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FEDERAL TRADE COMMISSION

In the Matter of:)
TELEMARKETING SALES RULE FORUM.) Matter No. P994414
-----) Volume 1

JULY 27, 2000

Room 432
Federal Trade Commission
6th Street and Pennsylvania
Ave., NW

The above-entitled matter came on for
discussion at 9:00 a.m.

FOR THE FTC:

- EILEEN HARRINGTON
- KATIE HARRINGTON-MCBRIDE
- ALLEN HILE
- KEITH ANDERSON
- CAROLE DANIELSON
- MICHAEL GOODMAN

For The Record, Inc.
Waldorf, Maryland
(301)870-8025

1 PARTICIPANTS:

2 JEFF KRAMER, BRIDGET SMALL, LAURA POLACHECK,
3 AARP
4 JOHN HESSE, II, Direct Selling Association
5 LINDA GOLDSTEIN, Promotion Marketing Association
6 GEORGE ROSE, PETER DRYMALSKI, National
7 Association of Consumer Agency Administrators.
8 TIM SEARCY, American Teleservices Association
9 SUSAN GRANT, National Consumers League
10 DENNIS MCGARRY, Personal Legal Plans
11 ELISSA MATULIS MYERS, Electronic Retailing
12 Association
13 MALLORY DUNCAN, National Retail Federation
14 JERRY CERASALE, Direct Marketing Association
15 MICHAEL PASHBY, Magazine Publishers Association
16 AVONNE SEALS, National Association of Attorneys
17 General
18 JASON CATLETT, SARAH ANDREWS, Junkbusters
19 ROBERT BULMASH, Private Citizen
20 JANE LARIMER, NACHA
21 CHUCK EPPERT, NANCY MATSON, Verizon

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P R O C E E D I N G S

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3 MS. HARRINGTON: Let's get started, please.
4 Good morning, and welcome back to the Federal Trade
5 Commission. I don't know that there's anyone here who
6 hasn't been here before.

7 I want to thank the Magazine Publishers for
8 providing coffee and pastries for us this morning. It's
9 very kind, much appreciated, and of course paves the way
10 for the magazine seller exemption.

11 Also, I would note that the Magazine Sellers
12 have put in to place new guidelines for their members on
13 ethical selling practices which we were very pleased to
14 see them do, and I just learned this morning that
15 they've been sued for that, which sort of puts you in
16 good company I would say. Sorry to hear that.

17 This is the workshop forum that we're holding in
18 lieu of written rebuttal comments on review of our
19 Telemarketing Sales Rule. There may be later workshops
20 as well. We're not sure yet, so stay tuned, but we're
21 delighted that all of you are here to participate
22 today.

23 We have a stenographer as always making a record
24 of this proceeding because the proceeding will be part
25 of the record of this rule review and any subsequent

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1 rulemaking work that is done as part of the process.

2 We also are providing in-house video and audio
3 transmission of the sessions so that others in different
4 rooms in the building who don't want to sit in this room
5 and have nice pastries and coffee, they'll all be up in
6 a minute, can watch, and any of you are welcome to use
7 the overflow room for this as well, which is room 332.

8 The rules are pretty simple and
9 straightforward. We have an agenda that has time
10 limits. We're going to stick to it religiously. We
11 invite vigorous discussion among the participants at the
12 table. We discourage any statements by participants
13 that simply rehash comments that are already filed.

14 The intent here is to move the discussion along
15 and help us learn what we need to know in greater depth
16 in order to do a sensible job on this rule review. So
17 as always the person who's moderating who sometimes will
18 be me, sometimes will be my colleague Katie Harrington
19 McBride, my colleague and not my relative, for the
20 record.

21 We will be enforcing strictly the rules, and
22 they are these: If you wish to speak, you need to raise
23 your tent. I will be noting raised tents in
24 approximately the order that I see them, but I won't
25 necessarily call on you in the order that you put your

1 tent up. If it seems that there is some useful response
2 that you might have to something that is under
3 discussion at the moment, we may shift around.

4 For those who repeat themselves when they have
5 an opportunity to speak, your names will go to the
6 bottom of the list when the tents go up because we
7 really want this to be a discussion that moves and not
8 an opportunity for people to come and sound one note.

9 There will be a public participation opportunity
10 at the end of both days of the workshop, and if you want
11 to participate, there will be some cards out in the
12 foyer later this morning, and you need to fill them out,
13 and if you want to participate in the public session, it
14 would be useful and important for you to have your card
15 filled out by the end of the break at 3:30 this
16 afternoon, any of you who are here, and we very much
17 look forward to that portion of the day, so we really
18 want you to be part of it, all of you who are sitting in
19 the chairs.

20 Is there anything that I've forgotten, Katie?

21 MS. HARRINGTON-MCBRIDE: I don't think that
22 we've mentioned that if you have any electronic devices
23 like cell phones, that you should shut them off. They
24 wrought havoc at our last forum with our microphone
25 system and caused us to all have great ear pain, so if

1 you could shut those off.

2 MS. HARRINGTON: Yes.

3 MS. HARRINGTON MCBRIDE: And there is a message
4 board outside where -- there's an emergency number in
5 the packets that are outside. If you have any emergency
6 phone calls, you need to be reached here, you will
7 expect to find a message on that board.

8 MS. HARRINGTON: Yes, the electronic device rule
9 is very important. The converse to the exemption for
10 those who bring coffee and pastries is triple civil
11 penalties written into the rule for anybody whose device
12 is on and causes us electronic jamming here. It really
13 is a problem.

14 MS. HARRINGTON-MCBRIDE: Even if we get past
15 11,000 feet they don't go on, so it's not like planes.
16 They don't go on all day.

17 MS. HARRINGTON: Right, right. Okay. First
18 we're going to ask each of the participants to introduce
19 themselves, and please limit your introduction to 60
20 seconds, and what I think we're most interested in is
21 hearing who you are, who you represent and a very brief
22 indication of what your interest is, what are you most
23 concerned about in this discussion over the next couple
24 of days.

25 Let's begin with Susan.

1 MS. GRANT: Thank you, Eileen. I'm Susan Grant
2 from the National Consumers League. We've been involved
3 in the fight against telemarketing fraud and abuse for
4 many years and operate -- do I have to push something
5 for this to be on?

6 MS. HARRINGTON: No, you're working.

7 MS. GRANT: -- Operate a hot line for consumers
8 to report telemarketing fraud. As one of the industry
9 commenters noted in written comments, the telemarketing
10 rule works, it works pretty well. However, times
11 change. There are inventive people who find ways to get
12 around rules and to exploit loop holes. There are also
13 technological advances that cause us to need to review
14 the rule and decide whether it could be improved and
15 strengthened. Thank you.

16 MS. HARRINGTON: Thank you, Susan, and I'm going
17 to pause for a minute because our other stenographer has
18 arrived, and one thing that I failed to mention is that
19 when you speak, especially in these early session this
20 morning, it's very important for you to identify
21 yourself and your affiliation for the record.

22 Now, as the day goes on, she's an old friend, so
23 I know it won't take her very long to remember who we
24 are and who we represent, but since she's just getting
25 set up for this session, certainly let's follow that

1 rule. Thank you for your introduction, Susan.

2 Jerry, you want to introduce yourself?

3 MR. CERASALE: I'm Jerry Cerasale with the
4 Direct Marketing Association, and we're a trade
5 association of over 5,000 members, many of whom use the
6 telephone as part of their ongoing business both in
7 incoming calls and outgoing calls. The Telemarketing Sales
8 Rule is important to us. We want to ensure that it's
9 there, and it works and continues to work to help combat
10 fraud because combating fraud keeps trust in the
11 market place, and it's important to us. Thank you.

12 MS. HARRINGTON: Thanks, Jerry. Bob Bulmash,
13 can we hear from you?

14 MR. BULMASH: Hi, my name is Bob Bulmash. I'm
15 president of Private Citizen, Incorporated. What we do
16 is we notify telemarketing related firms across the
17 country telling them of our members', our subscribers'
18 unwillingness to be solicited for any purpose, whether
19 sales, survey, fund-raising or political calls, and that
20 if a telemarketing entity wishes to solicit one of our
21 members, our members' private property, our members'
22 telephone is available for use on a for hire basis of
23 \$500 per call.

24 We have collected -- as a matter over the last
25 -- well, since 1996 we've collected well over a half

1 million dollars from telemarketing entities.

2 My concern here is to talk about predictive
3 dialers, Caller ID and perhaps even encourage the
4 allowance of consumers to be able to tape record calls
5 from solicitors without having to get consent since many
6 solicitors are indeed telling us when they call that the
7 call may be recorded.

8 If their calls are being recorded, I don't see
9 why we can't record their calls in order to prove up the
10 existence of the call. Thank you.

11 MS. HARRINGTON: Thank you, Bob. John?

12 MR. HESS: I'm John Hesse. I'm with the Direct
13 Selling Association, which is a little bit different
14 than the Direct Marketing Association. We represent
15 about 200 companies, some of who you may know, Amway,
16 Mary Kay, Tupperware, who in turn represent
17 approximately ten million distributors in the United
18 States.

19 These distributors use the telephone from time
20 to time in their marketing practices, and we're here to
21 just make sure that the Telemarketing Sales Rule
22 continues to operate in a way that allows them to
23 conduct their business appropriately and as best they
24 can.

25 MS. HARRINGTON: Thanks, John. George?

1 MR. ROSE: I'm George Rose. I'm vice president
2 of the National Association of Consumer Agency
3 Administrators, which represents 165 consumer agencies
4 at all levels of government in both the United States
5 and other countries.

6 In my other life, I'm chief of the Montgomery
7 County Division of Consumer Affairs where we do get
8 complaints about telemarketers. The primary concerns
9 that have been expressed to me by Montgomery County
10 residents are senior citizens complaining about what are
11 apparently predictive dialers and violations of the do
12 not call list.

13 We have volunteered and our office has collected
14 over \$9,000 from telemarketers for violating the do not
15 call rule.

16 MS. HARRINGTON: Thanks, George. I live in
17 Montgomery County. We're proud of you. Chuck?

18 MR. EPPERT: I'm Chuck Eppert, director of
19 technical regulatory support for what was Bell Atlantic,
20 is now Verizon Communication, and I'm here to lend my
21 expertise about the technology that enables Caller ID,
22 methods of getting around the Caller ID, if you would,
23 and also to talk about a new service we'll be offering
24 the first of September called Call Intercept that gives
25 the consumer some control over those incoming calls.

1 MS. HARRINGTON: Thanks. We're really glad that
2 you could be here. Let me ask you a question as a
3 customer. Has the whole company changed its name to
4 Verizon, not just the wireless part but all of it?

5 MR. EPPERT: That's correct, except we don't use
6 the name in direct interface with customers until August
7 1 because of two state regulatory rules.

8 MS. HARRINGTON: Okay. Interesting. Linda?

9 MS. GOLDSTEIN: I'm Linda Goldstein representing
10 the Promotion Marketing Association. We represent --
11 we're a smaller association by comparison to the Direct
12 Marketing Association, comprised of approximately 700
13 members. Most of our members are major consumer goods
14 and services companies, manufacturers, entertainment
15 companies, telecommunications companies.

16 And our members use the telephone as one
17 component of an overall integrated marketing campaign.
18 They use it as one form of a promotional tool to sell to
19 consumers. Our interests here today are primarily
20 related to the content side of the rule as opposed to
21 the technology side, marketing practices, disclosures
22 and things that would relate to the manner in which the
23 telephone is used as a marketing tool.

24 MS. HARRINGTON: Thanks. Mike?

25 MR. PASHBY: I'm Michael Pashby. I'm executive

1 vice president of Magazine Publishers of America. We
2 have about 240 members which publish about 1,500
3 consumer magazines in this country, and of the
4 approximately 300 million subscriptions sold annually in
5 this country, a substantial portion are sold through
6 telemarketing.

7 We believe that the rule in conjunction with
8 self regulation has worked extremely well over the past
9 five years for consumers, law enforcement and the
10 publishing industry, and I would note that the
11 complaints that we receive about telemarketing of
12 magazines has dropped since passage of the rule,
13 although there has been a growth in telemarketing of
14 magazine subscriptions in that period.

15 So we think it's worked well, and we would like
16 to see the rule maintained as is.

17 MS. HARRINGTON: Thank you. Avonne?

18 MS. SEALS: I'm Avonne Seals with the Illinois
19 Attorney General's Office, which is Jim Ryan. I'm in
20 the Consumer Fraud Bureau. I'm here representing the
21 National Association of Attorneys General. However,
22 that is actually comprised of the various state offices,
23 and any comments I make here would be with respect to
24 the Attorney General of Illinois, with the exception of
25 those comments that would mirror whatever is already in

1 the comments that we have filed.

2 We are very pleased to have the rule in
3 existence because consumers often come to our offices as
4 their first level of attack against fraud, and we see
5 complaints at every level, every type of complaint, and
6 the rule has given us the opportunity to go into federal
7 court. That of course gives us the ability to obtain a
8 nationwide injunction, something that we are very
9 pleased to have and which is very rare. There are only
10 certain circumstances in which we can get that.

11 Illinois has filed many actions under the rule,
12 and we are just hoping that the areas in which we have
13 noted consumer complaints have continued will be
14 strengthened by the result of whatever happens with the
15 comments.

16 MS. HARRINGTON: Thank you. We're really
17 pleased to have the Attorneys General represented at the
18 table. They've been incredibly valuable and persistent
19 allies to us so we're very happy to have you. Dennis?

20 MR. MCGARRY: Well, good morning, and I am
21 Dennis McGarry with Personal Legal Plans located in
22 Charlotte, North Carolina, as well as offices in
23 Atlanta, Georgia, and Greensboro, North Carolina. I'm a
24 small business owner, have been in business now for 20
25 years, and we build our clients through customer

1 referrals, and we do utilize the telephone like hundreds
2 of thousands of other businesses as well as
3 self-employed in acquiring clients.

4 So it's important to me that what -- my emphasis
5 of today is hopefully getting today and tomorrow
6 emphasis on enforcement of the current rules, so the
7 good guys have good image, and the bad ones are wherever
8 they need be put, and the TSR rules are I think well
9 designed. I'm greatly for it, and the only other
10 comment is state laws that are getting very confusing
11 between state and federal. Thank you.

12 MS. HARRINGTON: Thanks. Thank you very much
13 for taking time from your business to come too.
14 Mallory?

15 MR. DUNCAN: Good morning. I'm Mallory Duncan,
16 general counsel for the National Retail Federation. We
17 represent sort of the broad part of the industry,
18 everyone from Saks to Sears, from specialty stores to
19 Home Depot, and we also have 50 state retail
20 associations as our members.

21 Are interest in the rule goes back to its very
22 inception. We are -- we're pleased to see that the rule
23 has helped to provide a dividing line between those
24 companies that operate with integrity and those that do
25 not, and it also provides guidance for those companies

1 who want to go further because it shows where
2 consumer -- the direction consumer protection is moving
3 in.

4 MS. HARRINGTON: Thanks, Mallory. Jeff?

5 MR. KRAMER: Good morning. I'm Jeff Kramer.
6 I'm a legislative representative in federal affairs at
7 AARP. We're pleased to be here. AARP has also been
8 very active in the issue of telemarketing fraud, and
9 we've been active educating our members and education
10 the public as well as working with other agencies and
11 groups to enforce the rule, and we think it's working,
12 but we have to keep sight of the fact that it's maybe
13 not working well enough if you look at the comments that
14 were filed by individuals as well as the things we hear
15 from our members.

16 I know National Consumers League here so there
17 are still problems out there, and we need to address
18 those. Thank you.

19 MS. HARRINGTON: Elissa?

20 MS. MYERS: Good morning. Thank you so much.
21 I'm Elissa Myers, president of the Electronic Retailing
22 Association. I represent 470 large retailers who sell
23 directly to the public through electronic media, direct
24 response television, radio and the Internet. In
25 addition to that, we've just launched Global ERA Small

1 Business Council or as we call it, playing with the
2 name, ERA Light or Local E, Local E, that brings in to
3 our family about 5,000 small local retailers and growing
4 rapidly.

5 ERA out of enlightened self interest takes self
6 regulation very seriously. We hope to play an
7 appropriate role in ensuring that our members are
8 behaving appropriately with the public and treating them
9 fairly, and to that end, in late -- in early June we
10 adopted the first set of ERA telemarketing guidelines
11 governing the behavior of our members in the use of
12 phones in their transactions.

13 We believe in general in regulating bad behavior
14 and not the technology that is used for the bad
15 behavior, and we believe that simple is better so to the
16 greatest extent possible we are in support of enforcing
17 existing rules and trying not to add layers of rules
18 that make it more difficult for small businesses to know
19 how to behave appropriately.

20 And we had the great pleasure last week of
21 having Allen Hile address my members, and, Allen, my
22 mother thanks you for the work you're doing.

23 MS. HARRINGTON: Thank you. We love Allen too.
24 Tim?

25 MR. SEARCY: Good morning. I'm Tim Searcy. I'm

1 a board member with the American Teleservices
2 Association, and unlike most of you, this is my first
3 time at the FTC, so thank you for inviting us and
4 providing this forum.

5 I'm also a business person who as CEO of Optima
6 Direct has about 25 years of personal experience in
7 using teleservices.

8 MS. HARRINGTON: No. Look at this face. Has
9 this guy been alive for 25 years?

10 MR. SEARCY: I sold the Benson Sun Newspaper by
11 phone when I was ten.

12 MS. HARRINGTON: We try to flush out the record
13 to make it completely truthful.

14 MR. SEARCY: And it is, and it is. As a
15 practitioner and as a board member, we have ongoing
16 interest in any regulation and legislation that affect
17 teleservices and our 2,000 members. We believe that the
18 sales rule as it is currently stated is excellent but
19 may require some refinement and some additional
20 enforcement.

21 MS. HARRINGTON: Thank you very much, Tim. And,
22 Jason?

23 MR. CATLETT: Thanks. I'm Jason Catlett. I'm
24 the president and CEO of Junkbusters. We run a popular
25 web site at Junkbusters.com where consumers come to

1 learn how to install and reduce any kinds of junk
2 communication including telemarketing calls that are
3 unwanted.

4 The two topics that I'm most interested in today
5 are outlined on the orange sheet out at the front
6 there. They are the problem of dead ringers or
7 abandoned calls which cause a great deal of concern by
8 consumers who sometimes believe that they're being
9 stalked, and we maintain that these calls are actually
10 illegal under the Telephone Consumer Protection Act and
11 should therefore be stopped completely.

12 Second, there's the use of prison labor for
13 telemarketers which has caused some individuals very
14 considerable stress, and I think that that practice is
15 plainly abusive and should be halted.

16 MS. HARRINGTON: Thanks, Jason, and thank you
17 all. Let me turn to my FTC colleagues and just ask for
18 you to introduce yourself and where in the agency you
19 work.

20 MS. DANIELSON: Carole Danielson, and I work for
21 the division of marketing practices. I was on the
22 original rulemaking team and survived and am currently
23 on the new rulemaking team.

24 MS. HARRINGTON: No good deed goes unpunished.

25 MS. LEONARD: I'm Karen Leonard. I'm also with

1 the division of marketing practices. I'm a staff
2 attorney there, and although not a survivor of the last
3 rulemaking, I'm very excited to soon be a survivor of
4 this one.

5 MR. HILE: I'm Allen Hile. I'm an assistant
6 director in marketing practice. I, too, am a veteran of
7 the first rulemaking team.

8 MS. HARRINGTON MCBRIDE: I'm Katie Harrington
9 McBride, also not a survivor but I am a staff attorney
10 and very excited to be working on the rule and excited
11 to have you all here today so that we can finally sit
12 down face to face and talk about it.

13 MR. GOODMAN: Michael Goodman, attorney in
14 marketing practices and also new to the rule review
15 team.

16 MR. ANDERSON: Hi. I'm Keith Anderson. I'm an
17 economist, not an attorney, and was on the team five
18 years ago, so back again.

19 MS. HARRINGTON: All right. Let's jump right
20 in. The first topic, one of the most interesting and
21 challenging ones for us, is the topic of technology,
22 what's new and what's changed since 1995.

23 Let's now just jump right into the first subject
24 on the agenda, and that concerns the transmission of
25 Caller ID information. As many of you know, this was

1 the subject of a hearing recently before one of the
2 House Commerce Subcommittees. There's some legislation
3 introduced by Mr. Freylinghausen on this issue, and the
4 \$64,000 question I think is, what is the state of the
5 technology, what is possible, what is soon likely to be
6 possible, and what's the deal?

7 How come many consumers report that when they
8 are receiving inbound calls at their homes from
9 telemarketing concerns that their Caller ID information
10 comes out blank, not available, and, Chuck, I think
11 we're going to start -- even though your tent isn't up,
12 we're going to start with you, and we would like to hear
13 your take on the state of technology, what's possible,
14 what's not.

15 Why is it that in many instances the Caller ID
16 information is not transmitted for calls that come from
17 telemarketing companies?

18 MR. EPPERT: I would be happy to do that, and
19 the way the question is phrased here: Is transmission
20 of Caller ID by telemarketers feasible? I would like to
21 draw the focus to the phone company itself first.

22 Caller ID is made possible because the telephone
23 industry is using common channel signaling networks
24 which are separate high speed packet data networks to
25 send information between central offices, access tandems

1 and, for example, between Verizon and the AT&T network
2 or a CLEC perhaps that is competing for local service.

3 This common channel signaling network when a
4 call originates sends what's called an initial address
5 message. Within that message is a field known as CPN or
6 calling party number. That is also sent forward
7 assuming that the intervening networks handle common
8 channel signaling. That information is always sent
9 forward to the destination office, and that's what enables
10 things such as Call Trace and, for example, Caller ID.

11 If a subscriber who has received a call
12 subscribes to Caller ID, then we recognize that and send
13 that calling party number out over their telephone line
14 between the first and the second ring, and of course if
15 they subscribe to Calling Name Delivery, we look up a
16 name and also deliver that.

17 The point I'm trying to make is that takes place
18 within the telecommunications network. Common Channel
19 Signaling, or it's often referred to as SS 7, which is
20 really the signaling protocol, we do not have
21 interconnection at this time between the public switch
22 telephone network and private networks.

23 MS. HARRINGTON: What's a public switch network
24 and a private network?

25 MR. EPPERT: Bell Atlantic is a public switched

1 telephone network, any of the local exchange carriers as
2 opposed to a private network where a major corporation
3 sets up its own private line facility network say across
4 the country or within their business.

5 MS. HARRINGTON: So that would be like here at
6 the FTC we have a phone system that I think was
7 installed for us by Rome; is that right?

8 MR. EPPERT: Which I believe is probably a PBX
9 arrangement and would not be generating Caller ID. That
10 is not interconnected to Bell Atlantic through common
11 channel signaling, so I'm trying to get back to the
12 question, can a telemarketer actually provide the Caller
13 ID themselves.

14 It's provided through the telephone company to
15 which lines are connected, and any other questions about
16 how it works? If not, I'll get into how one might
17 explain the lack of information coming to a customer.

18 MR. ANDERSON: Chuck, quick question. If I make
19 a call from my office here out on to the line, would
20 anything show up? Would the trunk line that I get to go
21 out show up, or --

22 MR. EPPERT: Yes, if you're in fact served by a
23 PBX, Private Branch Exchange, then the telephone number,
24 the billing telephone number for the Federal Trade
25 Commission could be displayed. If someone tries to call

1 back to that, they're probably not going to reach you.

2 MR. ANDERSON: So basically all you would get is
3 the trunk line.

4 MS. HARRINGTON: You say it is displayed or it
5 could be displayed?

6 MR. EPPERT: Could be. It depends on the
7 service. For example, where my daughter works, she is
8 served by a PBX that something prevents that number from
9 being displayed. It could be the nature of her client
10 that somehow prevents that, but at any rate so I won't
11 make a blanket statement.

12 What's interesting on the FCC web site they talk
13 about types of lines that are currently exempt from
14 having their number displayed, pay phones, PBXs, hotels,
15 motels and party lines, and this is consumer information
16 that is published on the web by the FCC.

17 MS. HARRINGTON: Now, why is it that these
18 private exchanges do not use SS 7?

19 MR. EPPERT: First of all, let me use a Marriott
20 Hotel, for example. They would have their own Private
21 Branch Exchange or PBX. It is, in essence, a telephone
22 switching office on a small scale, but the cost of
23 deploying common channel signaling on such a device I
24 believe would be prohibitive because you have to equip
25 the office with the capability to do signaling, first of

1 all, over a high speed packet data network.

2 Then the interconnection to other networks is
3 also quite costly, but to the best of my knowledge, none
4 of the PBXs are common channel signaling capable.

5 MS. HARRINGTON: It's a cost issue, you believe.

6 MR. EPPERT: It's a cost and technical
7 feasibility issue.

8 MS. HARRINGTON: Is it technically feasible?

9 MR. EPPERT: I have never said that anything is
10 not technically feasible given enough money and time.
11 They might have to replace the equipment they have
12 though, so there's a great economic feasibility
13 question.

14 MS. HARRINGTON: Why did the public switched
15 networks like your company invest in this kind of
16 signaling technology in the first place if it's very
17 costly? What were the incentives.

18 MR. EPPERT: Prior to the development of this
19 technology, we used what was called multifrequency
20 signaling which simply means we took the two sounds, put
21 them together to create a third sound, and you may
22 remember hearing kind of a musical tone when you made a
23 telephone call and heard those tones transmitted.

24 We transmitted those over the same pair of
25 wires, if you would, or path that you were going to be

1 using to talk to the party you called, so it was called
2 in-band signaling. It did not give us the capability to
3 transmit such things as calling party number, so one
4 reason we enabled it or developed it was to enable new
5 services the ability to do Automatic Call Trace, for
6 example.

7 Another big reason was economics. If we could
8 take the signaling time off of those facilities that
9 were going to be used for conversations, then we needed
10 fewer of those facilities so we built this overlay, very
11 high speed packet data network to handle the signaling.

12 MS. HARRINGTON: So the reason that your company
13 and others invested in this technology are -- let me
14 just restate this, were, number 1, greater efficiency?

15 MR. EPPERT: Yes.

16 MS. HARRINGTON: Number 2, it permitted you to
17 develop enhanced services that you could sell?

18 MR. EPPERT: That is correct.

19 MS. HARRINGTON: Any other reasons why this was
20 developed that you know of? Those are very interesting
21 --

22 MR. EPPERT: Those are principal reasons. That
23 covers a lot of territory.

24 MS. HARRINGTON: It certainly does.

25 MR. EPPERT: Would you like me to address now

1 some of the ways that services do not end up
2 transmitting Caller ID or come back to that?

3 MS. HARRINGTON: Let me ask -- let me hold that
4 thought for a minute. Dennis had something that he
5 wanted to say, I think.

6 MR. MCGARRY: I would like to answer a question
7 maybe by Chuck. Our company does not block our name and
8 phone number. When we make a local call it appears.
9 When we make a long distance call using a T-1 it -- we
10 found out that it doesn't appear, so we're not blocking
11 it. So why does it work in one case and not another?

12 MR. EPPERT: I'm glad you asked.

13 MS. HARRINGTON: Good lead in.

14 MR. EPPERT: I'm glad you asked. We can only
15 provide the calling party's number and in fact use the
16 common channel signaling network on line side services,
17 so when you make the local call go off hook, receive
18 dial tone, that's on the line side of your local
19 telephone company's central office switch, and we do use
20 common channel signaling.

21 A T-1 -- pardon me, please. A T-1 is a high
22 speed dedicated facility on the trunk side of the
23 central office switch that is used so that you have the
24 high speed data connection, and since that is not on the
25 trunk side, not associated directly with that number

1 going off hook, we do not send the initial address
2 message.

3 Therefore, the information is never created and
4 sent out in the first place, so it's the difference
5 between line side and trunk side. Trunk, let me
6 describe, is the big pipeline that connects one central
7 office to another or one network to another or in your
8 case a business to somebody's network.

9 MS. HARRINGTON: And what's line side?

10 MR. EPPERT: Just plain old telephone lines.
11 The telephone line that serves your home is on the line
12 side, telephone line side of the switch.

13 MS. HARRINGTON: Now, let me just do a quick
14 survey. How many people understand what Chuck just told
15 us?

16 MR. EPPERT: I'll go back.

17 MS. HARRINGTON: You're going a really good job
18 here, but I don't get it.

19 MR. EPPERT: All right. Let me start at the
20 beginning. My telephone line to my house is served out
21 of Centreville, Virginia, central office, owned and
22 operated by Verizon Communication. When I go off hook
23 to make a call, I get dial tone.

24 MS. HARRINGTON: Off hook means you pick your
25 phone up.

1 MR. EPPERT: Let me get away from all that.
2 When I lift the receiver of my phone and receive dial
3 tone, that dial tone is being provided by the
4 Centreville, Virginia, central office switch which, by
5 the way, is a computer, digital computer, and my
6 telephone -- the pair of wires that run from my house
7 out to Centreville are called the local loop.

8 That loop is connected to the line side or line
9 equipment in this digital computer called a central
10 office switch. So that's what I mean by line side.

11 I receive the dial tone from that line side.
12 When I now make a call to either my neighbor or across
13 the country, it analyzes the -- receives and analyzes
14 the digits that I dial and knows where to send that
15 call.

16 If I'm calling from there let's say to
17 Arlington, Virginia, it will select a trunk which is a
18 pipeline that connects the Centreville central office
19 switch to the Arlington, Virginia, central office
20 switch. The call will come in on that trunk side of the
21 Arlington switch, go out on the trunk side of
22 Centreville, in on the trunk side of Arlington.

23 Arlington will analyze the digits and see that
24 that's destined for my desk. It will send it across to
25 the line side of the central office switch, connect it

1 to the local loop or pair of wires to my desk and cause
2 my phone to ring.

3 MR. HILE: So the line side is the side that
4 deals with the individual line subscriber?

5 MR. EPPERT: Yes.

6 MR. HILE: And the trunk goes from central
7 office to central office.

8 MR. EPPERT: Very well said.

9 MS. HARRINGTON: Now, what I thought you were
10 going to say is that when that call leaves the
11 Centreville line and goes into the trunk line that takes
12 it to Arlington, that that information could not be
13 transported further, but that's not what you said.

14 MR. EPPERT: Let me back up and separate the
15 signaling from the talking.

16 MS. HARRINGTON: Okay.

17 MR. EPPERT: When the Centreville, Virginia,
18 office, realized that it needed to connect to the
19 Arlington, Virginia, office it sent information out over
20 the common channel signaling network, the separate high
21 speed packet network and informed, signaled, that's what
22 we mean by signaling, informed Arlington that I have a
23 call for you that's destined for 974-3547.

24 The Centreville and Arlington central office
25 switches or computers are able to communicate with each

1 other, determine whether my telephone line is available
2 to receive a call or it may be busy. If it's busy,
3 Arlington informs over the separate network Centreville
4 to play a busy signal to the calling party.

5 If it's available, they choose this trunk over
6 which we're going to talk to each other and cause that
7 connection to take place, so the signaling is going
8 out. The calling party number is transmitted from
9 Centreville to Arlington. Arlington does nothing with
10 it unless you invoke some service that uses it.

11 If you're a subscriber to Caller ID, we
12 automatically send that to the party who has been
13 called. If it's a threatening call and you choose to
14 activate Call Trace, then we use the information for
15 that purpose, and there are other purposes as you see
16 advertised.

17 MR. ANDERSON: But what you're saying then in
18 answer to Dennis's question is a T-1 line never goes
19 through the switch so it doesn't activate the common
20 channel signaling network, it hooks in somehow beyond
21 the switch.

22 MR. EPPERT: That is correct. The T-1 is a
23 dedicated facility for your use. Have I left you
24 totally --

25 MS. HARRINGTON: No.

1 MR. EPPERT: Show of hands now. Any others
2 now?

3 MS. HARRINGTON: Questions for Chuck.

4 MR. BULMASH: Chuck?

5 MS. HARRINGTON: Bob.

6 MR. BULMASH: Is there any way to piggyback some
7 frequency signal on a T-1 as it connects into the main
8 network to provide Caller ID, or is it practically
9 speaking impossible cost wise?

10 MR. EPPERT: If a call originated from a
11 telephone line that is connected to the line side of the
12 telephone switch and therefore an initial address
13 message has been created, that again is sent over that
14 separate network. It could be sent to the other end, a
15 receiving office or entity.

16 MR. BULMASH: Specifically I'm wondering whether
17 or not an organization, telemarketing service agency
18 which has a T-1, has a trunk line, calls out multi
19 line -- calls out from that, is there some way to put a
20 signal on that T-1 that will integrate into the network
21 that will identify A, B, C telemarketing services as the
22 caller when Caller ID picks up the signal on the called
23 party end?

24 MR. EPPERT: Unless they have interconnection
25 with the telephone network using common channel

1 signaling, not at this time. It might be possible to
2 develop it.

