

**Before the
FEDERAL TRADE COMMISSION
Washington, DC 20580**

**SUPPLEMENTAL COMMENTS OF
DIALAMERICA MARKETING, INC.**

TELEMARKETING RULEMAKING – COMMENT

FTC File No. R411001

(Proposed Amendments to the Telemarketing Sales Rule)

Arthur W. Conway
President & CEO
DialAmerica Marketing, Inc.
960 Macarthur Boulevard
Mahwah, New Jersey 07495
(201) 327-0200

June 28, 2002

Before the
FEDERAL TRADE COMMISSION
Washington, DC 20580

SUPPLEMENTAL COMMENTS OF DIALAMERICA MARKETING, INC.
TELEMARKETING RULEMAKING COMMENT – FTC File No. R411001

I. INTRODUCTION

DialAmerica Marketing, Inc. (DialAmerica) welcomes the additional opportunity to comment on the Notice of Proposed Rulemaking (NPRM) to amend the Telemarketing Sales Rule (TSR). DialAmerica's comments focus again on the telemarketing industry, particularly the outbound sector. The additional comments will cover the following areas:

- Caller ID

Delivering Caller ID information for every telemarketing call is the most effective and fairest way to create accountability in the industry.

- National Do-Not-Call Registry

This approach to create accountability is inherently unfair in that it punishes all members of the industry for the actions of a few.

- Preacquired Account Information

Prohibiting the use of preacquired account information would significantly reduce response rates for legitimate marketing programs, making them no longer viable and would raise issues with regard to

“identity theft.”

- Express Verifiable Authorization

We discuss our proven success of the policy that requires 100% verification of all consumer orders and raise our serious concerns regarding “identity theft” by requiring recitation of complete account information (by the consumer or sales representative.)

II. CALLER ID

Delivery of Caller ID information, that will be displayed on a consumer’s Caller ID device or that can be accessed through such services as *69, is essential to create accountability in the outbound telemarketing industry. The information delivered should be a telephone number and, perhaps, a name, that are directly related to the entity that made the call. (See Attachment A for a more detailed explanation of availability and delivery of Caller ID information.)

From DialAmerica’s review of the more than 40,000 comments submitted in response to the NPRM (see Attachment B), we found that most consumers who took the time to write detailed comments, rather than just vote or fill out a form questionnaire, had three major concerns with outbound telemarketing. These are:

- Ignoring requests to be placed on a company’s do-not-call list
- “Dead air hang-ups” resulting from answering machine detection (AMD) and high abandonment rates
- No Caller ID information being displayed or available through *69

Mandating delivery of Caller ID information clearly addresses the third issue above. It would also address the first issue above by giving the consumer the option of calling back with the request to be placed on a company's do-not-call list. If such requests were not honored, i.e., violations of the TSR, enforcement would be much more practical than it is today (without enforcement, adherence to any rule is highly questionable.)

As to the second point above, consumers will or can know who the company was that called them, and, if they want to be placed on that company's do-not-call list, do so. We believe the consumer would be very likely to do this if the same number appeared more than once for a "dead air hang up." This creates a strong incentive for companies to keep abandonment rates low and eliminate "dead air."

The accountability delivered by Caller ID information extends beyond the three issues noted above. It brings it down to the individual sales representative level. The consumer will have the means to inform a company of a poor quality telemarketing call and thus allow the company to take specific action.

DialAmerica does not understand why some would seem to oppose the delivery of Caller ID information and would want the Federal Trade Commission (Commission) to believe it cannot be done. Could it be that Local Exchange Carriers and others make money by selling call-blocking services that depend on Caller ID information NOT being delivered? Perhaps it is the anonymity that the lack of such information provides to certain overly aggressive sellers and telemarketers (AT&T, MCI, and Qwest are mentioned quite often in the consumer comments.)

Delivery of Caller ID information creates strict accountability in the telemarketing industry. Such accountability will allow effective enforcement of the TSR and allow the Commission to strike a fair and proper balance between the interests of consumers and those of the legitimate telemarketers and users of telemarketing who do it the right way.

III. National Do-Not-Call Registry

The proposed national do-not-call registry is an extreme measure in an attempt to create accountability throughout the outbound telemarketing industry. The Commission currently estimates that over 60 million telephone numbers (*NPRM regarding TSR User Fees, footnote 3*) may be on the registry. Since those households not actively telemarketed (e.g. unlisted numbers) would be less likely to put their telephone numbers on a national do-not-call registry, the proportion of numbers on the registry to those actively telemarketed could very well be far greater than the proportion to total telephone numbers. This obviously would have a severe negative impact on legitimate outbound telemarketers. This could put us out of business.

DialAmerica compared the telephone numbers associated with sales it had made from 1996 through May of 2002 (for its own programs or those conducted on behalf of its clients) to those on the 15 state do-not-call (DNC) lists maintained by the states themselves. The states DNC lists maintained by the Direct Marketing Association (DMA) were excluded. This analysis can be found in Exhibit I. We found that over 30% of the telephone numbers on the state DNC lists were also on our sales history (yes, we are in strict compliance

with state DNC rules!) Over 30% of the consumers that signed up for the states' DNC lists had purchased from us in the past. In fact, the sales count is over two-thirds higher when multiple sales are counted. Since this is the experience of just one company, it is not a stretch to conclude that a higher, if not much higher, percent of consumers on the states' DNC lists have purchased through outbound telemarketing in the past. We conclude from this analysis that consumers who sign up on state DNC lists are not opposed to telemarketing in general, but rather, view it as a way to avoid the annoyance caused by the issues raised in Section II.

