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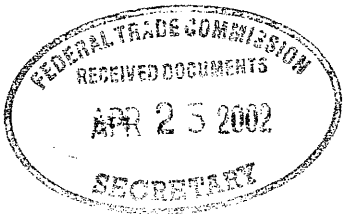


Federal Trade Commission
The Honorable Donald S. Clark
Office of the Secretary
Room 159
600 Pennsylvania Avenue, N.W.
Washington, DC 20580
ATTN: FTC File No. R411001

RE: Telemarketing Rulemaking – Comments FTC File NO. R411001

Dear Secretary Clark,

FleetBoston Financial Corporation ("FleetBoston") is pleased to offer the following comments with respect to the above-referenced Notice of Proposed Rulemaking on behalf of itself and its primary banking subsidiary, Fleet National Bank ("FNB"). FleetBoston is the seventh largest financial holding company in the United States as of December 31, 2001, based on total assets. FleetBoston's principal businesses include: consumer financial services, including domestic retail banking and credit cards; wholesale banking, including commercial finance, corporate banking and small business services; wealth management and brokerage, including asset management and retail brokerage and securities clearing; international banking including full service banking in key Latin American markets; and capital markets, including investment banking, brokerage market-making and principal investing.

FleetBoston's comments are in response to the Federal Trade Commission ("FTC") proposal to amend its Telemarketing Sales Rule ("TSR") ("Proposal") which was originally adopted on August 16, 1997 pursuant to the Telemarketing Consumer Fraud and Abuse Prevention Act ("Act"). Neither the Act nor the TSR directly apply to banks or other federally regulated financial institutions. However, the FTC takes the position that the TSR and the Proposal apply to telemarketing activities performed on behalf of banks by third parties (including subsidiaries and affiliates of a bank). Therefore, if a bank were to hire a company, whether an affiliate or subsidiary of the bank or an unrelated third party, the FTC would apply the requirements of the TSR to that company's telemarketing activities, thereby, also indirectly regulating the bank's telemarketing activities.

FleetBoston supports the recent efforts of the FTC to investigate and eliminate fraud in telemarketing and supports the TSR currently in effect. However, the revisions proposed by the Commission in the proposed rule place many burdensome restrictions on companies such as ours that have ethically used the telephone as a legitimate sales and marketing tool. We are concerned that these attempts will penalize the business practices of reputable companies and have adverse impact on our company's ability to continue to conduct ethical, legal and customer-centric telemarketing programs. We, respectfully, submit the following comments:

1) **Jurisdiction.** As stated above, while the FTC does not have jurisdiction over banking activities, the Proposal would impact banking activities by restricting the activities of service providers who perform telemarketing functions for a financial institution. Respectfully, we believe that the Office of the Comptroller of the Currency ("OCC") already provides significant guidance to banks on managing the risks that may arise from their business relationships with third parties. See, for example, OCC Bulletin – OCC 2001-47 – which extensively describes the risk management principles applicable to third party relationships. It is our belief that the management of third party vendors already is sufficiently monitored by federal banking agencies requirements and, therefore, bank activities involving third party marketers should be exempt from this proposal.

2) **Do-Not-Call List.** The Proposal would create a centralized do-not-call list ("DNC List") that would be maintained by the FTC. Companies would be prohibited from calling any individual on the DNC List unless the individual has provided "express verifiable authorization" ("EVA") that he or she wished to receive calls from a specific company. We are concerned about the access to the registry as well. If this becomes public information, there is the potential that a consumer's private telephone listing could then become "public record" by appearing on this registry. Furthermore, if the registry is of public record, the very "fraudulent" telemarketers that this Proposal is intended to address, would have access to this group of people. This approach raised a number of issues including the following.
   a) **Existence of National Registry.** The industry has already attempted to provide consumers with a one-stop service to remove their names from all calling lists. The Direct Marketing Association's Telephone Preference Service offers consumers an easy, free, nationwide do-not-call system that has already been created and will not require additional money to be expended by the FTC. The DMA's national list is applicable to 80% of marketers, is already implemented (also includes mail preference) and can react more quickly. Perhaps the FTC could work with the DMA to increase publicity of the Telephone Preference Service and work with the states toward adopting a central clearinghouse.
   b) **Federal Preemption.** While the Proposal attempts to establish a "central" DNC List, the Proposal's approach would complicate, rather than centralize, the do-not-call process since there is no provision for federal preemption of existing state laws. The Proposal adds yet another layer to the already complex process for determining which individuals have opted out of telemarketing.