3 MS. HARRINGTON: And the barrier to
4 interconnectivity here is cost, or is there a
5 proprietary barrier as well?

6 MR. EPPERT: The protocol itself is not
7 proprietary, but the rules of interconnection, the
8 requirements of meeting network reliability standards
9 and requirements are very, very strict.

10 MS. HARRINGTON: The FCC has given its
11 imprimatur to those rules, right?

12 MR. EPPERT: That is correct.

13 MS. HARRINGTON: Jerry.

14 MR. CERASALE: One question on just Caller ID
15 going -- when you're on the line side to a line side. I
16 don't know if I'm correct. It's my understanding that
17 from Centreville to Arlington, what is sent is just the
18 phone number of the calling -- of the individual calling
19 or the phone line that's calling.

20 Arlington, if they have that phone number in a
21 database match with a name, will also show the name, but
22 it's the Arlington switch or the Arlington -- the
23 destination switch that has to have the name associated
24 with the phone number in order to have that shown. Am I
25 correct on that?

1 MR. EPPERT: Almost. Let me explain it.
2 Arlington does not have a database that would say, The
3 name associated with my home number is Charles Eppert.
4 I wish it said Chuck, but Charles Eppert. What happens
5 when that call arrives at Arlington central office and
6 the Arlington central office realizes that you, thank
7 you, have subscribed to both Caller ID and Calling Name
8 Delivery, we momentarily interrupt the process of that
9 call and send a question, or we like to call it a query,
10 out over the common channel signaling network to a
11 database known as the line information database or
12 LIDB.

13 Our LIDB has information about every Verizon
14 customer, your name, telephone number, and a whole lot
15 of other information, but for Calling Name Delivery, we
16 send the query over the high speed data network, say I
17 have a call from Chuck Eppert's home number, what is the
18 name I should display out on the Caller ID device, and
19 what it does is give the name that's associated with the
20 account for that telephone number.

21 So it would bring up Charles Eppert if I was the
22 one calling you.

23 MR. CERASALE: Jerry Cerasale again. I'm sorry,
24 I didn't say my name the first time. I just want to go
25 a little further so I can understand a little better.

1 We use the example of Centreville to Arlington. Let's
2 say the call is going from Centreville to Austin, Texas,
3 and therefore you're switching companies.

4 Is it the same kind of thing? Does the
5 Southwestern Bell switch in Austin go back to the
6 Centreville -- go back some place to go to some central
7 national database which has the names or how does
8 that --

9 MR. EPPERT: The name? Yes, to the extent that
10 telephone companies have contracts with each other to
11 use the other company's database, and let me use just
12 for a moment SBC Ameritech in Chicago. I know that Bell
13 Atlantic and SBC Ameritech have such a contract, and the
14 reason it's not universal is a capacity problem, not a
15 legal terms and conditions problem, but we do have such
16 an agreement.

17 So if I call from my home in Arlington to
18 someone in Chicago who has calling party number and name
19 delivery, then the Ameritech central office switch will
20 launch a query through a long distance carrier back to
21 the Bell Atlantic or Verizon line information database
22 to obtain that information, I emphasize via long
23 distance.

24 We can leave New York now and go to Ameritech's
25 database on our own, but until we get long distance

1 permission elsewhere, we have to have intermediary
2 across the line of boundary.

3 MR. CERASALE: Jerry Cerasale again. One other
4 question. Can a marketer -- let's say that we had the
5 ability to show the Caller ID and you're calling from a
6 certain number, but you would want to show a customer
7 service number so that the individual receiving the call
8 gets a number they can call back and actually get
9 someone as opposed to a busy signal because you're
10 always calling out on that number.

11 Is that done? Is that technically feasible?
12 How do you do that?

13 MR. EPPERT: The assumption I would have to make
14 is they're starting from a regular telephone line that
15 generates Caller ID.

16 MR. CERASALE: Yes, let's say it's one that --
17 yes.

18 MR. EPPERT: And in essence you want to
19 substitute a different number; is that correct?

20 MR. CERASALE: That's correct.

21 MR. EPPERT: I have to be very careful answering
22 this and tell you it is physically possible for the
23 telephone company to change the number. I'm not aware
24 of end user customer, the person using the phone and
25 originating the call, being able to do that, but I am

1 aware of a situation where we set up a test in a
2 laboratory for law enforcement to see if alteration
3 could occur.

4 And it is physically possible to do so although
5 to the best of my knowledge we don't do it.

6 MS. HARRINGTON: Katie?

7 MS. HARRINGTON-MCBRIDE: Chuck, is it going to
8 come down to into the next some number of years, this
9 number is going to evaporate? It seems to me that if
10 the common channel signaling, the SS 7, is sort of the
11 state of the art and the MF is the older model, is this
12 something that is over time going to abate, or are there
13 other sort of compelling reasons why this older
14 technology is still in use by I guess a large number of
15 telemarketing concerns?

16 MR. EPPERT: That's an excellent question,
17 Katie. Actually common channel signaling is now an
18 older technology. It hasn't been around as long as I
19 have, but it's getting close. No. It's been here for
20 approximately 15 years or so. We are working in
21 research and development now for a replacement for
22 common channel signaling.

23 Part of the concern regarding that replacement
24 will be, How do you interconnect all networks. One of
25 the possibilities is it's going to be Internet protocol,

1 okay, because so much is leaning toward the Internet
2 today. Definitely it's going to be full packet data,
3 asynchronous transfer mode type technologies, no
4 questions, please, and because just, for example, what's
5 called asynchronous transfer mode or ATM, we're using
6 that for high speed data communication today.

7 There's no reason we can't packetize voice and
8 send voice over that same type technology, and that is
9 well on the horizon, so common channel signaling as we
10 know it today is short-lived. Now it's a question of
11 what is a short life in telephone years. It's going to
12 be around for awhile, but we are evolving to the next
13 generation.

14 MS. HARRINGTON: Let me ask all of our
15 participants when you speak to speak directly into the
16 microphone. We have a national web cast of this session
17 that's being listened to by people who are absolutely
18 addicted to FTC rulemaking workshops all over the
19 country and the world, so please identify yourselves and
20 speak directly into the microphone.

21 Allen, you have a question?

22 MR. HILE: Mr. Eppert, this is not quite
23 directly about what you just said, but do I understand
24 that each leg has its own LIDB, or is there one joint
25 LIDB.

1 MR. EPPERT: I will speak to what's been fondly
2 referred to as the RBOCs, the children of Ma Bell at
3 divestiture, so Bell Atlantic at that time, NYNEX,
4 Ameritech, each of the regional Bell Companies had their
5 own line information database. GTE had its own line
6 information database. There are entrepreneurs who
7 provide database service of that nature to small
8 independent telephone companies, or they make contracts
9 with a company like now Verizon to provide that service
10 for them.

11 So there's a fairly significant number of them,
12 and they're spread throughout the country, but if
13 someone needs the name of a Bell Atlantic customer, they
14 come to the Bell Atlantic LIDB.

15 MS. HARRINGTON: Elissa?

16 MS. MYERS: I have two quick questions. One is
17 that when my secretary calls me from her cell phone to
18 my cell phone, if she's in the area, I can see her
19 Caller ID, it comes up, and if she's out of the area, I
20 get a message saying no Caller ID available, and I
21 wonder why that is.

22 MR. EPPERT: That could be a difference in the
23 service provider for that cellular service. I
24 experienced the same thing. Within this area of course
25 I use Verizon Wireless, and when I make calls to people

1 who have Caller ID, they get my telephone number.

2 I have was recently in Portland, Oregon,
3 roaming, called my wife, and she got a telephone number,
4 but it had nothing to do with who I was or where I was,
5 so I'm not sure what was being transmitted, but not all
6 cellular companies -- you're talking cellular to
7 cellular. Not all cellular companies have yet deployed
8 common channel signaling in their networks.

9 They also could be connected to a land line
10 service because when you make a cellular call, unless
11 it's within the same system, cell phone to cell phone,
12 you do involve a local telephone company connection, and
13 if that local telephone company has not interconnected
14 using common channel signaling, the data will not be
15 send.

16 MS. MYERS: My second quick question is if a
17 company wanted to block its Caller ID, is there a way to
18 do that, or is it dependent on using one of the
19 technologies that's not Caller ID enabled yet?

20 MR. EPPERT: Okay. Let me address it first as
21 to what we're required to provide as a service to
22 customers, and these are customers who originate
23 telephone calls.

24 MS. HARRINGTON: Required by whom?

25 MR. EPPERT: Required by the Federal

1 Communication Commission rules. We're required to give
2 you two options, an option that if you're getting ready
3 to make a telephone call and want to invoke privacy,
4 that is, instruct our system not to display your
5 telephone number to a Caller ID device, you can do it
6 one of two ways.

7 You can dial star whatever the two digits are to
8 block delivery of your number on that telephone call or
9 you could ask the telephone company to block delivery of
10 your number from your telephone line. Now, if you
11 choose the latter, you can unblock it on a per call
12 basis with a different star code.

13 What happens, we still send the calling party
14 number from -- let me use Centreville to Arlington
15 again. We still send calling party number in the
16 initial address message or the signaling in case it's a
17 threatening call and you need to invoke Call Trace, for
18 example, but we send a privacy indicator with the
19 calling party number and instruct Arlington not to
20 display it on a Caller ID device, so those are services
21 that are provided in accordance with the FCC rule.

22 There are other ways to make calls without
23 Caller ID being delivered, for example, from a PBX, coin
24 phones, some individuals not wishing to be identified
25 may use in that case what shows up on Caller ID device,

1 simply says pay phone or the use of trunk side
2 connections.

3 MS. HARRINGTON: Okay. Keith, a question?

4 MR. ANDERSON: I wanted to clarify sort of for
5 the record here the importance of Jerry Cerasale's
6 question or point a minute ago.

7 What we're saying is even if a telemarketer say
8 using a PBX line puts out the Caller ID number, what
9 you're getting is the number that he used to make the
10 call, so that number I presume is not of very much use
11 to the consumer. It's not a number that -- and Tim can
12 probably address this better than I, but I presume it's
13 not a number that you can call back in on.

14 So you may get a name that would be helpful, but
15 the number isn't directly going to it seems to me very
16 helpful because it isn't a number that you can call and
17 say, I want to be put on your do not call list.

18 MS. HARRINGTON: Tim.

19 MR. SEARCY: As a matter of fact, that's why my
20 tent card was up. The practical application of that is
21 that you might call back and get a busy signal. The
22 other concern that we might have is that if you put out
23 that Caller ID, many of the Caller ID functions or boxes
24 that are out these days will allow you to list the
25 previous calls that came in.

1 Even if it goes out as a 00 or a 9000 or 8000 or
2 7000 which is usually the trunk exchange for a large
3 bank of T-1 lines, you're going to wind up getting that
4 number. Up until now --

5 MR. ANDERSON: By 9000, you mean that's the last
6 four digits?

7 MR. SEARCY: Right, exactly, so you know that
8 you're going to you'll be calling most likely a business
9 if you're a consumer at home. The concern would be that
10 you are now going to incur a cost because if you decide
11 to call that number back out of curiosity or confusion
12 or because you know someone in that area and you don't
13 know that they're not calling you from their business,
14 you, the consumer, are going to become very frustrated
15 in a short period of time because you're calling a
16 number that's busy, or if for some reason we were able
17 to switch the nature of the switching device that placed
18 the call and you did get through, what would you be
19 getting through to?

20 To Jerry's point, we really would need to change
21 the nature of the information that's going out.

22 MS. HARRINGTON: So it would be name information
23 that might be useful to the customer, not telephone
24 number information?

25 MR. SEARCY: That would be possibly helpful, but

1 again, you'll find that I'm going to tend to go to the
2 practical side of that, which is for the service
3 agencies who are making calls on behalf of clients, the
4 ongoing expense and administration of constantly
5 contacting Chuck's organization to dedicate trunks, to
6 dedicate calling banks, et cetera, is enormous.

7 And I can only say, not to speak to Verizon, but
8 just try to get an extra T-1 in your shop, okay? That's
9 six weeks. Call and ask for a new phone number for an
10 800 number for a client, that's some between 9 and 21
11 days, depending upon which group you go to.

12 MR. ANDERSON: What you're saying is we could
13 get the name -- we could get whatever your company --

14 MR. SEARCY: XYZ.

15 MR. ANDERSON: -- the XYZ who's making the
16 call. What you would not get is -- was the name of the
17 party on whose behalf they're calling, so you got the
18 telemarketing shop. You get that name, but you don't
19 get --

20 MR. SEARCY: I actually had gone another way.
21 There are three options. You could get the phone number
22 which I think we as a group have determined would not be
23 useful unless to Jerry's point it was a customer service
24 number, which hopefully will be a toll-free number on
25 behalf of the customers. That's one.

1 The second is you could get the name of the
2 company who's calling on behalf of XYZ, or potentially
3 you could go through what I just described as an
4 administrative nightmare of managing each of the names
5 of the client organizations who are calling.

6 MS. HARRINGTON: What about a broader label like
7 commercial? This is off the top of my head. For
8 example, in the -- I think in the -- there's been some
9 discussion in the unsolicited commercial E mail context
10 of using a broad label like bulk or commercial.

11 What would the feasibility be for putting a
12 commercial tag on the call?

13 MR. SEARCY: Well, I think if you do the
14 technology as was already described, and we're now in I
15 think pretend land because I don't think it actually
16 exists at this point, but let's go to pretend land and
17 say you put commercial on that. The difficulty would be
18 how would you screen those calls that you want versus
19 those calls that you don't? You have an existing
20 relationship with your bank. If that call is placed, it
21 will say commercial.

22 MS. HARRINGTON: Right.

23 MR. SEARCY: You might want to talk to them.

24 MS. HARRINGTON: Sure.

25 MR. SEARCY: And in that case, that broad label

1 would probably be too broad.

2 MS. HARRINGTON: Chuck?

3 MR. EPPERT: You brought up an interesting
4 subject, how would you screen the calls, and before our
5 time expires, I would like to address a service that's
6 being offered in Illinois, will be available here
7 September 1 that does give consumers that ability.

8 MS. HARRINGTON: Okay. I'm not sure that now is
9 quite the moment. Let me tell you what we're going to
10 go. We have got to get on to predictive dialers, what
11 are called predictive dialers which is a very important
12 issue in this session, so I'm going to look around the
13 table. All the name tents just went down.

14 Okay. I want to finish -- we're going to have
15 no more than five more minutes on this Caller ID related
16 stuff. George?

17 MR. ROSE: Well, I was going to say in answer to
18 the question about your bank calling or somebody like
19 that, you could put sales, and certainly I think
20 everybody would understand what sales means and
21 whether -- you're already required to disclose in the
22 call you make that it's a sales call so I don't know why
23 if the technology existed you couldn't describe it as
24 that.

25 MS. HARRINGTON: Jason?

1 MR. CATLETT: In response to Chuck's assertion
2 that the phone companies offer companies the opportunity
3 to withhold their calling party numbers, I wonder if
4 anyone at this table knows of telemarketing companies
5 that deliberately withhold the telephone numbers even
6 though they could transmit it, and secondly, if there
7 was anyone who would object to a prohibition against
8 telemarketing companies withholding their --

9 MS. HARRINGTON: Intentionally withholding
10 rather than --

11 MR. CATLETT: Yes.

12 MS. HARRINGTON: -- because of technical
13 incapacity?

14 MR. CATLETT: Right. Right.

15 MS. HARRINGTON: First, does anyone know of
16 telemarketing companies intentionally -- that have the
17 capacity to deliver this information intentionally
18 withholding it? Does anyone have any evidence of that?
19 All right.

20 The second question: Would anyone from the
21 telemarketing side object to a prohibition on
22 intentional withholding of information where it's
23 technically feasible to do -- to provide? Mallory, you
24 object?

25 MR. DUNCAN: Mallory Duncan, National Retail

1 Federation. For the reason that was mentioned earlier,
2 a number of companies who want to provide good customer
3 service would be concerned if the number that they were
4 -- was revealed was the number that a customer is going
5 to call back and get a constant busy signal or get
6 frustrated by, so that is a concern.

7 MS. HARRINGTON: Okay. Noted. Anyone have
8 anything different? Linda?

9 MS. GOLDSTEIN: I was just also going to say
10 from the client side, and I don't a definitive answer,
11 but I think we would have to go back out into the field
12 and talk to the marketers because some of the feedback
13 we did get on this question from our members was that
14 that would raise some concern for them about using
15 telemarketing as a medium to begin with because their
16 interface with the client would be a number that's not
17 associated with their brand.

18 And when they're interfacing with a client,
19 they're trying to strengthen the relationship of this
20 person is calling on behalf of me, and that kind of
21 weakens the brand identity in connection with the
22 customer, so it could be a reaction from that side.

23 MS. HARRINGTON: Okay. Tim?

24 MR. SEARCY: I concur.

25 MS. HARRINGTON: Tim agrees.

1 MR. SEARCY: Yeah.

2 MS. HARRINGTON: Does anyone have anything
3 different to say? Linda, you have had your --

4 MS. GOLDSTEIN: That was really the point I
5 wanted to make.

6 MS. HARRINGTON: Avonne, you're going to have
7 the last word on this subject.

8 MS. SEALS: Just from a law enforcement
9 perspective, when we are attempting to identify targets
10 it is very difficult to do so. The inability of that
11 number to be displayed or to be known literally hampers
12 completely our ability to go forwards, and it frustrates
13 consumers because they are not able to give information
14 as well.

15 And while I obviously don't have any answers as
16 to how to change the technology to enable this
17 information to be determined, I can tell you that it
18 sincerely hampers our efforts to actually enforce the
19 Telemarketing Sales Rule, and it's extremely
20 frustrating.

21 I would encourage whatever efforts are possible
22 to be undertaken and to make sure we know, even if it is
23 a general number, we can use traditional law enforcement
24 techniques, subpoena power to then go beyond that
25 general number to determine who in fact is responsible,

1 or we can perhaps sue whomever is calling as an agent.

2 So it is important to law enforcement that we
3 have some identity and that some technology be employed
4 to give us that potential power.

5 MS. HARRINGTON: Okay. Thank you. We're going
6 to move on to so-called predictive dialers. The broad
7 question is: Has their use increased or the past five
8 years? Is there anyone at the table who believes that
9 it hasn't? I mean, I think the question may not be --
10 okay. Dennis, you believe that it has not?

11 MR. ROSE: Well, I'll just make the point.
12 Small businesses can't afford it so we don't have it so
13 it hasn't increased in our area.

14 MS. HARRINGTON: Okay. The question really
15 opens the discussion, and I'm going to turn to my
16 colleagues for specific questions on this area. Katie?

17 MS. HARRINGTON-MCBRIDE: I guess the question
18 that I have with my perhaps somewhat limited
19 understanding from just having perused journal articles
20 and so forth on the topic of predictive dialers. It
21 appears that there's a practical importance that
22 industry employs these because it saves time and creates
23 efficiency.

24 I guess my question would be: If you can use
25 the technology in a way perhaps that accommodates a

1 certain efficiency but takes away from the negative
2 experience of consumers who get hang-up calls -- so is
3 there a way the technology can be used where the
4 hang-ups disappear but you're still getting the benefit
5 of automated dialing, and you're not having somebody
6 pushing buttons all day in addition to talking to people
7 all day?

8 I didn't intend for that to be a show stopper.

9 MS. HARRINGTON: Who would like to say anything
10 about predictive dialers? Well, there we go. Tim, you
11 had -- use your microphone, please, so that everyone can
12 listen over the Internet.

13 MR. SEARCY: The answer to question number 2 is
14 no, but if we are going to say something about
15 predictive dialers, my comment would be you cannot turn
16 a dialer to zero and gain any efficiency. It can't be
17 done.

18 MR. HILE: What do you mean when you say turn it
19 to zero, Tim?

20 MR. SEARCY: The reference that she made to the
21 efficiency gained by using a predictive dialers, about
22 the algorithm that allows us to make slightly more calls
23 than there are lines that we're contacting, and the
24 reason being is that there is a fair amount of people
25 who aren't home or who through Caller ID have chosen not

1 to be called at that time or make a choice not to pick
2 up the phone at that time.

3 So what practitioners, prudent practitioners do
4 is to set the number as low as possible for the number
5 of calls. They use a dynamic algorithm, which means
6 that it continues to take information in and make
7 changes so that it's calling as few extra numbers as
8 possible, and you can't set it to zero which means no
9 extra calls and gain any efficiency.

10 And each organization uses the algorithm
11 differently to try to figure out based on the size of
12 the list, the target market they're contacting, the time
13 of day that they're contacting. They use the algorithm
14 to gain efficiencies so that they can get more call
15 minutes in a given hour and operate their business
16 economically.

17 MR. ANDERSON: You could still gain something by
18 having -- even if you had to wait, and I'm not
19 advocating this position obviously, but even if you had
20 to wait until the person previously hung up and could
21 only make one call at a time, you gain something, but
22 you just wouldn't gain much, right? You would gain over
23 it coming up on the screen, the person sitting there and
24 punching the buttons?

25 MR. SEARCY: Your gains would not justify or

1 warrant the expense for the machine to do it.

2 MR. ANDERSON: Okay.

3 MS. HARRINGTON: Bob?

4 MR. BULMASH: Bob Bulmash, Private Citizen,
5 Incorporated. Regarding the abandonment rate issue, I
6 think it's central to the entire issue of predictive
7 dialers. Right now the Direct Marketing Association is
8 advocating guideline with a 5 to 0 percent abandonment
9 rate, which they perhaps feel is conservative, and I
10 understand they're considering dropping that high side
11 from 5 percent to 2 and a half percent.

12 But we're not talking Pavlovian dogs. We're
13 talking about human beings in their homes, feeding their
14 children, eating dinner, listening to a phone ring,
15 responding to the bell and going to it with a reasonable
16 likelihood -- it's substantially higher than 5 percent,
17 with a reasonable likelihood that when they reach the
18 phone, they'll hear nothing. Nobody will be there.

19 Is it a stalker? Let me give you an anecdote,
20 if I may. I assisted one woman in Milwaukee, Wisconsin,
21 who received over a years period 400 abandoned
22 telemarketing calls made by a predictive dialer. She
23 had to quit her job to watch her children. She put an
24 alarm system in her home. The telephone companies kept
25 saying, Well, there's nothing we can do, it's just

1 telemarketing.

2 Somehow she found out about Private Citizen.
3 She came to us. I instructed her how to put a trap on
4 her line through the phone company, how to do the police
5 number, how to through the Freedom of Information Act
6 find out who it is that was calling.

7 When we found out who it was that was calling,
8 we contacted the organization, and she got quite a
9 sizeable settlement because indeed, an abandoned
10 telemarketing call made by a predictive dialer is a
11 violation of federal law.

12 Under the FCC regulations you must provide an
13 address or a phone number when you make a telephone -- a
14 call to a residence for the purpose of intending the
15 sale or purchase of a product or service. It's not that
16 you have to talk to them. If you make the call, which
17 is a demand for dial tone and dialing the number, if you
18 make the call, you must provide address or phone
19 number.

20 Abandoned calls don't. Abandoned calls are a
21 violation of federal law, the Telephone Consumer
22 Protection Act of 1991, but beyond the aspect of the
23 statutory violation, we have a violation of simple human
24 decency when we have these megalithic organizations
25 calling us, grabbing us from what we're doing in the

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1 sanctity of our final sanctuary, knowing that a certain
2 percentage of those calls will wind up doing nothing
3 more than disturbing and perhaps frightening those
4 people called to the phone when they hear nothing on the
5 other end.

6 We're talking about elderly. We're talking
7 about infirm people. There are lists out there of
8 people in wheelchairs that are used for telemarketing
9 purposes. We're talking about people who have
10 substantial effort to go through to get to the phone,
11 and with an industry that's willing to use equipment
12 which intentionally will hang-up on certain percentage
13 of that, I think it's an obscenity for the United States
14 to put up with it.

15 I'm a little wired on this issue.

16 MS. HARRINGTON: Thank you, Bob. Yes. I was
17 going to say there's the decaff tank and the tank with
18 caffeine. Decaff for you for the rest of the day.

19 Well, as we move on the list of people with
20 their tents up, let me ask a non-controversial question,
21 and that is: Why doesn't this practice also violate the
22 Telemarketing Sales Rule as it's presently written? The
23 Telemarketing Sales Rule also requires prompt disclosure
24 of the identity of the caller and the purpose of the
25 call, and it prohibits the intentional causing of a

1 phone to ring in an abusive and harassing way, more or
2 less, I'm paraphrasing the existing rule.

3 But is there anyone who -- as we move around I
4 would invite comment on that question, that is, does the
5 Telemarketing Sales Rule -- would the Telemarketing
6 Sales Rule need to be altered to prohibit that practice
7 or does it already prohibit it?

8 George? You don't have to answer that
9 question. I'm just tossing it out in addition to. You
10 can say whatever you want.

11 MR. ROSE: Well, I'm not going to speak to the
12 legality. I just would like to second the concern. I'm
13 George Rose with the National Association of Consumer
14 Agency Administrators.

15 During the last two or three years, we've
16 conducted numerous seminars along with AARP in
17 Montgomery County for senior citizens, and the single
18 biggest complaint in all of those seminars without fail
19 has been what Jason refers to as dead ringers, senior
20 citizens who go and answer the phone, there's nobody
21 there. They either think they're being stalked or they
22 think that they have a relative that's ill and they may
23 think they tried to call them, and they actually place
24 calls to emergency personnel saying, Can you go check on
25 my sister or my aunt or uncle because of the fact that

1 there's nobody there on the line.

2 So that's all I want to say about it, but if
3 there's one single complaint that I've heard about
4 telemarketing practices, it's this predictive dialers
5 and the dead ringers.

6 MS. HARRINGTON: Thank you. Keith, question?

7 MR. ANDERSON: Yes. Tim, I was wondering, I
8 doubt that you can answer this question now. Maybe
9 you'll have to send it in for the record later, but I
10 would be curious to know sort of what the trade-off is
11 between the number of calls that a caller can handle say
12 in an hour and the probability of getting dead ones?

13 MR. SEARCY: I don't feel qualified to talk to
14 an economist about the economics of our business. What
15 I would say --

16 MR. ANDERSON: It's a technical question. It's
17 not an economics question.

18 MR. SEARCY: Well, that's the way you interpret
19 it. I interpret it as an economics questions because
20 for our business, the numbers mean money.

21 MR. ANDERSON: Sure.

22 MR. SEARCY: So when you look at what's the
23 trade-off, it's time, how much time in a given hour, and
24 that time of course trickles down through the rest of the
25 behaviors and what goes on and how we make money in our

1 business.

2 I can get back to you with some ideas on what
3 the exchange is, but we use as a metric the call
4 minutes, the contact minutes in a given hour, and the
5 difference is pretty substantial. In my own personal
6 practical experience, it's 30 to 40 percent shift.

7 MR. ANDERSON: Of going from what to what in
8 terms of drop rates?

9 MR. SEARCY: 40 or 45 minutes of being able to
10 talk to folks on the phone to maybe 30 or less.

11 MR. ANDERSON: If you go all the way to zero?

12 MR. SEARCY: Sure.

13 MR. ANDERSON: I mean, there obviously are
14 continuum in there. You can drop an occasional but not
15 drop 5 percent, and that would affect you to some extent
16 but not as much?

17 MR. SEARCY: Every business has a different
18 size -- as I said, there are three or four factors that
19 control the value of the algorithm, time of day, type of
20 business, dial up list, demographics, all that, and so I
21 can only speak to the component that I know, and in that
22 I would say yes.

23 MS. HARRINGTON: Jason?

24 MR. CATLETT: Thanks. Tim, I have a question
25 here. From what I understood you have what's

1 effectively a knob or a dial up where you can set the
2 percentage of dead ringers; is that correct?

3 MR. SEARCY: There is a way to control the
4 algorithm.

5 MR. CATLETT: I'm sorry. So this is a knob that
6 you set according to your own economics, and you said
7 the trade-off is time, the time of your operators.

8 MR. SEARCY: Efficiency time, yes.

9 MR. CATLETT: And on the other side,
10 we have the time of the people that get up to the
11 telephone and answer it, and there's nobody there. Now,
12 you don't pay for them, do you?

13 MR. SEARCY: I think that's a rhetorical
14 question.

15 MR. CATLETT: So my point is that you're
16 operating on a trade-off here in which you don't pay for
17 the other side, so perhaps the economically rational way
18 to fix this would be to have some cost on the other side
19 so that there is a payment for abandoned calls.

20 And given that these abandoned calls or dead
21 ringers are probably illegal under the Telephone
22 Consumer Protection Act, and we have a \$500 fine for
23 violative calls, my suggestion would be this: When the
24 predictive dialer makes a call that it's able to -- it
25 abandons, it simply plays a message saying, This call

1 was made by XYZ Company in violation of the Telephone
2 Consumer Protection Act, press one to give us your name
3 and address so we can send you your \$500 check.

4 MS. HARRINGTON: Well, that solves that issue.
5 No. I think that's a very interesting proposal.

6 MR. ANDERSON: It would obviously, Jason,
7 violate another provision of the TCPA that says you
8 can't play a recorded message.

9 MR. CATLETT: Right, so you make it a thousand.

10 MS. HARRINGTON: That's a two for. Yeah.

11 MR. CATLETT: You actually add triple damages
12 because it was intentional, so \$6,000 but it's a
13 number. It would get in the incentive.

14 MS. HARRINGTON: Susan.

15 MR. GRANT: Jason, I love that idea. I'm not
16 sure whether this is prohibited by the rule or not, but
17 I do think that it would be helpful for this to be
18 clarified in the rule, and I would suggest that the
19 central question should be whether the efficiency --
20 whether it's appropriate for the efficiency that
21 telemarketers gain through using these devices when that
22 gain is at the expense of consumer's peace of mind.

23 Consumer's peace of mind is something that the
24 original law sought to address, and I do think that
25 that's an appropriate thing to have on that side of the

1 scale versus the use of these devices.

2 In my view, when you balance those two things, I
3 think you have to come out in favor of the consumer, and
4 it may be appropriate to rule that these devices
5 shouldn't be used, period.

6 MS. HARRINGTON: Karen, do you have a question?

7 MS. LEONARD: Yes, I do. I actually was
8 wondering, I would like very much to hear from the DMA
9 on this issue since you've actually come out with a
10 recommendation for your members of a zero percent
11 abandonment rate or maybe slightly higher, and I'm sure
12 that economics played a great part in the decision to
13 make that recommendation. I would like to hear about
14 how you came to that conclusion.

15 MS. HARRINGTON: Okay. Jerry, do you want to
16 answer Karen's question? We'll get to all the rest of
17 you.

18 MR. CERASALE: Sure, Jerry Cerasale from the
19 Direct Marketing Association. Mr. Bulmash was correct
20 that the guidelines of the DMA say that we should keep
21 the abandonment rate as close to zero as possible, and
22 in no case should it exceed 5 percent of answered calls
23 per day in any campaign.

24 The guideline also goes on to talk about the
25 fact that you should -- to prevent an abandoned call to

1 anyone where if you're in a marketing campaign and
2 you've called a number and abandoned it twice in a
3 month, you can't call them again unless you have a
4 dedicated person to respond to the call to try and -- I
5 guess to try to meet the harassment type.

6 So our rule looks at both the abandonment rate
7 and also looking at specific numbers that have been in
8 fact abandoned and put a number there.

9 We don't have it at zero because of the
10 economics, because of the significant cost. I mean, we
11 virtually would drive the cost of telemarketing very,
12 very high, but we think that in response to that an
13 abandonment rate above 5 percent is just -- from our
14 view is just not -- couldn't stand muster from our
15 ethical view in looking at customer service as well.

16 We are in fact -- Mr. Bulmash again is correct,
17 we are in fact reviewing that. When we put out the
18 guideline, we said we would go back and review with the
19 thought of reducing the 5 percent number, and we are in
20 the middle of that discussion right now at the DMA.

21 MS. HARRINGTON: Thank you. Jeff?

22 MR. KRAMER: Thank you. Jeff Kramer, AARP.
23 We've done a number of surveys and research on
24 telemarketing fraud. This is not one we've done any
25 research on, but I can speak anecdotally from volunteers

1 I've talked to and our fraud fighters out in the field
2 that this is obviously a very big issue, and five years
3 ago, I mean there's no question it's larger than it was
4 five years ago.

5 And I think it's time that the rules start to
6 address this, and I think one of the problems is, and I
7 think Susan mentioned this, a lot of our members are
8 frightened. They don't know who's on the phone and then
9 -- which is obviously a very big concern. What we're
10 also finding out, and this is something you want to look
11 at when you do your models I guess, is that people are
12 becoming angry now.

13 It's becoming, Forget it, I'm not going to pick
14 up the phone. If they look at their Caller ID, which a
15 lot of them are being forced to get now because of that,
16 and they see something where the caller is unknown or
17 something, they're just not picking up the phone
18 anymore. Certainly if they start to get repeated calls,
19 abandoned calls, they're not picking up the phone.

20 So you got people who are upset, who are
21 worried, and then on the other side you get people who
22 are angry who are certainly not going to be your
23 customers down the road so it's probably something to
24 consider. Thank you.

