

Before the
FEDERAL TRADE COMMISSION
600 Pennsylvania Ave., NW
Washington, D.C. 20580

In the Matter of

Telemarketing Rulemaking

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FTC File No. R411001

**COMMENTS OF THE ASSOCIATION OF PUBLIC
TELEVISION STATIONS**

1. The Association of Public Television Stations (“APTS”) hereby submits its comments in the above captioned proceeding. APTS is a nonprofit organization whose members comprise the licensees of nearly all of the nation’s 356 noncommercial educational television stations. APTS represents public television stations in legislative and policy matters before the Commission, Congress, and the Executive Branch, and engages in planning and research activities on behalf of its members.

2. On January 22, 2002, the Federal Trade Commission (“FTC”) proposed significant changes to the Telemarketing Sales Rule (“TSR” or “the Rule”).¹ The TSR is a far-reaching regulation adopted in 1995 to prevent deceptive and abusive telemarketing practices. Among other things, the proposed amendments to the TSR would establish a centralized national “Do Not Call” registry, restrictions on the dissemination of customer billing information, and other requirements designed to curb abusive telemarketing practices. Pursuant to the USA

¹ 60 FR 43843.

PATRIOT Act,² the FTC has proposed to expand the coverage of the TSR to reach not just calls made to sell goods and services, but also charitable fund-raising calls made by for-profit telemarketers on behalf of charitable organizations. The FTC has proposed creating a national do-not-call registry, which will be maintained by the FTC. This mechanism would allow consumers to place their telephone numbers in the national registry and thereby eliminate *all* telemarketing calls from all sellers and telemarketers covered by the TSR. Unlike many analogous state do-not-call laws, the new Rule would *not* exempt from its reach telemarketing calls made to a seller's existing customers.³

3. Public television appreciates the FTC's effort to curb abusive telemarketing practices, including the creation of a national do-not-call registry that can supplement similar state registries. However, the absence of an exception from the do-not-call registry where a non-profit membership organization has relationship with a donor (whether they be a current or former member) could dramatically affect the ability of public television stations to solicit renewal donations from their members and to contact former members of the station through the use of paid telemarketing contractors.
4. It should be noted that for public television stations, telemarketing has proven to be a very successful fundraising tool. However, keenly aware of the widespread sensitivity to telemarketing calls, public television stations throughout the nation are careful to be

² "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001," Pub. L. 107-56 (October 25, 2001), Section 1011(b)(3) (amending 15 U.S.C. § 6106(4)).

³ For instance, New York's do-not-call registry allows for calls from companies with whom the consumer has a prior business relationship. See NY CLS Gen Bus § 399-z (1)(j)(ii) (2002), and 21 N.Y.C.R.R. 4603.2(a) (2002). See also <https://www.nynocall.com/resident.html>.

responsible in using this method. It is generally an accepted practice among public television stations, for instance, not to initiate cold calls to individuals who have never voiced an interest in donating to their local public television station. And many stations restrict their calls to certain times of the day that are considered reasonable as well. Moreover, many stations have do-not-call lists of their own. However, public television stations have found that occasionally contacting current members in a reasonable and professional manner allows the station to maximize the generous donations of its current members. In addition, nearly all public television stations use professional telemarketers to renew and re-instate “lapsed” members.

5. A survey of our membership indicates that the impact of telemarketing on charitable giving is significant. For instance, on average, stations raise roughly \$425,000 per station per year from telemarketing with a median figure of \$98,500 per station per year. Moreover, stations raise funds from telemarketing that range from \$6,000 per year for smaller stations to \$3,740,000 per year for some of the larger stations.
6. In general, for small and medium and even some of the larger stations, outsourcing of telemarketing is an important component of station operations. Indeed nearly 75 percent of APTS membership outsources its telemarketing operations. This is because contracting with an outside company for telemarketing services is less expensive and easier to manage than installing an in-house system. For instance, the average cost per year of outsourcing for telemarketing operations is approximately \$182,000 per year. But the average estimated cost per year of operating the same level of telemarketing by using in-house capabilities –

assuming such an option is even possible – is \$224,000 per year, approximately \$42,000 more per year. And some stations have estimated that the cost of replicating their outsourced telemarketing capability could reach over \$2 million. Moreover, a station that outsources its telemarketing operation does not have to manage personnel issues, taxes, insurance, and other employee benefits. Recreating a telemarketing campaign with in-house staff is therefore frequently a financially impractical option for many public television stations for a variety of reasons. If these stations attempted to establish in-house operations using volunteers, they would be faced with a daunting task of recruiting a large, reliable, professional volunteer corps, often on a seasonal or temporary basis, to handle the volume of calls routinely made for the station: a managerial nightmare.

7. To ensure that the FTC's proposed telemarketing rules do not unintentionally restrict the ability of public television stations to engage in reasonable and responsible fundraising necessary for their financial health, public television proposes a limited exception to the do-not-call registry that would allow public television stations, through their telemarketing agents, to contact donors who are currently members of the station and to contact former members, with whom the station had a previous donor relationship.

Respectfully submitted,

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