DialAmerica compared the telephone numbers on the DMA TPS file to those on the state-maintained DNC lists (see Exhibit II). Less than one third of the people on the TPS file felt it was necessary to add their telephone numbers to the state DNC list. Over two thirds of the people on the TPS file would appear to feel the DMA TPS works fine and feel no need to be on additional DNC lists. But why are more people on the state DNC lists than are on the DMA TPS?

Politically, it was very important to have a lot of people sign up for a state DNC list. The more people that sign up, the more political mileage to be gained. (The same would obviously be true of a national do-not-call registry.) When states enacted DNC legislation, there was a great deal of free publicity concerning such legislation. If the same exposure were to be achieved through paid advertising, the cost would be millions, if not tens of millions of dollars.

The DMA TPS receives no such free publicity. It is not new, having started in 1985. And probably more

significant, it is not embedded in politics, but simply self regulation within an industry.

DialAmerica believes the DMA TPS works. If it were better publicized, more people would know about it and use it (not many more if the Commission mandates the delivery of Caller ID information as outlined in Section II.)

DialAmerica views creating accountability in the telemarketing industry through a national do-not-call registry as flawed. It punishes all members of an industry for the actions of a few. To create a system of accountability that punishes an entire class of organizations for the actions of individual members of the class amounts to stereotyping. But from an accountability standpoint, that is exactly what the proposed national do-not-call registry would do.

If all company-specific do-not-call requests were honored, the company-specific approach would work. Mandating delivery of Caller ID information would go a long way to making this happen. And if the company-specific do-not-call list approach works, is there a need for a national do-not-call registry?

IV. Preacquired Account Information

A question was asked at the June 5-7, 2002 forum by the Commission's staff as to "Why do marketers need preacquired account information to market to consumers?" The answer involves response rates and, to a lesser extent, propriety of data.

It is DialAmerica's experience that consumers are reluctant to give out their credit card or debit card number in an outbound telemarketing call. This is not surprising since many consumer groups and the Commission itself advocate the position that consumers should not give out any credit card information in an outbound telemarketing call.

An example of this occurs in the DialAmerica Sponsor Program (described in more detail in DialAmerica's comments filed on April 15, 2002). Sales representatives call existing customers to see if they would again participate in the program by purchasing another magazine subscription to help out the charitable organization for which they had purchased a prior subscription. If a sale is made, the sale is sent to a centralized verification center which is separate from the sales centers. Here we call the consumer back to verify the sale and, in the process, solicit payment by a credit card. Only about 10% of the consumers will pay by credit card. The remaining consumers are billed and the pay-up is in excess of 85%, which is very high in the magazine industry.

We conclude from this experience that consumers are satisfied with the sale, given the high pay-up on the billed portion of the business, but are simply reluctant to give out a credit card number over the telephone.

Our experience with programs that involve preacquired account information relating to credit cards, is that the consumer is comfortable with preacquired account information. Very rarely (less than one percent of all calls) will consumers ask "Where did you get my credit card number from?" or similar questions.

Our experience shows that legitimate marketing programs, involving payment by credit card or debit card, have significantly higher response rates when it is not necessary for consumers to give their account information to a sales representative. If there were no preacquired account information, response rates would plummet, and many of these programs would no longer be viable.

A secondary benefit to preacquired account information is security. The sales representative never has the full account information of the consumer. “Identity theft” is a growing concern among consumers. DialAmerica is very sensitive to this issue. We, whenever possible, avoid giving our sales representatives access to a consumer’s account information. Even in our Sponsor Program, it is the verifier (typically a much longer term employee) who solicits the account information from the consumer, not the sales representative.

We believe that preacquired account information, when properly used and with express verifiable authorization, is a legitimate marketing tool, not an abusive telemarketing act or practice. Further, there is a real benefit to the consumers with regard to “identity theft.”

V. Express Verifiable Authorization

DialAmerica has a policy of 100% verification for every transaction agreed to by a consumer. Initially, this was done by call-back verification as described in Section IV (Preacquired Account Information). As we

developed digital recording technology, we moved to a “taping” environment where we record the sales representative’s reading of a full disclosure confirmation and the consumer’s acceptance of the offer. Independent verifiers listen to all recordings. If there are any discrepancies or questions about the recording, the verifier will call the consumer back and rerecord the confirmation and consumer’s acceptance. The only call-back verification (non-recorded) done today is for our magazine programs. Other than for our magazine programs, every transaction, whether a sale or otherwise (such as a credit card application), entered into by the consumer is recorded by the verification procedures described above.

Obviously, we do not have a problem with the proposed requirements for express verifiable authorization. In fact, we believe the requirement should cover all situations where billing information is given in a telemarketing call.

We do have a problem with the requirement of the recitation of the entire account number by “either the consumer or the telemarketer.” (*page 38 of the NPRM*) In cases of marketing using preacquired account information, we believe that the account name and the expiration date or last four digits of the account number, or some other vague feature of the account, would be sufficient for consumers to understand that their accounts will be charged while adequately addressing concerns of “identity theft” discussed in Section IV (Preacquired Account Information.)

Conclusion

The proposed national do-not-call registry does not address the problems consumers have with telemarketing. It simply provides a place for them to hide. And those that do not hide will continue to be exposed to the very same problems that exist today. If everyone hides, then there will be no more telemarketing, and DialAmerica will be out of business.

Today there is very little accountability in telemarketing. Without accountability, the problems will continue.

This is not good for the consumer and is not good for those companies that “play by the rules.” Delivery of Caller ID information for every telemarketing call creates the much needed accountability.