25 MS. HARRINGTON: Mallory?

1 MR. DUNCAN: Obviously I did not speak with our
2 members before attempting to answer the question that
3 you put out at the beginning as to whether this is
4 violative of the existing telemarketing fraud rules.

5 To some extent, and this I think follows on with
6 what Jerry was saying, the most likely avenue is the
7 area of harassment. If you have a relatively high
8 number, I think you can realistically, just say a 10
9 percent abandonment rate, and you realistically can
10 expect that one out of every hundred or ten times ten
11 people will be contacted twice, and you have to make a
12 judgment call as to whether two calls like that
13 constitutes harassment of an individual.

14 You have a much lower abandonment rate say of 1
15 percent then the likelihood of someone being contacted
16 twice is 1 in 10,000. That's probably not the kind of
17 a number that you want to make a law enforcement
18 judgment on and say there was intention to harass when
19 you have a low probability of multiple contacts like
20 that.

21 So to some extent I think that the DMA has taken
22 the right direction by moving towards a number that
23 reduces that level of harassment and then puts a second
24 layer on it as well.

25 MS. HARRINGTON: Thank you, Mallory. Allen,

1 question?

2 MR. HILE: Mallory, the numbers that you just
3 gave, are they just off the top of your head?

4 MR. DUNCAN: It's just mathematical
5 calculations. 10 percent is one in ten times ten is 1
6 in a hundred. 1 percent times 100 times 100 is 10,000.

7 The other question, of course, was raised
8 earlier and that is whether or not there might be some
9 other mechanism, for example a recording, and as was
10 pointed out that would be would a violation of the
11 TCPA.

12 Perhaps one of the things that might come out of
13 this conference is should we go back to the Hill as to
14 whether the Hill thinks that because of this situation
15 they want to reconsider the prohibition on recordings at
16 the beginning of a call.

17 MS. HARRINGTON: Bob?

18 MR. BULMASH: Bob Bulmash, Private Citizen,
19 Incorporated. You had asked why the TSR, Telemarketing
20 Sales Rule, or if the TSR does address the issue of
21 predictive dialers. I believe it does. The rule
22 imposes calling restrictions. The rule prohibits
23 telemarketers from calling consumers repeatedly or
24 continuously with the intent to annoy, abuse or harass
25 any person at the called number.

1 The key word is intent. Their motive is not to
2 annoy. Their motive is to generate revenue. Their
3 intent is to generate revenue by telemarketing in a
4 fashion which is noisome, which is abusive. Knowing
5 that you're going to wind up calling people and hanging
6 up on them, those people that are hung up on by the
7 predictive dialer, the telemarketing entity making the
8 call knows that that person and they intend that that
9 person be annoyed so that indeed they can make the calls
10 they have to make in order to get the efficiency they
11 want.

12 Two other issues I wanted to mention. The cost
13 shifting issue, this ties in with Caller ID. Predictive
14 dialers use T-1 lines, trunk lines. They don't transmit
15 Caller ID. People are indeed changing their life-style
16 as far as their use of the telecommunications equipment
17 in their home as far as the phone. They're not
18 answering it. They're letting their answering machines
19 pick it up if they have one.

20 People who make calls to residents commonly
21 can't get through because commonly people screen their
22 calls. This is changing the value of our entire
23 telephone system, and it's increasing as far as -- in my
24 experience, the calls that I'm getting from consumers,
25 the rate of hang-up calls is skyrocketing in the last

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1 two, three years, but not only is it an abusive
2 practice, not only is it the mistreatment of our
3 humanity, but it's also a diminishment of this very
4 valuable network we have, the telephone network.

5 We've got organizations like Ameritech which are
6 offering services, and I understand that Verizon will be
7 offering a similar service, that will attempt to screen
8 out predictive dialer calls with a technology that's
9 going to cost an additional \$5 a month on top of the
10 cost of Caller ID.

11 Now, Caller ID people get that in order to try
12 and determine who is a predictive dialer caller, and
13 then we have Ameritech in this case attempting to sell
14 an additional service in order to get rid of the
15 predictive dialer calls that don't transmit Caller ID,
16 and then we have in this case specifically Ameritech
17 selling phone numbers and predictive dialers to the
18 telemarketing industry.

19 So we have an arms dealer relationship between
20 the telecommunications industry and the residences that
21 they serve, and the net result, the end result is going
22 to be a diminishment of the way we handle our telephones
23 in our homes, and I don't think when Alexander Bell said
24 Watson, Come here, I want you, it wasn't a telemarketing
25 issue.

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1 We want to be able to use our phone. This is,
2 if you will, how we contact our extended families. We
3 don't live in Dodge City. The doctor isn't next door
4 anymore. They're 20 miles away. We have to be able to
5 use our telephone facilities with confidence, and we're
6 not able to now with the telemarketing industry this
7 abusive, sociopathic, if I may, technology.

8 MS. HARRINGTON: Jason?

9 MR. CATLETT: Thanks. I would like
10 to address these numbers that have been brought up on
11 the rights of below 5 percent, for example, and if you
12 do the math, you can see that only one in 10,000 so it
13 gets two or more or three harassing calls. The
14 probability of me killing a pedestrian as I drive back
15 home is probably less than 1 in 10,000, but it's still
16 illegal.

17 The fact that I don't do it very often is not
18 really relevant here. It is illegal, and for the DMA to
19 say don't set it at more than 5 percent is tantamount to
20 saying, Obey the law at least 95 percent of the time,
21 which I guess most of us do.

22 I have a question. Is there anybody here who
23 would argue that dead ringers or abandoned calls are not
24 illegal under the Telephone Consumer Protection Act? I
25 would like to hear the legal basis for that.

1 Second proposal --

2 MS. HARRINGTON: Would anyone like to make that
3 argument, that they are legal under the TCPA?

4 MR. DUNCAN: I think that the question asked was
5 does it constitute harassment?

6 MS. HARRINGTON: Well, actually. No Jason is
7 asking about -- actually, you know what? We've got 20
8 minutes left in this section, so I'm not going to have a
9 discussion of the TCPA and its legality. We'll note the
10 question.

11 MR. CATLETT: All right. Could I
12 simply throw out a challenge to the representatives
13 here to put down a detailed legal argument as to why
14 they think dead ringers are not illegal under the TCPA.

15 And I have a second suggestion that the
16 companies that use predictive dialers should be required
17 to report to the FTC or a suitable agency the number of
18 abandoned calls that they make, and that the FTC should
19 decide a suitable levy of fines for these companies
20 according to the number of abandoned calls that they
21 make.

22 MS. HARRINGTON: Avonne?

23 MS. SEALS: I wanted to address your issue with
24 respect to whether it is illegal under the TSR and get
25 back to a point that Mr. Bulmash was making. I was just

1 perusing the TSR, and it appears to the extent that
2 predictive dialers would be covered, it probably would
3 be covered under that particular provision.

4 However, assuming that we would find it to be
5 causing a telephone to ring with an intent, the
6 difficulty for law enforcement authorities is the intent
7 element. I'm sure that the telemarketing side here
8 would disagree with your suggestion as to what their
9 actual intent is.

10 That's what I then would have to deal with in
11 terms of trying to fashion a complaint in court and
12 prove the case in court. The framework for consumer
13 fraud statutes in the states generally is that we don't
14 have the common law fraud type of element with intention
15 to prove. We simply have to show that the particular
16 act occurred and there was a pattern of practice, for
17 instance, to commit the fraud or the particular act.

18 So if the Commission were to reconsider whether
19 this particular area was covered under the act, I would
20 recommend that they look at this issue of intent because
21 that would certainly frustrate our efforts in terms of
22 actually proving the element of intent.

23 MS. HARRINGTON: Thank you, Avonne. We're going
24 to move to a different area here. Katie, do you have a
25 question?

1 MS. HARRINGTON-MCBRIDE: Yes. As you can see
2 from the agenda, we were certainly interested in the
3 issues of Caller ID and predictive dialers. In addition
4 to that, we're interested to know what's on the horizon,
5 and for those of you who are working, using
6 telemarketing and for those of you who track this, we
7 thought it would be a good opportunity to speak with you
8 about what technologies have emerged to drive the
9 marketing effort in the last five years and if any of
10 these might necessitate changes in the TSR.

11 For example, in the field of database marketing
12 and data mining, what is being done, as an example, and
13 what practices are currently in place and what changes
14 do you foresee in these marketing practices coming down
15 the pike? In particular, obviously the folks who
16 represent the industry may be well qualified to answer
17 this one.

18 To pick on Tim. He looked chagrined. I guess
19 he would be a good pick.

20 MR. SEARCY: No, not at all. Actually the tool
21 box has become rather robust in being able to do target
22 marketing which I think is the question as it was
23 originally posed in the writings, and because it's
24 robust, what we wind up doing as an industry is using
25 that information to actually target better who we're

1 going to contact which means less calls.

2 People do not do broadcast telemarketing for the
3 most part anymore. It's too expensive. You have to
4 identify those customers who are most likely to purchase
5 and focus on them because that's the only way to make
6 that medium, that channel cost effective.

7 The tools that are out now are pretty amazing.
8 I mean, the amount of modeling that can be done and the
9 amount of information that you can use that is publicly
10 accessible, that does not invade privacy, that is just
11 about your own customer file.

12 MR. HILE: Give us an example.

13 MR. SEARCY: I don't want to be too technical,
14 but let's say Utah someone who's been a customer for you
15 for three years, a good example would be a customer of
16 Verizon's, who has one cellular phone, and you know they
17 have one cellular spoken that's with Verizon, and you
18 also know that they are a two party household because
19 they have a phone line and a teenager phone line. They
20 have two lines to their home.

21 In a simple example, the likelihood that they
22 might need a second cellular phone would be higher than
23 someone that you know only has one phone and has been a
24 customer with you for 15 years.

25 So you would take that information and say, I

1 don't want to call the second person I just identified,
2 but I do want to call the first person I identified and
3 give them access as a preferred customer to a superior
4 cellular plan because I want to cement that relationship
5 with them and carry it further through some royalty
6 based on multiple purchases from my firm.

7 Does that answer your question, Allen?

8 MR. HILE: Yes.

9 MR. SEARCY: I don't know if I answered Katie's
10 question.

11 MS. HARRINGTON-MCBRIDE: I think that's
12 certainly a good start, and that's been our
13 understanding from reading the literature is that there
14 has been -- obviously computers have driven the work
15 force all around, and so your ability to do this.

16 You said it allows for more refinement, but what
17 we're also hearing, and I can't cite specific numbers,
18 but certainly the anecdotal evidence and numbers that I
19 have seen quoted if not verified, suggests that the
20 number of telemarketing calls has actually gone up, so
21 I'm trying to figure out what the correlation is.

22 If you're doing more refined marketing and
23 you're doing less broadcasting, why would that
24 necessarily translate into an increase in calls?

25 MR. SEARCY: Well, the number of industries that

1 have discovered the value of the channel. The industry
2 didn't start off with 30 sectors picking up the phone
3 and starting to dial. It actually started off with very
4 few sectors, and as those individuals who found it to be
5 effective moved into marketing positions in other
6 sectors, they took that knowledge with them.

7 And that knowledge expertise has spread to the
8 point that like broadcast or direct mail or other
9 channels and avenues of communication, it's become
10 something that's noteworthy and effective when it is
11 cost effective, and so more industries, more
12 applications are being discovered, but each application,
13 as necessitated by the target marketing efforts, are
14 smaller, so you're doing more things with smaller
15 groups.

16 MS. HARRINGTON-MCBRIDE: Okay. Linda?

17 MS. GOLDSTEIN: Kind of a reinforcement of that
18 point, but there are changes outside the industry itself
19 that are impacting the increase in the use of
20 telemarketing, and it's a little bit of a chicken and
21 egg, but the ability to do more sophisticated database
22 analysis makes targeted telemarketing a more attractive
23 marketing vehicle for more industries and companies that
24 maybe five, ten years ago were not interested in
25 pursuing telemarketing as a medium are now finding it

1 more efficient and more cost effective as have other
2 changes in other areas in which -- of traditional
3 advertising.

4 I mean, the changes in the network composition
5 and the effectiveness of network advertising or
6 broadcast advertising with so many more options
7 available at the broadcast level has led many companies
8 to explore alternative media to reach consumers, and
9 when you combine that with the ability to mine databases
10 in as sophisticated way as you can today, that's just
11 naturally resulted in an increase in the use of the
12 medium, but not necessarily an increase in the number of
13 calls to an individual consumer.

14 MS. HARRINGTON MCBRIDE: Jason?

15 MS. HARRINGTON-MCBRIDE: Katie, I would like to
16 address your excellent question of why doesn't better
17 targeting information result in a lower amount of
18 solicitations? This is an expectation most people have,
19 and if you understand direct marketing math, in fact
20 exactly the opposite is true.

21 By providing better information about targets,
22 the total number of solicitations has increased because
23 the economics of making any given solicitation is
24 improved through the better information.

25 Now, still 98 percent of people don't respond to

1 the solicitation, but if you can raise the number that
2 do from 1 percent to 2 percent, then that makes it
3 economical to run a particular campaign on a particular
4 segment.

5 So in general better targeting information
6 results in a larger number of total calls and a larger
7 number of unwanted calls or solicitations through
8 whatever means it is.

9 Now, to go on to your question about the
10 database marketing information available, the
11 information has become quite spectacular about estimates
12 of when people are likely to answer the telephone, what
13 kind of solicitation -- pitches are most likely to be
14 beneficial, what kind of practices the consumers had
15 using 800 numbers.

16 For example, we can look at Axiom's catalogs for
17 an example of this. That's resulted in telemarketers
18 having a really intrusive amount of information at their
19 fingertips when they make calls.

20 Let me give you an example from an Email that a
21 college student sent to me. He had done a stint as a
22 telemarketing agent as many college students do, and he
23 said he had never really thought about these profiles,
24 about it until one day his dad came -- his dad's
25 telephone number came up and his dad answered, and he

1 was looking here at his screen at dad's income and other
2 information about his dad.

3 He said, Is this really right. I think it's --
4 we should really question why these telemarketers have
5 so much information about people and ask whether it's
6 appropriate for the people who are called to have access
7 to that information.

8 I would suggest in keeping with a lot of privacy
9 law that the person being solicited and the target of
10 this be given an access right to the information that
11 the telemarketer has about them.

12 MS. HARRINGTON-MCBRIDE: All right. Susan?

13 MS. GRANT: I would like to mention some other
14 ways that technology is changing telemarketing, and one
15 of the biggest changes is the Internet. You have
16 consumers responding to Emails or information that they
17 see on web sites or other places on the net by telephone
18 either directly or indirectly.

19 And in our written comments, we noted the
20 problems with Internet dialer programs where consumers
21 see service advertised on the net, download the program
22 to avail themselves of the services without realizing
23 that they're making a foreign phone call.

24 Whether this should be addressed in the 900
25 Number Rule or whether it should be addressed in the TSR

1 is a matter for the FTC to decide, but it's certainly an
2 issue that needs to be addressed somehow.

3 MS. HARRINGTON-MCBRIDE: Okay. Seeing no tents
4 up -- I'm sorry, Tim. There you are.

5 MR. SEARCY: It's like no tents up.

6 MS. HARRINGTON MCBRIDE: We're going to call on
7 you one way or another.

8 MR. SEARCY: Thank you. I wanted to respond to
9 Jason's point. Every incident that is cited has to be
10 anecdotal, but I would say that the preponderance of
11 phone calls that are made on behalf or by telemarketing
12 people, data is not available to them. The
13 sophisticated models that we you described earlier
14 involving selection and target marketing, that
15 information is populated in a screen, someone is talking
16 has only this: their name.

17 All the dynamics behind how is the offer
18 structured, what is that person qualified for, the
19 person that's receiving the call. That information
20 populates on the screen. It is extremely rare,
21 extremely rare that information such as income populates
22 the screen.

23 Anything that's of that nature has been done in
24 a back room. It's been done in a computer program or a
25 computer model and generates information inside the

1 computer for scripting purposes, so although that's --
2 it's an anecdote, I would want this body to feel that
3 that is typical behavior because it's not.

4 MR. ANDERSON: When you use the word populates
5 the screen, this means appears on the screen.

6 MR. SEARCY: Correct.

7 MR. HILE: So the person who's making the call,
8 who's handling the pitch isn't the person that has
9 access to this information; it's somebody else in the
10 operation.

11 MR. SEARCY: Correct, and it's not done on a
12 individual record by record basis. It's done en masse.
13 You have a great deal of processing that goes through,
14 and the pitch is made from that.

15 MS. HARRINGTON: When would the situation that
16 Jason described occur in your experience?

17 MS. HARRINGTON-MCBRIDE: Let me ask, is it not a
18 known practice for physical cards to be sold to
19 telemarketers, telemarketing sales agencies of the name,
20 number and other information on it for smaller
21 operations?

22 MR. SEARCY: I don't know. I've not seen it.

23 MS. HARRINGTON-MCBRIDE: Anybody?

24 MR. SEARCY: I have not seen cards sold that
25 way. They always come in electronic files.

1 MS. HARRINGTON: Dennis, you're a smaller
2 operation. Do you do that? Do you know about this?

3 MR. MCGARRY: We buy name lists, and we define
4 the name lists of someone in our particular case that
5 owns a home, who has a household income over \$30,000,
6 and that's the two criteria that we have, but we don't
7 know what anybody makes.

8 We just have a list that they earn that or above
9 and own a home, so how they compute the data, these name
10 list companies, I'm sure they gather it from a variety
11 of census data or so forth, but I have no idea.

12 MR. ANDERSON: But all you're getting is the
13 results of the screen.

14 MR. MCGARRY: All I'm getting is the name -- I
15 just get the name of the person and the phone number,
16 but you can go and look on the computer of property
17 taxes at every -- on my web site, my cousin or my
18 nephew, excuse me, in Florida, he could pop up on the
19 federal level that the city provides on my property
20 taxes and the value of my home, so it's public knowledge
21 right there without ever having any of this, we don't
22 ever use that.

23 MS. HARRINGTON: When would the situation that
24 Jason described occur? You've said, Tim, that that
25 would not be a typical or frequent occurrence, but when

1 would that happen? Under what circumstance would -- as
2 you say would the screen be populated with that kind of
3 rich information.

4 MR. SEARCY: I can't imagine one. I'm assuming
5 that Jason has a specific anecdote. I don't know of
6 members who do that. I don't know of applications
7 because financial information -- the treatment of
8 information is relatively sacred on the part of
9 telemarketers for one good reason, that we don't want to
10 create a privacy concern.

11 So ranges of income, i.e., over 30,000 and under
12 a billion, excludes Mr. Gates, but that might be a range
13 that you would get but the actual last year your W-2
14 read, I don't know of a single application where that
15 shows up.

16 MR. CATLETT: So would anybody have an objection
17 to the proposal that no personal information other than
18 name and address be available to the telemarketing
19 representative except as authorized by the consumer?

20 MR. DUNCAN: We would -- if I may, we would have
21 an objection to that, because you're putting unnecessary
22 constraints. For example, if I go to Sears and I've
23 purchased a number of products over the last few years,
24 and I purchased a service contract on them or an
25 extended warranty plan. If the time comes up for

1 renewal, their representative will want to know what
2 products it is I've purchased and which ones they want
3 to extend the plan on.

4 That's personal information about items in my
5 household, and yet a blanket prohibition I think would
6 be very counterproductive.

7 MR. CATLETT: Well, my proposal was
8 certainly a requirement to ask the consent in the way
9 that Bell Atlantic operators say, May I have the
10 information to access your records. Would you accept a
11 requirement to ask the consent before the telemarketer
12 looks at that information?

13 MR. DUNCAN: I think the practical effect of
14 that is you would get more telemarketing calls rather
15 than fewer, but let's work this out with my
16 hypothetical. If the warranties were expiring, and I
17 had to call each individual and ask, I would like to
18 sell you an extended warranty, may I have consent to
19 look at your file to see what is expiring on your file
20 before I can talk to you about it and you turn me down,
21 then that's a call for no purpose whereas if they know
22 up front which items you have, the transaction could be
23 completed in one call rather than repeated calls trying
24 to obtain consent to determine whether I can go into
25 your file.

1 MS. HARRINGTON MCBRIDE: IF I may, Mallory, my
2 understanding from what Tim was saying is that it's not
3 that that isn't available to the telemarketing concern.
4 It's simply not popped up on the screen for the
5 individual representative making a call so that it would
6 drive a script that may say, for example, It appears
7 that your washer is about to go out from under warranty.

8 And if I understand Jason's concerns, it's that
9 it -- even if the information exists and drives
10 marketing, that it not exist on the screen of the
11 individual telemarketing representative.

12 MS. HARRINGTON-MCBRIDE: Yes, unless the consent
13 is given.

14 MR. DUNCAN: Right. But the very fact that the
15 script says, Your washer is about to go out from
16 warranty means that personal information has already
17 been revealed, and I hear his suggestion as asking for
18 consent even to put that little bit of personal
19 information on the screen.

20 MS. HARRINGTON-MCBRIDE: In this case, you have
21 an existing business relationship presumably.

22 MR. DUNCAN: Presumably, yeah.

23 MS. HARRINGTON-MCBRIDE: So my concern is more
24 with the unsolicited call where there's no business
25 relationship.

1 MS. HARRINGTON: Or where the information is
2 acquired from a third-party rather than being the
3 business's own sales record driven or other
4 information. Michael?

5 MR. PASHBY: There are many provisions --

6 MS. HARRINGTON: Microphone, please?

7 MR. PASHBY: We are talking here about
8 telemarketing, but information is available to all
9 marketing whether it's through the mail or over the
10 phone. Information which is -- there is plenty of
11 information which is public information. Information
12 that is not public has provisions already on the release
13 of that information to marketers.

14 And we're talking as if there are no safeguards
15 at all. There are plenty of safeguards.

16 MR. CATLETT: Well, there have been many cases
17 such as Mike Hatch's suit against a large group which
18 sold a great deal of information about customers
19 including banking account balances, and my proposal was
20 simply to have the general prohibition against the
21 telemarketer, the agent at least having this information
22 on the screen absent an explicit consent. Would anyone
23 object to that?

24 (Chorus of yeses.)

25 MS. HARRINGTON: All right. Well, obviously

1 these technical issues are of great interest to us, and
2 to the extent that you have not been able to make a
3 comment, we are up against our time deadline, and you
4 hopefully can -- if you have information that you would
5 like to submit for the record, we would be happy to
6 review it.

7 And on these issues it would also inform our
8 study of the practice of telemarketing generally which
9 we are concurrently conducting, so please do send in
10 information that addresses this topic.

11 We will take a break now. We're breaking until
12 11 o'clock, and we will reconvene promptly at that
13 time.

14 (A brief recess was taken.)

15 MS. HARRINGTON: We are now moving in to the
16 11:00 to 12:30 segment of the morning, and if there's
17 anyone out there -- if there are any FTC people standing
18 out there, could you round folks up and get them in here
19 for us?

20 I guess I have not been sufficiently stern. In
21 a complete departure from ordinary practice, I have not
22 threatened -- Voni, could you round people up? Voni,
23 could you tell folks that we're beginning now? Okay.
24 Thank you.

25 I definitely am going to have to resort to old

1 practice here and threaten that if people do not
2 promptly come to the table, they will not be called on
3 for the whole next session, so consider yourself
4 warned.

5 We're not going to impose that sanction from the
6 11:00 to 12:30 session, but consider yourself warned if
7 you're late again you won't get called on, but, Chuck,
8 now that you're here late, I'm going to call on you.

9 MR. EPPERT: Okay. Good. There's always an
10 exception.

11 MS. HARRINGTON: Here comes Jason. He's late,
12 he's late, he's late.

13 Before we move on to marketing tools and
14 techniques, we wanted to take one minute to let Chuck
15 shamelessly promote the new Verizon product that is
16 about to become available in this market area, but that
17 Ameritech has been providing for awhile out in Illinois,
18 and that is relevant to the discussion.

19 Chuck, do you want to tell us about this?

20 MR. EPPERT: Yes, thank you, Eileen. And
21 Verizon will be calling this Call Intercept Service, and
22 it will be available to customers who subscribe to
23 Caller ID. Basically if you get a call that for any
24 reason does not have the telephone number identity of
25 the calling party, whether that calling period exercised

1 privacy as I described earlier or it's using a T-1 line
2 and therefore the information is not sent, for whatever
3 reason, you do not get the telephone number, the call
4 will be momentarily placed on hold.

5 The calling party will be told that the number
6 you're calling has Call Intercept and does not accept
7 calls from unidentified numbers. To record your name,
8 press pound key. If that party chooses to record their
9 name, then let's assume I'm the customer now with Call
10 Intercept. My phone will ring in a distinctive pattern
11 so that I know it's this service calling me.

12 My Caller ID will simply say Call Intercept, and
13 I'll have the choice. I can listen to this name, and
14 then I can either connect it, answer the call. I can
15 inform them that I'm not available at this time, that I
16 don't accept telephone solicitations or have that call
17 go to my voice mail. So very quickly that's the
18 service.

19 Tariff has been approved in New Jersey. We
20 expect to have it approved and available in the
21 Washington metropolitan area September 1. I know that
22 the approved rate in New Jersey is \$5. I can only
23 assume then that it will be in that range in other
24 states but certainly leave that up to state commissions
25 to decide.

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1 But it gives the consumer a great deal of choice
2 and control regarding these anonymous calls. Ours is a
3 little bit different than Ameritech's. Bob was
4 explaining that to me a little bit earlier, but they've
5 had the service out for some time I believe.

6 MS. HARRINGTON: Thank you, Chuck. One other
7 detail before we move into this discussion about pre
8 acquired account information, and that is that the
9 collection of comments received thus far in this rule
10 review is now available out at the registration desk.
11 There were some requests to have access to the comments
12 today. They are in a notebook. There are notebooks out
13 at the registration desk if anyone cares to peruse
14 them.

15 All right. Let's jump right in to the next
16 segment. We are very interested in learning more about
17 the extent of the use of pre acquired account
18 information, and what we mean by that is the practice of
19 having already in hand when the call is placed to the
20 consumer or when the consumer calls in to someone, not
21 the company that they've done business with before,
22 their account information, credit card numbers or
23 checking account numbers or other payment related
24 information.

25 So to what extent -- we certainly know that this

1 is a practice here at the FTC. We're interested in
2 knowing about the extent of this practice.

3 Should we assume from the silence that everyone
4 is doing it, that this is widely -- that this is a very
5 common practice? That's the inference I'm prepared to
6 draw from the silence. Jerry? Jerry wants to break the
7 silence.

8 MR. CERASALE: Jerry Cerasale, DMA. First, I
9 think the practice is going to go through some
10 significant changes with the effective date of Graham
11 Leach Bliley with the notifications, and I think the
12 notification has to go out by July 1, 2001, even though
13 the law's effective on November 13, 2000, and that has
14 some significant requirements to the credit card issuers
15 on make sure there's notice and a choice to opt out on
16 sending any account information out.

17 So I think that there will be a change in this
18 practice coming within the next year so we already have
19 some effective federal law coming out, and I know that
20 the states are in fact -- a significant number of states
21 are looking at changing some of their own financial
22 services laws because Graham Leach Bliley, they do not
23 preempt any efforts so there will be further legal
24 changes.

25 Generally speaking, Eileen did cut this to

1 someone with whom you do not have a preexisting business
2 relationship. The most prevalent practice is where you
3 already have a relationship with someone. Using the
4 example that Mallory used on Sears and a warranty
5 calling up and would you like this extended warranty,
6 more than likely you purchased the appliance with a
7 credit card and that credit card is more than likely
8 still on account.

9 We see that often with the -- especially now on
10 the Internet with going to certain of travel places and
11 so forth. You've already registered your credit card
12 account number, and it's billed -- it's billed that
13 way.

14 Many times the -- we see in using this
15 information it's more like a joint marketing agreement
16 type operation where a customer, a bank -- I'll use the
17 bank as an example but it's not limited to banks. A
18 bank will go with a -- make a joint marketing agreement
19 with an organization trying to sell, for example,
20 insurance on credit cards, and we'll provide the names
21 of the credit card holders of the bank.

22 And this company with whom there is a joint
23 marketing agreement will make phone calls to those
24 credit card holders, those customers of the banks, and
25 will offer them a service which would be their Jerry

1 Cerasale insurance service, and they will have the
2 ability to, if I called Mallory and he said yes, I don't
3 have to ask Mallory for the account number, I already
4 have the ability to charge the account.

5 MR. HILE: Is that being made clear to the
6 consumer, that the account number is already in hand?

7 MR. CERASALE: The account number in hand? The
8 situation is that they're calling bank card customers
9 and they ask, Can I bill your account, is the way the
10 scripts are, and that's pretty much all that's said from
11 my understanding.

12 MS. HARRINGTON MCBRIDE: Can you tell me again,
13 perhaps sort of a naive question but just in thinking
14 about this as a non industry expert, what would be the
15 benefit to having not just a list of names of people who
16 would likely buy your service, which I can grasp that,
17 but also the account information which presumably in a
18 sort of traditional offer acceptance scenario would be
19 provide by the person who's accepted the offer? What
20 additional benefit is gained by providing the account
21 information along with --

22 MR. CERASALE: Less time on the phone is the
23 major benefit.

24 MS. HARRINGTON MCBRIDE: Okay. I see now lots
25 of cards up. Why don't we start with Susan.

1 MS. GRANT: The National Consumers League is
2 really concerned about what we see as the growing use of
3 pre acquired account information, and it's not only
4 credit card accounts. It's bank accounts. This pops up
5 in complaints that we receive about buyer's clubs, about
6 credit card loss protection plans and certain other
7 telemarketing fraud categories.

8 And I think the potential for abuse is very high
9 especially given the fact that because the marketer
10 already has the consumer payment information, the
11 consumer does not have to affirmatively provide it, and
12 I think NAAG in its comments pointed out very vividly
13 how people may not understand that they are, in fact,
14 agreeing to purchase anything, and this is something
15 that may be more clearly triggered in their mind if
16 they're actually giving their account information.

17 But when they're not, especially if the offer is
18 combined with some sort of trial period, it may be very
19 confusing for consumers, and they may not realize that
20 in fact they're going to be charged at some point,
21 whether right away or at some later point.

22 MS. HARRINGTON-MCBRIDE: Elissa?

23 MS. MYERS: As a consumer, I appreciate
24 companies using efficiencies that ultimately hold down
25 my costs and save me time. I've become personally quite

1 a fan of PriceLine.COM, not to pitch a company that
2 actually is not yet a member of ERA and should be. But
3 I found that I have substantial savings on my grocery
4 bill, and every Saturday before I go to the grocery
5 store I hit PriceLine. I put in my grocery order, and I
6 appreciate the fact that I don't have to go find my
7 purse, find my credit card number, reenter it into the
8 system. I appreciate the fact that they're storing it.

9 And I feel the same way in all of my
10 transactions. The less time that it takes me to
11 complete a transaction the better I feel.

12 However, ERA guidelines are very clear that
13 there has to be full disclosure that the credit card
14 information is on file, that the seller that you're
15 transacting with, whether it's on phone or online, has
16 your credit card information, and you have the
17 opportunity to know that your card is going to be
18 hit, and if it's going to be hit on a renewal,
19 you have the opportunity, you're told -- explicitly told
20 that your card -- if you don't, for example, decline a
21 new trial offer in a club, that your card is going to be
22 hit at some point.

23 The guidelines also -- the ERA guidelines have
24 also called for an attempt to reinforce the message
25 period, so that in the case of a buyer's club where

1 you're offered a free trial period, typically it's said
2 that you have 30 days. I myself joined one of those
3 clubs, and I received the packet with the number that I
4 could call to get off of the club 35 days after the
5 period and not -- so my free trial period had expired,
6 and the card was hit before I even got the kit to call.

7 And the ERA guidelines address that and believe
8 that the trial period ought to consummate at the point
9 when the consumer has the opportunity to cancel.

10 MS. HARRINGTON MCBRIDE: All right. Michael?

11 MR. PASHBY: I just very briefly want to say
12 that all of these -- all the things we're discussing
13 here are really covered by many of the rules that we've
14 already discussed in the disclosures. We are -- the
15 telemarketers are supposed to disclose. We do disclose,
16 and there is very little difference in this from five
17 years ago for what we should be doing now. We are
18 disclosing, and I think that is sufficient.

19 MS. HARRINGTON MCBRIDE: So in the instance
20 where, for example, it's not a magazine seller with whom
21 an individual has a preexisting relationship but, for
22 example, the consumer maybe makes an inbound call to
23 someone else and then is offered an additional service
24 of a magazine subscription.

25 MR. PASHBY: Right.

1 MS. HARRINGTON MCBRIDE: Your understanding or
2 your representation is that there is a disclosure by the
3 person the inbound call went to initially that there's
4 going to be information transferred over to the new
5 seller or how does it work?

