities, it is not the intent of the Committee that telemarketing practices be considered per se "abusive." *The Committee is not interested infurther regulating the legitimate telemarketing industry through this legislation.*

> Rather, the goal is to curtail any deceptive (including fraudulent) and abusive practices by *specific* telemarketers.

Id. (emphasis added). Establishing a national do-not-call registry which would effectively impact every telemarketer subject to the FTC's jurisdiction would clearly undermine Congress's goal of *not* over-burdening legitimate telemarketing activities.

11. Policy Considerations Weigh Against Establishing A National Registry

Even if the Commission's proposal was permitted by the Telemarketing Act, policy considerations weigh heavily against establishing a national do-not-call registry. Telemarketing is an effective advertising and marketing tool that benefits businesses, consumers and the U.S. economy. Further, the current regime of federal and state telemarketing regulation has been particularly effective at protecting consumers while not unjustifiably burdening legitimate business. Establishing a national registry would be detrimental to business, harmful to consumers and damaging to the economy. Finally, the proposal would unfairly disadvantage the industries that are subject to the Commission's jurisdiction.

A. Telemarketing Benefits Business, Consumers And the Economy

For many years, telemarketing has been an efficient and cost-effective marketing tool available to businesses of all sizes. It is also a useful way for individuals to receive valuable information about a wide variety of products and services. In emphasizing that the Act was not intended to impede legitimate telemarketing activities, Congress specifically acknowledged the benefits of telemarketing to both businesses and consumers:

> The sale of goods and services over the telephone, commonly called telemarketing, has been a cost-effective way for many legitimate businesses to reach potential consumers. The Committee recognizes that legitimate telemarketing activities are ongoing in everyday business and may provide a useful service to both business and their customers.

House Report No. 103-20.

Telemarketing is a particularly valuable marketing tool for small- and medium-sized companies that do not have the resources to invest in broadcast and other more expensive forms of advertising. Because telemarketing is one of the least expensive marketing options, it enables smaller companies to reach a substantial number of potential customers on an affordable basis. As well, many smaller businesses rely on word of mouth and personal references, and follow up on such referrals by telephone.

For this reason, telemarketing is an essential component of many smaller companies' marketing programs.

Telemarketing also is an extremely valuable tool for companies that market most effectively on a one-on-one basis. The residential mortgage lending industry, for example, relies heavily on telemarketing to introduce financing options and alternatives to potential borrowers. By initially presenting mortgage loan products to consumers over the telephone, lenders are able to customize their products to fit the individual financial circumstances of each particular consumer. This personalized attention cannot be provided through more generalized marketing alternatives, such as television and radio.

In addition to enabling businesses to market in an affordable and cost-effective manner, telemarketing provides many consumers with access to information and opportunities that they might not otherwise receive. Consumers who live in rural areas, for example, often do not have access to mass-media advertising. However, they are able to receive a significant amount of commercial opportunities via direct marketing, including through telemarketing. Additionally, telemarketing enables consumers to learn about opportunities from companies that cannot afford more expensive marketing alternatives. This increases the amount of commercial choices offered to consumers.

The ability to interact with a telemarketer about a product or service being presented also enables consumers to quickly and efficiently determine whether the product or service will meet his/her needs. In the mortgage lending business, for instance, consumers who receive telemarketing calls can receive an estimate on their interest rate and monthly payment in minutes. This is significantly more informative than seeing or hearing an advertisement that provides interest rate estimates, but no specifics about the consumer's particular circumstances.