Caller ID information can be delivered over T-1's today. We have been doing it for over two years. If the Commission does not mandate the delivery of Caller ID information, those who would want the Commission to believe that it can not be done will have been successful.

DialAmerica urges the Commission to mandate the delivery of Caller ID information and create accountability. This will address the problems consumers have with telemarketing, making the medium more acceptable, and less annoying. At the same time, it forces everybody who uses telemarketing to play by the same rules which is not happening today.

The Caller ID approach balances the concerns of consumers and those of legitimate users of telemarketing in a fair manner.

SUPPLEMENTAL COMMENTS OF DIALAMERICA MARKETING, INC.

EXHIBIT I

<u>State</u>	<u>Single Sales to Unique Phone(1)</u>	<u>Sale Count to Unique Phone</u>	<u>State DNC Phone Count</u>	<u>Percent of All Sales to State DNC Phone</u>
Alaska	1,260	1,599	5,330	23.64%
Arkansas	7,958	13,286	28,810	27.62%
Arizona	1,372	1,692	13,088	10.48%
Colorado	209,700	341,451	700,945	29.92%
Florida	34,680	51,524	171,942	20.17%
Georgia	86,221	154,383	86,221	32.99%
Idaho	19,679	34,251	53,523	36.77%
Indiana	315,794	548,162	1,106,248	28.55%
Kentucky	167,903	279,478	605,572	27.73%
Louisiana	72,813	122,969	247,968	29.36%
Missouri	305,151	522,504	946,392	32.35%
New York	673,934	1,148,040	2,198,041	30.66%
Oregon	20,186	35,609	58,051	34.77%
Tennessee	188,747	310,209	721,707	26.15%
Texas	<u>80,072</u>	<u>323,883</u>	<u>484,629</u>	<u>37.16%</u>
	<u>2,285,470</u>	<u>3,889,040</u>	<u>7,603,573</u>	<u>30.06%</u>

(1) Count of unique phone numbers that are now on the state DNC list in which at least one sale was made prior to the phone being placed on the state DNC list.

SUPPLEMENTAL COMMENTS OF DIALAMERICA MARKETING, INC.

EXHIBIT II

<u>State (1)</u>	<u>Total State DNC Phone Count</u>	<u>Total DMA TPS Phone Count</u>	<u>Phones Across Both DMA TPS and StateDNC</u>	<u>Unique DMA TPS Phone Count</u>
Arkansas	28,810	22,082	1,377	2,705
Arizona	13,088	44,308	773	45,535
Alaska	5,330	1,225	80	1,145
Colorado	700,945	56,952	25,378	31,574
Florida	171,942	122,953	7,469	115,484
Georgia	261,327	53,470	11,070	42,400
Idaho	53,523	12,692	2,074	10,618
Indiana	1,106,248	67,507	37,885	29,622
Kentucky	605,572	41,365	20,772	20,593
Louisiana	247,958	30,598	8,856	21,472
Missouri	946,392	51,930	26,255	25,675
New York	2,198,041	211,501	85,505	125,996
Oregon	58,051	38,642	3,469	35,173
Tennessee	721,707	48,799	20,484	28,315
Texas	<u>484,629</u>	<u>126,579</u>	<u>23,021</u>	<u>103,558</u>
Totals	<u>7,603,573</u>	<u>930,603</u>	<u>274,468</u>	<u>656,135</u>

SUPPLEMENTAL COMMENTS OF DIALAMERICA MARKETING, INC.

ATTACHMENT A

Calling Party Number Availability:

DialAmerica has been delivering the Calling Party Number (CPN) for over two years using regular T-1 trunk groups provisioned by AT&T. To date we have only utilized AT&T Digital Link service to deliver CPN, but it is our understanding that MCI, Qwest, and Sprint also provide similar CPN capability.

All carriers offer Integrated Services Digital Network (ISDN) T-1's, also known as Primary Rate Interface (PRI), which enables the user to control whether CPN is delivered, and what telephone number is displayed.

The limitation using AT&T Digital Link T-1's to deliver CPN is that AT&T will only allow us to display the CPN that is associated with the branch location that originates the phone call. We cannot deliver a number from a different DialAmerica location or deliver a toll-free number. The CPN service offering from Qwest using standard T-1's allows the CPN to be a toll number owned by the calling company, but not necessarily linked to the location that originates the call. We plan on testing the Qwest service next quarter.

How DialAmerica Delivers CPN Today:

As an AT&T Digital Link customer we have the option to provision our regular outbound T-1 trunk group with CPN presentation allowed, or restricted. If the presentation is allowed we will deliver a phone number, which identifies the DialAmerica location generating the outbound call. By delivering the number we are allowing the called party to capture our number on their Caller ID equipment, or utilize the *69 feature to identify the phone number that called their home.

If a consumer decides to call us back, we utilize the Local Exchange Carrier (LEC) call forward service to route the calls to our Customer Service Center located in Athens, Ga. The caller is routed into a voice response unit that explains that DialAmerica Marketing attempted to contact them for a particular program, and that we will attempt to contact them again in the next few days. We also provide a toll free number if the caller would like to speak to a customer service representative.

SUPPLEMENTAL COMMENTS OF DIALAMERICA MARKETING, INC.

ATTACHMENT B

RESPONSES TO THE PROPOSED NATIONAL DO NOT CALL REGISTRY: **INTRODUCTORY REMARKS**

Approximately 40,000 electronic and paper responses were submitted to the Federal Trade Commission (Commission) regarding the Notice of Proposed Rulemaking (NPRM), which proposes establishing a national do-not-call registry. More than a third of all responses were simply contact information for sign-up for the proposed registry, which indicates that these individuals were misinformed.