6 MR. PASHBY: There are examples where in the
7 process the person who was up selling did not disclose
8 that it was another company that was going to be
9 charging the card. The reason I believe that that was
10 not disclosed was because the companies involved felt
11 that their relationship with that consumer would be
12 jeopardized when it got charged to the bill.

13 It's much more important obviously that it must
14 be disclosed that the person does understand who is
15 going to be hitting the credit card bill?

16 MR. HILE: Do you think that the TSR currently
17 has enough requirements to cover the situation, that it
18 already requires this kind of disclosure?

19 MR. PASHBY: Yes, we do.

20 MS. HARRINGTON MCBRIDE: And as for the -- I
21 should make an announcement first. I see that Nancy
22 Matson representing Verizon is also here taking Chuck
23 Eppert's place at the table for the time being.

24 I have a follow up question. You've noted that
25 the disclosure of the separate identity of seller number

1 2 is probably taking place now or it's at least in some
2 instance taking place.

3 What about the disclosure of this account
4 information being in the hands of seller number 2
5 without the caller having to provide it, is that
6 disclosure also being made?

7 MR. PASHBY: I think that disclosure is being
8 made by the consumer being told, Your account will be
9 charged.

10 MS. HARRINGTON-MCBRIDE: Is that the typical
11 language your account --

12 MR. PASHBY: Correct.

13 MS. HARRINGTON-MCBRIDE: Linda?

14 MS. GOLDSTEIN: Yes. I would like to try to
15 address some of your concerns and maybe give you a
16 little bit of an overview as well, and I think we have
17 to start by saying that to some extent, this has been an
18 evolving industry practice. It has its roots.

19 One of the specific questions you asked is
20 whether the use of cross selling or up selling has
21 increased, and we kind of moved from account information
22 into the broader issue, and they really do flow
23 together.

24 It has certainly increased from a cost
25 perspective. It has become almost a critical element to

1 marketers to be able to maximize the potential of being
2 able to sell product while you have the customer on the
3 phone, and as other methods of customer acquisition have
4 increased, the ability to be more efficient with the use
5 of a telephone has certainly led to an increase in this
6 practice.

7 I also think it's fair to say that as with many
8 burgeoning practices, there has been an evolution as the
9 industry has become more aware of some of the concerns
10 that have been expressed both by the Federal Trade
11 Commission and by various State Attorneys General and
12 various consumer groups that have spoken on the subject.

13 So that while in its early stages there may have
14 been disclosures that certainly reasonable minds could
15 disagree as to their adequacy, I think today the
16 industry is moving much more to the area of
17 understanding what the critical disclosures are and how
18 the critical disclosures need to be made.

19 It's also important when you bring in the issue
20 of preexisting account information, you really need to
21 distinguish between what occurs during the course of an
22 inbound call and what occurs during the course of an
23 outbound call, because on an inbound call which is the
24 last example you gave, you asked the question, Would you
25 disclose that seller 2 has the account information.

1 Seller 2 doesn't have the account information.
2 The first sale is made, and the credit card number is
3 captured, and then a disclosure is made to the consumer
4 that there's an offer for a second product, and if you'd
5 like that product, the third-party who's offering that
6 product in effect will bill your account, and then the
7 terms of that billing are disclosed as well.

8 So in that sense you don't have a situation of
9 seller 2 working with pre acquired account information.
10 The key would be in the script to ensure that disclosure
11 was made to the consumer that it is a third-party that
12 will be billing the account, not the initial party when
13 they called.

14 MS. HARRINGTON-MCBRIDE: And that would cover
15 the instance, if I continue to use this I guess
16 language, seller 1 is offering the services of seller 2
17 or products and goods and services of seller 2, but
18 they're actually making a disclosure that the billing
19 will take place, but they're continuing the call and
20 making the sale themselves, not transferring the call.

21 MS. GOLDSTEIN: In effect the sales
22 representative telephone is acting on behalf of seller 1
23 and seller 2, and therein lies the efficiency that
24 rather than having to have a call come in to two
25 telephone sales representatives, in effect that

1 representative is first acting as an agent, if you will,
2 for seller number 1 and selling that product.

3 And then whether the consumer accepts or
4 declines, an offer may be made for the consumer to be
5 offered product two, and disclosure is made. At that
6 point the credit card number isn't recaptured, but the
7 disclosure is made to the consumer that seller number 2
8 will bill their credit card, and the terms and
9 conditions and the costs are disclosed.

10 Just moving to sort of your third question,
11 which I guess is the critical question, we believe that
12 the current provisions of the Telemarketing Sales Rule
13 are adequate to deal with this practice. The
14 Telemarketing Sales Rule already requires disclosure of
15 all of the material terms and conditions of the offer,
16 the identity of the seller, the total cost, and those
17 are all of the elements that have come in to play in
18 these marketing programs that you would want to be
19 disclose.

20 I would volunteer to you that I think we can
21 represent, and some of my colleagues at the table might
22 share in this, that the industry or those that have
23 engaged in these programs have certainly become more
24 aware of some of the concerns and areas in which
25 disclosure and the types of disclosures that seem to be

1 most important, and we would certainly be willing to
2 continue to work with the Commission perhaps towards
3 some additional self regulatory guidelines specifically
4 addressed to this issue.

5 But I don't think it really requires or warrants
6 any particular modification of the rule because the
7 basic principles that you're looking to articulate are
8 already contained in the rule itself.

9 MR. HILE: Do you think that failure to disclose
10 that the second seller has the account information is a
11 violation of the rule? Is it a material term that needs
12 to be disclosed?

13 MS. GOLDSTEIN: Allen, because there are ongoing
14 investigations, I can't answer that question as you've
15 asked it because it could be a trick question.

16 MR. HILE: I'm sorry, it wasn't intended to be.

17 MS. GOLDSTEIN: No, no. I know that, but I
18 would prefer not to answer that directly but to say that
19 I think the better way to approach this issue would be
20 in the form of some additional self regulatory
21 guidelines. The ERA guidelines made a start in that
22 direction. I know that the industry would be quite
23 interested in working with the Commission and fleshing
24 out perhaps on a more itemized basis the particular
25 disclosures that you think are appropriate.

1 But again in essence, and I think the fact that
2 the Commission has already instituted some enforcement
3 actions in this area is indicative of the fact that the
4 current rules are certainly sufficient to give you the
5 enforcement power you need, and if there's additional
6 guidance that you feel would be appropriate for the
7 industry, perhaps we do it by way of self regulatory
8 guidelines.

9 MS. HARRINGTON-MCBRIDE: If we could hear from
10 Jason now.

11 MR. CATLETT: Thank you, Katie. I would like to
12 come back to your opening question which was prevalent
13 is this practice and how extensive is it. I think we
14 have some experience here from a case in June 1999 I
15 alluded to early where Attorney General of Michigan,
16 Mike Hatch, sued U.S. Bank, and Hatch issued a press
17 release that detailed the extent of the information.

18 I'll just read a few: Name, address, telephone
19 numbers, primary, secondary customer agenda, medical
20 status, homeowner status, occupation, checking account
21 number, credit card number, Social Security number,
22 birth date, open account date, average account balance,
23 account frequency information, credit limit, credit
24 insurance status, year to date financial charges,
25 automated transactions, authorized credit card, type and

1 brand number of credit card, cash advance amounts,
2 behavior score, bankruptcy score, date of last payment,
3 amount of last payment, date of last payment and
4 statement balance.

5 I will give the court reporter a copy of this
6 for her benefit.

7 MS. HARRINGTON-MCBRIDE: I'm impressed that you
8 were able to hang in for the first 25 seconds. That's
9 good.

10 MR. CATLETT: A statement issued.

11 MR. HILE: Is that all, Jason?

12 MR. CATLETT: That's all Hatch objected to. In
13 a statement the CEO of U.S. Bank Corp., Jack Grunhauffer
14 (phonetic) said that this kind of transaction was: "An
15 industry wide practice," so I think we have it from the
16 horse's mouth there that this is common.

17 Now, Jerry Cerasale has pointed out that since
18 that time Graham Leach Bliley has been enacted, but
19 Graham Leach Bliley doesn't prohibit in any way the
20 transmission of this information. It merely requires
21 disclosure and an opt out, and I think disclosure is not
22 sufficient here.

23 Susan pointed out the fact that consumers
24 sometimes get confused about whether they've been
25 ordered and certainly sales people tend to err on the

1 side of a yes in interpreting that confusion or some
2 have what's in the long distance industry called
3 slamming where the salesperson simply asserts that the
4 has taken place, that the customer ordered it when it
5 didn't.

6 In fact this practice of giving the account
7 information greatly facilitates that kind of abuse, and
8 I think it really should be stopped.

9 MS. HARRINGTON-MCBRIDE: All right. Jeff?

10 MR. KRAMER: Thank you. Our members believe in
11 efficiency too. In fact, they have other things to do
12 besides stay on the phone with people. In fact, one of
13 them is to get on the Internet and to look at
14 PriceLine.COM, but that's an affirmative action they're
15 taking, to put that information in there. They know
16 it's in their account, and they're doing that.

17 On the other hand, it's a more defensive mode
18 when you're on the phone with someone who tells you that
19 you're a member of a certain gas -- you have a certain
20 gas credit card and you've been chosen to belong to the
21 buying club and do all this kind of stuff.

22 And I know that the disclosures may be there,
23 but I think a lot of the issue, and I know we'll talk
24 about this more tomorrow, is the timing of the
25 disclosures and exactly when they're given to people so

1 they understand that this is a free trial offer. Yet
2 when you get it, you're actually starting the
3 subscription, and the free trial is just an additional
4 month you're getting on the subscription you've already
5 agreed to which people don't understand.

6 So I think there are still some questions with
7 how disclosures are being made.

8 MS. HARRINGTON-MCBRIDE: All right. Elissa?

9 MS. MYERS: Actually, Jeff, we agree with you so
10 I think everything you said makes sense. One point that
11 hasn't been made that I thought was worth making is
12 consumers do have additional recourse in the case -- in
13 the instance where their credit card is charged, and
14 they're not -- they didn't mean -- they misunderstood
15 that that was what was going to happen, and that is in
16 the form of a charge back.

17 And charge backs inherently have significantly
18 financial consequences for the seller both in the terms
19 of per incident charges that the credit card companies
20 impose which can be significant, and more seriously in
21 the form of a removal of the merchant credit card
22 account in the case of a very high incidence of charge
23 backs, so a small point to be made.

24 MS. HARRINGTON-MCBRIDE: All right. Bob?

25 MR. BULMASH: The phrase "we'll charge your

1 account" is certainly a nice phrase, but to the average
2 fellow, Joe six pack who receives a call of this nature,
3 it doesn't really mean as much as, What's your credit
4 card and expiration date.

5 There's a certainty to that. There's no real
6 certainty to "we'll charge your account" because these
7 guys don't have my account number. I'll say whatever I
8 want to them. Furthermore, what if the baby-sitter
9 answers the phone. Furthermore, what if somebody
10 misinterpreted or mistranscribed my phone number and
11 used somebody else's phone number and that was the phone
12 number that was dialed and someone who gets the call, Is
13 this -- we want to sell you something, and the guy says,
14 Sure, yeah, I'll take it knowing it's not him that's
15 asked to buy.

16 So the safety -- balance the safety against the
17 efficiency. A credit card is another 35 seconds. If
18 you've got the sale, you made the profit, take the time,
19 protect the consumer.

20 MS. HARRINGTON-MCBRIDE: Actually if Jason reads
21 the credit card number it's only another 1.2 seconds.

22 Avonne?

23 MS. SEALS: I think there's really some question
24 here with respect to outbound calls made by
25 telemarketers with whom a consumer does not have a

1 business relationship. I mean, that's really where we
2 see the problems, and the problem there is that it's
3 taken control completely away from the consumer to
4 traditionally give them the means by which that consumer
5 will be charged for a product or service.

6 We see it problematic because I don't really
7 believe that the TSR as it currently stands deals with
8 that kind of situation. It appears to me that there's a
9 presumption that a consumer would give payment
10 information.

11 For instance, in Rule 310(A)(1), before a
12 consumer pays for goods or services offered, there are
13 some disclosures which have to be made. Before a
14 consumer pays presumes that a consumer will then give
15 the means by which they will be paid, so I don't think
16 the situations for unknown telemarketers and outbound
17 calls who have this information, however it was
18 acquired, is actually covered.

19 We have filed cases in Illinois specifically
20 involving outbound calls to offer web site hosting
21 maintenance and design services where a free trial offer
22 was involved, and the bottom line of that story is that
23 consumers were charged before the end of the free trial
24 period for the services. They were charged via their
25 telephone accounts without knowledge of -- the companies

1 sometimes claiming not to ever have even received a
2 call.

3 That's certainly problematic, and they might
4 have actually been put on an automatic renewal for the
5 service without having known that they were going to be
6 charged, so we do see problems, and I just don't think
7 that we can say the rule as it currently stands
8 addresses that.

9 MS. HARRINGTON-MCBRIDE: Can anyone perhaps in
10 address this, are there higher rates of charge backs
11 where pre acquired account information is used?

12 MS. MYERS: I don't know the answer to that
13 question. We would be happy to poll our members on the
14 question.

15 MS. GOLDSTEIN: Same here, we would as well.

16 MS. HARRINGTON: Would you poll your members and
17 put something in the record?

18 MS. MYERS: Yes.

19 MS. HARRINGTON-MCBRIDE: Susan?

20 MS. GRANT: In addition to unauthorized or not
21 clearly authorized credit card charges, charges may also
22 be made by deducting money from consumer's bank accounts
23 through debit card numbers or just their savings or
24 checking account number, and while consumers do have
25 good charge back dispute rights for credit card charges,

1 they do not have the same rights when the payment is
2 made in another way.

3 And it's a real up hill battle for consumers to
4 try to convince the bank to give that money back, and I
5 would say that anecdotally in the calls that we receive
6 from consumers, they're not successful. In arguing that
7 they never authorized that money to be withdrawn,
8 there's no way of their proving it, and of course it's
9 further complicated by the fact that the seller already
10 had the number.

11 And I think that while one could argue that in
12 general this is an unfair and deceptive practice that
13 law enforcement agencies can take enforcement action on,
14 the thing that we need to focus on is keeping this from
15 happening to begin with, trying to prevent this abuse to
16 begin with, and so I think the solution to that has to
17 be better disclosure and verification that the consumer
18 has actually agreed to make the transaction and
19 understands all of the terms of it.

20 MS. HARRINGTON-MCBRIDE: Okay. I think we had
21 noted earlier that there's a certain fluidity not only
22 intrasession but intersession, so we're going to touch
23 on some of these topics. It will be a bit recursive,
24 perhaps we'll double back, but we had talked a little
25 bit about the phenomena of cross and up selling in the

1 context of this conversation about pre acquired account
2 information, and it seems that the answer we've gotten
3 so far is that it is a more prevalent practice.

4 Would anyone disagree with that, that cross
5 selling and up selling are on the decline, not the
6 increase? Okay. Again, the inference is taken that
7 silence -- consent there.

8 In the instance of a transaction where a
9 consumer is, I don't know whether I'm using the
10 terminology correctly, cross sold or up sold a product
11 or service, but there's actually a transfer of the call
12 to a second seller, so it's not the instance that Linda
13 had talked about where it's the marketing on behalf of
14 two organizations being done by a single telemarketing
15 sales representative, where there's actually a transfer
16 to another representative of another company, does that
17 start the clock running again?

18 Is it handled as though it's a brand new call
19 and all disclosures are remade, or is there a
20 presumption that the disclosures made in the first call
21 are adequate from the industry perspective? Elissa?

22 MS. MYERS: I'm sure that it works in many ways,
23 but I think the most prevalent instance is that actually
24 the call is being -- you've got a third-party caller, a
25 telemarketing, teleservices company, teleservices

1 company that has an operator that is receiving the first
2 call, and the company that they're passing the call off
3 to is typically the operator sitting virtually next to
4 them in the room, so you're still on the call with the
5 same teleservices operator.

6 MS. HARRINGTON-MCBRIDE: But from the consumer's
7 perspective, if it's a separate seller -- even if it's
8 the same third-party service bureau doing the calling,
9 if it's a separate seller, are the new disclosures made
10 of who the sellers is and that kind of thing?

11 MS. MYERS: Our guidelines require that the
12 second seller be disclosed.

13 MS. HARRINGTON-MCBRIDE: Tim?

14 MR. SEARCY: At the point of call transfer,
15 again in a practical application, rapport has to be
16 reestablished. Part of the rapport portion of the call
17 is resetting the clock as you described it, what are we
18 doing, what are we offering, what are the terms,
19 conditions and verification.

20 So in a sense for the -- not just for the value
21 of the call but also because it builds credibility in
22 the person's mind that you're talking to at the point of
23 transfer, in addition to guidelines, most firms do it
24 because it makes sense, not even just because it's the
25 right thing to do but also because it's the best thing

1 to do.

2 MS. HARRINGTON: When you recounted what is
3 included, you didn't include, Who we are.

4 MR. SEARCY: Forgive me.

5 MS. HARRINGTON: I'm curious.

6 MR. SEARCY: You would have to say who we are,
7 again as part of the rapport building, unless you have
8 two people who sound exactly the same. When I say I'm
9 going to transfer the call, I'm going to transfer the
10 call to someone who has an exciting offer for you about
11 X.

12 When that person talks to the consumer, they
13 start to -- they start by introducing themselves very
14 typically. Good, I have nodding colleagues.

15 MS. MYERS: And, in fact, it almost serves as an
16 early warning system for the consumer that you are being
17 passed on to a second agent. The same operator could --
18 although it might not be efficient but the same operator
19 could make the second offer, but by passing them on to a
20 second agent at the company, it's almost like sending up
21 a flag, now we're talking about something else here.
22 It's a different deal, and as you so eloquently said,
23 the disclosures continue to be made.

24 And I did want to say that it seems to me that
25 every time I walk into McDonald's and order a hamburger,

1 the agent at the counter asks me if I want some fries,
2 and I think the notion of up selling has -- although
3 it's more prevalent in the telemarketing arena now, it's
4 being used for efficiency, it's certainly not a new
5 notion in American marketing.

6 MS. HARRINGTON-MCBRIDE: All right. Avonne? Is
7 your card up because you -- you've just left it up?

8 MS. SEALS: I just left it up.

9 MS. HARRINGTON-MCBRIDE: Or do you have
10 something else to say? Okay.

11 What about transactions where the billing method
12 is not one that you would traditionally expect, it's one
13 of the sort of emerging methods, you are billed on your
14 telephone bill for example for this second transaction.
15 To what extent is that kind of non traditional billing
16 being done?

17 I'm sorry, I'm sort of jumping ahead to
18 something this afternoon, but it's related, and I'm
19 wondering in those instances where the disclosure is
20 not, We'll bill it to this account but where there's
21 either an affirmative decision that it will be charged
22 to some non traditional place or that that's the back up
23 position, so if your credit card fails, then we will
24 bill it to your mortgage. To what extent is that
25 practice prevalent? Linda?

1 MS. GOLDSTEIN: Speaking for our membership, I'm
2 not aware of it being prevalent at all anymore, and
3 particularly on the telephone side. Since the LECS
4 adopted their guidelines a year and a half ago that
5 basically prohibit billing for non telecommunication
6 services on a telephone bill, that practice has
7 virtually disappeared.

8 Most of the up sell activity that we have seen
9 has all been in the nature of credit card billing.

10 MS. HARRINGTON-MCBRIDE: Okay.

11 MS. HARRINGTON: Does this mean that this is
12 something that we are not going to see from the sort of
13 mainstream of companies that engage in telemarketing
14 activity. Tim?

15 MR. SEARCY: Billing mechanism is almost always
16 based on an affinity relationship, so in the case that
17 you cited of the telephone company has to have
18 established a relationship with a marketer. A utility has
19 to establish a relationship with a marketer. Due to the
20 regulatory nature of those businesses or those types of
21 businesses and the amount of oversight, the
22 LECS as an example a year and a half adopted guidelines
23 that would make it virtually impossible to do the kind
24 of affinity marketing we were describing.

25 Utility industry seems to be following a very

1 similar pattern, so the likelihood that you're going to
2 see pervasive billing mechanisms beyond credit card is
3 pretty nominal right now.

4 MS. HARRINGTON: I interrupt the program for
5 this announcement, and I'm reading it to me exactly as
6 it has been given to me. I am not making this up. The
7 National Narrow Cast Network, which is the organization
8 that is carrying this session out over the Internet,
9 would like to ask the men who are speaking to speak into
10 the microphones. The women are doing a fine job.

11 Since you have a proven track record, Susan?

12 MS. GRANT: In a way what we're seeing now is
13 with charges to people's financial accounts where it
14 appears that the seller already has that information
15 reminds me of the telephone cramming problem, and one
16 reason why that happened was because of the easy
17 availability of people's telephone numbers so that
18 whether or not they agreed to purchase the service, the
19 seller could represent that they did anyway and put the
20 charge through on the telephone bill.

21 Cramming has really gone down, and problems with
22 things like buyer's clubs which fit the scenario largely
23 are going up which makes me wonder whether these vendors
24 have not found a new way of making unauthorized charges
25 and debits on consumer's accounts, not through their

1 telephone bills anymore, but through their financial
2 accounts.

3 MS. HARRINGTON-MCBRIDE: From my reading of the
4 comments it seems the buyer's clubs would not perhaps be
5 independently troubling, but it's the combination of
6 it's selling a service and saying, Try it out and if you
7 like it, then you'll be billed, and if not, you can
8 cancel.

9 Is that sort of -- is that perception shared,
10 that it's not the service being sold but the terms of
11 the contract, if you will, allowing for this free trial
12 period that is to some extent driving this confusion?
13 Susan?

14 MS. GRANT: If consumers have actually had a
15 telephone conversation with the vendor, I think that's
16 correct, but we're receiving a lot of complaints from
17 consumers that don't recall ever having a conversation.
18 I don't know whether the vendors are paid on a
19 commission basis or whether there's some other incentive
20 for representing that the consumer has agreed to
21 purchase the service when the consumer hasn't, but from
22 the complaints that we receive, it appears that there's
23 some of that going on.

24 MR. HILE: I think that's an interesting
25 question. The folks who manage the phones, are they

1 paid on an hourly basis typically or are they on
2 commission?

3 MR. SEARCY: Well, I would love to answer that,
4 but I would also like to get called on too, so I'll
5 answer by saying it depends often on the program. One
6 of the things, since I need to speak into the
7 microphone, that we need to keep in mind is that the
8 financial institutions that allow for affinity marketing
9 have privately or self regulated to a great deal.

10 Two things that are in particular that I think
11 this group needs to keep in mind is, one, most of the
12 verification or validation of information is
13 tape-recorded or digitally recorded, and it is done so
14 with the consumer's knowledge, so a consumer understands
15 that all of the pertinent terms related to the agreement
16 that they are making between themselves and their
17 financial institution and the group that is contacting
18 them is available for review.

19 And most of the organizations that I'm aware of
20 have 100 percent tape verification which means in
21 addition to taping that, prior to pushing the sell into
22 processing, they listen to those tapes. They make sure
23 they've got something that makes sense. If it doesn't,
24 they kick it out, and that is in turn called back again,
25 and the entire call is tape-recorded to make sure that

1 we have good, valid sales.

2 The comment I wanted to make before though was
3 about the Negative Option Rule, which I believe is the
4 FTC's guideline as well, which would indicate possibly
5 inside that ruling that it's more about enforcement of
6 the Negative Option Rule, which is what happens when you
7 say, We would like to do a trial offer for 30 days and
8 then we will bill your credit card.

9 The Negative Option Rule I think should
10 adequately cover that problem, and it's really not
11 inside the TSR purvey to do that. Instead it's inside a
12 different guidelines.

13 MS. HARRINGTON-MCBRIDE: Tim, can I just
14 clarify, you say in your experience 100 percent of calls
15 are taped and 100 percent are verified?

16 MR. SEARCY: No, 100 percent of sales calls are
17 taped, and not the call, the portion in which the
18 agreement to purchase goods and services and the terms
19 for that purchase are tape recorded. I don't have a
20 client that doesn't insist on it right now.

21 MS. HARRINGTON-MCBRIDE: Regardless of the
22 method of payment.

23 MR. SEARCY: Absolutely, absolutely, and it's
24 moving to even more rapid technology that's positive,
25 which is digital recording. Most of my clients insist

1 if they had a complaint, that within one hour we must
2 produce a tape. The tape must be played for them, and
3 failure to do so in most of my contracts results in a
4 fine from my client, and a steady pattern of that
5 behavior would result in termination of my agreement
6 with my client.

7 MS. HARRINGTON-MCBRIDE: Okay. Let me make sure
8 I have the terminology down. Sales call, a call in
9 which there's an assent to purchase?

10 MR. SEARCY: Correct.

11 MS. HARRINGTON-MCBRIDE: Okay. And 100 percent
12 of sales calls are verified.

13 MR. SEARCY: 100 percent of calls that I am
14 familiar with, and I can speak for the majority of our
15 membership, it has become such a common practice you
16 just -- you don't even think about it. You
17 automatically have the language in the script. You
18 already have the tapes set up.

19 MR. HILE: So after the initial pitch and the
20 consumer indicates that they're interested in completing
21 the transaction, that's when the taping begins?

22 MR. SEARCY: Yes. We would say, Mr. Hile, so I
23 don't make any clerical errors on my part, I would like
24 to tape-record this last portion of this call. I show
25 that you've agreed to take Time Magazine for 48 months

1 or 52 weeks or whatever at this rate and we'll be
2 billing that to your credit card, okay.

3 And I am abbreviating because believe me, the
4 disclaimers are getting extremely long.

5 MS. LEONARD: Actually as a follow up to that,
6 you say the pertinent terms are articulated during this
7 taped portion of the call. Are all these pertinent
8 terms -- I'm wondering if you could just sort of clarify
9 what you mean by that, and also are these pertinent
10 terms things that have actually been articulated during
11 the sales portion of the call, or are they presented to
12 the consumer at the time of verification only?

13 MR. SEARCY: Again I speak in my experience, the
14 confirmation portion which is what we called taped
15 confirmation or digitally recorded confirmation is a
16 restatement of the terms. It is not a presentation. It
17 is -- that I can think of except for possibly the phone
18 number for customer service of new information. It is
19 simply validating what has happened during the script in
20 a concise format that we can use if somebody calls us
21 from say an Attorney General's office and says, Did you
22 make this call and what happened.

23 We want to be able to play that tape for them so
24 they can be satisfied that fraud did not occur.

25 MS. LEONARD: What is a consumer required to do

1 in order to indicate assent at that moment, if you can
2 give me an example?

3 MR. SEARCY: A clear vocal yes, a clear vocal
4 okay. There are some that ask -- we ask for some
5 validation on some programs like mother's maiden name,
6 last four digits of your Social Security number,
7 something that does not invade privacy but that if we
8 verify it back to you, we wouldn't have had access to it
9 before.

10 And to take the follow on question that
11 naturally comes, that is not typically -- I have never
12 seen it transmitted to the next -- if the call was
13 transferred, you wouldn't pass along the last four
14 digits or the mother's maiden name. You wouldn't pass
15 that along. You would want a separate validation.

16 MS. HARRINGTON-MCBRIDE: Linda?

17 MS. GOLDSTEIN: I just wanted to add one other
18 comment on the verification, that in addition to that,
19 it is fairly common industry practice as well on the
20 side of the telephone sales representative for the
21 instructions on the script that they're reading to
22 indicate that there must be an affirmative response of
23 yes so that if the consumer says nothing or they're
24 silent or it's unclear, that they cannot proceed.

25 There's usually a bold directive on the script

1 so that the sales representative knows not to go forward
2 as an additional way to back up that that affirmative
3 consent has been given.

4 MR. SEARCY: You're absolutely right. The other
5 part is that that portion of the script is really a
6 cottage industry for lawyers. They write that
7 literally. Every one of those disclaimers is written --
8 not written by a marketing person. It's written by a
9 lawyer for the protection of their firm, and it must be
10 read verbatim, and that's what you're doing when you're
11 tape verifying.

12 When you listen to the tape, you're listening
13 for 100 percent verbatim.

14 MS. HARRINGTON-MCBRIDE: Mallory?

15 MS. HARRINGTON: I have a question about that.
16 Do any of you sort of copy test your lawyer's scripts?
17 Seriously.

18 MS. MYERS: Yes.

19 MS. HARRINGTON: Do people understand what this
20 stuff means, and what do you do to see to it they
21 understand the work that comes out of your law
22 departments?

23 MS. HARRINGTON-MCBRIDE: Nancy, sure.

24 MS. MATSON: This is Nancy Matson from Verizon.
25 All of our scripts are legally approved before we put

1 them in to place, and luckily we've had the same
2 attorneys for a very long time so they're very familiar
3 with the telemarketing environment, and, yes, we know
4 that they know what they're talking about because they
5 continually come back to us and question us on things
6 that they feel is not clear and that we need to clarify
7 in the scripting before we actually put it into place.

8 So I think that that is definitely being
9 covered. The other thing I wanted to agree with Tim on
10 is we do the same thing when we telemarket and tape
11 verification, and if it's -- we don't require tape
12 verification, but we do require 100 percent
13 verification, so if it's not taped, then we require
14 another person within the organization, a verifying
15 group, to verify that call, so that it's not the same
16 person that actually took the sale.

17 We don't necessarily listen to every single
18 taped verification, but we do keep them on hand, and we
19 do do audits, and if there's any question that it's not
20 clear, we call the customer back to make sure.

21 And also the customer is given the option to
22 back out of that sell on that verification call because
23 a lot of times people get caught up in that, and when
24 you start to discuss and reverify the cost and all of
25 the things you do, the customer -- if there's any

1 hesitation on a customer's part at that point in time we
2 allow that customer back out.

3 We're not, go ahead and try it, go ahead and try
4 it, no, we just say, okay, fine, that's okay, we'll
5 cancel the sale and we appreciate your business.

6 MS. HARRINGTON-MCBRIDE: All right. Mallory?

7 MR. DUNCAN: I guess I really wanted to
8 emphasize the point that was just made that there are
9 two different methods. Sometimes there will be a second
10 person pulled in for verification of the call.
11 Increasing we're seeing with our members that they will
12 use a recorded consent as was discussed earlier.

13 It has two advantages. One you know that you
14 have verification. Secondly, for use with regulators
15 when there's an investigation, you can pull up those
16 tapes and show.

17 In response to Eileen's question, I'm not sure
18 whether that constitutes copy testing because the
19 regulators listening to it are also lawyers, but at
20 least they're making a determination at that point that
21 there was a verification of the call.

22 Then the third thing and members are just
23 discovering this is that many times customers will say,
24 I don't remember purchasing that, and they're able to
25 pull up the tape and actually play the tape back for the

1 customer, and the customer says, Oh, yes, now I recall
2 that call, and it kind of confirms the purchase they
3 made as well.

4 MS. HARRINGTON-MCBRIDE: George?

5 MR. ROSE: Yes. George Rose, National
6 Association of Consumer Agency Administrators. I think
7 we can probably all agree that the number of the
8 telemarketers represented here at the table probably do
9 have an excellent verification system, but I would be
10 interested in knowing if there's any industry figures on
11 how many do have such a system and how many don't.

12 And on a personal anecdote that relates to that
13 as well as to the previous issue of compensation that
14 you asked about, I was recently a victim of a
15 telemarketing scam by a legal plan, not Dennis', in
16 which I received unsolicited a package saying, Welcome
17 to XYZ legal club, which being a lawyer I didn't think I
18 needed it, some of my friends may have thought I might
19 have, should have joined.

20 But anyway, I immediately call their 800 number,
21 got a recording said, I never ordered it, don't want it,
22 don't charge me, forgot about it. In my June statement,
23 a charge appeared from this something, not the same
24 name, a different name, and in my July statement I
25 finally picked it up.

1 I called this company back and finally got a
2 person on the line, and they said they would immediately
3 cancel the charges for future reference, but I had to go
4 to their telemarketing company to get the first two
5 charges back because their telemarketing company
6 received the first two charges and that's who I had to
7 go to get my money back from.

8 I called my credit card company, and they
9 immediately agreed to reverse the charges, but I think
10 it's clear that there's some that don't, and there's
11 also a method of compensation where if you can get your
12 money up front, maybe we won't be here by the time
13 someone comes knocking at your door.

14 MS. HARRINGTON-MCBRIDE: Avonne?

15 MS. SEALS: Speaking for the states represented
16 by the National Association of Attorneys General, we see
17 problems with verification. They are indicated in our
18 comments. Eileen had asked that we not rehash the
19 comments. However, I did want to pick up one statement
20 expressly from the comments. Pre acquired account
21 telemarketers rarely, if ever, directly ask the consumer
22 for authority to charge his or her account.

23 That is what we have found. When that occurs,
24 you get confusion. Consumers do not remember because
25 they do not give their actual express consent to have

1 their account charged.

2 The other problem we have found with
3 verification is that the question presumably to be used
4 to verify has not always been asked by the
5 telemarketer. Another problem we find is that when
6 tapes have been requested from companies who claim they
7 have kept tapes, there has been an inability to produce
8 them.