Telemarketing also benefits the U.S. economy, both in terms of sales revenue generated and employment of millions of individuals. In a recent study entitled 1999 Economic Impact: U.S. Direct Marketing Today, the Direct Marketing Association ("DMA") indicated that direct marketing advertising expenditures represent more than half of all U.S. advertising expenditures, and outbound telephone marketing expenditures, "by a large margin, represent the largest category of direct marketing media spending." According to the study, U.S. sales revenue attributable to consumer telemarketing was estimated to reach $256.9 billion in 2000, $276.6 billion in 2001 and $373.3 billion in 2005. The study also indicated that in "2000, more than 14.7 million workers will be employed throughout the U.S. economy as a result of direct marketing activities,'' and 5.7 million (38.9 percent) of those workers will be employed in telephone marketing. Furthermore, in 2001, nearly 6 million workers were expected to be employed in telephone marketing, and in 2005, the number is projected to exceed 6.9 million. These

figures do not include jobs associated with direct marketing "secondary suppliers" or "secondary 'inter-industry' suppliers (*i. e.*, suppliers to suppliers)."

In short, telemarketing has long been a marketing mainstay for many U.S. companies, an important source of product information for American consumers and a significant contributor to the U.S. economy.

B. The Current Regulatory Regime Is Effective

Telemarketing activities are already heavily regulated, and the current regime has proven to be extremely effective against telemarketing fraud and abuse. Currently, the telemarketing industry is subject to the Telemarketing Act and the TSR, the TCPA and the FCC's implementing regulations, and state-specific telemarketing statutes in 26 states.

In the area of do-not-call restrictions, there are significant consumer protections already available under both federal and state law, as well as under highly effective self-regulatory programs. Under federal law, all companies must maintain an internal do-not-call list and provide consumers with a copy of their do-not-call policy upon request. On the state level, many jurisdictions have implemented statewide do-not-call restrictions, most of which contain exemptions for certain types of transactions, such as those that are completed on a face-to-face basis. Furthermore, the DMA requires its members to adhere to its Telephone Preference Service ("TPS"), a system that enables consumers to request that DMA members refrain from calling them.[1] The DMA's TPS, which includes over 4 million consumers, is universally regarded as an extremely successful and cost-effective self-regulatory measure.

These mechanisms have provided ample authority for the FTC, FCC, states and consumers to take action against allegedly abusive and/or deceptive telemarketers. For example, the FTC's TSR has been in effect for five years. According to the National Association of Attorneys General, complaints against telemarketers fell from being the top consumer complaint to tenth place within the first year of the implementation of the rule. As well, in the five years since the TSR has been in existence, the FTC's enforcement efforts and lawsuits by consumers have resulted in the collection of hundreds of thousands of dollars in civil penalties and the recovery of $152 million by consumers. Recently, in March 2002, a U.S. District Court ordered a magazine subscription telemarketing group to pay $39 million in consumer redress for violating the terms of a 1996 telemarketing settlement. These recoveries demonstrate that the Commission has been able to vigorously protect consumers against telemarketing abuses using existing laws and regulations.

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[1] In addition to requiring its members to comply, the **DMA** provides the TPS list to non-members for a fee.

The Commission itself has conceded that the current version of the TSR has been a useful tool in telemarketing enforcement. According to the Commission, in response to its February 2000 request for comments regarding the effectiveness of the TSR, it received a total of 92 comments from representatives of the telemarketing industry, law enforcement agencies, consumer groups and individuals. These 92 commenters:

> . . . uniformly praised the effectiveness of the TSR in combating the fraudulent practices that had plagued the telemarketing industry before the Rule was promulgated. They also strongly supported the Rule's continuing role as the centerpiece of federal and state efforts to protect consumers from interstate telemarketing fraud.

67 Fed. Reg. 4494 (Jan. 30,2002).

The Commission has indicated that its proposed do-not-call registry is justified by the purported frustration of consumers over unwanted telephone solicitations. 67 Fed. Reg. 4517 (Jan. 30, 2002). Under the current TSR, a telemarketer must cease all calls to a consumer upon request. Notwithstanding this requirement, the telemarketing industry reports that fewer than 5 percent of all contacted consumers request to be placed on company-specific do-not-call registries.

In sum, there is no reliable evidence demonstrating that the current system of telemarketing regulation is ineffective. The current regime strikes an equitable balance between the interest in protecting consumers against deceptive and abusive telemarketing activities, and the interest in not unduly burdening legitimate businesses.