Less than half of the responses contained qualitative feedback offering consumer's insight of their specific concerns. However, this small portion of responses is an extremely useful tool for the Commission and the telemarketing industry to respond appropriately and effectively.

The consumer commenters' three biggest concerns about telemarketing are:

- **Telemarketers ignoring requests for placement on the company-specific do-not-call list.**

A percentage of commenters do not have major problems with a sales call from a company until that company calls repeatedly despite requests for the calls to cease and for their number to be placed on that company's do-not-call list.

Long distance carriers were most often cited for ignoring requests for placement on their do-not-call list, specifically *AT&T, MCI, and Qwest*.

- **“Dead Air” due to predictive dialers with high abandonment rates.**

Thousands of people repeatedly claimed that they answered the telephone and heard nothing, which evoked anger or fear.

- **Telemarketers not displaying their Calling Party Number (CPN).**

On average, consumers pay \$7-\$10 per month for Caller ID, and are frustrated that many telemarketing calls appear as “Unavailable.”

This attachment will first address the electronic responses and then address the paper responses.

ELECTRONIC RESPONSES TO THE PROPOSED NATIONAL DO NOT CALL REGISTRY:
Summary of Findings

In response to the Commission's proposal to amend the TSR by creating a national do-not-call registry, the Commission's website received 35,156 responses. After carefully reviewing and categorizing these emails, it was determined that many responses lack depth.

In an era of quick and convenient communication via the Internet, one must consider the repercussion of such easily collected responses and the quality of them.

- In comparing those responses that were sent via USPS to the electronic responses, the electronic responses contained an overall lack of qualitative and useful information.
- Many email responses are unsigned.
- In other examples, more than one response was posted from the same email address (the contents of the email were usually the same).
- The vast majority of responses, perhaps as much as 80 percent, were posted between Monday and Friday between 9am and 5pm.

The proposed national do-not-call registry was publicized coast-to-coast via newspapers, news websites, and news channels. It is extremely important to note how it was presented to the public. Headlines such as, "Hate Telemarketers? Tell it to the Commission," baited unfavorable responses and led to confusion. Many responses came from individuals who clearly did not read the terms of the proposed amendment, understand its purpose and its intended result. Some examples are:

- Some commenters believe this proposed amendment to the TSR will permanently silence all types of outbound telemarketers, ranging from political surveyors to credit card marketers to charity collectors to scam artists.
- The vast majority of one-line responses are the individual's contact information. These individuals believed that by posting to the FTC website, they would be automatically signed up for the proposed registry.
- Many people used this forum as an opportunity to express concerns about unsolicited electronic marketing, especially SPAM emails and faxes.

The email responses are divided into the following eight (8) categories:

CATEGORY	DESCRIPTION	APPROX. # RESPONSES	%
Do Not Call Supporter (A)	Longer, unique response	14,100	40%
Do Not Call Supporter (B)	One line response	11,275	32%
Form	Answers to surveys posed by the FTC, AOL, etc.	4,360	13%
Anti Do Not Call Registry	Opposition to the proposed amendment	2,240	6%
Adherence to FTC Regulations	Endorsement of stricter adherence to direct marketing guidelines	1,090	3%
Anti Unsolicited Marketing	Opposition to all kinds of unsolicited marketing, especially faxes and SPAM email	790	2%
Unrelated/Incoherent		715	2%
Anti Telemarketing	Opposition to the industry itself	586	2%
Total Postings to FTC Website		35,156	100%

Do Not Call Supporter (A)
14,100 responses (40%)

The majority of electronic responses fall into this category. These responses are not form responses and are more substantial or detailed than those in the “one liner” category.

Consumers expressed concerns of poor telemarketing practices that violate the TCPA, such as refusing to place a telephone number on a company-specific do-not-call list or calling outside of the lawful calling hours.

The companies most often cited for incessant calling and refusing to place the individual on their company-specific do-not-call list are AT&T, MCI, and Qwest. These companies would be exempt under the new TSR amendment. This is an example of how uninformed the commenters are regarding this proposed amendment, as many assumed it would eliminate calls from these companies.

Many expressed frustration due to lengthy “dead air” caused by some predictive dialers as well as “Restricted” or “Unavailable” appearing on Caller ID from telemarketing calls.

Consider the following complete or excerpted examples:+

“I don't know anything about the proposal. All I know is that I am sick to death of the phone calls day in and day out. If there is anything I can do to help stop it, I would gladly do so. Thank You!”*

*“I will go to court and sue MCI Worldcom for stalking if the FCC, The Georgia Department of Consumer Affairs, or The Federal Trade Commission can't (or doesn't want to) do anything to stop them from harrassing me. I've logged at least 24 phone calls in a seven day period from them (as many as 4 calls in one day). I lost important numbers stored on my caller I.D because the calls from MCI Worldcom exceeded my phones memory capacity. After countless phone calls and letters to MCI and the above organizations the calls ended only to find a "prepaid" phone card in my mailbox from MCI a month later. *If we have three impotent organizations that cannot or will not enforce their own regulations what makes anyone think a watered down piece of NPR will make any difference.* Sincerely, Jeff Doster”*

“Dear Mr./Ms. Secretary: Do not call lists do not work. How can anyone believe that a telemarketer can memorize the countless persons on a do not call list? It is obviously

+ **Note:** Throughout this document, although some responses have been shortened for clarity, the responses are presented verbatim. No alterations have been made to the content or grammar.