9 So I just want it on the record that law
10 enforcement authorities, particularly the states, have
11 found problems with the so-called verification process,
12 and it certainly needs to be improved.

13 MS. HARRINGTON-MCBRIDE: Keith?

14 MR. ANDERSON: I just sort of wanted to build on
15 what Avonne had said and a couple of the other
16 comments. The people we have around the people today
17 are the clean players, and we have to keep in mind that
18 we don't have the problem children here, and so I don't
19 know where to go from there.

20 But there are bad actors out there, and they're
21 not represented at the table, and we all understand
22 that.

23 MS. HARRINGTON-MCBRIDE: Mallory.

24 MR. DUNCAN: I think I said at the beginning
25 that the rule forms a useful baseline, and there are

1 practices that good companies, picking up on what Keith
2 was saying, that go beyond that. In terms of the
3 negative option, one practice that some companies are
4 beginning to use, they take painful steps to explain how
5 the negative option works, but people may or may not
6 fully understand what's going on. I've talked with
7 companies who will now send an announcement, say there's
8 a renewal two years later, will send announcement 30
9 days before that renewal to let them know we're going to
10 be charging your account again.

11 And typically again on the calls, it isn't just
12 your account. It's the specific, your Macy's charge
13 account or your Lord and Taylor account or something
14 like that.

15 MS. HARRINGTON-MCBRIDE: Linda?

16 MS. GOLDSTEIN: Two points I wanted to make, one
17 just following up on the point that the bad actors
18 aren't at the table. That may very well be, but -- and
19 we all recognize that.

20 MR. DUNCAN: That's certainly the case.

21 MS. GOLDSTEIN: But the spirit, the spirit of
22 this rule always was to maintain a balance so that in an
23 effort to provide enforcement tools to get after the bad
24 actors, we don't overregulate the industry to such an
25 extent that the good players that know how to play by

1 the rules are curtailed in their ability to conduct what
2 would otherwise be legitimate marketing practices.

3 And I just hope that we can sort of continue
4 that spirit here, and as I'm speaking, I forgot my
5 second point, so I'll raise my card again when I
6 remember it.

7 MS. HARRINGTON-MCBRIDE: Susan?

8 MS. GOLDSTEIN: Oh.

9 MS. GRANT: That's good because I actually
10 forgot what I was going to say.

11 MS. HARRINGTON: See, we're all five years
12 older.

13 MS. HARRINGTON-MCBRIDE: But we are good with
14 the mikes.

15 MS. GOLDSTEIN: And the second point which was
16 -- I wanted to make is that as we're getting into the
17 area of negative option and continuous service, I would
18 propose that that is an issue that is not confined to
19 the telemarketing arena. That is a marketing practice
20 that cuts across many different areas. It's widely
21 utilized in direct mail. It exists on the Internet. It
22 exists via telemarketing.

23 And I would propose that if some attention were
24 given to that as a marketing practice, it may not be
25 appropriate to do it within the context of this

1 particular rulemaking because there really shouldn't be
2 a separate standard for what is in essence a marketing
3 program dependent upon whether it's being done via
4 telephone or direct mail or Internet that perhaps that
5 be addressed at some time as a separate entity and let
6 all the players that participate in those marketing
7 programs have an opportunity to voice their opinions.

8 MS. HARRINGTON-MCBRIDE: Back to you, Susan.

9 MS. GRANT: As usual, Linda and I have different
10 views of things. Two things: One is that the rule not
11 only is designed to help the enforcement agencies, but
12 also to prevent abuses from occurring in the first
13 place, and we have to keep that in mind.

14 And secondly picking up on what Mallory said, I
15 think it would be really helpful if in for instance a
16 trial offer or negative options -- a trial offer
17 situation consumers had to be notified at the end of the
18 trial offer period that you are about now to be
19 charged.

20 MS. HARRINGTON-MCBRIDE: All right. Michael?

21 MR. PASHBY: I would like to agree with Linda on
22 bringing together another group to discuss negative
23 option, but also I would like to say that the magazine
24 industry over the past five years has seen a huge change
25 in its business practices, and many of those changes can

1 create confusion in the minds of the consumer despite
2 the disclosures that we go through.

3 There has been a very large change in the
4 magazine industry to continuous service, to the negative
5 option plans. For 125 years the magazine industry has
6 always sold a one-year subscription. We have sent out
7 renewal notices six to nine months before the end this
8 subscription. We have asked for renewals and we have
9 then billed people when they renewed.

10 The industry is now moving to a negative option
11 model continuous service, and consumers, despite
12 extensive educational campaigns, can be confused because of the
13 past history of the industry, and I do think that this requires
14 a completely different discussion outside the context of
15 the TSR.

16 MS. HARRINGTON-MCBRIDE: All right. Any other
17 comments on the topic of pre acquired account
18 information or the practices of cross selling and up
19 selling?

20 Well, I guess what we will do is break a little
21 early for lunch which will be a good thing. There are
22 obviously many fine eateries in Washington, but our own
23 Mr. Ming upstairs on the 7th floor has apparently bought
24 such abundant quantities of chicken that it would be a
25 shame if you were to miss out.

1 MS. HARRINGTON: Today's special chicken Caesar
2 salad.

3 MS. HARRINGTON-MCBRIDE: Please feel free to go
4 upstairs to grab some lunch, and we will get started
5 promptly, promptly at 1:30.

6 (Whereupon, at 11:30 p.m., a lunch recess was
7 taken.)

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AFTERNOON SESSION

(1:30 p.m.)

MS. HARRINGTON-MCBRIDE: We're going to go ahead and get started, if everyone will take your seats. It was much better. We'll have to tell Eileen when she returns that we were all in our places with bright shiny faces and ready to go at 1:30. Well, her absence is excused of course.

We're going to begin up this afternoon picking up largely where we left off this morning which is a somewhat broader issue than just verification generally but about the payment systems process that's in place now, how that's different than five years ago, and what implications that has for the rule and its effectiveness for consumers.

We are now joined at the table by Sarah Andrews, representing Junkbusters, and by Jane Larimer from NACHA who will to some extent probably be called on disproportionately much for this particular session because we would like to hear what they have to say representing the ACH industry.

So I would like to maybe start with just a very general discussion which is: Is there a difference in the way -- and you in the market -- in the telemarketing would certainly know this, is there a difference in the

1 way consumers are paying for their telemarketing
2 transactions now versus five years ago?

3 Any tents up? Are were all dazed by Mr. Ming's
4 fabulous chicken salad? Mallory?

5 MR. DUNCAN: There has been because of the shift
6 in payment mechanisms an upsurge in the use of debit
7 cards, and I think that would be the most pronounced
8 shift we've seen.

9 MS. HARRINGTON-MCBRIDE: Do you have any sort of
10 statistics, rough statistics that would give us a sense
11 of what the differences are?

12 MR. DUNCAN: I don't have them off the top of my
13 head, but there has been a dramatic increase in debit
14 card usage in the last several years. I could probably
15 find numbers for you.

16 MS. HARRINGTON-MCBRIDE: That would probably be
17 helpful to supplement the record with hard data on
18 that. Susan?

19 MS. GRANT: I'm just looking in our comments for
20 what we said the percentage was in 1999 because we have
21 now looked at the first six months of 2000, and I think
22 it's gone up. Bear with me. Let's see. We said that
23 in 1999 in the telemarketing fraud reported to us by
24 consumers that 1 percent of the transactions were made
25 by debit cards.

1 In the first six months of 2000 it's about 3
2 percent so far, and I think it's reasonable to assume
3 that we'll see that percentage go higher as more and
4 more people get debit cards. A lot of people's ATM
5 cards are being replaced now by debit cards or they have
6 credit cards that also function as debit cards, and more
7 and more people are getting comfortable with using them.

8 So I would think that we can expect that
9 percentage to rise.

10 MS. HARRINGTON-MCBRIDE: I apologize. I see
11 that Laura Polacheck from AARP has also joined us at the
12 table. Welcome.

13 MS. POLACHECK: Thank you.

14 MR. ANDERSON: Can I ask a quick question?

15 MS. HARRINGTON-MCBRIDE: Sure.

16 MR. ANDERSON: Susan, that's 1 percent of
17 fraudulent transactions, not 1 percent of overall
18 transactions?

19 MS. GRANT: Yes, I don't have any information
20 for others.

21 MS. HARRINGTON-MCBRIDE: Jerry?

22 MR. CERASALE: Jerry Cerasale from the Direct
23 Marketing Association. In preparing for this, some of
24 our -- asking some of our members who use telemarketing
25 and sales or the telephone about the changes in payments

1 since five years ago, they actually say, Well, debit
2 cards are growing, but the biggest growth change is the
3 use of credit cards so that other types of payment other
4 than credit card have actually dropped.

5 Now, debit cards go in the opposite direction,
6 but there's been a -- from the perspective of our
7 members there's a significant -- not significantly but
8 there's a larger usage, larger penetration of the use of
9 credit cards than there were five years ago. That would
10 mean less checks, et cetera.

11 MS. LARIMER: Excuse me, is there a way to
12 quantify if that is a VISA branded debit card because
13 the debit cards -- there are no online debit, we can't
14 do that over the phone, so it's an off line debit, and
15 that would go through the VISA network, so is that
16 showing up as a credit card transaction to the VISA
17 card, or is that showing up their as a debit card
18 transaction.

19 MR. CERASALE: That's a good question. From our
20 -- just their discussion back was they expected more
21 debit cards but that there had in fact been they believe
22 straight credit card transactions.

23 And I know from that line that in a lot of cases
24 you can't tell whether it's a debit or a credit card
25 when you're the marketer so it's difficult to know that

1 also.

2 MR. HILE: Jane, when I get to this part of the
3 transcript and read your question, I'm not really going
4 to understand that. Can you go back and explain a
5 little bit more.

6 MS. LARIMER: Right now a lot of times people
7 say debit card and it is a debit card. It's say your
8 ATM card that has a VISA brand on your ATM card which
9 allows you to over the phone or in person wherever the
10 VISA network accepts payment use what I would call my
11 ATM card, my debit card.

12 And a lot of times when you read something over
13 the phone to a telemarketer or catalog company or
14 whoever, they'll ask you what the card is and you say
15 VISA and you give them the number. You don't say, I'm
16 Suntrust or Citibank or anything else, so it would go
17 under the VISA net as -- actually that transaction is
18 authorized through the VISA network, and it goes as an
19 off line debit, but it's through the VISA network.

20 So they may not know if that's a VISA branded --
21 a credit card transaction or a debit card transaction.

22 MR. HILE: Thank you.

23 MS. HARRINGTON-MCBRIDE: Jane, what protections
24 are in place when you use a VISA branded debit card? Is
25 it the same as when you're using your VISA credit card?

1 MS. LARIMER: Well, there's a couple different
2 things, that with a VISA credit card, you have the
3 cardholder rules and the issuer rules through VISA, and
4 also you have Regulation Z which is going to protect you
5 from unauthorized transactions, so you have a \$50
6 liability cap there.

7 If is a debit card, the VISA rules have come
8 forward, VISA has come forward, MasterCard they've come
9 forward and have said, they'll limit that to \$50 as well
10 or sometimes zero depending on your issuer, but if it's
11 going into your checking account, it's also going to be
12 a Regulation E transaction and will be protected under
13 Regulation E.

14 And then it gets even more complicated if it say
15 hits your overdraft account and it forwards credit, in
16 which case Regulation Z could come back into place to
17 take care of the credit transaction.

18 MS. HARRINGTON-MCBRIDE: Okay. Thanks. Just a
19 reminder to everybody to introduce yourself. We have
20 some new folks at the table and so when you begin making
21 your comment if you could just say who you are and who
22 you represent. It looks like Elissa has a comment.

23 MS. MYERS: Hi. Elissa Myers retailer -- the
24 first woman to forget the microphone. Elissa Myers,
25 electronic Retailing Association. I am really glad to

1 learn that today. It was our impression -- one other
2 form of electronic payment that we're beginning to see,
3 it's still a marginalized incidence, but my members are
4 beginning to accept E checks.

5 And it seemed to us that the definition of the
6 regulations for the way that an E check transaction gets
7 conducted are quite specific and provide for recording
8 of the transaction, and there are safeguards in place,
9 and as we discussed earlier, credit transactions have
10 safeguards in place, but we've been confused about the
11 protections available in -- with a debit card that is a
12 credit card overdraft protection.

13 MS. LEONARD: Actually if you could clarify a
14 little more. It's I think our understanding that in
15 fact VISA's protection for debit cards are voluntary at
16 this point; is that right, and that in fact Reg E may or
17 may not cover debit transactions depending upon the
18 nature of the transaction from what I understand in
19 terms of whether it's a recurrent payment or whether
20 it's an isolated payment transaction?

21 I wasn't clear on that from our other
22 research.

23 MS. LARIMER: There are two things in response
24 to you. Again I'm Jane Larimer, do I have to introduce
25 myself again?

1 MS. HARRINGTON-MCBRIDE: Yes.

2 MS. LARIMER: I'm general counsel with NACHA.
3 Regulation E covers any EFT to a consumer account, and
4 there's confusion that Regulation E only recurring
5 payments, the liability caps, and that's not true. In
6 fact Regulation E covers any un -- it covers any EFT to
7 a consumer's account and unauthorized through an access
8 device which a debit card would be as well as through a
9 pre authorized debit which say an ACH would be, so
10 Regulation E would cover --

11 MS. LEONARD: An individual transaction.

12 MS. LARIMER: Correct, an individual
13 transaction. And one of the questions I have back about
14 E check, where things start getting very confusing is
15 for me marketing terms when people talk about E check
16 because sometimes what they're talking about actually is
17 a paper draft, so I would get on the phone with somebody
18 and say, This is my checking account number and I
19 authorize you to debit it.

20 And what you find is until you look at your
21 banking statement, half the time you don't know if that
22 has gone through a check or a paper draft system or if
23 it had been actually an ACH and had gone through the
24 electronic network, so when people -- if you could
25 explain a little bit more what you mean by E check.

1 MS. MYERS: I am far from being an expert on
2 this, but we did look at -- we did look into E checking
3 systems on behalf of members of the industry, and what I
4 found was that there are a number of companies that use
5 the expression E check that provide E checking services
6 to a merchant and that word exactly as you suggest
7 covers a multitude of sense, one of which is a --
8 replaces a check in your checkbook kind of a transaction
9 and one which doesn't.

10 MS. LARIMER: It's important -- maybe from just
11 the lawyer standpoint, it's important to know the
12 difference for a couple reasons. One, if it's going
13 through the checking account, Reg E protections aren't
14 going to apply if it's actually a paper draft so the Reg
15 E protections don't apply and just the regular UCC check
16 law is going to apply to those transactions.

17 If it is in fact going through ACH, we have
18 pretty comprehensive rules on what few ACHs are allowed
19 to be initiated over the telephone. Right now we're
20 pretty strict on the customer, say, already has to have
21 a written authorization in their hands which makes it
22 pretty difficult, and if not that, we're running a pilot
23 right now, we can talk about it a little bit later,
24 which is based upon the Telemarketing Sales Rule so we
25 can talk about that.

1 But we know everybody who is doing that, and
2 we're watching that very carefully, so a lot of times I
3 think the marketplace gets ahead of what is actually
4 allowed by the rules, and that's kind of the people we
5 try to track down.

6 MS. HARRINGTON-MCBRIDE: All right. I think
7 that in the original -- in the statement of basis and
8 purpose for the rule, we reference a figure of 85
9 percent of all consumer transactions are made by cash or
10 check and only 15 percent by credit or debit cards, and
11 it sounds like what we've heard so far, particularly
12 from Jerry, that that is not necessarily the case
13 anymore, that there's an increased use of debit cards
14 and perhaps an increased use of credit cards as well and
15 some murky area we're not quite sure what it is, but
16 it's got a VISA brand logo on it.

17 What about specifically the use of phone checks
18 or demand drafts, anybody have any sense of whether that
19 has gone up or down?

20 MS. MYERS: Up.

21 MS. HARRINGTON-MCBRIDE: Elissa, you're saying
22 that's gone up?

23 MS. MYERS: It's still very small, but it's
24 definitely going up.

25 MS. HARRINGTON-MCBRIDE: It's increased? Would

1 you be able to point to any statistics or dredge them up
2 after today.

3 MS. MYERS: I'll work at it. I'll find out if I
4 can.

5 MR. HILE: Any idea why it's going up?

6 MS. MYERS: If I were going to say it with a
7 sense of humor, lots of consumers have tapped out on
8 their credit, and it's an alternative form, alternative
9 payment system that can be of use to the consumer.

10 MR. HILE: When you mentioned E check, what's
11 the difference between an E check and phone check? When
12 you said it, I thought you meant entering your checking
13 account number on an Internet transaction. Is that what
14 you're talking about?

15 MS. MYERS: It could be on an Internet
16 transaction, or it could be -- in the way that I used it
17 I meant it to cover any electronic transaction so I
18 would include the telephone.

19 MR. HILE: And the distinction you were drawing
20 is where the seller actually generates a paper document
21 based on the consumer's checking out number.

22 MS. LARIMER: Right. Things I guess start
23 getting confusing. I was specifically speaking at that
24 time toward phone and not toward Internet, but the
25 bottom line is the same. They ask for your checking

1 account information which they need to do for an ACH or
2 for a check, and a lot of times marketing because they
3 want to make it easy for the consumer, and consumers
4 understand checks, they don't understand electronics or
5 ACH as much, and so even if it's an ACH sometimes,
6 they'll say, What is your check number and rip that out
7 and put that in your book.

8 So even though the check never goes through, the
9 paper draft, the ACH feels more comfortable
10 theoretically knowing that this a check and so that's
11 okay with them, but they don't know until they go to
12 look at their statement whether it's cleared through
13 their system through a paper check or through the ACH.

14 MR. ANDERSON: But if I understood you earlier
15 technically you can't put it through the ACH because you
16 don't have a written authorization, right?

17 MS. LARIMER: Well, theoretically what the ACH
18 allows for right now is if you have a preexisting
19 business relationship with somebody, you can give -- say
20 if I have done business with Jay Crew before, they could
21 send me a catalog which has the written authorization
22 language I can read, and then I could call them back up
23 and enter in a pin number or some other identifying
24 number that they gave me.

25 That is allowed through the ACH now. There is a

1 pilot now for phone calls to begin without -- where you
2 read them the authorization language where it's not
3 written and in front of them. This is only for --
4 specifically for nonrecurring payments because for
5 recurring payments, Regulation E they have their
6 authorization requirements which we can't circumvent
7 obviously, so this is just primarily for nonrecurring
8 payments.

9 And that's where you can just call them, read
10 the authorization language and then either send them the
11 postcard or have taped the conversation.

12 MS. MYERS: And I think that's right. I believe
13 the reading of the information has to be tape-recorded,
14 so you have to be able to --

15 MS. HARRINGTON-MCBRIDE: Jane, I understand from
16 your comment, NACHA's comment that the pilot program
17 isn't scheduled to end until early this fall but is
18 there any preliminary data? I guess part of what you
19 were looking at was sort of customer acceptance of this,
20 and do you have anything that you can share with us from
21 the study thus far?

22 MS. LARIMER: Yes, the pilot has been extended
23 until March 15, 2001. We just extended it further
24 because we are going to go into final rule making to try
25 to put a rule into place. We have been gathering

1 statistics for about a year now I guess on the pilot,
2 and what we were really looking to see is if
3 unauthorized entries increased as a number of total ACH,
4 and it appears that they really have not.

5 It depends always on what the line of business
6 the people are trying to collect the payment for.
7 Collection agents might have a little bit higher but
8 they do traditionally whether it's through a check
9 payment because people get panicked on the phone and
10 they say, Go ahead and take my payment, they don't have
11 the money in their account.

12 So when we kind of looked at all of the
13 statistics, there's a little bit of a -- they're a
14 little bit higher than a regular unauthorized percentage
15 of ACH, but when you looked at the line of business, it
16 was right in line with the traditional line of
17 businesses, what kind of NSF or unauthorized you would
18 have.

19 The thing that which might not better to anyone
20 else here that did go up are administrative returns,
21 i.e., they couldn't find the checking account which
22 meant that the person reading it didn't read the routing
23 and transit number and the checking account number right
24 or just because it's on a check doesn't mean it will go
25 through the ACH properly.

1 Sometimes you need a different number to go
2 through the ACH, so those have increased a little bit
3 more than we would like them to. That's why we now have
4 a requirement to check through an account number
5 database to try to make sure that they have the right
6 numbers before they even use the payment system.

7 MS. HARRINGTON-MCBRIDE: Okay. Tim?

8 MR. SEARCY: Tim Searcy, ATA. The comment to
9 Linda and Elissa's comment earlier, although we as a
10 group have seen some increase in the demand payment, the
11 draft more format that you're discussing, we haven't own
12 it as a percentage rise above credit card, i.e., there's
13 a lot more transactions occurring so we're therefore
14 seeing it, but we're not seeing activity that shows
15 disproportionate growth and share in activity.

16 MS. HARRINGTON-MCBRIDE: Okay.

17 MS. LEONARD: I just actually had a question
18 about the ACH system. What if Jay Crew fails to
19 provide that written authorization, disclosure, pin
20 number, et cetera, what are the ramifications for Jay
21 Crew or another entity?

22 MS. LARIMER: The ramification, through the ACH
23 network, Jay Crew would be -- is called the merchant or
24 whoever is originating the payment. Their final
25 institution warrants that this information is

1 authorized, that it's been authorized with the amount,
2 that I've said it was okay, that the amount is correct,
3 that the date the payment is going to hit is correct,
4 and that financial institution warrants that.

5 So if I had been given a pin number but my
6 roommate had also picked up the catalogs and saw it and
7 request she's the one who authorized the payment as Jane
8 Larimer, then what would happen is I would go to my
9 financial institution, tell them that that was an
10 authorized payment, and that would be returned now
11 within the 60-day window that we have from settlement
12 date, but I would go into my financial institution, tell
13 them it was unauthorized, sign an affidavit and they
14 would return the payment so Jay Crew would be ultimately
15 liable for the payment.

16 MR. HILE: But Jay Crew issues the consumer the
17 pin, and then if the consumer wants to use this method
18 of payment in future transaction, not only the account
19 number has to be provided but also the pin; is that what
20 you're telling me?

21 MS. LARIMER: Right, what happened in 1996
22 Regulation E, the requirements for pre authorized debits
23 were revised at that time to say not only in a writing
24 signed, so I could also sign something, but in a writing
25 that's either signed or similarly authenticated, which

1 at the time perceived the use of a pin or digital
2 signature or something else.

3 And so at that time we looked at our rules and
4 said, well, they have that written authorization in
5 their hand, and it could be say on Bell South or any
6 other utility who sends me along with my bill a pin
7 number or says, Use the last six digits of your Social
8 or whatever it is, then I would call and give them my
9 account number and the pin.

10 They would use the pin to not only authenticate
11 me to make sure or to try and make sure I am who I say I
12 am but also to witness my assent to doing it.

13 MS. HARRINGTON-MCBRIDE: All right. Let's go to
14 Susan and then Mallory.

15 MS. GRANT: Two things. I wanted to provide
16 some statistics about demand drafts from our first six
17 months of this year, telemarketing fraud statistics.
18 They're at 13 percent of the telemarketing fraud reports
19 reported to us, which I think is higher than last year,
20 but I don't have last years statistic for that with me
21 and would be happy to provide it later.

22 And second, I just want to clarify when you talk
23 about needing to have something signed, that doesn't --
24 the lack of having anything signed doesn't prevent the
25 payment from being made. It comes up when the consumer

1 disputes.

2 MS. LARIMER: Exactly.

3 MS. HARRINGTON-MCBRIDE: All right. Mallory?

4 MR. DUNCAN: Actual Susan just asked the
5 question.

6 MS. HARRINGTON-MCBRIDE: She got it? Let's talk
7 a little bit about express verifiable authorization and
8 the provision in the Telemarketing Sales Rule that
9 requires that. From the perspective of the
10 telemarketer, how does that authorization generally
11 gained? The rule gives you options. What is generally
12 done? What's been your experience?

13 We, of course, presume that you all are in
14 compliance with this provision so this shouldn't be a
15 really hard one.

16 MS. LARIMER: I'm sorry, in this void, can I
17 just jump in? I just want to make sure that when I said
18 exactly, basically the way the payment gets returned is
19 if I go in and say it was unauthorized. However,
20 financial institutions have a vested interest in making
21 sure that they know their customer and that they don't
22 initiate payments that are not authorized.

23 And they keep credit limits, exposure limits on
24 their originator, so what would happen is say if it
25 wasn't Jay Crew but there was another originator who all

1 of a sudden a lot of returns started coming in
2 unauthorized, they monitor that, and they would probably
3 either take the originator off the system and go in and
4 review their practices.

5 There might be an audit or some other procedure
6 because ultimately the financial institution is on the
7 hook if that originator went belly up. The ODFI would
8 have to take that, so I didn't want to make it look that
9 we're originating payments willy-nilly and waiting for
10 people to see if they were unauthorized or thought.

11 MS. HARRINGTON-MCBRIDE: Elissa?

12 MS. MYERS: Actually I just love to take the
13 opportunity to stress again with an expert in the room
14 that the penalties to a merchant for incurring an
15 unusual number of transactions which turn out to be
16 unauthorized or charge backs on the credit card are
17 pretty severe.

18 So for the legitimate merchant there's a pretty
19 big incentive not to be engaged in financial
20 transactions that aren't pre authorized and understood;
21 is that correct?

22 MS. LARIMER: Right. It depends on what the
23 parents system is, but through the ACH they're eating
24 the whole payment. If they've already sent any goods
25 out, then they're getting hit twice, and through credit

1 card not only did -- their discount rate might get
2 higher but then all of a sudden they might get every
3 charge back that's coming through too so they are
4 getting hit.

5 MS. HARRINGTON-MCBRIDE: I see we're not only
6 joined by Peter Drymalski from NACAA, but also he has a
7 statement to make so welcome.

8 MR. DRYMALSKI: Thank you. I have one question
9 for the financial people based on the complaints we get
10 where people have issued some kind of authorization in
11 advance for a transaction which is to be paid in
12 installments. A customer wants to revoke the
13 authorization, usually I hear that the banks won't let
14 them do it. They will continue to debit the consumer's
15 bank account over the consumer's protest and request
16 revoke his revocation to do that. Is that in fact the
17 case?

18 MS. LARIMER: Well, there's a couple different
19 things. Are we talking over the telephone or through
20 written contracts?

21 MR. DRYMALSKI: Yes, it would be a telephone
22 authorization.

23 MS. LARIMER: Right now there's probably very
24 few that are going through the ACH right now because to
25 stay in line with Regulation E, sometimes it may be a

1 paper draft, and what they do is every month they issue
2 a paper draft and hits the account.

3 Now, with paper drafts it's a different animal
4 than the ACH, and I know that probably when it comes
5 down to the consumer they don't really care what animal
6 it is. They just want to make that stop. There's two
7 different ways to handle it. Through the ACH in the
8 language that we require originators to give to the
9 consumer to gain their authorization, it has to
10 specifically say for recurring payment with the manner
11 in which the consumer needs to revoke the authorization.

12 So the originator needs to say, You can call us
13 at this phone number or you can call us between nine and
14 five or you can write a letter, they have to tell them
15 exactly what they need to do. That's a requirement of
16 our rule for these recurring payments of how to revoke
17 that authorization because the agreement is between the
18 originator and the consumer, not between the consumer's
19 financial institution or anyone.

20 They're the recipient of the payment. They pass
21 it through to the consumer, and the reason why we have
22 this rule is to keep the consumer's financial
23 institution kind of out of a fight between the consumer
24 and the originator.

25 That being said, if I went into my financial

1 institution and said, I'm getting this payment for 25.33
2 and it's been hitting and I tried to stop it and that
3 customer won't do it, the originator will not stop the
4 transaction, most financial institutions that I know of
5 -- it's getting whoever it is behind the desk at the
6 bank at the time, but they'll place a stop payment on
7 that, and they'll go through and stop those payments and
8 send them back because the receiving financial
9 institution doesn't have the ability to revoke an
10 authorization. They can just block the account so that
11 that payment is not hitting them.

12 But through a paper draft system you can also
13 put stop payments and try to send those back, but paper
14 drafts, there's even of fewer rules concerning -- the
15 Uniform Commercial Code didn't really say anything about
16 that, and there are a lot of problems with paper drafts,
17 and that's why a lot of the check clearinghouses are
18 changing their liability models so that they can -- so
19 they can start sending back these drafts to the
20 originating bank again.

21 For a long time in a lot of clearinghouses
22 they're stuck eating them, the consumer's bank, so
23 they're changing some of the liabilities in some of the
24 clearinghouses because drafts are so problematic that
25 they're sending those drafts back.

1 MS. HARRINGTON-MCBRIDE: All right.

2 MS. POLACHECK: Are you ready for the consumer
3 side?

4 MS. HARRINGTON-MCBRIDE: I'm sorry, I didn't see
5 your card up.

6 MS. POLACHECK: That's okay. I just put it up.
7 Laura Polacheck from AARP, and I think many people at
8 this table were here talking about the difference
9 between verifiable oral authorization and written
10 authorization, and AARP and NAAG was very strong on
11 advocating for written authorization because we believe
12 it's extremely important for control of people's money
13 to be with them and not with the telemarketer.

14 And I think we've heard with some sort of
15 written authorization there can still be problems, and
16 it's an after the fact problem. It's not a protection
17 for consumers. They suddenly have to go through a lot
18 of hoops to get their money back, and at the original
19 hearings on the act giving rise to this rule, federal
20 governors from San Francisco and Boston talked
21 extensively about the abuses with debiting someone's
22 bank account without a written authorization.

23 I think we know a lot of times, maybe not people
24 at this table, but a telemarketing sales call, people
25 are trying to either close a sale or have the consumer

1 hang-up, but they're not going to get off the phone
2 until one or the other happens, so sometimes people feel
3 pressured into deciding to make a purchase, and if at
4 the same time their bank account is being automatically
5 debited, it's sometimes almost impossible to get the
6 money back before they fully consider the consequence of
7 their decision.

8 And it's a decision made based on not knowing
9 the seller, not seeing the goods, not perhaps fully
10 understanding the refund policy. The telemarketer is
11 not required to give the full refund policy unless asked
12 about it, unless there's no such policy.

13 In fact in New York we did a survey of New York
14 residents, well over 90 percent said that they wanted
15 written confirmation before their bank account was
16 debited. In fact New York just passed a telemarketing
17 sales law that we worked on very hard for two years, and
18 that state now requires written authorization based on
19 the advocacy also of the leaders in the New York State
20 Assembly and the Attorney General and the Governor.

21 So I think that -- as we all know this is a
22 voice over the telephone, and we think it's an unfair
23 and a sometimes deceptive way to get money from people,
24 and I don't know there's any problem waiting for someone
25 to write a check so they can fully consider the

1 consequence of what they've done.

2 I know a lot of people argued at the original
3 workshop in Chicago that this was a great convenience
4 for consumers, especially older consumers. I can tell
5 you our national legislative council which is our
6 leadership volunteer group is appalled by this. They
7 literally do not believe it's legal. We give
8 presentations on the rule, and they will sit and argue
9 with us up and down, This is impossible, you have to
10 have something in writing to get money out of your bank
11 account. They do not believe this is a legal practice
12 even if -- it is of course a legal practice.

13 Virtually every group we talked to -- it's also
14 quite clear this is a legal practice, and I know this is
15 anecdotal but I think it's very telling that no one has
16 ever raised the opinion that it's a convenience. They
17 in fact believe that their bank account should be in
18 their control and that they should have something in
19 writing saying exactly what they want debited.

20 And that's our position at the state level and
21 that's what we fought for at the state level and some
22 states have in fact put this in their laws.

23 MS. MYERS: So they don't use ATMs?

24 MS. POLACHECK: It's in their control if they're
25 using an ATM. They're controlling how much money is

1 being taken out of their bank account. They're using
2 their own ATM and putting in their own amount of money.
3 That's still within their control.

4 MS. HARRINGTON-MCBRIDE: Tim?

5 MR. SEARCY: I understand the concern that the
6 AARP is voicing, but in the economy that we're moving
7 to, it's counter intuitive to take speed out of the
8 equation, and if you take into account the fact that this
9 consumer is reading a number, a number that we do not
10 hold, a number they must give us, it is no different
11 than them writing a check. It's no different than them
12 giving a voice over the phone when they purchase a
13 credit card.

14 When they go to draft this way, it is simply a
15 different number, and the credit is just an exchange of
16 method, and as you start to brand VISA cards for debit
17 cards and you start to look at paperless checks, this
18 all becomes one big blur of how many numbers am I
19 saying. Am I saying 11 or 21 or 9 or what numbers, but
20 the effect is the same.