C. A National Do-Not-Call Registry Would Harm Business, Consumers and the Economy

If adopted, the FTC's proposal would seriously impair businesses that use telemarketing as part of their advertising strategy and irreparably harm those businesses that rely on it. As discussed above, telemarketing accounts for hundreds of billions of dollars in annual sales in the United States. In the course of enacting the TCPA, Congress recognized the crippling effect that a national registry could have on industry, and required the FCC to evaluate the costs and benefits ***before*** establishing it. After undertaking this evaluation, the FCC rejected the national registry approach, concluding that it would not be an "efficient, effective, or economic means" of preventing unwanted telephone solicitation. In reaching this conclusion, the FCC stated that a national registry "would be costly and difficult to establish and maintain in a reasonably accurate form." Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, 7 FCC Rcd 8752, Par. 14 (1994). According to the FCC, "requiring the maintenance of company-specific do-not-call lists would be the most effective and efficient means for telephone subscribers to avoid unwanted telephone solicitations." In

initially developing the TSR without a national do-not-call registry, the FTC affirmed the FCC's prior conclusion regarding the effective balancing of interests by company-specific do-not-call lists between legitimate telemarketers and consumers.

Like the FCC, the FTC must consider the economic impact the proposed registry would have on the businesses and employees who engage in telemarketing. The vast majority of telemarketing businesses comply with the existing TSR. **A** national registry would harm these businesses because they depend upon call volume to generate sufficient revenue to remain profitable. To deny businesses the opportunity to make at least one contact with a consumer to describe their products or services effectively closes the door to revenue. If these same consumers do not want to be called again, they can simply request that the caller place their name on the company's internal do-not-call list. The current rule allows consumers the freedom to choose which opportunities they wish to be notified about via the telephone, and prevents calls from those companies they do not care to hear from in the future.

The proposed registry would have a particularly devastating impact on small- and medium-sized businesses. For many smaller companies, telemarketing presents the only efficient and affordable method of marketing their products. Eliminating or drastically reducing these companies' client bases is tantamount to putting them out of business. Likewise, the proposal will harm local merchants, such as clothing retailers or sporting goods stores, who regularly call their clients to alert them of upcoming sales or the amval of new merchandise. Consumers who have preexisting relationships with businesses might not realize that they are blocking calls fi-om businesses from whom they would like to receive calls, and with whom they have a history of doing business. Consumers will presumably rush to sign up on the list without thinking of the full impact of their actions. This will be especially detrimental for small- to medium-sized businesses, which consumers may normally wish to support, as they may not associate such businesses with telemarketing calls. However, under the proposed rule, such businesses with which consumers may already have a relationship would be barred from calling regular customers. It is easy for a consumer to notice receiving calls from businesses they do not wish to support, but it may be too much to expect that a consumer would notice the absence of calls from a business they would like to hear from. **As** a result, such preexisting relationships may falter and wither, causing small- and medium-sized businesses relying on such relationships to fail.

In addition, complying with a national registry will present technical challenges that many small- and medium-sized companies will not be able to overcome. Unlike large corporations with sophisticated computer systems and substantial financial resources, smaller businesses will not have the technology and expertise necessary to scrub their local calling lists against the FTC's national database or even a smaller regionalized version of the database. Further, a federal do-not-call registry would

overlay, and not replace, state requirements and self-regulatory registries. The added costs of acquiring the technology and personnel to fully be in compliance with these various registries will be fiscally unfeasible for most smaller businesses. This would especially hold true as complying with, and scrubbing existing local calling lists against, a national registry would undoubtedly be much more expensive than it presently is on a state level. Add to this the additional logistical burden of conscientiously complying with all the various regulatory schemes, which differ in their scope, and it is very realistic to imagine that many businesses will not be able to stay solvent. In essence, the proposed national do-not-call list is too blunt an instrument to effectively prevent consumer fraud without irrevocably harming businesses.