* **Note:** Throughout this document, italics have been added for emphasis by the author of this document. The italics did not appear in the responses' original forms.

impossible. The only way such a list could work is to have the list computer automated, so that the numbers on the do not call list are filtered. That is, the outgoing call would automatically trigger a computer to cancel the call. Human beings simply cannot do this job. Sincerely, John David Smith Florida”

“Please, Please, Please establish this registry ... *These telemarketers have become so rude that they call before 8 AM and after 10 PM.* They hang up when you ask to be removed from their call back lists or when you ask to speak to a supervisor. If there is any way to prevent taped recorded messages that tie up my answering service, I would be overjoyed! I am so angered by all these calls, that I no longer will provide any donation to any charity that calls me on the phone. I have told my financial institutions to send me letters to alert me to new things as I will not talk to them either. To extend this further, I would appreciate it if you could encourage state governments to establish in-state registries as well ... Thank you!! Judy Edwards”

The following is an example of an email that was copied and pasted among family members within two minutes:

“I wish to go on record as supporting a national no-call list for telemarketing. These people are out of control, and I applaud your effort to muzzle them. Regards, [Gary Schreffler, posted 3/27/02, 08:52:10; Chikako Schreffler, posted 3/27/02, 08:53:47; Lisa Schreffler, posted 3/27/02, 08:54:39]”

Do Not Call Supporter (B)
11,275 responses (32%)

These short “one-line” responses have little or no substance. Many of these responses, perhaps as much as two-thirds, were submitted by consumers who believed that the proposed registry was already passed and established, and therefore were submitting responses such as:

“Please put us on the “do not call” for all telemarketers. Thank you Pat and Lori Seykora”

“I recently heard that the *Do Not Call Registry* has been initiated. Can you give me the phone number to call to place my phone numbers on the registry? Thanks for your help. Kent Samuel”

“Dear Mr. Beele, Please stop telemarketers from calling my house. Thank you.”

“If it is true that there is proposed NPR to deal with this, I’d like information on it ... Josh Blumenthal”

“Please stop telemarketing to telephone address [redacted]. Thanks.”

“Nowhere do you tell us how to get on the list.”

Many responses are informal, at best:

“Screw the worthless shits....when I say don’t call that means do’nt call... forever”

“stop it!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!”

“what’s taking so long ?”

“hurry up and pass it asap”

Form Responses
4,360 responses (13%)

These responses were answers to questions posed by various questionnaires. The length of the responses tended to be longer in this category.

Based on the responses, it appears consumers perceived limits set by the survey form. Many only answered the questions regarding logistics of the proposed registry and did not offer individual experiences and frustrations.

Furthermore, the longer length of the responses raises the issue of quality over quantity. The form responses are longer than those in other categories because the consumer is actually retyping the questions in the form prior to their response. The consumer may have also felt compelled to respond to every question.

An example of a consumer literally retyping the question on the form into their response:

“I fully support this proposal! After you accomplish this one, please also start the creation of a "Do No Email" registry. To answer the questions posed on the FTC web site concerning the "Do Not Call" registry, here goes... >How long should a telephone number remain on the national "do not call" registry? At least 1 year. >Who should be permitted to request that a telephone number be placed on the "do not >call" registry? Should requests from the line subscriber's spouse or adult child be >permitted? Should third parties (outside the FTC) be permitted to collect and forward >requests to be put on the "do not call" registry? Any adult over 18 years of age living at the residence should be able to get the number added to the list. >What security measures are appropriate and necessary to ensure that only those >people who want to place their telephone numbers on the "do not call" registry can do >so? Should consumers be able to verify that their numbers have been placed on the >registry? If so, how? This could be done via email, a website, or via a form at the post office. Yes, consumers should be able to find out if their number is already on the list or verify that it's been removed. >Should the "do not call" registry be an "all or nothing" option or should it instead allow >consumers to specify the days or time of day that they are willing to accept >telemarketing calls? All or nothing. If the DMA had policed itself they would have already put a process in place to be less of an annoyance. >The proposed rule would permit consumers or donors who place their name and >telephone number on the "do not call" registry to provide express verifiable authorization >to specific sellers or organizations to make calls to them. How will this requirement >affect those entities with which a consumer or donor has a pre-existing relationship? I have no idea. I'm not concerned with pre-existing relationships. Thanks for doing this! Mark Abreu”

This is what the response should have looked like had the consumer not retyped every question:

“I fully support this proposal! After you accomplish this one, please also start the creation of a "Do No Email" registry. > At least 1 year. >Any adult over 18 years of age living at the residence should be able to get the number added to the list. > This could be done via email, a website, or via a form at the post office. Yes, consumers should be able to find out if their number is already on the list or verify that it's been removed. > All or nothing. If the DMA had policed itself they would have already put a process in place to be less of an annoyance. > I have no idea. I'm not concerned with pre-existing relationships. Thanks for doing this! Mark Abreu

Anti Do Not Call Registry
2,240 responses (6%)

Most of these responses are from employees of the telemarketing industry wishing to protect themselves and their families from unemployment. There are also responses from those who utilize the telemarketing industry (such as nonprofit organizations) for its fundraising efforts, such as Special Olympics and the Leukemia and Lymphoma Society. There are also responses opposing the proposed do-not-call-registry from individuals that do not identify themselves as part of the telemarketing industry.