21 MS. HARRINGTON-MCBRIDE: I think Laura would
22 like to rebut.

23 MS. POLACHECK: Just a very quick comment. It's
24 certainly not the same as a credit card. There are a
25 lot of protections with credit cards for unauthorized

1 charges. The money is not automatically taken out of
2 your account. You have to write a check to fulfill your
3 bill, and so I would say that it's far different from a
4 credit card, and the speed of the transaction should be
5 up to the consumer to decide how fast they want that
6 transaction to occur and where they want their money to
7 go.

8 MS. HARRINGTON-MCBRIDE: Linda?

9 MS. GOLDSTEIN: I just wanted to add to Tim's
10 comment which was of the first part of what I was going
11 to say, that I don't think it's analogous to the
12 consumer not having control over the funds in their
13 account because they have control until they release the
14 numbers that would allow that account to be debited.

15 We're not dealing here with a situation where
16 that information is pre acquired. It's something that
17 the consumer has to affirmatively provide during the
18 course of the call, and all of the items that you
19 mentioned that your constituents have indicated are
20 material elements of the transaction are precisely the
21 elements that the rule currently requires be disclosed,
22 the cost, the seller, the method of payment. If there
23 is no refund policy, that fact needs to be disclosed.
24 All of that needs to be disclosed and is subject to the
25 verification requirements.

1 Now, to the extent that consumer's accounts are
2 being debited without that disclosure being made, that's
3 a violation of the rule as it already exists. That
4 doesn't require a modification of the rule. It requires
5 enforcement and points -- to the extent that that's the
6 nature of the complaints I think it points to the fact
7 that the rule is right on target.

8 MS. HARRINGTON-MCBRIDE: Does anybody have any
9 evidence that in the discussion we had later on this
10 morning or the later end of the morning discussion that
11 sometimes bank account information as opposed to credit
12 card information is pre acquired? Any problems with
13 that? Any evidence of that?

14 MS. GRANT: Yes. We have many complaints
15 especially in the buyer's club category where the
16 consumers say that they did not give that information
17 but the money was debited from their bank accounts which
18 leads us to conclude they were pre required.

19 MS. HARRINGTON-MCBRIDE: Tim?

20 MR. SEARCY: I think that's a pretty substantive
21 causal leap, that their lack of knowledge, lack of
22 understanding or lack of memory automatically assumes
23 fraud. As has been pointed out a couple times, the rule
24 as it stands and certainly as a trade association, we
25 back the idea of applying the same rules across every

1 method of payment which I think we've kind of gone into
2 ad nauseam.

3 But I would say the comment I would make is that
4 we would have to collect some data before you come to
5 the conclusion that definitively that information is
6 being passed along. The majority of my business outside
7 of the ATA involves financial institutions, and those
8 institutions make a clear separation between credit
9 information and bank information.

10 They do not ask us to in any way try to debit an
11 account. They want us instead to stick to the credit
12 accounts. I don't know what channel they use for other
13 methods. They may use direct mail. They may use some
14 other method to try to secure, but they're not asking me
15 to use the telephone with bank information with credit
16 or with check information.

17 MS. HARRINGTON-MCBRIDE: Peter Drymalski?

18 MR. DRYMALSKI: Quick message of support for
19 Laura's position. I think there are two major
20 differences by authorization by credit card and by
21 check. First of all, with credit card you have charge
22 back rights which you don't when there's a debit, and
23 secondly I think there's a big difference between giving
24 a number one time for a one-time payment and you giving
25 the same number to authorize multiple installment

1 payments when you may not have a clear understanding of
2 how many or how much are going to be required of you.

3 You're locked into a much longer-term agreement
4 when you do that.

5 MS. HARRINGTON-MCBRIDE: Karen?

6 MS. LEONARD: Tim, when you say you apply
7 essentially the same principle and practices to every
8 payment form and verification for every payment form,
9 does that mean this you run through the entire express
10 verifiable authorization process with regard to whatever
11 payment type, or because it's only required for demand
12 drafts obviously under our current rule.

13 Are you saying you actually apply that to every
14 payment method in order to double protect yourself?

15 MR. SEARCY: Yes, and actually it's a practical
16 application. If you were to in some reason mix payment
17 mechanisms by variety of credit card or by check
18 authorization or check debiting, you just don't want
19 your telephone sales representatives to have to focus on
20 rethinking the differences. Practically speaking much
21 easier to say we apply one standard all the way through,
22 so it's easier to train, et cetera.

23 Now, all we're looking for is: Is it a
24 legitimate number? Can we run it through the algorithm
25 to make sure that the VISA number is the accurate

1 number, the MasterCard number is an accurate number? Do
2 we have enough information to make the credit routing
3 occur? So all you're doing then is just checking to
4 make sure that the number is a legitimate number.

5 Am I making sense? I see a frown.

6 MS. LEONARD: When you say you're checking to
7 see if the number is a legitimate number, does that mean
8 that you have the consumer read to you the credit card
9 number that you have in front of you? For example, in
10 the instance of a pre acquired account, do you have the
11 consumer read back to you the number that you intend to
12 bill so that you confirm it is accurate with the
13 consumer or how would that work in that particular
14 scenario?

15 MR. SEARCY: Speaking for myself and not for the
16 association, I would say that there are two ways we do
17 it. Sometime we ask for a specific number of digits
18 just to make sure they're the same like the last four
19 digits of the credit card, and those are the only four
20 that the representative can see.

21 On an inbound call, of course we take the full
22 credit card because we don't have access to it prior to
23 that. Otherwise, no, we do not ask them to read all of
24 the digits. We assume that the financial institution
25 that's provided the pre acquired information has

1 properly indicated where it came from and that it indeed
2 is the credit card that we're talking about.

3 MS. HARRINGTON-MCBRIDE: Michael?

4 MR. PASHBY: Debiting back accounts -- Michael
5 Pashby. Pre authorizing of bank accounts is important
6 to one sector of the magazine industry, and the magazine
7 industry did speak quite extensively in Chicago about
8 this, and many of the disclosures required of them came
9 out of that, those discussions.

10 Since 1995, I have not received one complaint in
11 my office about the debiting of bank accounts as regards
12 to the magazine industry, and I would be interested to
13 hear if anyone around this table has got any level of
14 complaints about the magazine industry in this regard.

15 MS. HARRINGTON-MCBRIDE: Anyone have anything on
16 that?

17 MS. HARRINGTON: I think we have seen that
18 problem -- the use of demand drafts in connection with
19 the fraudulent sale of magazine subscription contracts
20 was a particular problem before the TSR was issued. I
21 think that in terms of our experience at the FTC, that
22 specific problem has decreased greatly in that industry.

23 MR. PASHBY: Therefore, it's a matter of
24 enforcement of current rules more than anything else.

25 MS. HARRINGTON: Well, you asked a question

1 about the magazine sales industry only.

2 MR. PASHBY: Correct.

3 MS. HARRINGTON: And I'm responding only to
4 that, but...

5 MS. HARRINGTON-MCBRIDE: Laura?

6 MS. POLACHECK: I think a point has to be made
7 that the original rule did require several disclosures
8 before payment requested, and it was changed to before
9 payment is made, and of course it's a rather major
10 difference because if it's before payment is made, it
11 means the consumer has already basically agreed to the
12 sale but hasn't yet paid for it.

13 And it's our view that to make a fairly informed
14 buying decision, you need to know exactly what you're
15 agreeing to buy and what the terms and conditions are
16 before you say, Yes, I'll go ahead with this purchase,
17 and the rule does not require any representations to be
18 made about refund policies unless there's no refund
19 policy and unless the consumer brings it up.

20 So I think particularly for this payment method,
21 unless the consumer fully understands and knows what
22 they're getting into, it's unclear when these
23 disclosures are made and whether or not the consumer
24 already believes they've committed to the particular
25 purchase.

1 And so that's why we believe -- I know we're
2 going to be talking about the timing of disclosures
3 later but in this particular issue, the timing of the
4 disclosure makes a fairly large difference as to what
5 the consumer believes he or she is agreeing to buy or
6 not and what the terms are.

7 MS. HARRINGTON-MCBRIDE: Okay. Jerry?

8 MR. CERASALE: Yes, I just wanted to -- I think
9 one time when the marketer must tell about the refund
10 policy besides if there isn't one, and that's if they
11 say money back guaranteed or something, some statement
12 in the piece, so if that's in there, they have to tell
13 you about all the terms and conditions of the refund
14 policy.

15 So if the marketer has said something about the
16 refund policy, they must say it, so it's not just when
17 the consumer asks about it.

18 MS. HARRINGTON-MCBRIDE: Okay.

19 MS. HARRINGTON: A very impressive display of
20 knowledge of the specifics of the Telemarketing Sales
21 Rule, Jerry.

22 MR. CERASALE: Sad but true.

23 MS. HARRINGTON-MCBRIDE: Linda?

24 MS. GOLDSTEIN: I just wanted to provide some
25 additional industry information and partially in

1 response to some of Susan's comments that we could try
2 to provide more data as a follow up, but my
3 understanding is that for the most part the vast
4 majority of membership club services do not use check
5 debit, that it is primarily done through a credit card.

6 I guess that could also be a debit card because
7 the marketer can't really distinction when that number
8 is given, but as it relates to an actual demand draft
9 that is not a practice that is utilized with any -- I
10 personally haven't seen any among our members who are my
11 clients.

12 I'm sure there could be some that exist, but it
13 is not prevalent at all in the industry. It's primarily
14 credit card driven.

15 MS. HARRINGTON-MCBRIDE: We've come a fairly
16 long way from the first time I asked, but we're curious
17 to know from the telemarketer's perspective when you are
18 faced with a situation where a consumer wants to use a
19 demand draft, how is authorization done, by which
20 method? Is it oral authorization? Is it written after
21 the fact? How are these things practically speaking
22 playing out and why is it being done that way?

23 MS. HARRINGTON: Are there any people here that
24 actually use demand draft as a method of payment or have
25 experience with that? Tim, does your company do this

1 for some of your clients?

2 MR. SEARCY: Very, very rarely.

3 MS. HARRINGTON: And how you do it when you do
4 it?

5 MR. SEARCY: It's oral. It's collection of the
6 number. The validation of the number is done through
7 the clearinghouse, so in terms of making anything happen
8 after that, it's managed through the clearinghouse. It
9 happens pretty doggone rare. It's just not -- there
10 isn't a demand for my services and my company which
11 heavily is in the financial services arena and in some
12 others, in some lead generation, et cetera, that that
13 kind of payment vehicle is warranted.

14 And to be candid it's because most of the folks
15 who are most desirable within a target marketing effort
16 are going to be credit card holders.

17 MS. HARRINGTON: Michael, do you have something
18 on that? You said earlier this is a relevant payment
19 method for a segment of the magazine industry. Do you
20 know how that segment gets authorization?

21 MR. PASHBY: I don't believe it's by written
22 authorization. I think the vast, vast majority is
23 verbal authorization following the six steps that are
24 required in the TSR.

25 MS. HARRINGTON: Elissa, do your members use

1 this method of payment?

2 MS. MYERS: I think I was the one that brought
3 up this discussion in the beginning, and --

4 MS. HARRINGTON: I wasn't here. Sorry.

5 MS. MYERS: It's still a highly marginalized
6 practice. I can't speak to it directly, but it probably
7 represents no more than 1 or 2 percent at the outside of
8 the transactions, but the question was raised, Is there
9 a growing incidence, and I do have members who do accept
10 that form of payment.

11 And again my answer to how they transact would
12 be exactly as the gentleman Michael Pashby referred,
13 going through the six steps, verbal authorization over
14 the phone.

15 MR. PASHBY: And recorded.

16 MS. MYERS: And recorded, right.

17 MR. CERASALE: Jerry Cerasale. The practice for
18 the DMA tends to be the same. Some of our members also
19 then use a -- they tape-record the verification and some
20 go another step and within 24 hours do a call back as a
21 verification, but the initial step generally speaking is
22 an oral verification tape-recorded speed or digitally
23 recorded.

24 MS. HARRINGTON-MCBRIDE: Jane.

25 MS. LARIMER: Jane Larimer. I think that you'd

1 see in the vast majority -- I don't want to say 100
2 percent, but I think it would be right close to that of
3 oral authorization for that. That's the beauty of the
4 demand draft because it is your oral authorization that
5 they can sign your name on something that is a check, so
6 if they're going to get written authorization, they
7 might as well send a paper to the people and say, Send a
8 check in.

9 I can't -- I'm not saying it never happens, but
10 I can't imagine somebody getting oral authorization, and
11 then sending out something else to be signed and sent
12 in.

13 MS. HARRINGTON-MCBRIDE: Tim had noted that it's
14 become I guess sort of a de facto practice, regardless
15 of the method of payment, at his organization to sort of
16 use the model that we have set forth in the rule.

17 To what extent is that common in the rest of
18 your organizations? Elissa, you're nodding. You do
19 that as well? It's become your model or not?

20 MS. MYERS: Of course, I'm speaking on behalf of
21 my members, I think many of them use your guidelines as
22 a model, and our guidelines are modeled after yours.

23 MS. HARRINGTON-MCBRIDE: And that's regardless
24 of whether they're using credit card, phone check, no
25 matter what, you've defaulted sort of to this template.

1 MS. MYERS: We also think -- we were talking at
2 lunch, and I think if anything the marketing practices
3 of my members have become more conservative, and one of
4 the things they continue to struggle with is a lot of
5 ambiguity in exactly how do these rules apply.

6 There is room for some considerable
7 interpretation in the guidelines, but I think that as a
8 practice they're becoming more conservative in what they
9 do. They're redoubling back and asking twice instead of
10 once. The fraudulent operators are still out there,
11 there's no question, and we have never disputed that,
12 but I think that merchants who mean to maintain a solid
13 business relationship with their customers and to
14 sustain that over a long period of time are trying hard
15 to understand what is fair practice and to comply with
16 emerging definitions of what that is.

17 MS. HARRINGTON-MCBRIDE: Linda?

18 MS. GOLDSTEIN: I don't have specific data on
19 this, but my impression is that the recordings are more
20 common with outbound than with inbound, and then within
21 the inbound calls it is often more typical to record the
22 authorization but not necessarily to record the
23 provision of all of the information as is required under
24 the rule when you're doing it a demand draft.

25 MS. HARRINGTON-MCBRIDE: Okay. Thank you.

1 Another thing that we had wanted to talk about during
2 this session was to the extent that anybody here has a
3 crystal ball and knows what's going to be changing in
4 the way consumers pay or have the option to pay, what
5 predictions might any of you be willing to make on the
6 record about how this shift will continue to grow in the
7 coming years based on what technologies are available
8 and what practices seem most beneficial to industry?
9 Tim?

10 MR. SEARCY: My crystal ball is a little foggy,
11 but I'll work through a couple of thoughts. The need to
12 bundle products and service continues to grow. As lines
13 separate or as they blur between your utilities, your
14 long distance, your entertainment companies and so on
15 and so forth.

16 Two things are going to make that more efficient
17 in the future. One is historically those industries
18 have not built sophisticated billing systems. They have
19 very simple billing systems that were focused internally
20 on how they would bill their own products. Some of the
21 practical applications for the telephone side prior to
22 the CLECs having difficulties, they couldn't make the
23 relationship work because they couldn't make the bill
24 work. They couldn't get the bill out. They couldn't
25 track the payment. They couldn't separate the payment,

1 et cetera.

2 That seems to be changes, and it's a possibility
3 that LECS may reenter or utilities will enter into
4 billing relationships with institutions interested in
5 their constituents is going to grow, and the application
6 seems to be whenever someone talks to us about doing
7 that, that affinity marketing, the application of --
8 when we stand on the shoulders of giants, we've done
9 this before, we have the TCPA, we have the telephone
10 sales rule, the same folks who came from the traditional
11 credit payment system are making assumptions that the
12 same rules will apply in the new systems.

13 And so consequently the scripts are coming out
14 pretty much similar because you've got again the same
15 lawyers putting together sets, number 1, more folks
16 doing that.

17 The second is the ongoing understanding that
18 marketing requires recurring payments because of the
19 size of the products, the price of the products, and it
20 appears that you're going to see from what we've seen
21 amongst our members more multi time recurring payments,
22 three times a year, monthly, et cetera, which will cause
23 lots of opportunities -- it will increase the number of
24 opportunities to get out, so you'll have a fee based
25 systems, membership based systems that are monthly

1 instead of annual or quarterly instead of annual which
2 will give the consumer a greater freedom to decide that
3 they no longer want to purchase something or that they
4 no longer want to have that bill.

5 And I don't know if that's a shift in payment.
6 I don't know that it addresses your question but it does
7 address what I perceive to be a significant shift in the
8 way we as practitioners have to do business.

9 MS. HARRINGTON-MCBRIDE: What's driving that?
10 Is it consumer concern? Is it -- I would venture to say
11 off the top of my head, although I've been wrong on the
12 financial stuff before today so I could be wrong again,
13 that it's not more cost efficient to have more frequent
14 notices rather than less frequent notices but what is
15 it --

16 MR. SEARCY: Actually you would be surprised.
17 The part where it's more cost efficient is they have
18 more opportunities to communicate and touch you, and in
19 doing so more opportunities to create interest on your
20 part in purchasing additional services.

21 Now, all you have to do is go to your frequent
22 flier to figure out what the value of a cooperative
23 marketing program is. Every time you get a bill, I defy
24 you to get your phone bill and not have them trying to
25 sell you something or trying to communicate with you to

1 sell something to somebody else or buy from somebody
2 else.

3 So there is a value in breaking up the payments,
4 but the second is that the on going communication has a
5 revenue value, but it has also an expense value because
6 if you want to get out at that point in time, I don't
7 have to service you anymore, I don't have to worry about
8 the problems because you don't like the product, I don't
9 have to worry about the possibility that you're going to
10 make a complaint to someone about this product that
11 you're no longer using but that you paid for in the
12 first three months, i.e., buying clubs.

13 So there's a real benefit to a pay as you go
14 system, and I don't think I'm alone in this, but this
15 is -- that's where my crystal ball kind of ends.

16 The other stuff I've got to tell you, the
17 methods of payment and all that, it all comes down to
18 digits, how many digits are in the string, I'm going to
19 read you a check number, I'm going to read you my pin
20 number, I'm going to read you a credit card number, I'm
21 going to look at my debit in my electronic bank off in
22 the say in Internet land. It all comes down to digits
23 and verifications.

24 So I personally don't see a great deal of change
25 in the method of administration of something like the

1 Telemarketing Sales Rule. Instead what I see is maybe a
2 growing number of channels or uses, sophistication, but
3 at the end you're still going to come down to digits and
4 clearinghouses and pins and expiration dates.

5 MS. HARRINGTON-MCBRIDE: Keith?

6 MR. ANDERSON: Tim, are you saying that we're
7 going to see increased billing, this stuff that appears
8 on telephone bills is going to increase, or just that
9 there's going to be affinity marketing between the
10 telephone and somebody else but that could go to the
11 credit card instead?

12 MR. SEARCY: Yeah. Again it's a crystal ball so
13 let's keep that in mind. I'm saying that the move from
14 single purchase to recurring billing is natural in an
15 environment of bundled products and services. As you take
16 sectors and start to combine them, the long distance
17 folks want to sell you your access to your ISP and on
18 and on and then they want to book your travel, then they
19 want you to buy your computer from them, then they want
20 you to buy additional services.

21 As that all happens, that affinity marketing
22 creates a larger and larger appetite for large ticket
23 items which have to be broken down into consumable bites
24 which is recurring payment. This may have been almost
25 like Chuck like in terms of technical, but that's kind

1 of where it's going.

2 MS. HARRINGTON-MCBRIDE: I'm sort of
3 understanding.

4 MS. HARRINGTON: Charles, he's not here, we can
5 tweak him now.

6 MR. SEARCY: Charles like. Chuckie.

7 MR. ANDERSON: I guess my question is we've had
8 this problem with stuff actually appearing on people's
9 phone bills, and I thought I heard you say in the
10 beginning to say that you expected to see more of that
11 and --

12 MR. SEARCY: I don't expect to see more
13 problems. I expect to see the LECS and the CLEC and all
14 these --

15 MR. ANDERSON: It's a certified local exchange
16 carrier. I think it's certified. Isn't C for
17 certified? It's like -- okay, competitive local
18 exchange carrier versus a LECS, which doesn't compete, I
19 don't know because they have a monopoly, but that's a
20 political statement.

21 The comment I would say if it's not the phone
22 company it's going to be your utility company or it's
23 going to be your IP provider.

24 MR. ANDERSON: But they're going to be being
25 their bills for multiple purposes.

1 MR. SEARCY: They will wisely be examining how
2 they can gain more from that relationship and build
3 their brand through cross selling opportunities and
4 affinity.

5 MS. HARRINGTON-MCBRIDE: All right. Michael?

6 MR. PASHBY: Michael Pashby. I'm not quite sure
7 that everything is going to move through someone else's
8 billing system, but I do agree that the affinity sales
9 opportunities will be the single biggest growth area in
10 telemarketing.

11 Magazines certainly are looking at every
12 opportunity for affinity sales, whether it be Yankee
13 titles, whether it's bundled, whether it's single price
14 or not so, Yankee tickets with a sports magazines, no
15 names, or cooking equipment with a cooking equipment,
16 whatever it may be, and also I suspect it will be
17 combined with some form of negative option with the
18 magazine, the negative option being the other major
19 growth area of magazine sales.

20 MS. HARRINGTON-MCBRIDE: How much of this
21 implicates pre acquired account information? How
22 integral is that to these new kinds of affinity
23 marketing programs?

24 MR. PASHBY: It's important. It's very
25 important, but once again it's the use of that

1 information in a responsible manner. Just because one
2 has pre acquired information doesn't mean one is
3 irresponsible about the way one uses it and whether one
4 -- if one discloses the fact that one has that
5 information, there is a reasonable use of that
6 information I think.

7 MR. ANDERSON: Why?

8 MR. PASHBY: What do you mean why is it
9 important?

10 MS. HARRINGTON: Keith, use the microphone.

11 MR. ANDERSON: In what sense is the use of this
12 pre acquired information important?

13 MR. PASHBY: For one thing it cuts down sales,
14 time, money spending, the fact that one can move and
15 talk about the value of the products rather than the
16 whole billing implications is also important. Once
17 again it's a matter of disclosure. It's a matter of
18 disclosure. If you disclose that you have the
19 information, that is sufficient. That is what's in the
20 TSR.

21 MS. HARRINGTON-MCBRIDE: All right. Susan?

22 MS. GRANT: Of course all I hear about all day
23 is fraud so it tends to make my outlook very cynical,
24 but there is a dark side to all the things we've been
25 talking about, recurring charges, affinity sales,

1 negative option. It is not as easy to stop the payments
2 or debits as has been portrayed here when you went to
3 get out of a program in which you're being billed or
4 debited monthly.

5 It is harder sometimes to assert yourself and
6 say no than it is to just be rolled over and have the
7 salesperson assume and proceed with the assumption that
8 you're agreeing, which is one of my concerns about
9 negative option, and I forgot the third thing that I was
10 going to say. Let's see. I'm totally blanking out
11 here. I'll think of it.

12 MS. HARRINGTON-MCBRIDE: We'll let Jerry weigh
13 in on his part of this.

14 MR. CERASALE: Thank you. Jerry Cerasale. I'm
15 trying to look at the crystal ball not specifically some
16 of the comments already made. I think that we see the
17 future virtually all the Direct Marketing Association
18 members who are not suppliers but are actually selling
19 to our -- selling to consumers have to be multi media.

20 So they're not just using the telephone.
21 They're not just using the direct mail. They're not
22 just using the Internet. We've seen from our Internet
23 marketing going to customers and trying to send them
24 verifications you placed an order, here's when the order
25 is coming, here's when we've actually sent the order,

1 you should receive it by this time, and then did you
2 receive it, if you haven't, get back to us, tends to
3 have a huge customer service plus.

4 It keeps touches -- as Tim was saying, touches
5 with the customer and so forth, so I think in the future
6 we're going to see more marketers trying -- even their
7 telemarketing side trying to get the Internet to see if
8 they can keep touch with the customer with Email
9 accounts and so forth.

10 So from the verification side we may start to
11 see starting within five years from now that you may get
12 in verification types of payments an Email verification,
13 where they have -- I see that -- some of our members are
14 trying to do that already, and I see that potentially
15 increasing, and that's when we're trying to get the
16 Email address and using that for touching and also for
17 verification.

18 MS. HARRINGTON-MCBRIDE: And that's regardless
19 of method over the telephone, the confirmation goes back
20 and says, As agreed we've billed your VISA account
21 number 16 digits later?

22 MR. CERASALE: Yes. We see that as -- if they
23 have that other means, the other medium to contact, to
24 try and then use that medium to do the contacting, and
25 it's just a verification back and makes them feel good

1 that the account -- the order has been placed. They
2 actually know that they have the order. It wasn't lost
3 from there, and then continue confirmation.

4 I don't know how prevalent that's going to be
5 five years from now, but we see it starting a little bit
6 now, and I expect it to be much more so in five years.

7 MS. HARRINGTON-MCBRIDE: Can anybody speak to
8 this, and this may be again not real world, but are any
9 of you doing your telemarketing transactions and taking
10 payment via the Internet either sending an outbound
11 Email and requesting payment information be sent back or
12 payment be done online via web site? To what extent is
13 there an integration there? Jerry?

14 MR. CERASALE: I'll respond. Jerry Cerasale,
15 Direct Marketing Association, very small, but some of
16 our members are doing it or at least offering that
17 possibility, if you would like to, would you like to pay
18 via the Internet, et cetera, and it's the customer's
19 choice. That again of course keeps -- if they get the
20 Email, have the Email address, it keeps the time short
21 quickly on the phone, so it's a plus. You don't have to
22 about through the oral taping of the verification and so
23 forth.

24 MS. HARRINGTON-MCBRIDE: Susan, did you think of
25 that other point?

1 MS. GRANT: Sorry, I think I need a siesta I
2 think. Maybe it's that they're just aren't as many
3 fireworks this time. It's not keeping me awake.
4 Another point I wanted to make --

5 MS. HARRINGTON: What can we think of?

6 MR. CERASALE: A fist fight or something?

7 MS. GRANT: Another concern I have about
8 recurring charges, and this is something that came up in
9 the context of telephone cramming, is to the extent that
10 you break down the chunks into smaller pieces, they may
11 escape consumer's notice at least for awhile, so the
12 smaller charges may slip by for a couple months before
13 the consumer notices it on a credit card or notices that
14 it's being debited from a bank account.

15 And with all of these payment methods, there are
16 of course conveniences on the other side and appropriate
17 uses for them, but there are also abuses that we see
18 with them.

19 MS. HARRINGTON-MCBRIDE: Okay. Laura?

20 MS. POLACHECK: Laura Polacheck, AARP. I wanted
21 to kind of agree with both of Susan's points, both times
22 she made them, but also say that of course there is a
23 large convenience for consumers, certain products being
24 bundled together because they found out about other
25 products or services they might not know about, but on

1 the other hand, it can also be a complete nightmare.

2 Financial modernization with the merging of
3 different institutions and data they have on consumers
4 and customers and consumers do not understand exactly
5 who is marketing to them, why they have this personal
6 information.

7 One element of the original act was supposed to
8 be the right of consumers to maintain their privacy, and
9 so when the telemarketing rule was written, the right to
10 privacy with certain information was supposed to be
11 protected, and I understand it's a very, very changing
12 world as far as how people are marketed and how they buy
13 and sell products, but the fact of a negative option
14 having an automatic bill with information they already
15 have I can tell you is not a consumer protection or a
16 convenience, and disclosures do not always cure all
17 ills.

18 I think disclosure is basically the most minimal
19 form of consumer protection. You're basically saying,
20 This is the way we're going to do it but we're telling
21 you first. That's not necessarily a consumer
22 protection. There are certain things that are going to
23 be inherently unfair or deceptive that simply should not
24 be permitted because the fact of the FTC being able to
25 bring an enforcement action or the State Attorneys

1 General being able to bring an action is not sufficient
2 because you know what?

3 There's no way you have the resources to look at
4 every single problem. I mean, the most local Consumer
5 Protection office cannot possibly keep up with every
6 consumer problem or even know about it, and so the law
7 has to be written to prevent the abuses from happening
8 in the first place.

9 And certainly we don't want to slow down
10 commerce or consumer options or consumer convenience,
11 but on the other hand if something is inherently
12 deceptive or unfair or even has potential for it, it
13 should certainly be protected.

14 MS. HARRINGTON-MCBRIDE: Mallory, I can't tell
15 if you had a comment or not, if your tent went down.

16 MR. DUNCAN: It fell down actually. Mallory
17 Duncan. Looking at the last question, what payment
18 mechanisms are likely to merge and what the effect on
19 the Telemarketing Sales Rule, it's our strong belief
20 that we will see a continued growth in debit mechanisms,
21 whether that's VISA debit or Master money debit cards,
22 whether it's new electronic benefits, transfer cards,
23 Social Security card, payments being debited
24 automatically.

25 And having said that, there's not necessarily a

1 need to take steps in terms of redrafting the
2 Telemarketing Sales Rule. What there probably is is a
3 need to provide greater consumer information about the
4 differences that those types of product because of their
5 jurisdictional issues it's probably not a specific issue
6 for the FTC, but it is one that I think as pointed out
7 earlier there are differing levels of protection,
8 consumers looking at the products may not understand
9 those different levels of protection and there needs to
10 be greater explanation of that.

11 MS. HARRINGTON-MCBRIDE: We certainly are going
12 to touch on the consumer ed piece on all of this
13 tomorrow afternoon, and I think that we've heard
14 throughout I think the original rulemaking and in our
15 first FOIA into forums in January that that is something
16 we all agree can't -- we can't have too much consumer
17 ed, and we'll talk about some practical strategies for
18 ways people think it can best be done and obviously take
19 any offers of help there tomorrow afternoon.

20 Linda?

21 MS. GOLDSTEIN: I just wanted to follow up, and
22 it actually follows up a little bit on what Duncan said
23 in terms of other payment mechanisms. I think one of
24 the other major themes that will drive future payment
25 mechanisms is convenience, and I'm hesitant to say that

1 now after what's been said and maybe that will start the
2 fireworks going, but that is the reality of where
3 payment mechanism technology is headed.

4 I was actually at a conference about eight
5 months ago where a presentation was made by developers
6 of a program that would allow you basically while you're
7 watching TV to hit a button if you saw an address on a
8 TV show that you wanted to buy, point and click and have
9 it billed to your cable bill.

10 Now, the developers of that were quite proud of
11 the technology, and I almost felt the need to jump up
12 and say, Wait until the FTC hears about this.

13 MS. HARRINGTON-MCBRIDE: These people don't have
14 children five and under either. I promise you --

15 MS. GOLDSTEIN: I don't want to tell you about
16 the part of the speech where they talked about how
17 convenient it would be for your children as well, but I
18 think the point of it is, and this goes back to an
19 underpinning of this rule also, always that was that we
20 would not impose restrictions on the use of the
21 telephone as a marketing tool that would make it less
22 convenient or more cumbersome than other marketing
23 methods.

24 And as we see these other payment technologies
25 developing, which are not necessarily endemic to the

1 telephone, I think it underscores Duncan's point that
2 that is another issue that is sort of a global issue in
3 and of itself and not really something to be dealt with
4 within the context of the Telemarketing Sales Rule.

5 MS. HARRINGTON-MCBRIDE: Jane?

6 MS. LARIMER: Jane Larimer. I think that just
7 speaking as payment mechanisms, I think we're going to
8 continue to see them kind of merge and morph. I mean,
9 we've seen debit -- ATM cards and VISA branding on that
10 so you have a credit function and a debit function kind
11 of. We see check truncation where you're having a check
12 application but it's being collected electronically
13 through the ACH or through other systems.

14 So I think that it's going to continue to be
15 confusing for consumers and more so because with
16 Internet applications, people are out there, and what
17 I've noticed at least the things that keep me awake at
18 night are the people who say, We can do it, we have the
19 technology, like they can do whatever they want and
20 saying, I understand that but there's no law supporting
21 that, there's no legal framework.

22 So you're going to start seeing technology
23 driving the marketplace, driving the legal side and the
24 financial institutions to try to offer more. There's a
25 whole host of products that are going into beta pilots

1 through the ATM networks for online debits through the
2 Internet because right now there's no pinless
3 transactions on a true debit card.

4 NACHA's talking currently about -- we're not
5 even close to pilot but trying to get financial
6 institutions interested in an ACH credit application for
7 the Internet which would make me a lot happier because
8 credit application means the consumer drives the payment
9 as opposed to a debit application where they authorize
10 it and it comes back through to them. This would be a
11 consumer initiated credit payment. That's something
12 we're working on.

13 So I think that you're going to see a lot more
14 people going out and trying to find different solutions,
15 trying to find more consumer initiated payments and also
16 finding technology that's driving it and seeing what's
17 out there, the wallet systems and everything else.
18 We're going to see a lot more of that.

19 MS. HARRINGTON-MCBRIDE: Peter?

20 MR. DRYMALSKI: Two quick points in response to
21 one of the speakers. One is that with regards to
22 payment on a cable TV bill or on a telephone bill of
23 something that you're purchasing, I hope the FTC will
24 keep in mind that this really raises the stakes for
25 consumer dispute because if I had agreed to put

1 something on my telephone bill and then I want to
2 dispute it, I may find my telephone service being
3 disconnected because I don't want to pay an entirely
4 unrelated charge.

