Before the
FEDERAL TRADE COMMISSION
Washington, DC 20580

In the Matter of	)	
	)	
Telemarketing Rulemaking to	)	FTC File No. R411001
Amend the FTC's Telemarketing	)	
Sales Rule, 16 C.F.R. Part 310	)	

To: The Commission

COMMENTS OF NATIONAL PUBLIC RADIO, INC.

National Public Radio, Inc. ("NPR") hereby submits its Comments in response to the Federal Trade Commission's Notice of Proposed Rulemaking ("NPRM") requesting public comment on proposed changes to the FTC's Telemarketing Sales Rule, 16 C.F.R. Part 310. While NPR supports the Commission's efforts to reduce fraudulent charitable solicitations, NPR believes that the FTC's proposed Rule 310.4(b)(1)(iii)(B) prohibiting for-profit companies that solicit donations for or on behalf of charitable organizations from calling consumers who have placed themselves on a national "do-not-call registry" would unnecessarily limit the fundraising capabilities of public radio stations.

I. Background

NPR is a non-profit membership corporation that produces and distributes noncommercial educational programming through more than 640 public radio stations nationwide. Among its award-winning programs are *All Things Considered*®, *Morning Edition*®, *Talk Of The Nation*®, and *Performance Today*®. NPR also operates the Public Radio Satellite Interconnection System and provides representation and other services to its Member stations.

NPR's Member stations are licensed to a variety of institutions, including nonprofit community organizations, universities, and state and local governments. NPR Member stations rely heavily on contributions from individuals to fund the production and acquisition of programming and other operational costs.[1] In fact, individual contributions are the largest source of revenue for public radio stations, comprising 33.1% of the total revenue for public radio in 1999.[2] Public radio stations raise funds from individuals through a combination of on-air membership drives, fundraising events, direct mail and telephone solicitations.[3] Member stations also rely heavily upon contributions from businesses, which comprised 17.9% of the total revenue for public radio in 1999.[4] Business support – frequently in the form of program underwriting or sponsorship – is often the result of telephone solicitations.[5]

Telephone solicitations on behalf of public radio include calls to current and former members of a station encouraging them to renew their membership, serve as

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1 Many stations, including stations that are part of a statewide network or that serve communities close to a state border, have members in more than one state.

2 See Public Broadcasting Revenue, Fiscal Year 1999, Final Report, Corporation for Public Broadcasting, March 2001, Table 2, reprinted at http://stations.cpb.org/system/reports/revenue.

3 As the result of a policy forged with its Member stations, NPR itself does not engage in any on-air fundraising drives, direct mail or telephone solicitations for individual donations.

4 See Public Broadcasting Revenue, Fiscal Year 1999, Final Report, Corporation for Public Broadcasting, March 2001, at Table 2. The remaining support for public radio stations comes from foundations, the Corporation for Public Broadcasting, and state and local government contributions. Id.

5 Many individual stations also attract support from businesses in more than one state. See note [1], supra.

challenge grantors in an on-air membership drive, or contribute to other special fundraising efforts. These solicitations also include calls to prospective members. Some public radio stations use staff or volunteers to make these calls. However, many stations, lacking the staff, equipment and expertise, turn to for-profit companies who specialize in telephone solicitations on behalf of public broadcasters or other charitable organizations.

II. The Proposal To Prohibit For-Profit Companies Soliciting Donations On Behalf Of Charitable Organizations From Contacting Persons On The National "Do-Not-Call Registry" Would Restrict An Important Source Of Revenue For Public Radio Stations

If the FTC adopts proposed Rule 310.4(b)(1)(iii)(B) as currently drafted, the number of individuals who may be contacted via telephone on behalf of public radio stations could shrink dramatically. Many individuals may sign up for the registry without realizing that the registry encompasses calls from their local public radio station. As a result, an important source of funding for the many public radio stations that rely on for-profit entities to solicit charitable contributions on their behalf could be restricted. Likewise, if businesses place their names on the national registry, the number of potential underwriters or sponsors that a station may contact through a for-profit agent could be reduced as well.

Public radio stations, which operate on very tight budgets, can ill afford to lose any source of revenue. The removal of or decrease in any one of these limited sources would place a significant burden on a station and its efforts to provide high-quality noncommercial radio programming.