The proposal also will harm consumers by reducing their choices and increasing their costs of goods and services. As discussed above, telemarketing activities provide information about products and services that many consumers would not otherwise receive. If adopted, the proposal would eliminate a wide range of beneficial opportunities and drastically reduce the commercial alternatives presented to consumers. Furthermore, the proposal would result in increased costs. Even if the expense of a registry were not passed on to consumers directly, the compliance expenses and the business losses that will result from the registry will be borne by consumers in the form of increased prices. The FCC recognized this when it rejected the national database approach. According to the FCC, even though the TCPA indicated that the cost of a national database should not result in additional charges to residential subscribers, the high compliance costs associated with a registry made it likely that the costs would nevertheless be passed through to consumers.

Furthermore, the benefit conferred on persons who would participate in the registry is negligible compared to the cost that would be borne by consumers who purchase goods and services from companies that rely on telemarketing. As discussed above, telemarketing is a cost-effective and comparatively inexpensive means of marketing. If adopted, the registry will significantly increase the expenses of companies that rely on telemarketing, and these increased costs will be ultimately paid for by consumers. Although the registry will enable some number of consumers to reduce (though not eliminate) the number of telemarketing calls they receive, this benefit would not be justified by the substantial costs that will be passed on to *all* consumers.

The FTC's stated bases for adding yet another regulatory hurdle to the beneficial exchange of information between businesses and consumers are the changes in the marketplace that have occurred in the five years since the TSR was enacted. However, the stated factors can be addressed by existing enforcement options, and simply do not support a registry that proscribes all telephone contact.

The FTC believes that more sophisticated information gathering by marketers has encroached on consumer privacy. If the purpose of the registry is to reduce or eliminate unwanted calls, an equally compelling argument can be made that the sophisticated data gathering that concerns the FTC has already reduced the number of unwanted intrusions. When telemarketers know more about a specific consumer's buying habits and are able to provide the consumer with tailored purchasing options, rather than being harmed, the consumer has received a specific unanticipated purchasing opportunity from a telemarketer who offers a service or product the consumer is more likely to have some interest in buying. When less sophisticated data gathering was used, all marketers contacted all consumers irrespective of whether the consumer might have any desire to purchase the specific product. The FTC cannot rationally argue that indiscriminate calls are less intrusive than tailored marketing efforts. If the FTC's concern is the protection of consumer privacy, then perhaps the focus should be on existing privacy regulations relating to the sale of consumer data between businesses. For some businesses, the consumer's existing ability to opt-out of data sharing already allows consumers to selectively protect their data.

D. A National Do-Not-Call Registry Would Arbitrarily Disadvantage Certain Industries

Certain entities, including banks, savings and loan institutions, and certain federal credit unions, among others, are not subject to the FTC Act and therefore are outside of the FTC's jurisdiction. ***See, e.g.,*** 67 Fed. Reg. 4497 (Jan. 30, 2002). **As** a result, these entities are not subject to the current TSR and would not be subject to the Commission's proposal.

Imposing a national do-not-call registry on certain types of companies, but not others, will burden the institutions subject to the registry and reduce the range of choices available to consumers. If the Commission adopts its proposal, it will severely impede certain entities' ability to reach out to their potential customers, while allowing others unfettered access. For example, while the proposal would apply to independent mortgage companies such as Ameriquest, it would not apply to banks, savings and loans, and certain other types of lending institutions. This means that Ameriquest's ability to compete with banks, ***et*** *al.,* would be unjustifiably impaired. Given that independent mortgage companies are already heavily regulated by state mortgage banking licensing authorities, the Department of Housing and Urban Development, the Federal Reserve Board and other agencies and authorities, there appears to be no rational basis for this result.