5 MS. HARRINGTON: If I can interrupt. We have
6 another rulemaking underway in the pay per call rule
7 area, and the Commission has proposed dealing more
8 broadly with telephone based -- telephone billed
9 purchases there.

10 MR. DRYMALSKI: And the second point I wanted to
11 make about telephones marketing not being treated
12 unfairly compared to others, let's keep in mind that
13 door to door solicitations are quite highly regulated.
14 Most door to door solicitors in this county, in this
15 area anyway have to be licensed. In addition I can put
16 up a no trespassing sign or no soliciting sign on my
17 house and keep them away all together. A lot of people
18 want the same rights with telephone marketing. They
19 want to put a no soliciting sign on their phones.

20 MS. HARRINGTON-MCBRIDE: All right. I hate to
21 see no cards up, especially when it sounds like we might
22 be getting close to fireworks, but does anyone else have
23 anything to add either about this last issue that we've
24 covered about what emerging payment systems may be on
25 the horizon or about any of the other payment systems

1 topics?

2 MS. GRANT: I do.

3 MS. HARRINGTON-MCBRIDE: Susan?

4 MS. GRANT: I just want to make the point that
5 convenience can never be the ultimate goal without
6 consideration of other things like the public good. It
7 is very convenient to change your phone service, but
8 that's become such a problem and such an area of abuse
9 that we now have to have a variety of elaborate rules
10 FOR verification and for consumer redress to resolve
11 problems with slamming.

12 To the extent that payment for telemarketing
13 related transactions becomes more convenient, the
14 flipside of that may very well be the potential for more
15 abuse and the need for better verification and consumer
16 redress rules.

17 MS. HARRINGTON-MCBRIDE: All right. Well, if no
18 one else has anything I think what we will do is --
19 we're going to huddle up.

20 MS. HARRINGTON: Here's what we're going to do.
21 We're going to take a longer break. We're going to take
22 a 30-minute break and reconvene at 3:15. That will give
23 you time to either go upstairs and get coffee or go
24 across the street and mob the Starbucks for coffee, but
25 we will resume at 3:15.

1 There's coffee out front. You don't have to go
2 anywhere because the Magazine Publishers have provided
3 us with coffee, so but anyway we're going to take a
4 30-minute break and reconvene at 3:15.

5 (A brief recess was taken from 2:45 p.m. to 3:15
6 p.m.)

7 MS. HARRINGTON-MCBRIDE: Before we get started
8 on this last question of cross border telemarketing
9 fraud, I would just like to do a reminder for anybody in
10 the audience who is interested in speaking at the open
11 mike time, that if you are interested you should sign
12 up. There's a table, the registration table immediately
13 outside the doors here on the left. Please go out and
14 sign up.

15 We'll have a very short break between this
16 session and when we start the open mike time, and I
17 think we will go ahead and get started and we'll just
18 have people join in as they arrive.

19 I would like to talk a little bit about two
20 issues that are related. At least we've seen that
21 relationship independently and we've seen it in the
22 comments, and the issue is that telemarketing fraud
23 seems to have become a more international enterprise,
24 and we're seeing more and more fraudulent transactions
25 emanating outside the U.S. and targeted toward U.S.

1 citizens, and we would like to talk a little bit about
2 that.

3 And to the extent that anyone has any general
4 comments about it, we would like to get started with
5 that. Perhaps from the perspective obviously of the --
6 I think we're mainly -- most of you represent U.S. based
7 concerns, but to the extent that you have anecdotal
8 evidence of how this international fraud has impacted
9 legitimate industry, that too would be helpful for the
10 record.

11 MR. CERASALE: I'll start again. Do I get extra
12 pay for this?

13 MS. HARRINGTON-MCBRIDE: Look at that. More
14 coffee is what we can offer.

15 MR. CERASALE: Double my payment that you paid
16 me for being here, right? Jerry Cerasale from the
17 Direct Marketing Association. One of the things we see
18 from our perspective on dealing with fraud issues on
19 telemarketing fraud cross border tends to be -- the
20 biggest problem we see tends to be Canada, especially in
21 western Canada.

22 We seem to have some difficulty in cooperation
23 between Canadian authorities and American authorities,
24 especially usually almost every -- from what we find
25 almost every fraud, even if it is a telemarketing

1 situation, always tends to end up with something in the
2 United States mail, so the United States Postal
3 Inspection Service can become involved.

4 And they do not seem -- in our discussions with
5 them at least in the past six months, we haven't talked
6 with them in six months, was that there were some real
7 problems with people heading north of the border
8 generally in western and British Columbia to -- and in
9 calling in to the United States, being it's basically in
10 the same very easy telephone connections and the rates
11 are -- work pretty easily from there, which is probably
12 one of the reasons that it's -- that it works, and
13 English is also a fairly common language in Canada as
14 well as in the United States.

15 We think it hurts. We think that that type of
16 fraud clearly hurts legitimate marketers. It just
17 raises questions against the medium itself in the eyes
18 or in the minds of consumers that a telephone -- people
19 who have been victimize by a cross border fraud that we
20 can't go after tends to -- anyone victimized tends to go
21 against the medium, not necessarily just thinking about
22 going against the perpetrator of the fraud, so that they
23 will tend to look negatively on telemarketing, and then
24 it may even extend down to any type of remote sale.

25 They don't want to deal remotely with anyone

1 applying it therefore to the Internet and also then
2 eventually -- less likely but also eventually to direct
3 mail so that I don't know exactly how you handle -- I'm
4 not anywhere an expert on cross border fraud, but I
5 think that we have to try and work, see if we can get
6 some cooperation between the law enforcement entities of
7 both countries, both here in Canada and of course we
8 also have what is it, Nigeria we tend to see that
9 there's a significant -- or is it Liberia? Nigeria.

10 So that that's the situation that we see, and we
11 think it's -- we can set guidelines, and our guidelines
12 can go across borders, but in treating fraud and in
13 act -- going against fraud you need some police
14 enforcement and that requires government cooperation, so
15 I think that from our perspective looking at cross
16 border fraud we have to look more at the government and
17 the Federal Trade Commission to try and see if you can
18 do something with cooperation, law enforcement
19 cooperation.

20 MS. HARRINGTON-MCBRIDE: Tim?

21 MR. SEARCY: Tim Searcy with the ATA. I concur
22 with Jerry. We have many anecdotes of positive cross
23 border uses of teleservices. Amex and General Electric
24 have around 20,000 representatives in India right now,
25 not just doing back office functions but also taking

1 inbound calls for customer service. Baser Computers
2 does their customer service out of Costa Rica. Outbound
3 calls are made from Canada.

4 Calling centers are opening up in the Dominican
5 Republic, in Hayti, in Grenada, and again it's the
6 responsibility of the good practitioners to weed out the
7 bad practitioners, and the bad practitioners are the
8 hardest to find unless we can get the kind of cross
9 border cooperation.

10 I would just comment though that the growth as
11 long as the employment rate, the unemployment rate
12 remains so low -- the growth of cross border telephone
13 services activity is going to be explosive, and
14 explosive to the tune of thousands of positions, not
15 tens and 20s.

16 The other comment I would make it is I don't
17 know if anyone else in this group would comment, but
18 oftentimes fraud does not occur in large batches. It's
19 micro brewed. You got five, maybe ten folks sitting and
20 making calls and abusing the system, bilking people out
21 of money. We are totally opposed to that. The large
22 practitioners have to make a substantive investment
23 which fraudulent practitioners don't want to make
24 because they don't intend to be in it very long.

25 When we make an investment it's a five-year

1 investment or a ten-year investment. Even when you go
2 open up a thousand seats in India, you're going to go
3 ahead and make 10,000 per seat investment. That's 10
4 million dollars of investment.

5 So two things: One is definitely the
6 cooperation, but the second is the focus on the scale,
7 and the difficulty in the enforcement in our opinion is
8 that the abuse and the fraud that's going to occur can
9 pop up in literally any garage, and trying to manage
10 that through international regulation is going to border
11 on impossible.

12 The last comment would be most of this has to
13 terminate in some sort of payment system. Either you
14 have to get to a credit card or -- so the regulations
15 that are available we feel are sufficient, but again the
16 cooperation is required to make the international value
17 of those regulations more real.

18 MS. HARRINGTON-MCBRIDE: All right. Thank you.
19 Jeff?

20 MR. KRAMER: Yeah, we would suggest that -- one
21 way to blunt what's going on cross border is to do
22 something with the assisting and facilitating standard.
23 We think one way to get to it is get at the people who
24 are providing a lot of this information to the
25 telemarketers who are making these calls who we think

1 the good guys in the industry would be as interested in
2 this as we are.

3 And we would suggest lowering the standard
4 because we think the standard as it is right now is a
5 little too high for law enforcement. I don't know if
6 NAAG and others want to speak to that, but known or
7 should have known we think is a reasonable standard of
8 proof to have assisting and facilitating.

9 MS. HARRINGTON-MCBRIDE: That was certainly
10 something that was addressed in the NAAG comment.
11 Avonne, would you like to speak to that issue of the
12 standard versus to facilitate?

13 MS. SEALS: Yes, that is addressed in the
14 comments. However, I believe that since that time there
15 have been some discussions that that standard may not be
16 applicable and the particular -- assisting and
17 facilitating arena, so outside of the comments, until we
18 resolve what exactly that issue is, I really would not
19 be in a position to recommend it any further than what
20 has occurred.

21 And we also are having some issues in Illinois
22 with respect to the knowledge standard for assisters and
23 facilitators right now, that we're hoping to work out as
24 well, so I don't have any further comment unfortunately
25 because of some of the problems than what is in the

1 comments.

2 MS. HARRINGTON-MCBRIDE: Okay. Anybody else?
3 We have went into world record territory here. If we
4 had Jason recite the entire thing by himself, we would
5 have been done in actually negative time. Well, the
6 comments -- Elissa?

7 MS. MYERS: I just reread to refresh my own
8 memory the provision as it exists now in the rules. It
9 is -- certainly it creates a pretty strong standard but
10 I wonder how is it enforced, who holds responsibility
11 for the enforcement of it? I mean, you do, but in
12 practice what are you saying from your side of the
13 table?

14 MS. HARRINGTON-MCBRIDE: Well, I don't want to
15 take the opportunity here. Obviously we will -- in the
16 course of the rulemaking we will be analyzing fully for
17 the public records of what our data is, but it certainly
18 has come up in the context of comments and in the
19 context of I think the practice experience of people
20 that the standard has sometimes proven a problematic
21 one.

22 And I know having read through the transcript
23 from the original proceeding that it was a hotly debated
24 topic, and the issue was one that was well fleshed out
25 at that time, and it's certainly something because of

1 the depth of comments on this issue, assisting and
2 facilitating generally, but specifically in the context
3 of cross border fraud in that specific application that
4 we will be taking a look at.

5 And we perhaps over budgeted the amount of time
6 that we needed to spend talking about it, but we did
7 want to raise the issue publicly and allow for the
8 dialogue to take place. I don't want to obviously force
9 one where it isn't naturally occurring, and we have open
10 mike speakers as well.

11 So, does anyone else have anything else on cross
12 border issues? It might be a good time to do a quick
13 wrap up on any of the other things. Anybody have any
14 revelation since morning on the issues of pre acquired
15 account information or on Caller ID, any issues we've
16 covered today?

17 We have the luxury of extra time today. We may
18 not be so lucky tomorrow. Linda?

19 MS. GOLDSTEIN: Just one issue that or fact I
20 guess that I was asked to get inserted into the record
21 which is that -- and I alluded to it but to make the
22 point more explicit that the marketers, the sellers do
23 not have the information that would enable them
24 currently to distinguish between credit cards and debit
25 cards, and that is actually something that the industry

1 has indicated would be extremely helpful and obviously
2 we've heard here that there would be various consumer
3 protection purposes served by that as well, so that may
4 be something for the Commission to consider.

5 MS. HARRINGTON-MCBRIDE: All right. Susan?

6 MS. GRANT: The statistics that we provide about
7 the methods of payment are based on direct reporting
8 from consumers, so I think we're better able in many
9 cases to shed light on this in terms of exactly what
10 kind of payment it is.

11 And picking up on the point made at the end of
12 the table, I think the payment system is the key because
13 I think that we probably will see more global trade in
14 general, whether it's in telemarketing or any other form
15 of marketing, and while right now most of the
16 telemarketing transactions that we hear about, at least
17 fraudulent telemarketing, the payment is made by check
18 or money order still.

19 To the extent that people become more
20 comfortable with paying by various electronic forms and
21 to the extent that vendors are able to accept payment in
22 those forms, I think that will facilitate both
23 legitimate global telemarketing as well as fraudulent.

24 One thing that we saw over the past several
25 years, and this was cited in some of the industry

1 comments, is that as the credit card issuers and the
2 merchant banks became more strict about the vendors who
3 could participate in the credit card system, we saw a
4 corresponding reduction in telemarketing fraud and other
5 routes. It was harder for fraudulent telemarketers to
6 have used that particular kind of payment system.

7 Now, however, it appears as though it's easier
8 for vendors to become part of new payment systems or to
9 become members of existing payment systems in new ways.
10 For instance, you can find very easily on the Internet
11 application forms to fill out to be an online vendor and
12 be part of the credit card system, be able to take
13 credit card numbers online, and there doesn't seem to be
14 the same scrutiny, somebody from the merchant bank
15 actually going out and seeing, Do you have a physical
16 facility at the address that you gave us, do you
17 actually have goods or services that you're providing
18 and so on?

19 So to the extent that it's easier for vendors to
20 take advantage of these new payment systems, I think
21 that that will also facilitate fraud and certainly will
22 increase cross border fraud. It's a little cumbersome
23 now because of differences in currency and the time that
24 it takes to send your payment through the more
25 traditional means.

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1 It's not necessarily as easy as it could I think
2 as it will be once these new forms of electronic payment
3 really take hold.

4 MS. HARRINGTON-MCBRIDE: Elissa?

5 MS. MYERS: One quick thought on cross border.
6 I would make a plea that as we worry about what others
7 outside of the United States are doing to us, that the
8 U.S. not lose site of its responsibility to make sure
9 that U.S. companies are dealing fairly in this new
10 global village that we're offering in that we make sure
11 that U.S. marketers are dealing fairly with those
12 outside the United States who are increasingly their
13 customers.

14 And on a general note, again I believe that
15 businesses mean to do well, and to the extent that the
16 rules remain rational and fairly simple and easy to
17 absorb, to that extent they'll be easier to comply, and
18 I think most businesses mean to comply with the rules.

19 Ambiguity in the rules, in the areas of the TSR
20 and in other rules and regulations that govern business,
21 ambiguity encourages retailers and businesses to push
22 the envelope of fair play to keep pace with what they
23 fear their competitors may be doing, so the more
24 precision that can be brought to the understanding of
25 what is fair, the better.

1 And to that end one of the things that I've come
2 to understand is that the enforcement of the TSR tends
3 to take place to a great extent or is left to a great
4 extent to the states to interpret, and for companies
5 marketing on a national basis to try to keep up with
6 interpretations on a state by state basis becomes a
7 cumbersome process which gets in the way of their doing
8 the right thing.

9 So I again would like to sound a voice for
10 clarity, simplicity and uniformity in the rules.

11 MS. HARRINGTON-MCBRIDE: All right. Jerry?

12 MR. CERASALE: Thank you. Jerry Cerasale
13 again. I would like to just follow up a little bit on
14 what Linda said on the debit card, credit card issue.
15 We clearly agree from the DMA that we would love to be
16 able to tell the difference, and one of the things that
17 our members find is when someone gives a number and you
18 ask, Is it a credit card or debit card, in a large
19 number of cases the customer has no idea.

20 We think tonight as we think about education
21 tomorrow, we should think about that as one part of
22 the -- of an education process is that the consumers are
23 not necessarily saying whether it's a credit card or a
24 database especially if they see a MasterCard or VISA
25 logo on a debit card so that should be part of what we

1 think about in education.

2 MS. HARRINGTON-MCBRIDE: All right.

3 MR. DRYMALSKI: I understand that, and with
4 direct sales by computer, by the Internet, the FTC has
5 issued an advisory of some kind saying some aspects of
6 their telemarketing law apply to Internet sales or not
7 or am I thinking of the Mail Order Rule?

8 MS. HARRINGTON: Well, the Mail Order Rule
9 definitely applies. The mail and telephone sales, mail
10 and telephone order sales rule absolutely applies to
11 Internet sales.

12 MR. DRYMALSKI: Is the FTC considering applying
13 any aspects of their telemarketing rules to Internet
14 sales, direct marketing on the Internet?

15 MS. HARRINGTON: I think that the Commission's
16 view is -- was really established by the original rule,
17 and that is that the Congress has defined telemarketing,
18 and we are regulating that type of activity that is
19 included in the statutory definition of telemarketing,
20 so it is -- I think that the requirements of the Mail
21 and Phone Order Sales Rule apply.

22 The Commission has not issued any advisory
23 saying that the Telemarketing Sales Rule is applicable
24 to Internet marketing and sales. Keith?

25 MR. ANDERSON: I wanted to clarify one thing

1 that I heard earlier in terms of the frequency with
2 which payment mechanisms are used. I thought I heard
3 someone from the industry saying the most common payment
4 mechanisms were still cash and check, and I'm wondering
5 is that true for telemarketing or is that for
6 transactions in general?

7 MS. HARRINGTON: I think that was Susan Grant
8 saying the most commonly used payment mechanism in
9 fraudulent transactions seemed to be check and cash
10 payment, but that's what that the consumer complaints
11 that we receive from people who have been defrauded
12 suggest. Is that what you were saying, Susan?

13 MS. GRANT: I did say that, but I think somebody
14 else made a remark before that you may be referring to,
15 and I don't remember who or what it was.

16 MR. ANDERSON: But that's not correct?

17 MR. CERASALE: That's not. The vast, vast
18 majority, I mean, above 90 percent of remote sales, that
19 would be through direct mail, through telephone
20 marketing, through the Internet are by credit card.
21 Now, debit cards are growing but it's by credit card.

22 Check is -- even in the mail order catalog area
23 is diminishing, becoming very, very small, and it tends
24 to be via credit card.

25 MR. ANDERSON: That's what I was sure it was.

1 MR. DUNCAN: If I can elaborate just slightly on
2 that, an undetermined percentage of those credit card
3 transactions are in fact debit card transactions.

4 MR. ANDERSON: I understand, but cash and check
5 just --

6 MR. CERASALE: No.

7 MS. MYERS: In the U.S.

8 MS. HARRINGTON-MCBRIDE: All right. Well, thank
9 you all for your participation -- Karen has something.

10 MS. LEONARD: This is actually going way back,
11 and it might be a bit of a simplistic question, but I've
12 been kind of mulling over this idea of a preexisting
13 business relationship with the consumer and how that's
14 understood by the consumer, how it's understood by
15 industry, how these affinity relationships kind of
16 piggyback on that or are integrated into the notion of
17 preexisting business relationship.

18 And I wondered if anybody wanted to sort of
19 comment in on how that's understood either by industry
20 or by consumer.

21 MS. HARRINGTON: Tim?

22 MR. SEARCY: Sure. The understanding is
23 typically again cemented at the moment of the rapport
24 building. As you contact someone and you're going to
25 use a credit vehicle at the termination of that call,

1 the bridge that you make is in the introduction, and you
2 say, I'm calling on behalf of your financial institution
3 with an exciting offer for whatever.

4 So that that transition starts there at the
5 beginning, and that's how it's understood. That's how
6 we believe and can demonstrate through customer surveys
7 that it's understood by the consumer is that one
8 institution is either selling on behalf of itself or
9 as -- created an affinity relationship with another
10 institution, and that's where the transition occurs.

11 And then it finally culminates in the
12 confirmation, the taped conversation often, although we
13 have referenced third-party verification, and the tape
14 confirmation with a restatement that your credit card
15 from the original issuing institution is going to be
16 somebody says hit, is going to go ahead and we're going
17 to tag it, and that's how that relationship occurs.

18 I don't know if that answers your question.

19 MS. LEONARD: I guess what you're saying is --
20 am I right to say that when you build these sort of
21 affinity relationships between two sellers, for example,
22 or two product or service providers, that the second
23 service provider, the one who is offering an additional
24 product to an original seller's customer list is doing
25 so, quote, on behalf of that original seller in that

1 that original seller has agreed that this is a product
2 that they would like to be marketed to their customer
3 base, and so there's -- is it clear to the consumer that
4 what's being offered to them is being offered by a
5 third-party seller or a different entity?

6 How is that transaction explained or understood
7 is I guess what I'm trying to get to?

8 MS. HARRINGTON: If I could add to that question
9 also, do people on the selling side think of that as a
10 prior business relationship with respect to the new
11 seller and the consumer? What is a prior business
12 relationship in this affinity marketing up selling
13 world? Linda?

14 MS. GOLDSTEIN: I just -- I think there may
15 be -- we may be mixing some apples and oranges here, and
16 that may be leading to some of the confusion because I
17 think there's some confusion going on between an
18 affinity program and an up sell that may involve two
19 unrelated third parties.

20 In a classic affinity program, the bank is
21 marketing to its customers, and through its affinity
22 relationship, it has acquired another product or service
23 that it believes would be of benefit to its customers,
24 so it would be Chase Manhattan Bank saying, As a Chase
25 customer we can get a great rate for you at Hertz.

1 That becomes a benefit of being a cardholder as
2 opposed to a classic up sell where you call up because
3 you want to buy widget A and after you buy widget A, the
4 sales representative says, By the way, we also have
5 another offer, and you can -- we would like to present
6 an offer to you for widget B, which is -- I mean, that's
7 an up sell, but that's not really an affinity marketing
8 program.

9 So getting back to your question, in the first
10 situation I think there's no question that there's an
11 existing business relationship because it's --

12 MS. HARRINGTON: Relationship between whom?

13 MS. GOLDSTEIN: Between the bank or --

14 MS. MYERS: Or the first.

15 MS. GOLDSTEIN: -- or the first marketer and its
16 credit card customer.

17 MS. HARRINGTON: What about Hertz, is there a
18 preexisting business relationship between Hertz and the
19 Chase Manhattan customer in your mind?

20 MS. GOLDSTEIN: It might depend on the nature of
21 the arrangement between Hertz and the bank, whether they
22 formed a joint venture to do this or whether it's just a
23 comarketing arrangement.

24 MS. HARRINGTON: And I really apologize to Chase
25 Manhattan and Hertz, but if Chase gives the cardholder's

1 number and other information to Hertz for Hertz to call
2 or for Hertz to use, let's say that the deal is save
3 time the next time you need to rent a car by using your
4 Chase card, all you have to do is present -- tell them
5 that you're a Chase cardholder, and the rest is taken
6 care of, go right to your car.

7 So that the convenience factor is you don't have
8 to stand in line. You don't have to give a credit card
9 number. You don't have to do this. You don't have to
10 do that. We already know all this at Chase. We're
11 going to give it all to Hertz, and you rent from Hertz,
12 you don't spend any time.

13 Is there a prior business relationship between
14 the consumer and Hertz in that instance?

15 MS. GOLDSTEIN: I don't think so.

16 MR. ANDERSON: Follow up, Linda. You
17 characterized it as Chase makes the call, but I'm
18 wondering whether that's what really goes on or whether
19 sort of more like Eileen's situation, Chase gives your
20 name to Hertz. I mean, the one that I can think of is
21 the mortgage insurance solicitations that we all get
22 from time to time.

23 And it seems pretty clear that they're not --
24 they've got your mortgage company's name on them but
25 they're not really coming from your mortgage company.

1 They're coming from the insurance seller. Does that
2 make it a preexisting relationship.

3 MS. GOLDSTEIN: Between who?

4 MR. ANDERSON: Between the marketer who I take
5 to be the insurance seller and you?

6 MS. GOLDSTEIN: Again, I mean I think it
7 would -- I'm not trying to be evasive, but I think it
8 would depend on the relationship that the insurance
9 company and the mortgage seller had in terms of --

10 MR. ANDERSON: Did they form a legal
11 relationship?

12 MS. GOLDSTEIN: Correct.

13 MS. HARRINGTON MCBRIDE: Bob?

14 MR. BULMASH: Is it possible then that any
15 entity that makes a relationship with any entity that
16 you presently do business with may be indeed one that
17 you had a prior business relationship with? In other
18 words, let's say Chase forms a relationship with Happy
19 Harry's vacation services and Hertz and the local
20 Chinese restraints and 7,800 other businesses.

21 If it's structured properly, are those all
22 affiliated entities and is that what it is seen by the
23 telemarketing industry? How far does this go?

24 MS. GOLDSTEIN: I don't think we're suggesting
25 that companies can create legal fictions or corporate

1 structural shams in order to act as a shield for
2 transferring information or claiming a prior existing
3 relationship exemption.

4 There are situations where two companies
5 legitimately join to form a third entity and that that
6 third entity has a proprietary program that is unique to
7 those two entities, but if you're talking more in --
8 Eileen's scenario was really more a list arrangement
9 frankly where names are being provided, okay, to Hertz,
10 and Hertz might say, Because you're a valued Chase
11 customer, we're offering you X but the offer is really
12 coming from Hertz.

13 I don't think you would say there that there's
14 an existing relationship between Hertz and the customer,
15 no.

16 MS. HARRINGTON-MCBRIDE: All right. John?

17 MR. HESSE: John Hesse with the Direct Selling
18 Association. Our definition of prior business
19 relationship is probably more narrow than most of the
20 people at the table. We view it where there's an actual
21 relationship between two people, a member of one of our
22 company sales force and the consumer, and whether that
23 is a relationship that's been derived from a personal
24 relationship with a family or acquaintance or whether
25 it's a relationship that's derived from an individual

1 transaction, there's actually been contact between two
2 individuals.

3 MS. HARRINGTON-MCBRIDE: Mallory?

4 MR. DUNCAN: It might be helpful to think about
5 it, and maybe I'm getting more confusion. In terms of
6 if the customer were to make a do not call request, who
7 would be the company that would be properly responding
8 to that request? So in the example in Hertz is calling
9 on behalf of Chase and they say, Please put me on your
10 do not call list, that would go -- relate back to Chase
11 they would be off that list, and frankly they would be
12 off of any other list that might come from Chase on
13 behalf of other people so it would solve the problem
14 that I think Bob was trying to resolve as well.

15 MS. HARRINGTON-MCBRIDE: Tim, I think you're
16 going to have the last word because though at one point
17 we were way, way ahead, we're now running right up on
18 schedule so go ahead.

19 MR. SEARCY: A life long goal. The comment I
20 would make on the prior existing relationship is the
21 implied risk to both partners in an affinity
22 relationship. Mallory touched on it and it's extremely
23 important which is those affinity relationships over
24 time are becoming so precious that the screening
25 mechanism by which each partner determines whether they

1 want to become a partner is based on the risk assessment
2 of what damage could the affinity partner do to my
3 primary relationship.

4 As we start to look at customer lifetime values,
5 we start to as organizations look to their customers for
6 the nature and value of their relationship. They're
7 becoming much more cautious about who they start to
8 involve themselves with and who they get associated
9 with.

10 And in that implied risk is I find a certain
11 comfort in that Chase is going to be very careful that
12 they are going to work with Hertz and that those two
13 brands together must be accretive in nature. They must
14 not be diminishing in nature.

15 MS. HARRINGTON-MCBRIDE: Thank you. I think
16 we're going to break for probably about two or three
17 minutes, as long as it takes for us to get the
18 microphone set up. We will come back. We hope you will
19 all stay with us for the open microphone session where
20 members of the public can --

21 MS. HARRINGTON: Everyone at the table better
22 stay with us because these people who are going to be
23 speaking during the open mike session have been
24 listening to you speak all day long, so you won't get
25 called on tomorrow if you bug out on this.

1 (A brief recess was taken.)

2 MS. HARRINGTON-MCBRIDE: I think we're ready
3 almost ready. For the public participation part of our
4 afternoon we're going to have two speakers, the first
5 Diana Mey and the second April Jordan, and I would like
6 to invite Ms. Mey to come forward, and if you could,
7 when you introduce yourself spell your name for the
8 record, so that our reporter can get that down.

9 MS. MAY: Good afternoon. My name is Diana D I
10 A N A, last name is M E Y. I'm a housewife and a mother
11 from Wheeling, West Virginia, and I recognize some of
12 you. I was here in January, and I appreciate you giving
13 me a couple minutes to share a few of my comments.

14 One of the things that I wanted to share with
15 you, I heard the discussion this morning about
16 predictive dialers, and Mr. Eppert I believe said that
17 to his knowledge the only -- he was talking about a
18 laboratory setting and the ability to -- when a caller
19 calls out to have a different name transmitted on
20 somebody Caller ID's box than where the actual number
21 was originating.

22 And I wanted to share with you about three
23 months ago I volunteered to help our State Attorney
24 General back in West Virginia. Now, logistically the
25 State Attorney General's office is in Charleston which

1 is the bottom part of the state. I live in Wheeling
2 which is up in the eastern panhandle which is opposite
3 ends of the state.

4 The Attorney General came up, and there were 20,
5 30 people that volunteered to man a bank of phones that
6 was logistically located in a motel down, a Best Western
7 I believe it was, and we were calling elderly consumers
8 to make them aware of what their rights were regard to
9 telemarketing fraud.

10 And my question to one of the representatives
11 from the Attorney General's office, I said how is this
12 going to appear on -- these people we're calling, how is
13 it going to look on their Caller ID because I thought it
14 was going to come across as a Best Western, and I was
15 told they had taken care of the fact that it would come
16 across as the West Virginia Attorney General's office.

17 So I just wanted you to know that apparently --
18 Bell Atlantic is who operates in our area, and that was
19 capable of being done, so I wanted to share that with
20 you.

21 Obviously I think that -- one of the things I
22 wanted to tell you is that I think a majority of
23 consumers are really fed up with telemarketing. I think
24 I read a lot of the comments that came in to the FTC,
25 and I think that it's -- consumers have expressed their

1 concern.

2 I also saw a survey that was conducted on an
3 Internet web site back in April, and on the web site
4 they had 1.73 million respondents respond to the survey,
5 and of those, 98 percent of the respondents said that
6 they were angry about telemarketing calls, and 84
7 percent of the 1.73 million respondents said they were
8 furious with telemarketing calls, so I thought that was
9 rather significant.

10 I also think that the rash of states that are
11 coming up with state wide do not call databases, states
12 are responding to their consumers, their residents, that
13 are fed up, and this is why you're seeing these state
14 wide lists happening, and in fact I'm working with
15 Senator Bowman in my home state to get this kind of
16 legislation passed in West Virginia.

17 I have to say that telemarketers repeatedly say
18 they don't want to call people that don't want to be
19 called, and yet they are gloating over the fact that
20 their lobbyists are marching in and inserting at the
21 last minute various exemptions to effectively invalidate
22 these state wide lists.

23 My wish list would be for a national list, but I
24 think until that happens, and I don't see that anywhere
25 in the near future, I think that the states are making

1 these state wide lists, and I think this is going to
2 help a lot of consumers, a lot of the elderly who simply
3 don't have the savvy to deal with telemarketing calls
4 but who would have the ability to put their names on
5 these state lists and not even deal with the calls
6 coming in at all, so I'm in favor of these state lists.

7 I would like to see predictive dialers banned.
8 You talked about those this morning. My brother-in-law
9 thought he was being stalked, and he filed a police
10 report because his phone kept ringing. He thought
11 somebody was staking out his home to come and rob him
12 later.

13 I had surgery back in April, and I was at home
14 recovering from a surgery and I had a telemarketer who's
15 name incidently came up on Caller ID that repeatedly
16 called me in a week's time, dragging me out of bed and
17 kept hanging up.

18 I talked to an elderly women in Florida who
19 could hardly maneuver across the floor to get her phone,
20 and she would get to the phone, and they would hang-up
21 so I think this is absolutely, absolutely a problem.

22 The other thing I would like to ask you to do is
23 if you could, if it's possible to insert a provision in
24 the rule that would allow every consumer to tape-record
25 telemarketing calls. I have a friend in California

1 who's been abused by a telemarketer, and she can't tape
2 her calls. They can tape her. They announce during the
3 call -- some of the calls that this call may be recorded
4 or monitored for quality assurance purposes, and yet she
5 can't tape her calls.

6 I think that consumers ought to be allowed to
7 tape their telemarketing calls because quite often this
8 is the only way you can prove that you've received these
9 calls.

10 I think that the other thing I would like to
11 see, and I know you're going to discuss it a bit
12 tomorrow, is more aggressive education to consumers
13 because I talk to so many people that have heard about
14 me in various medias, and I do, I'm fortunate, I give
15 consumer talks back home and a lot of elderly people and
16 say, We have never heard about this law. I would like
17 to see more aggressive media campaign to consumers in
18 general.