The following are complete examples of the variety of responses in opposition to the proposed amendment:

“March 21, 2002 RE: Telemarketing Rulemaking-Comment FTC File No. R411001
As an employee of TCIM Services, Inc. in Wilmington, Delaware, I am writing to express my opposition to the Federal Trade Commission's proposed changes to the Telemarketing Sales Rule for the following reasons. 1. Banning the use of predictive dialing would have a significant negative impact on the cost of services we provide to our clients. In addition, it would increase the cost of products and services we offer to consumers. The increase in these costs would equate to tremendous cutbacks and loss of jobs. Not to mention the backward spin this would be to the entire Teleservices Industry. Predictive dialing is an efficient way to reach the consumer with valuable products and information. 2. TCIM Services is an employer of approximately 3,000 people, of which 75 percent are minorities. If these new laws are adopted, it would have an adverse affect on at least sixty percent of our workforce. 3. Most states already have specific no call lists, in addition to the existing federal specific no call lists. Many more are in process of initiating no call lists. *Creating a national registry on top of these already very strict laws and rules will not only be a burden for my company, but will be more confusing to consumers.* Penalties are already severe. Perhaps we should look into enforcing the existing regulations instead of creating more. 4. TCIM has spent tremendous time and money to educate and train personnel to follow the laws and rules of the American Telemarketing Association, the Direct Marketing Association, as well as individual state laws. Our employees are well trained for the sales work they do on behalf of Fortune 500 companies. These specific skills, training, and careers will be lost. 5. I am proud of the work I do in this industry. I have invested many years in this profession and would like to be able to continue to make a living in a job that I have been well trained for and enjoy. Please allow me to, again, state that I oppose the Federal Trade Commission's proposed changes to the Telemarketing Sales Rule and appreciate the opportunity to voice my opinion. Sincerely, Judith A. Miller DE”

“Dear To Whom It May Concern, I receive calls from telemarketer's daily. If I am not interested I just tell them and they stop. People are in control of what to say and do

when a telemarketer calls. I think people are taking the whole thing of stopping them all together way to seriously. I often receive great benefits when buying from one too. *If a person does not want to buy or listen they simply say so.* Whether or not the people accept it, telemarketers have a job too. I know if I were to telemarketer I would be very upset if I were to lose my job to a "new" law. I think this needs to be looked at again and the people should have some consideration for the telemarketers. I do hope people will reevaluate this situation and make the right choice. Sincerely, Concerned”

“I realize that most people think of Telemarketing in a negative manor because they think of the call they got last night, but I wonder how many think about the impact of these new laws. *The economy will be greatly impacted by loss of millions of jobs, not just in Telemarketing Call Centers, but in all businesses..like the impact on phone companies that are laying off thousands of people already, increase in taxes to cover unemployment, possible increase in welfare.* The law which will require called parties to give credit cards numbers..... (where now the person calling does not have this information).....will definitely increase fraud. There has to be a better way to protect the called party and still prevent fraud, possibly a full authorization by the called party, but not actually giving the account number.”

“AS AN EMPLOYEE AT INTERACTIVE TELESERVICES CORP LOCATED IN MARRIETTA OHIO I OPPOSE THE FTC'S PROPOSED CHANGES TO THE TELEMARKETING SALES RULES. I WAS ON WELFARE BEFORE I GOT MY JOB AT ITC, I HAVE TWO KIDS *IF THE CHANGES GO INTO AFFECT I COULD LOSE MY JOB AND BE BACK ON WELFARE AGAIN.* THIS COULD GREATLY AFFECT MY LIFE IN A TERRIBLE WAY. PLEASE DO NOT CHANGE THE RULES IN AFFECT NOW, JUST *ENFORCE THE ONES WE HAVE NOW!* THANK YOU KATHY MINGER”

Adherence to FTC Policies
1090 responses (3%)

These responses were requesting enforcement of any telemarketing rules, whether new or old ones. In some cases, individuals offered suggestions for better enforcement in order to make the telemarketing industry run more smoothly.

Although some of these types of responses endorsed the proposed do-not-call registry, most were concerned that it would lack government backing. If some telemarketers do not adhere to the current TCPA, many are skeptical that the currently unlawful telemarketers will obey the proposed amendment. Some consumers desired tailoring current telemarketing laws, such as decreasing the number of sales hours per day. Further, the responses were split regarding exemptions; some strongly favored the exemption of political parties and charities, whereas others felt the proposed amendment should block all calls, regardless of their nature.

The following complete or excerpted examples express this skepticism and suggestions for improvement:

“I FEEL THAT TELEMARKETER HAS ITS PLACE BUT THEY SHOULD LIMIT THE HRS THAT YOU MAY CALL AND ONCE TOLD TO BE TAKEN OFF THE LIST THAT SHOULD BE IT ... THEY START CALLING AND SOME EVEN TRY AFTER MIDNIGHT. I PREFER NOT TO BE CALLED IF I WANT THERE SERVICE I WILL CALL THEM. THANK YOU SKIP”

“... In my experience as a telemarketer, *my boss completely ignored requests from people to be added to our (nonexistent, though that's illegal) do not call list.* If there was a national (or even a state) registry that he'd been required to acknowledge and use then it would be much easier for people to complain if state law is not followed ... With so many companies selling and sharing contact information, a national "do not call" registry makes sense. If I've told one company not to call me why should they be able to still sell my name and number to someone else who hasn't received that "do not call" request from me?”

“I certainly hope this also covers solicitation for donations. The telemarketer for the Fraternal Order of Police of Arlington Va has called our home as many as five times in one day and everyday of the week at least once. I consider this harassment. After I ask them to remove our name, they started calling and asking for my husband by his first name and hanging up if he weren't available. My husband is becoming senile ... It is for that reason I believe that spouses and adult children or a legal guardian should be allowed to enrol a person in order to protect them ... *Asking that your name be put on a company's do not call list works only if the company cooperates.*”

Anti Unsolicited Marketing
790 responses (2%)

This category contains email responses that only briefly touched upon the proposed amendment to the TSR and instead addressed various types of unsolicited marketing. Nearly 800 responses are not directly related to telemarketing, but rather piggybacked on telemarketing to express concern about many other areas of direct marketing.