The proposed exception to the Rule where the "seller or charitable organization has obtained the express verifiable authorization of such person to place calls to that person" is unlikely to relieve any of the burden on public radio stations. It would be almost impossible for an organization to obtain "express verifiable authorization" from any significant number of people without an extensive public awareness and communications campaign. Public radio stations simply do not have the resources for such a campaign.[6]

III. The FTC Should Exempt From The "Do-Not-Call" Registry Requirements Telephone Solicitations on Behalf of Public Broadcasters To Current And Former Members And Current, Former, and Prospective Sponsors of Public Broadcast Stations

To minimize the potential burden for public radio stations, the FTC should exempt for-profit companies that solicit contributions for or on behalf of charitable organizations, or at least on behalf of public broadcasters, from the do-not-call registry rule. The USA Patriot Act does not require the Commission to establish any national do-not-call registry, nor does it require the FTC to subject for-profit entities that solicit contributions on behalf of charitable organizations to the rule.[7] In adopting the USA Patriot Act, Congress did not reference any abuses in the telemarketing practices of public broadcasters. Nor is there any evidence cited by the FTC in the NPRM that consumers have received excessive or intrusive calls from or on behalf of public radio stations.

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6 To obtain express verifiable authorization, the Commission might include check-off boxes on the do-not-call registry sign-up sheet indicating types of callers, including a category for public broadcasters, from which a person consents to receive calls. However, individuals are unlikely to take the time to review an extensive questionnaire when they sign up for the registry.

7 See Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA Patriot Act) of 2001, Pub. L. No. 107-56 (Oct. 25, 2001).

A number of states that have established statewide do-not-call lists have exempted solicitations by or on behalf of charitable organizations.[8] At least one state has exempted specific industries from the application of its do-not-call rules.[9] The FTC should follow the lead of these states and exempt solicitations for or on behalf of all charitable organizations or all public broadcasters from the application of the proposed do-not-call registry rule.

If it does not exempt solicitations on behalf of all charitable organizations or all public broadcasters, the Commission should exempt all calls on behalf of a public radio station to current or former members of the station from the do-not-call registry rule. Many states that have adopted do-not-call registries have exempted telephone solicitations to consumers who have a prior or existing business relationship with the caller or entity on whose behalf the call is being made.[10] Such an exemption is also consistent with an exemption in the Telephone Consumer Protection Act of 1991.[11] The do-not-call registry is unnecessary with respect to current and former members. First,

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[8] See, e.g., Fla. Stat. Ann. § 501.059(1)(a) (applies to calls soliciting the sale of consumer goods and services); Conn. Gen. Stat. Ann. § 42-288a(7) (applies to calls for purpose of engaging in marketing or sales solicitation or soliciting extension of credit for consumer goods or services); Ga. Code Ann. § 46-5-27(b)(3)(C) (exempting calls by or on behalf of a registered charitable organization); Texas Bus. & Com. Code § 43.003 (applies to calls made to solicit the sale of a consumer good or service).

[9] See, e.g., Fla. Stat. Ann. § 501.059(1)(c)(4) & (5)(c) (exempting newspaper publishers and duly franchised cable television operators calling existing subscribers to sell cable television services).

[10] See, e.g., Fla. Stat. Ann. § 501.059(1)(c)(3); Conn. Gen. Stat. Ann. § 42-288a(9)(C); Ga. Code Ann. § 46-5-27(b)(3)(B); Idaho Code § 48-1003A(4)(b)(i); Mo. Rev. Stat. § 407.1085(4)(b); NY General Business Law § 399-z(1)(j)(ii) & (iii); Tenn. Code Ann. § 65-4-401(6)(B)(iii); Texas Bus. & Com. Code § 43.003(b)(2)(A); Ark. Code Ann. § 4-99-403(5)(A) & (6)(A).

individuals are less likely to object to a call on behalf of an organization of which they are a member. Second, public radio stations already have powerful incentives to ensure that telephone solicitations do not alienate their members.

The Commission should also exempt all calls on behalf of public radio stations to current, former, or prospective underwriters, sponsors, or other business supporters from the national do-not-call registry rule. This rule might disrupt public radio station efforts to secure program or operational funding, which the funder is permitted to treat as a charitable contribution for tax purposes. Under proposed Rule 310.6(g), telemarketers working on behalf of for-profit entities may contact businesses without concern for whether the businesses appear on the do-not-call registry. This means, for example, that a commercial media organization could contact potential advertisers without regard for the do-not-call registry, but a for-profit agency calling on behalf of a public broadcaster would have to consider whether a prospective underwriter was listed on the registry.

These exemptions would help minimize the proposed rule's financial impact upon public radio stations. Any individual objections to calls soliciting contributions on behalf of public radio stations could be handled adequately by company-specific do-not-call lists as set forth in proposed Rule 310.4(b)(1)(iii)(A).

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[11] See 47 U.S.C. § 227(a)(3)(b).

IV. Conclusion

For these reasons, NPR urges the FTC to modify proposed Rule 310.4(b)(1)(iii)(B) to exempt either (i) entities that solicit donations for or on behalf of charitable organizations or public broadcasters or (ii) calls made to a public broadcaster's current or former members or current, former, or prospective underwriters or sponsors.

Respectfully submitted,

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