19 Also to small businesses, I had a situation with
20 a small mortgage broker that called me out of Pittsburgh
21 over the past couple months, and he really had no clue
22 that he was accountable to the federal law as far as
23 telemarketing, and I'm proud to say that I'm going to be
24 working with him, and he's going to try to get a
25 publication put in a magazine that reaches the tri-state

1 brokers that, yes, we do have to comply with these
2 telemarketing laws.

3 I think the big companies, they already know
4 about the law, and quite frankly I think that they're
5 abusing it anyhow. In the last six months I received
6 calls from Citibank, Qwest, Sprint, MSN, Microsoft, and
7 in every one of those calls at one point or another
8 there was a violation of telemarketing laws.

9 MSN started out by saying, This is not a sales
10 call, did you get the disk that we sent out, the
11 Microsoft Internet. And I didn't ask -- and he said,
12 Well, we can get that sent out to you and you can have
13 this service and that service. To me that's a sales
14 call, and I think it was deceptive to say, This is not a
15 sales call, so again I think some of the big companies
16 are aware of it, and they are some of the biggest
17 offenders. Credit card companies in my experience seem
18 to be some of the biggest offenders.

19 So again I think that a national list is the way
20 to go. I also would like to challenge the ATA or the
21 DMA to dispute the figures. I often hear in response to
22 my request to get a state list that there must be people
23 that are interested in telemarketing because this many
24 billion dollars was generated in sales revenue last
25 year.

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1 And I would challenge your organizations to put
2 out the figures that differentiate between inbound and
3 outbound telemarketing. I believe that about 95 percent
4 of those sales dollars that you boast about consumer
5 spending are generated from inbound calls. For example,
6 when I call an 800 number for customer support or when I
7 call Barnes & Noble and order my book or when I call
8 J.C. Penney's and order out of the catalog, that's on my
9 time, and I don't mind spending my dollars like that.

10 And I challenge you to dispute the fact that
11 about 95 percent of those billion dollar figures you
12 spew out are in fact inbound telemarketing calls.

13 Thank you.

14 MS. HARRINGTON-MCBRIDE: Thank you, Ms. Mey. We
15 appreciate the time you took in January and the
16 thoughtful comments you submitted in your time here
17 today.

18 We are also going to hear from Mrs. April
19 Jordan, and I hope that I will not foul up your
20 presentation. Any time I am given the opportunity to
21 interface with technology, I mostly do goof it up, so
22 she's entrusted me with her tape recorder, and when she
23 gives me the signal we'll try to get it to play audibly
24 so everyone can hear.

25 MS. JORDAN: Thank you. My name is A P R I L, J

1 O R D A N. I live in Mesquite, a suburb of Dallas,
2 Texas, and I entirely enjoy your weather this weekend so
3 thanks for the cool break.

4 I know tomorrow afternoon the panel will be
5 discussing the use of inmates, and I'm sure that that's
6 something for the most part none of you have interacted
7 with. I know I didn't know about it until February
8 unfortunately, and I wanted you to hear the tape between
9 my daughter and the inmate and it's telling.

10 I mean, it's an eight minute tape, but it's been
11 edited so it's down to five, and there's a transcript.
12 Hopefully it's been passed around so you've got it but
13 it's not the clearest tape. But it is really
14 effective. And I know in the opening comments, Elissa
15 Myers, you said something to the effect that you wanted
16 to regulate bad behavior. This is bad behavior. It's
17 extreme bad behavior, definitely abusive, but I want you
18 to understand how bad it is. Instead of thinking, Okay,
19 this is her daughter, I want you to think this is your
20 daughter, your niece, your neighborhood, your son's
21 girlfriend, whoever you can think that is 14, 15, 16
22 female.

23 When this was over, I talked to my daughter and
24 had explained to her that she had been talking to an
25 inmate, and her response was, But I thought prisoners

1 only get one phone call. Kids don't get it. Inmates
2 know what they're doing, and it's pretty scary.

3 The monitoring system is set up. The only thing
4 he has access to is my name, the person he's supposed to
5 call, and the person that referred my name to him, and
6 that would be my sister's name. My sister lives in
7 California. I live in Texas.

8 This prison is in Utah, so there's really no
9 connection, and there's no safeguards either. The
10 monitoring system -- once he's supposed to identify
11 himself and describe the product, if the consumer's
12 interested, he's supposed to push a little button, and
13 it goes back to the Salt Lake City base center where
14 there's not inmates manning the phones.

15 The inmate that you'll hear on the phone, his
16 name is Derick Cramer. He will describe himself as Mike
17 Hardy. Mike Hardy is another inmate that does not work
18 for SandStar, the telemarketing company, but paid Derick
19 Cramer to find female information for him through the
20 telemarketing job that he had.

21 It's not the only case. There was another case
22 just a few weeks before mine. That inmate has been
23 released. That family is in hiding, and the CEO of
24 SandStar told me that it had happened approximately a
25 year before that with another minor female, and it would

1 happen again, and that was it.

2 So go ahead and play that, please.

3 TELEPHONE CONTACT WITH PRISON

4 APRIL JORDAN: -- familiar with my name and the specifics
5 thereof -- I am greatly concerned by the prison monitoring
6 system of the telemarketing industry, especially six weeks --
7 I'm sorry, eight weeks to the day being called again.

8 UNIDENTIFIED MALE: Okay.

9 APRIL JORDAN: And there's a -- there was a prison
10 incident report done, there was -- (inaudible) supposed to be
11 working with the Attorney General's Office, which I find out now
12 is a hoax. And that's on hold because of another incident. And
13 then you call me again? I mean, how much trouble is it that
14 your company wants to have out of this?

15 UNIDENTIFIED MALE: I do not know. One thing I would
16 definitely encourage, if you'd like, I understand that Mike Beck
17 perhaps may have spoken to you in the past, just from what you
18 said earlier; is that true?

19 APRIL JORDAN: Correct. I had a 45 minute conversation
20 with him on March 9th.

21 UNIDENTIFIED MALE: Are you -- are you familiar with a
22 number you can call him directly?

23 APRIL JORDAN: No, he did not give me his number
24 directly.

25 UNIDENTIFIED MALE: I'll give you that number and you can
26 call him right now.

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1 APRIL JORDAN: Okay.
2 UNIDENTIFIED MALE: It's 801 --
3 APRIL JORDAN: 801.
4 UNIDENTIFIED MALE: -- 463 --
5 APRIL JORDAN: 463.
6 UNIDENTIFIED MALE: -- 3080.
7 APRIL JORDAN: Now, is it customary -- if someone files a
8 complaint because you have violated -- violated. My God. Your
9 operator called, talked to my daughter, who is a minor -- that
10 was the first question he asked her, how old are you. She
11 stated her age. She is a minor.
12 Throughout the rest of the eight minute conversation got
13 her name, her date of birth, her physical description and a home
14 address and gave it to other inmates. And your company dares to
15 call my home again. Do you have a daughter?
16 UNIDENTIFIED MALE: I do.
17 APRIL JORDAN: What would you do in this situation?
18 UNIDENTIFIED MALE: I would be very honest in saying that
19 I would speak with Mike Beck, he's the one that would control
20 (inaudible) -- in all honesty, (inaudible).
21 APRIL JORDAN: And if you had done that already?
22 UNIDENTIFIED MALE: Then I'd be frustrated.
23 APRIL JORDAN: At the very least.
24 UNIDENTIFIED MALE: Very least.
25 APRIL JORDAN: You know, I understand you guys work at
26 the prison and your phone numbers are blocked, but they're not

1 calling your home. How come we don't get that same option?

2 UNIDENTIFIED MALE: I don't have an answer for you. I
3 could say that I strongly suggest you (inaudible) with Mike,
4 because I don't know either what to do and -- and I don't know
5 the specifics of your conversations with him previously. So, I
6 don't want to say my hands are tied, but I'm just not familiar
7 enough with the circumstances to say anything or do anything.

8 APRIL JORDAN: Who there at the prison is in control
9 completely over the telemarketing industry that hires out the
10 inmates?

11 UNIDENTIFIED MALE: I'm not sure. Are you questioning me
12 from the prison standpoint?

13 APRIL JORDAN: Yes.

14 UNIDENTIFIED MALE: It's a State mandated program, it's
15 called the PIE (phonetic) program. Federally they -- State
16 prisons across the United States are supposed to bring in
17 private sector companies, actually employ prisoners, and try and
18 rehabilitate them, give them skills and a trade that they can --
19 once they're released, actually get into the workforce after
20 they are paroled (inaudible).

21 So it's a Federally -- a Federal program that has to
22 bring in private sector employees or employers, so that they can
23 employ the inmates with different skills and trades.

24 So that's -- that's -- but that's not to answer your
25 question. Like, who oversees (inaudible)? I don't know who
26 that would be.

1 APRIL JORDAN: Who do you report to?

2 UNIDENTIFIED MALE: I report to Mike Beck.

3 APRIL JORDAN: You report to Mike Beck. Interesting.

4 Okay. I will be calling him. Thank you.

5 UNIDENTIFIED MALE: You're welcome. Sorry.

6 APRIL JORDAN: So am I.

7 (The telephone contact was concluded.)

8 ATTEMPTED TELEPHONE CONTACT WITH MIKE BECK

9 ANSWERING MACHINE: You've reached the office of Mike
10 Beck. I'm not available at the moment. Would you please leave
11 a message?

12 APRIL JORDAN: Mike Beck, this is April Jordan. We have
13 spoke in the past, I believe around March 9th. I have sent you
14 a certified letter, to which you have not responded.

15 I just received a phone call from the prison offering to
16 sell/purchase your product. How dare you leave my phone number
17 in the system to be called eight weeks after the initial phone
18 call. How dare you think that I would purchase anything from
19 your company or refer your company to anyone else.

20 In fact, I am doing quite the opposite. Those I gave
21 your initial referral to, as far as your product, I have told
22 them to call and be taken off the list and in the future never
23 give out any information.

24 And you call me again? I want an explanation to this and
25 I want a response to the letter that I mailed on the 17th of
26 March. Please call me. I am at home today. I expect a call

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1 within the next two hours. My phone number is XXX-XXX-XXXX.
2 Thank you.
3 (The telephone contact was concluded.)
4 ATTEMPTED TELEPHONE CONTACT WITH SERGEANT PEPPER
5 OPERATOR: (Inaudible)
6 APRIL JORDAN: I'm sorry? Cynthia?
7 OPERATOR: (Inaudible) May I help you?
8 APRIL JORDAN: Hi. Yes. Is it possible I can speak with
9 Sergeant Kevin Pepper?
10 OPERATOR: Um -- well, if you call another number.
11 APRIL JORDAN: Okay.
12 OPERATOR: He's not at this number, he's at
13 576 --
14 APRIL JORDAN: Huh?
15 OPERATOR: He's at 576-7612.
16 APRIL JORDAN: That's 801-576-7612?
17 OPERATOR: Yes.
18 APRIL JORDAN: Is there any way to transfer me there?
19 OPERATOR: Not really. You have to call him direct.
20 APRIL JORDAN: Okay. Thank you. 'Bye-bye.
21 (The telephone contact was concluded.)
22 TELEPHONE CONTACT WITH SERGEANT PEPPER
23 SERGEANT PEPPER: Investigations.
24 APRIL JORDAN: Yes. I need to speak with Sergeant Kevin
25 Pepper, please.
26 SERGEANT PEPPER: Yes. This is Pepper.

1 APRIL JORDAN: Hi. This is April Jordan.
2 SERGEANT PEPPER: Hi. Am I on a speaker phone?
3 APRIL JORDAN: Yes.
4 SERGEANT PEPPER: Okay. I can barely hear you, ma'am.
5 APRIL JORDAN: Is that better?
6 SERGEANT PEPPER: That's a whole lot better.
7 APRIL JORDAN: Okay. No problem.
8 SERGEANT PEPPER: Can you give me your phone number,
9 please?
10 APRIL JORDAN: Sure. XXX-XXX-XXXX.
11 SERGEANT PEPPER: Okay. Just wanted to verify it was the
12 same one that --
13 APRIL JORDAN: Yes. I spoke with Derek Williams
14 (phonetic).
15 SERGEANT PEPPER: -- (inaudible).
16 APRIL JORDAN: Sure. I spoke with Derek -- Derek
17 Williams maybe an hour ago, I guess, and he said he'd talk to
18 you and you'd be calling.
19 SERGEANT PEPPER: Call -- yeah.
20 APRIL JORDAN: And I didn't want to miss your call, so I
21 waited -- you had about an hour.
22 SERGEANT PEPPER: Okay. You waited and said, I'm going
23 to call anyway.
24 APRIL JORDAN: Yeah.
25 SERGEANT PEPPER: Okay. What can I do for you?
26 APRIL JORDAN: Well, I understand that you just finished

1 up or are in the process of another investigation concerning a
2 minor/inmate, as far as an inmate contacting a female minor
3 within the State of Utah.

4 SERGEANT PEPPER: Uh-huh.

5 APRIL JORDAN: For purposes other than telemarketing.

6 SERGEANT PEPPER: Uh-huh.

7 APRIL JORDAN: And has that investigation finished up?

8 SERGEANT PEPPER: Yes.

9 APRIL JORDAN: Okay. Am I -- can I ask what the finding
10 on that was or not?

11 SERGEANT PEPPER: Basically, so you're aware, it's a
12 little bit different than the one that the AG told me about with
13 you. This one we're unable to determine or find out exactly
14 where he got the information, because he did have inappropriate
15 communications with them by way of letter.

16 APRIL JORDAN: Okay.

17 SERGEANT PEPPER: Okay? Where yours was done by way of
18 phone. And if I -- if I understood right the call was made to
19 this phone number?

20 APRIL JORDAN: Correct.

21 SERGEANT PEPPER: Okay. See, now, in your regards to
22 your case we should be able to get a recording of the
23 conversation.

24 APRIL JORDAN: Correct.

25 SERGEANT PEPPER: On the last investigation I had to
26 depend entirely on what the inmate was saying, which he did

1 basically 'fess up to doing inappropriate contact with the
2 female, which is -- he was claiming
3 or --

4 APRIL JORDAN: So you do understand there was a letter
5 written by a different inmate to my daughter?

6 SERGEANT PEPPER: Okay. Did your daughter give an
7 address out or anything?

8 APRIL JORDAN: On the phone, he asked for it.

9 SERGEANT PEPPER: Pardon me?

10 APRIL JORDAN: The inmate on the phone asked for her
11 address.

12 SERGEANT PEPPER: Okay. Hang on for one second, please.
13 (Brief pause.)

14 SERGEANT PEPPER: Okay. Ms. Jordan?

15 APRIL JORDAN: Mm-hmm.

16 SERGEANT PEPPER: When was the initial call made?

17 APRIL JORDAN: The initial call was made on February
18 15th.

19 SERGEANT PEPPER: Of this year?

20 APRIL JORDAN: Of this year.

21 SERGEANT PEPPER: The -- the --

22 APRIL JORDAN: To my home.

23 SERGEANT PEPPER: To this number of XXX-XXX-XXXX?

24 APRIL JORDAN: Correct.

25 SERGEANT PEPPER: And talked with your daughter?

26 APRIL JORDAN: Correct.

1 SERGEANT PEPPER: How old is she?
2 APRIL JORDAN: She's XX.
3 SERGEANT PEPPER: Her name?
4 APRIL JORDAN: Her name is XXXX.
5 SERGEANT PEPPER: Okay. And did -- and she gave the
6 address out?
7 APRIL JORDAN: Yes, she did. However, it was after the
8 inmate stated -- and gave my daughter my sister's name, which
9 was how the reference came about to begin with, and said, well,
10 you know, let's pull up the information on the computer and see
11 what I've got -- and, let's see, I've got your number and
12 information from -- gave my sister's name.
13 So the implication there being he already had it and
14 wanted to verify it from her.
15 SERGEANT PEPPER: So that's what she was doing.
16 APRIL JORDAN: Yeah. And he's like, well --
17 SERGEANT PEPPER: Okay.
18 APRIL JORDAN: But his questions were very direct.
19 SERGEANT PEPPER: Can you tell me some of them?
20 APRIL JORDAN: What color is your hair, what color is
21 your eyes.
22 SERGEANT PEPPER: Okay. Did he know that she was XX?
23 APRIL JORDAN: Yes. That was the first question he
24 asked, he asked it twice.
25 SERGEANT PEPPER: And do you have the inmate's name?
26 APRIL JORDAN: Yes. However, did you not have a copy of

1 the Division of Institute Operations, Utah State Prison,
2 Interoffice Memo, dated February 28, 2000, Subject Sandstar
3 Incident, that details the entire investigation?

4 SERGEANT PEPPER: Who was -- who was it -- who is that
5 addressed to?

6 APRIL JORDAN: David Worthington (phonetic), Deputy
7 Warden, Security Support.

8 SERGEANT PEPPER: Okay. That's -- I'm in Law Enforcement
9 Bureau, we're the ones that does those investigations and it
10 hasn't come to my attention. Do you have a copy of that handy?

11 APRIL JORDAN: Yes, I do.

12 SERGEANT PEPPER: Could you fax that to me?

13 APRIL JORDAN: I do not have a fax machine near.

14 SERGEANT PEPPER: How about e-mail?

15 APRIL JORDAN: That I can do.

16 SERGEANT PEPPER: Okay. Take this e-mail down.

17 APRIL JORDAN: Okay.

18 SERGEANT PEPPER: CRUS -- C R as in cat, romeo.

19 APRIL JORDAN: Uh-huh.

20 SERGEANT PEPPER: UST.kpepper -- initial K Pepper --

21 APRIL JORDAN: Right.

22 SERGEANT PEPPER: -- @ symbol --

23 APRIL JORDAN: Uh-huh.

24 SERGEANT PEPPER: -- email.state.utah.us.

25 APRIL JORDAN: Okay.

26 SERGEANT PEPPER: Any and all documentations that you

1 have, send that to me if you can, by way of the computer. And
2 also, there was -- you said there was a second call made?

3 APRIL JORDAN: Today. Noon. I got a call and I -- it
4 was one of those calls where you're like, okay, I know
5 something's just not quite right. And I picked up the phone and
6 he says my name is David with Sandstar. And I'm going, uh, why
7 are you calling? Then he goes, well, because I got your name
8 from -- and he gave my sister's name.

9 And it was just -- I saw red. I have no other way to say
10 it, but I saw red. I was angry, I was furious. I told Mr. Beck
11 that I did not want his company contacting me ever again at my
12 home --

13 SERGEANT PEPPER: Now, who is Mr. Beck?

14 APRIL JORDAN: He is the CEO of Sandstar Family
15 Entertainment.

16 SERGEANT PEPPER: Okay. That's an office I (inaudible)
17 private business.

18 APRIL JORDAN: It's --

19 SERGEANT PEPPER: Can you do this for me, ma'am?

20 APRIL JORDAN: Yes.

21 SERGEANT PEPPER: This has not been brought to my
22 attention. I am assuming that you don't want your number called
23 anymore.

24 APRIL JORDAN: No surprise.

25 SERGEANT PEPPER: That's --

26 APRIL JORDAN: No.

1 SERGEANT PEPPER: I'm going to go ahead and make the --
2 take the initiative and I'm going to contact -- unfortunately,
3 they're closed right now, Sandstar is
4 -- or the people I need to contact, I should say.
5 APRIL JORDAN: Phooey. What time do they close?
6 SERGEANT PEPPER: Pardon me?
7 APRIL JORDAN: What time do they close?
8 SERGEANT PEPPER: 3:30. I'm talking about bosses and
9 staff and things from that nature that's going to be able to,
10 like, ban your number --
11 APRIL JORDAN: Oh, sure.
12 SERGEANT PEPPER: -- or pull the record for me. The
13 inmates may still be over there, you know, making the random
14 phone calls and there may be staff there supervising them, but
15 the people I need to talk to are gone at 3:30.
16 APRIL JORDAN: Okay.
17 SERGEANT PEPPER: And they're the ones that's going to
18 pull the records for me, they're the ones that's going to pull
19 the tape, the ones that's going to ban your number in the
20 system, so forth and so on.
21 APRIL JORDAN: Can they also ban my sister's number?
22 SERGEANT PEPPER: If you would like, I'll put it on.
23 APRIL JORDAN: Yeah, please.
24 SERGEANT PEPPER: What is it?
25 APRIL JORDAN: Her name is Vicki, V I C K I --
26 (Break in tape.)

1 APRIL JORDAN: She lives in California.

2 SERGEANT PEPPER: Okay. Because we can also pull that
3 number and see if that number was ever contacted. If you would,
4 please write me on your e-mail, that way I have it also
5 documented so when I go after the inmate and charge him and --

6 APRIL JORDAN: Well, supposedly he's already had his 30
7 days (inaudible). It's already been done.

8 SERGEANT PEPPER: By whom?

9 APRIL JORDAN: By whom -- the incident was screened with
10 Investigator Rex Dana (phonetic), at this time no action will be
11 taken by CIB --

12 SERGEANT PEPPER: Okay. Now, Dana is one of my cohorts,
13 so apparently it -- but it's on the other side. Okay. But
14 they --

15 APRIL JORDAN: That's why --

16 SERGEANT PEPPER: But they called again today?

17 APRIL JORDAN: Yeah. And the initial inmate that was on
18 the phone with my daughter is Derek Cramer (phonetic) and his
19 number is 21548 B Block, 232.

20 SERGEANT PEPPER: Okay. Cramer, C or K?

21 APRIL JORDAN: C R A M E R.

22 SERGEANT PEPPER: Okay. If you would, still send me
23 that --

24 APRIL JORDAN: I will.

25 SERGEANT PEPPER: Can you send that to me e-mail?

26 APRIL JORDAN: Yeah.

1 SERGEANT PEPPER: Okay. Send that to me. Rex will be
2 returning back here a little bit later today, I will talk to him
3 and find out exactly what's going on. And then tomorrow I will
4 call Adrian (phonetic) over at Sandstar and tell him he is --
5 better get this out of the system like now.

6 APRIL JORDAN: I would appreciate it.

7 SERGEANT PEPPER: And once I -- once I verify that number
8 is out of the system I'll give you a call back and let you know
9 or e-mail you, whichever way you prefer.

10 APRIL JORDAN: Yeah, because I faxed over a copy of the
11 letter, a copy of the envelope to show it's obviously the
12 prison's return address and date marked. I sent all that
13 information over initially back the very end of February. So,
14 the date on this report is February 28, 2000.

15 SERGEANT PEPPER: And that came from who?

16 APRIL JORDAN: That came from -- that came from --
17 well --

18 SERGEANT PEPPER: The warden?

19 APRIL JORDAN: -- it came from the prison. I can't -- it
20 was cc'd to Brian Hamman (phonetic), Darren Vanluwen
21 (phonetic) --

22 SERGEANT PEPPER: What does it say at the top? Who is it
23 addressed to?

24 APRIL JORDAN: To David Worthington, Deputy Warden of
25 Security.

26 SERGEANT PEPPER: Warden of Security. From?

1 APRIL JORDAN: From Glenn Perryman (phonetic), Draper
2 Site Shift Commander.

3 SERGEANT PEPPER: What does it say, in a nutshell?

4 APRIL JORDAN: It's three pages.

5 SERGEANT PEPPER: Okay. Can you just kind of give me a
6 nutshell as to what it says?

7 APRIL JORDAN: It's -- it's -- it's awful detailed.
8 Basically it goes through and -- and states my initial phone
9 call asking what's going on and his -- and Glenn Perryman's
10 interview with the inmate to find out what was happening, how he
11 got the phone number.

12 And then their investigation with Sandstar and listening
13 to the tapes, in which they found out by cross referencing that
14 the inmate was Derek Cramer, the interview with Cramer which
15 denied any of it.

16 And their -- the fact that they did search the cell to
17 make sure there wasn't anymore addresses or information about my
18 daughter. And Sandstar's action, Inmate Cramer's employment was
19 terminated and Sandstar is reviewing audiotapes.

20 The shift commander and the inmate that wrote my daughter
21 received a verbal warning, was ordered not to contact my child
22 again. And Inmate Cramer was terminated from his employment and
23 a disciplinary -- will be forthcoming, address charges of
24 contract violation.

25 I guess --

26 SERGEANT PEPPER: Is that -- is there anything on there

1 saying it went to Rex Dana?

2 APRIL JORDAN: Yes. Second sentence, third page, "The
3 incident was screened with Investigator Rex Dana, at this time
4 no action will be taken by CIB."

5 SERGEANT PEPPER: It's actually LEB.

6 APRIL JORDAN: Oh. Well --

7 SERGEANT PEPPER: Okay. Criminally there is nothing we
8 can do -- criminally. That doesn't mean we can't go after them
9 administratively and that sounds like what they've done.

10 Let me get your -- send that to me, any and all
11 information you can. Tomorrow I'll make a point to get hold of
12 Adrian or somebody over in Sandstar to ban your phone number so
13 no further calls can be made, including your sister.

14 APRIL JORDAN: Thank you.

15 SERGEANT PEPPER: Okay? And then once I've verified that
16 those numbers have been removed I will give you a call back.

17 APRIL JORDAN: Okay. And it'd be easier to reach me at
18 work because today -- I'm not normally home.

19 SERGEANT PEPPER: Okay. Could you just leave that number
20 on the e-mail?

21 APRIL JORDAN: I will do so.

22 SERGEANT PEPPER: Sounds good.

23 APRIL JORDAN: Thank you.

24 SERGEANT PEPPER: And if for some reason I -- do you have
25 voice mail?

26 APRIL JORDAN: At work and home, yes.

1 SERGEANT PEPPER: No at home?

2 APRIL JORDAN: Yes.

3 SERGEANT PEPPER: Okay. If just for some reason I can't,
4 I'll just leave some numbers that you can get in touch with me.

5 APRIL JORDAN: Okay.

6 SERGEANT PEPPER: Okay, ma'am?

7 APRIL JORDAN: Thank you.

8 SERGEANT PEPPER: Okay. 'Bye-bye.

9 APRIL JORDAN: 'Bye-bye.

10 (The telephone contact was concluded.)

11 (The tape recording was concluded.)

12 MS. JORDAN: My daughter is an honor student, by
13 the way. She's not -- she's one of above average
14 intelligence, but she just doesn't have the experiences
15 to know what was going on. She had never had a
16 telemarketing call before, but the prison, SandStar, they
17 were responsible for intervening in that phone call, and
18 they did not do it.

19 This was one of the most sophisticated
20 monitoring systems within any of the prisons, very
21 sophisticated, and it failed, failed miserably. The
22 very next call that this inmate made was to another
23 minor, and it just keeps on going, and the parents --
24 the parents of families, that can't go on T.V., they
25 can't tell anybody because they're in hiding because
26 they don't want to be found, and it's pretty bad.

1 MS. HARRINGTON: Do we have any -- may I ask a
2 question? In your comment or in anything else that
3 we've gotten in our record, do we have any information
4 about the extent of this practice, how many prisons?

5 MS. JORDAN: 17 to 20. I have -- there's
6 between 17 to 20 prisons right now.

7 MS. HARRINGTON: That have telemarketing centers

1 in the prisons with prisoners working on them?

2 MS. JORDAN: Right, yes. I think in some of my
3 comments I may have added -- you kind of got to read
4 through a lot of it to get a lot.

5 MS. HARRINGTON-MCBRIDE: There were articles
6 included as well, so that is all in the record.

7 MR. HILE: Did you say the tape was made by the
8 prison or did you make the tape?

9 MS. JORDAN: SandStar records all of the
10 conversations. They have one person dedicated to
11 randomly go back through those conversations. They
12 have -- there's approximately -- SandStar has between 15
13 to 40 inmates at the call center at one time.

14 At the time of this call in February they had
15 four monitors from the Salt Lake City location. The
16 prison is in Draper, it's a suburb, that would randomly
17 monitor the calls. They're supposed to go from one to
18 the other to the other. This has been edited. The tape
19 is eight minutes long. The next phone conversation is
20 to another minor.

21 They could have caught it. It's pretty poor.
22 It's just negligence on their part, and they would not
23 have called us and told us about it, unfortunately.

24 In speaking to the prison and finding out about
25 this, you had asked, SandStar made the recording, and the

1 shift commander at the prison played that for me over
2 the phone and so I recorded it that way, so that's a
3 little bit the reason for the static.

4 SandStar has been unresponsive. It took the
5 Attorney General's office before they would confirm in
6 writing that they had finally taken us off their do not
7 call list, but I had asked the prison, and they
8 communicated that in writing and sent me a copy of that
9 request to have my name and our phone number taken off
10 the list.

11 I had also sent a certified letter to SandStar to
12 make sure that we were taken off of their list and they
13 never called us again.

14 The problem is six weeks later they did call us
15 again, and I was home. My daughter was sick, and I
16 picked up the phone, and the voice on the other end
17 said, Hi, this is David with SandStar. And I'm sitting
18 there going, No, the CEO is Mike Beck, I haven't dealt
19 with anyone else.

20 I'm going, Why are you calling me, and he gave
21 my sister's name, and I blew a gasket, understandably
22 so, and demanded to speak to someone there at the prison
23 who was responsible for this, for the system to find out
24 what was going on. Why didn't they take my name out?
25 Don't they know that this is just ridiculous.

1 And in the process of trying to find someone, I
2 hit record, and that would be this conversation. I will
3 admit that I'm a bit distraught and I apologize, but
4 under the circumstances you can well imagine.

5 I want you to think what would happen if you
6 came home from work, and it was your wife or your
7 daughter and you found out about this, and you were told
8 by the Attorney General's office in Texas, You didn't
9 purchase anything, sorry, Attorney General's office in
10 Utah, get over it. That's it. Nothing.

11 So this is a very distraught person on April 17,
12 and I don't have a transcript for this one.

13 (Poor tape quality did not allow for transcription.)

14 MS. JORDAN: And I did call Mike Beck, and he
15 did not return my calls, never apologized, nothing. The
16 next call I made was to the Attorney General's office,
17 and they had told me they had handed the investigation
18 off to a Sergeant Pepper located at the prison, and I
19 called him.

20 He didn't even know who I was, did not know, and
21 this had already been over two months, didn't have a
22 clue, didn't have a record. It was just incredible.
23 The ball had been dropped, kicked. No one cared.

24 This month is when I was told by Fran Singione
25 in the consumer department of the Attorney General to

1 just get over it. She has two daughters. She knows how
2 I feel, but I should get over it.

3 There is no way that we can protect our children
4 no, way. We have nothing. We have no recourse. We
5 can't do anything. It's another state, and SandStar has
6 a distribution center in Los Angeles.

7 It would be really easy for him to just change
8 over to another inmate center, Utah has and will be
9 shutting down the call center in August because of this,
10 but the other private sector that they have is In-Mark
11 International LLC. They use inmates in Montana.

12 The database in Montana blocks the area code for
13 the state of Montana. Montana only has one area code,
14 so no one in Montana is going to get called by an
15 inmate. They have the call centers in Arizona. They
16 have a base home in Nevada. You can find an address for
17 them and a phone number.

18 You can't find their clients. They're lost.
19 We've run searches on the web. We cannot find anything,
20 and these are the university searches. They have the
21 bigger databases. So even if I know which company is
22 using inmates, I can't even prevent them from calling me
23 because I can't find the company.

24 And if they are so big that they need to use
25 multiple states to handle their clients, why can't I

1 find them?

2 Anyway, so we when you discuss that tomorrow, I
3 need to go home and tell my daughter something.

4 Thank you.

5 MS. HARRINGTON: Thank you. And you've come to
6 at least one right place. You've raised an issue that I
7 don't think we have been aware of in terms of the extent
8 of telemarketing by inmates from prisons, and I promise
9 you that that's something that we're going to look at
10 very carefully.

11 And the other issue that you've raised is the
12 difficulty -- is that you said, Don't call me anymore
13 and you were called, and let me tell you, you've really
14 come to the right place with that information, so thank
15 you very, very much for coming today.

16 And if there would be a way that we could get a
17 copy of the second tape from you, that would really help
18 us a lot. We'll work with you on that, okay. Thank you
19 very much for coming.

20 I think that's it for today. We will be
21 resuming at nine tomorrow morning, and we will begin by
22 discussing the firm exemptions to the Telemarketing
23 Sales Rule so we look forward to seeing everyone back
24 here. Thank you all for your participation today.

25 (Time noted: 4:15 p.m.)

1 C E R T I F I C A T I O N O F R E P O R T E R

2

3 TITLE: TELEMARKETING SALES RULE FORUM

4 DATE: JULY 27, 2000

5

6 I HEREBY CERTIFY that the transcript contained
7 herein is a full and accurate transcript of the notes
8 taken by me at the hearing on the above cause before the
9 FEDERAL TRADE COMMISSION to the best of my knowledge and
10 belief.

11

12 DATED: AUGUST 10, 2000

13

14

15 DEBRA L. MAHEUX

16

17

18 C E R T I F I C A T I O N O F P R O O F R E A D E R

19

20 I HEREBY CERTIFY that I proofread the transcript
21 for accuracy in spelling, hyphenation, punctuation and
22 format.

23

24

DIANE QUADE

25

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