Unlike the paper responses, many people expressed disapproval and frustration of email SPAM in particular. However, the unsolicited marketing complaints ranged from Jehovah's witnesses to the PennySaver.

Here are some examples in which the issue is not solely telemarketing:

"i have had my phone # changed 10x to get away ... They now get our phone #s from the internet from Spyware, which the FTC needs to end. You also need to end spam in our email, and porno spam which is out of control. Little kids get disgusting, filthy porn every single day and MSN, and other isps, do nothing about it. We're all sick of going into our email and finding porn every single day. Why should the public have to put up with this? Nobody should be calling our phones ever without our permission, nor should they ever be putting garbage in our email. I haven't answered the phone in years, but always screen, and if no one says who they are, we don't pick up the phone ... The only person who likes them is George Bush, and that's because he doesn't get telemarketers or porno spam. Let him get it, and we'll see how quick it ends. You want public comments, here they are, telemarketers suck, we all hate them, get them out of our lives. if you snooze, you lose"

"I LIKE THE NEW CHANGE AND WOULD LIKE A STOP PUT BOTH TELEMARKETERS AND JUNK MAILERS. BEING WITH THE WORLD SITUTATION BEING WHAT IT, I'D LIKE TO KNOW WHO'S MAILING ME WHAT. THANKYOU AKAIRCARGO@"

"To whom it may concern: I am tired of receiving unsolicited phone calls and would support a national no call registry. We in Indiana have a program in effect now, and although I still receive some calls it has reduced the number significantly.. I would also like to see a change in the Internet. I receive unsolicited e-mail with an option to remove by using the reply box. This never works, when you choose reply and type in remove it always comes back with a postmaster message saying the mail was undeliverable.
Thank You, Donald M. Abell IN"

“Dear FTC, A do not call registry is a no-no! First off, it violates our bill of rights right to privacy. Secondly, it encourages the same kind of slime that causes junk e-mail and junk postage mail to be sent without our permission ... Did you notice how Yahoo e-mail services recently without anyone's permission turned on all the marketing preferences for all its e-mail customers? That means if you volunteered any private information to Yahoo thinking it would be kept confidential, now it won't be. And for the many who didn't receive an e-mail stating their privacy rights have changed, now they are going to get mass marketing on a grand scale. This is a very, very bad thing ... Because lists can be sold to the highest bidder, and all of a sudden we get spammed tooth and nail ... Make it so that businesses can only advertise on TV or newspaper and magazines and radio. No more should I see coupons in my mailbox, or spam in my inbox. Enough is enough. End spam now!”

Unrelated/Incoherent
715 responses (2%)

These electronic postings were incomplete (perhaps due to a technical glitch) or unrelated to telemarketing. Some postings were blank; others were complaints or inquiries on matters irrelevant to the TSR.

The following examples are complete and not excerpted:

“Hi There, I have a proposal for you. If you can place the music featured in the link below into any film production then I will share all revenue accrued from the publishing rights 50/50%. I will even create a contract to this effect.

[Http://www.webmasteraudio.com/observations.mp3](http://www.webmasteraudio.com/observations.mp3) My name is Basil Simonenko, I am a professional audio producer from London England. I have released two Albums and recorded many many artists and bands over the years. I have also worked with Numerous T.V. and film production companies over here in the past including award winners " retina productions" with "Sock world" I have also worked closely with Hit T.V. screen writer and B.B.C. presenter Steve Rock on many new projects. I have now gone freelance with my personal catalogue and wish to create new and fruitful relationships all over the planet! I really hope you like the music and that we talk in the future! Kind regards Basil Simonenko www.webmasteraudio.com also for voice overs and flash design. Examples”

“Secretary Federal Trade Commission Room H-159 Sixth Street & Pennsylvania Ave. N.W. Washington D.C. 20580 By email to tsr@ftc.gov Re: Telemarketing Meeting April 15, 2002 Dear Sir Junkbusters Corp. is pleased to respond to the FTC's call for participation in its public meeting in June on proposed changes to the Telemarketing Sales Rule. My organization earlier joined the Electronic Privacy Information Center in filing comments. *I would also like to request the opportunity participate personally at the meeting.* I believe my experience would be useful to the Commission: I have a Ph.D. in Computer Science, have spent the past six years working full-time on privacy and the abatement of unwanted communications, and I have participated in many FTC workshops and meetings, several relating to telemarketing. Prior to founding Junkbusters, I worked at AT&T, including policy and practice relating to telemarketing. Junkbusters has been widely recognized in the media as a leading authority on reducing unwanted telemarketing. Millions of copies of our "Anti-Telemarketing Script" have been printed; it is one the most popular tools in the country to reduce junk calls. Our web site is one of the most popular consumer resources on telemarketing, as evidenced by the fact that a Google search consistently returns it as one of the top sites under the search term "telemarketing," often next to the ftc.gov site. Respectfully submitted Jason Catlett President and CEO Junkbusters Corp”

“O.K. This is all great about phone calls. But do I have to change my e-mail address everytime I order something over the internet as they give my address to every pill pushing, smut ordering, nasty group around? The spam e-mails are more frustrating than the telephone calls. Thanks for listening/reading.”

“Keep them from my computer.”