c) States appear to be strongly committed to pursuing and maintaining their own telemarketing statutes. Currently, approximately twenty states (representing approximately 60% of Americans) have moved to address the existing do-not-call framework. Should the FTC move forward with this Proposal, the FTC should also preempt state do-not-call requirements.

d) **Adverse Consequence for Responsible Companies.** The Proposal creates a "lowest common denominator" effect where all telemarketers will be directly affected by the questionable players whose telemarketing behavior will drive consumers to sign up for the DNC List. This means that the most responsible telemarketers who have crafted their procedures to telemarket in a pro-consumer manner will suffer the consequences of telemarketers whose practices may be objectionable. This problem is avoided under the existing approach whereby each company maintains their own registry.

i) Telemarketing has beneficial purposes. Many consumers take advantage of telemarketing; this fact is evident in the dollar amount consumers spend purchasing products and services. The telemarketing industry provides significant employment and employment growth.

ii) Financial impact. The Proposal as it stands is estimated to cost the FTC between $4 and $6 million to implement in the first year; subsequent costs (the second year forward) would be passed onto the industry. There would be significant economic impact on our corporation as follows.

(1) While many complain about telemarketing, there is no denying the numbers generated. If these restrictions become effective FleetBoston could potentially eliminate as many as 50 jobs within our corporate family.

(2) There would be additional costs of compliance that would be ultimately passed on to the consumer.

(3) The cost of the FTC's proposed registry to marketers and consumers increases with the frequency of renewal. Considering the transient nature of our population, we would end up with a national list that would be at least 20% incorrect after one year. Consider that telephone directories have a "shelf life" of six months.

iii) Timing issues. The time frame in the Proposal sets the expectation for a company to reconcile their data with a DNC list obtained not more than thirty days before a call is made. This time frame is impractical in view of the complex process used to prepare telemarketing lists. For example, the lists may be prepared with the help of multiple parties and may involve a series of screenings. In addition, many telemarketing campaigns may last for times exceeding a thirty day time period. That would mean that a telemarketing list "may expire'' before the consumers on the list have been called; once again adding to the financial impact of the process.

iv) Services Opting Out on Behalf of Consumers. It is critical that third parties not be permitted to place individuals on the list. Experience with other comparable situations, such as exist with respect to credit repair organizations, indicates that allowing intermediary service providers to interact on behalf of consumers in this context will likely decrease the accuracy of the DNC List and create the potential for consumer fraud and abuse.

e) **Established Customer Relationships.** The Proposal makes no exception for companies wishing to telemarket individuals with whom they have established customer relationships. As a result, a company would not be permitted to telemarket its own customers if those customers add themselves to the DNC List. For example, if we, at FleetBoston, direct our service provider to call an existing borrower to market refinancing alternatives the service provider would be required to ensure that is does not call any customers included on the DNC List; thereby removing our customer from the opportunity to obtain new beneficial products and services.

i) Should the FTC adopt the centralized DNC List, it should be made clear that companies **are not prohibited** from contacting individuals with whom they have an established customer relationship. In this case the bank would be prevented from calling its own customers about offers for cheaper, more efficient products and services. Financial institutions are heavily regulated and much of their corporate structure is dictated by regulatory requirements. These requirements generally permit the marketing of products and services across holding company affiliates and subsidiaries in order to permit one stop shopping and to foster the synergies between various financial products.

ii) It should also be made clear that any member of a corporate family should be permitted to call an individual on the DNC List as long as the individual has an established customer relationship with any member of that corporate family and the individual has not so advised the bank and/or affiliates of do-not-call instructions. This change is important to preserve the benefits that the financial modernization provisions of the Gramm-Leach-Bliley Act ("GLBA") were intended to provide.

3) **Use of Pre-acquired Account Information.** The Proposal would prohibit disclosing consumer billing information to any person for use in telemarketing It would also prohibit receiving consumer billing information for use in telemarketing, unless the consumer provides the information.

a) This issue is already addressed under GLBA, which provides that a financial institution may not disclose a customer's account number for use in telemarketing, among other types of marketing. We believe that GLBA fully addresses this issue as it pertains to account number information.

b) Furthermore, affiliates, within a corporate family, should not be treated as third parties. The guidelines for affiliate sharing are clear under both GLBA and the Fair Credit Reporting Act.