Imposing a national registry on certain classes of institutions but not others also would limit the options available to consumers. For example, under the proposal, consumers could receive mortgage loan information from banks, ***et*** *al.,* but not from

independent mortgage companies, such as Ameriquest. This means that consumers would not be able to compare the loan products offered by Ameriquest, and other similarly situated lenders, to those offered by the institutions that are exempt from the registry. Realistically, consumers may not even realize that these other choices exist. This result would particularly disadvantage those consumers who would not qualify for financing from banks, or who could benefit from loan products available from Ameriquest but not from other types of institutions.

In sum, the Commission should not adopt the proposal because it will arbitrarily put certain groups of companies at a competitive disadvantage, and reduce the company and product choices available to consumers.

III. If The FTC Adopts A National Registry, It Should Create Appropriate Exceptions

If the Commission adopts the do-not-call registry proposal, it should except from the requirement certain types of transactions where there are other protections in place to protect consumers from deception and fraud. For example, any registry requirement should be inapplicable to transactions:

(1) that are not consummated, completed or closed until after the consumer and the seller or seller's authorized agent have **a** face-to-face meeting;

(2) that are not consummated, completed or closed until after the consumer has had an opportunity to review and execute a written or electronic document; or

(3) that are entered into by an institution that is licensed or regulated by a state or federal government agency.

Most states that have adopted a do-not-call registry or similar requirement have recognized some, if not all, of these exceptions. All of them represent situations in which the consumer will be otherwise protected from fraud or deception. For instance, in transactions that are not closed until after a face-to-face meeting or until after the consumer executes a written or electronic document, the consumer will have time to evaluate the transaction and determine whether or not to complete it. This is distinct from the "typical" telemarketing fraud scenario, in which the consumer is asked to consummate the transaction with a credit card during the initial call. In fact, the Commission itself recognized the significant nature of these types of consumer protections when it created the exemptions to the TSR.

Specifically, the Commission noted that it was "Congress' ***clear intent*** not to cover such transactions," and that "such face-to-face contacts where consumers have the opportunity to examine the goods or services should be exempt under the Rule." 60 Fed. Reg. 30406 (June 8, 1995) (emphasis added). The Commission also noted that "[t]his exemption reflects the Commission's enforcement experience that the occurrence of a face-to-face meeting limits the incidence of telemarketing deception and abuse." 60 Fed. Reg. 43842 (August 23, 1995). The Commission recognized that legitimate businesses which use telemarketing as a means to effectively convey individualized information regarding products and services, and which require the consumer to take affirmative steps to complete the transaction, should be allowed to do so, as there is little danger of fraud or deception and potentially much benefit for the consumer. *Id*.

Furthermore, institutions that are licensed or approved by a government agency are typically subject to industry-specific consumer protection requirements, frequent regulatory audits and stiff penalties for statutory/regulatory violations. Ameriquest, for example, is licensed as a mortgage lender by the California Department of Corporations, and similar agencies in each of the states in which it does business. As a residential mortgage lender licensee, Ameriquest is subject to a comprehensive series of state and federal consumer protection requirements, and is audited on a regular basis by state licensing authorities. The oversight provided by such agencies is an effective tool already in place for preventing consumer protection abuse in the form of improper telemarketing tactics.

In short, if the Commission adopts a national registry, it should create exceptions for transactions with respect to which consumers already have protections against fraud.

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In summary, we strongly believe that the Telemarketing Act does not authorize the creation of a do-not-call registry, and that such a registry would be unconstitutional. In addition, a do-not-call registry would be burdensome for many businesses, and particularly onerous for some industries, while at the same time eliminating many consumer choices. The mechanisms currently in place are effective in protecting consumers. Should a national registry be instituted, the proper exceptions should be included to ensure that legitimate businesses are not unduly burdened.

Thank you for this opportunity to comment on the Commission's proposal. If you have any questions about these comments, please call Tom Noto at 714) 564-0600 x 4563.

Yours truly,
Ameriquest Mortgage Company

By: Thomas J. Noto

Thomas J. Noto
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