“Should it NOT be illegal NOT to have a way to request fax removals? The following company gives an e-mail address, but the twice I've sent a message, it has been returned at "inactive." These people should be prosecuted for not maintaining a fax removal number, which I understand IS REQUIRED BY LAW Thank you.
Virginia/George Jansen see the record of my e-mail attempts below. This one will be my third attempt>AND STOP WASTING PAPER for your unwanted messages! THIS WILL BE THE THIRD TIME I'VE TRIED TO FOLLOW YOUR INSTRUCTIONS! Your failure to have a fax removal procedure working IS ILLEGAL. I WILL REPORT YOU TO THE FTC.Virginia/George Jansen AND STOP WASTING PAPER for your unwanted messages!”

“Please consider this letter.”

Anti Telemarketing **586 responses (2%)**

This category contains responses that are not simply seeking to avoid telemarketing calls, but are specifically against the telemarketing industry.

Much of the animosity expressed in these responses is the result of ignoring TCPA guidelines. The most heated responses are from those who requested placement on a company specific do-not-call list and the request was ignored. This is perceived as disrespectful and invasive to an individual's privacy. Finally, hostility and distrust are aggravated if telemarketers refuse to reveal their identities and the purpose of the telephone call.

Many contest the validity and credibility of telemarketing due to unavailable CPN. Thousands of email responses revealed anger from paying a monthly fee for Caller ID or callback services such as *69 to only find the CPN is unavailable. As a result, consumers feel they are helpless; they do not know who is calling initially and they cannot call to complain if a telemarketer is unprofessional.

Examples include:

“... A "National 'Do not call' List" would be a great idea if it were enforced. If we have no way of identifying who is on the other end of the line, though, how can consumers report violators? ... *Ever get those calls where the phone rings and nobody is on the line when you answer it? and your caller ID says "Unknown Caller"?* Guess who that is!! Some auto-dialers dial several numbers at once and the telemarketer takes the first one that answers.....the others get dead silence on their phones when they answer. ... At the very least, *I believe that telemarketers should be required to identify themselves and to be prohibited from using phones that don't show up on Caller ID's.* We have laws now that require that the telemarketer maintains a "do not call" list and add your name to it if requested.....*but they refuse to identify themselves when you ask the name or address or phone number of their telemarketing firm "I'm not allowed to give out that information"...then when you ask to speak to the supervisor, you "accidentally" get cut off during the transfer----EVERY TIME!!* How are you going to ever know if your request to be placed on the "do not call" list was honored? Also, a telemarketer can be named ABC company this week, and XYZ company next week. Since they are a "different" company, they are not required to honor the "other" company's "do not call" list. ... Whether any new regulations come about or not, thank you for letting me vent!”

“Please pass and implement this bill as quickly as possible. My telephone is for my personal use only...I pay the bill....telemarketing calls are a nuisance, inconvenience,

invasion of privacy and a violation of my rights. I have screamed at them, told them not to call this number again and hung up on them. I have even had them to call me back and hang up on me. *I have now had to buy more telephone equipment and pay for another service* just to protect myself from these beasts. I don't understand how something like this was ever made legal but it must be stopped. My number has been unlisted and unpublished for 30 years...what gives the telephone companies the right to share this information. Thank you. BHL”

“... I am strongly opposed to the practice of a complete stranger calling and interrupting my very limited time that I spend with my family ... Any person that has the need or desire to purchase a product or service can do so on their own. We have the internet, Malls, Supermarkets and the yellow pages to search for anything that we want ... The world was in great shape before telemarketers and we will survive after them. Hopefully we can have reminders of telemarketers in museums right next to all of the dinosaurs and other extinct creatures. To be honest I would rather have the dinosaurs. At least their annoyance would be because of the nature of hunger and not greed. If telemarketing were a great career and the people annoying the hell out of the rest of the world were making a great deal of money we would picture them differently. However they are not making a great amount of money. Telemarketing is just another usually low paying job for the people of this world who are too lazy to get another low paying job in which they would actually have to get off of their rears and do something that people would actually appreciate. Obesity is another product of this type of work. Because of these types of jobs and kids that would rather play video games and watch television. The heart problems and health problems associated with laziness are going to keep driving up the costs of health care until none of us can afford a telephone to be annoyed by these people in the first place. So with or without them we will end up spending our money.”

PAPER RESPONSES TO THE PROPOSED NATIONAL DO NOT CALL REGISTRY:
SUMMARY OF FINDINGS

In addition to about 35,000 email postings regarding the proposed national do-not-call registry, about 5,000 paper responses were mailed to the Commission.

Generally, these responses were more articulate and formal than those on the website. The paper responses were more specific to the NPRM, whereas a great deal of the email responses also contained concerns regarding other mediums of unsolicited marketing. As a result, very few paper responses fell into the “Unrelated/Incoherent” category. There were no form responses, as the forms were apparently only circulated via the Internet, thus the paper responses carried more original input.

Thus, the categories of “Anti-Telemarketing” and “Unrelated/Incoherent” were smaller and “Form Responses” were deleted.

Nevertheless, many people sent their contact information with the request to be added to the proposed national do-not-call registry. Similarly to the email responses, the commenters are poorly informed about the intention and logistics of the proposed amendment.

One of the paper responses included an article that provided the Commission’s address. The article reads: “If approved, the registry would give consumers the option of eliminating most telemarketing calls with a single call to the FTC.” This is an example of how misleading the media coverage has been. This implies that all telemarketers will abide by this list (and if there are telemarketers now that will not obey the TCPA, it is safe to assume that they may not abide by the proposed national do-not-call registry.) Further, this article does not provide who is exempt, and industries most frequently complained about are among the exempt (i.e. long distance carriers.)

It was interesting to note that Caller ID was mentioned less frequently in paper responses than in electronic responses. The majority of the paper responses were handwritten (as opposed to word processed). One may conclude that those responding to the proposed amendment via USPS were less technically oriented or without access to a computer and the Internet.