4) **Definition of Outbound Calls.** Telephone calls initiated by a customer that are not the result of any solicitation by a seller or telemarketer are exempt from the current TSR. The Proposal, however, modifies that definition of an "outbound telephone call" in a manner that creates ambiguity with respect to this exemption. Specifically, the Proposal suggests that when a call initiated by a consumer is transferred to a telemarketer, the transferred call is a separate "outbound telephone call" and not exempt from the requirements and prohibitions in the Proposal.

a) There is no reason to redefine an outbound call simply because the call may include the offer of products or services from more than one seller. In an inbound call, the consumer knows the company who they are calling, and knows the call is about the consumer purchasing goods or services. Repeating disclosures for each additional product or service is likely to be confusing and annoying to the customer.

b) The definition of "outbound telephone call" should be clarified to ensure that it does not cover an inbound customer service call or inquiry from an individual with an established customer relationship. For example, it should be made clear that the telephone call from a cardholder who calls his or her bank to raise a customer service inquiry should not be covered under the Proposal, even if at some point during the call it may be appropriate to consider transferring the cardholder to a second individual in order to discuss possible product offerings that may be available to the cardholder.

5) **Payment Issues.** The Proposal would require a telemarketer to obtain a consumer's EVA before submitting the consumer's billing information for payment. The only exception to the EVA requirement is for credit cards; and other means of payment are covered by the unauthorized use and billing error protections of the Truth in Lending Act, or comparable protections. While we can appreciate the FTC's concern with payment methods that do not provide Dispute Resolution Mechanisms, the rule should permit or recognize that a seller may alleviate the FTC's and consumer concerns with alternate payment methods that do not afford dispute resolution mechanism through a liberal refund policy. State telemarketing and consumer protection statutes have recognized that a liberal refund policy is more effective than a burdensome and arduous notice and writing requirement. Many states have a provision in such statutes that state that the seller does not have to comply if the seller has a liberal refund policy that provides for a consumer to receive a refund within a certain time period (usually thirty days). This alternative would also alleviate privacy concerns with the FTC's proposal, which require the consumer to provide their account number to a telemarketer.

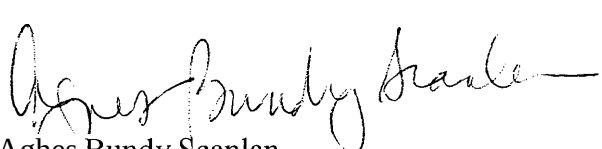
a) The FTC should explicitly recognize other examples of payment mechanisms that provide adequate protections and therefore are not subject to the requirement for EVA prior to submission for payment. For example both MasterCard and Visa have adopted unauthorized use liability provisions for debit cards issued in the United States.

b) EVA. FleetBoston Financial is in full agreement with the FTC for recognizing that EVA should be obtained via the telephone. We do, however, suggest the FTC amend the manner in which EVA is obtained. In particular, the FTC should delete the requirement that the consumer's account number should be part of the authorization. As the FTC has observed in other contexts, consumers generally should not share their account numbers over the telephone. In addition, the protections afforded to consumers under the privacy provisions of GLBA adequately address this issue and it would be inappropriate to "confuse" the issue with additional, and possibly inconsistent, requirements under the Proposal.

6) **Sale of Credit Card Protection.** The proposal would require certain disclosures in connection with the sale of credit card protection plans. It would also prohibit certain misrepresentations in connection with the product. We request that the FTC make it clear that the disclosure and prohibitions are limited to plans that purport only to cover liability related to the unauthorized use of credit cards.
7) **Predictive Dialers.** The Supplementary Information to the Proposal notes that the FTC will interpret abandoned calls from predictive dialers as violating the Proposal since under such circumstances a call was successfully placed without the telemarketer giving disclosure required by the TSR.
   a) The Proposal should not impose strict liability standards for telemarketers that use predictive dialers that result in abandoned calls, but define acceptable abandoned call rates.
   b) Predictive dialing is critical in the efficiency and productivity for telemarketers.
   c) Bear in mind that that after the implementation of the do not call registry, the universe of people that would be potentially exposed to the "hang ups" would be significantly reduced.
8) **Blocking of Caller ID.** While we support the FTC position on not blocking caller ID information, we suggest that it be made clear that this prohibited practice is the deliberate manipulation of the caller ID signal. There continues to be technological issues surrounding telephony uses that may prohibit implementing this requirement.

In conclusion, we appreciate the opportunity to provide comments on the Proposal. We recognize the difficulty of this task but believe that every effort should be made to avoid increasing the burden and costs of those institutions that use telemarketing in an ethical, legal and consumer-centric approach.

Respectfully submitted,



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