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FEDERAL TRADE COMMISSION

In the Matter of: )  
TELEMARKETING SALES RULE FORUM )  
-----)

JULY 28, 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

1 PARTICIPANTS:  
2 JEFF KRAMER, BRIDGET SMALL, LAURA POLACHECK,  
3 AARP  
4 JOHN HESSE, II, Direct Selling Association  
5 LINDA GOLDSTEIN, Promotion Marketing  
6 Association  
7 GEORGE ROSE, PETER DRYMALSKI, National  
8 Association of Consumer Agency Administrators  
9 TIM SEARCY, American Teleservices Association  
10 SUSAN GRANT, National Consumers League  
11 DENNIS MCGARRY, Personal Legal Plans  
12 ELISSA MATULIS MYERS, Electronic Retailing  
13 Association  
14 MALLORY DUNCAN, National Retail Federation  
15 JERRY CERASALE, Direct Marketing Association  
16 MICHAEL PASHBY, Magazine Publishers Association  
17 AVONNE SEALS, National Association of Attorneys  
18 General  
19 JASON CATLETT, SARAH ANDREWS, Junkbusters  
20 ROBERT BULMASH, Private Citizen  
21 JANE LARIMER, NACHA  
22 CHUCK EPPERT, NANCY MATSON, Verizon  
23  
24  
25

## P R O C E E D I N G S

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3

MS. HARRINGTON: Well, let's kick things off.

4

We are starting five minutes late, the first time in

5

the history of a workshop that I have had anything to

6

do with, because some of us needed to go and get

7

coffee. And I think that there will be some coffee

8

coming in in a little while. So, isn't that wonderful,

9

something to look forward to in addition to the

10

discussion?

11

Well, good morning, everyone. We've got some

12

sort of substitutions at the table this morning, so let

13

me ask people who are with us today who weren't with us

14

at the very beginning yesterday to introduce

15

themselves.

16

Matt, do you want to start?

17

MR. MATTINGLY: Matt Mattingly with the ATA.

18

I'm the legislative affairs manager for the association

19

based here in Washington.

20

MS. HARRINGTON: Welcome, Matt.

21

Nancy, you joined us during the day yesterday.

22

MS. MATSON: Right, I'm Nancy Matson from

23

Verizon.

24

MS. HARRINGTON: And what do you do there?

25

MS. MATSON: I manage all the telemarketing for

1 Verizon.

2 MS. HARRINGTON: Great, good, we're glad to  
3 have you.

4 Peter, you joined us during the day, too.  
5 Would you introduce yourself?

6 MR. DRYMALSKI: I'm an investigator for the  
7 Montgomery County Office of Consumer Affairs in  
8 Maryland, and I'm also representing the National  
9 Association of Consumer Agency Administrators.

10 MS. HARRINGTON: Great.

11 Down on this end, we have some FTC alum.  
12 Heather?

13 MS. MCDOWELL: Hi, my name is Heather McDowell,  
14 and I'm here for -- I'm short, and I'm here for Lisa  
15 Myers at ERA.

16 MS. PAGAR: I'm Char Pagar, and I'm also short,  
17 and I'm here on behalf of Linda Goldstein for the PMA.

18 MS. HARRINGTON: Okay, I don't think we have  
19 any other substitutions or new folks to welcome this  
20 morning.

21 We are going to start right off with a very  
22 important issue this morning, and that is the issue of  
23 the exemptions that are currently in the Telemarketing  
24 Sales Rule, and let's just begin with the first  
25 question, which is should the exception to the business

1 exemption be expanded to cover additional goods and  
2 services?

3 I can say, to get the discussion rolling, that  
4 we have certainly seen here at the FTC -- and our  
5 enforcement record of late reflects this -- that there  
6 are problems with fraudulent telemarketing from  
7 businesses to businesses that go beyond the areas that  
8 are presently subject to the rule's requirements,  
9 tangible office supplies and -- that's it, I think,  
10 that's the only -- and non-durables and office  
11 supplies, non-durable goods.

12 Specifically, we've recently brought some cases  
13 that have involved the telemarketing of web and  
14 internet-related services to small businesses, and  
15 those cases allege deception on the part of the  
16 telemarketing entities in the sale of goods and  
17 services, very similar to the kinds of fraudulent  
18 transactions that are otherwise addressed by the rule.

19 So, we have some recent significant enforcement  
20 history that tells us that there certainly are problems  
21 in business-to-business telemarketing that go beyond  
22 the scope of the current rule.

23 Susan?

24 MS. GRANT: We hear about that, also, at our  
25 National Fraud Information Center hotline. Businesses,

1 especially small businesses, receive calls or faxes or  
2 e-mails offering them a variety of advertising  
3 services, and they're just as much victimized in these  
4 instances as they are when they are sold non-durable  
5 office supplies and other equipment.

6 MS. HARRINGTON: Avonne?

7 MS. SEALS: Illinois -- I represent the  
8 Illinois Attorney General's Office and the National  
9 Association of Attorneys General. Illinois has brought  
10 some actions against website hosting companies similar  
11 to the FTC, and when we initially considered bringing  
12 these actions, we wanted to proceed under the  
13 Telemarketing Sales Rule and were quite disappointed to  
14 realize that we could not, and --

15 MS. HARRINGTON: And was the effect of that  
16 then that you were only able to proceed in state court?

17 MS. SEALS: Exactly.

18 MS. HARRINGTON: Then that limits the scope of  
19 remedy that you can obtain?

20 MS. SEALS: Exactly. So, we certainly would  
21 want that exemption narrowed if not stricken entirely.  
22 I agree with Susan that small businesses have become a  
23 consumer -- the consumer of choice. I think they're  
24 the consumer of the new millennium because of the  
25 various kinds of services that they offer, because of

1 the number of businesses, there has been an actual  
2 explosion in terms of growth. So, I think that we need  
3 to be looking toward the future at the kinds of  
4 consumers, new consumers we will have out there.

5 Also, a lot of the states probably do not cover  
6 business-to-business transactions within their consumer  
7 fraud --

8 MS. HARRINGTON: That's true.

9 MS. SEALS: -- statutes now. Illinois happens  
10 to do so. So, with those states, if the Telemarketing  
11 Sales Rule does not help them, they simply cannot help  
12 the small business owner.

13 MS. HARRINGTON: Mallory, I'm going to -- you  
14 don't have your tent up, but I am going to call on you  
15 here, because I know that when the rule was initially  
16 promulgated, this was an issue that was of great  
17 importance to some of your members, and I recall  
18 specifically the discussion was, gee whiz, if we don't  
19 create some sort of exemption, then every time somebody  
20 calls Staples to place an order or every time a  
21 customer calls Bloomingdale's to place an order or  
22 every time my Nordstrom shoe person calls to tell me  
23 that the annual sale is coming up and, you know, do I  
24 want some advance opportunity to look at shoes, every  
25 time those kinds of calls are placed, they might

1 conceivably be covered by the Telemarketing Sales Rule.  
2 That was your concern that I remember well.

3 But I think that our enforcement experience  
4 suggests now that we may have drawn that -- the  
5 exception to the exemption too narrowly. Have you  
6 given this any thought?

7 MR. DUNCAN: I'm embarrassed to say I wasn't  
8 thinking about it while other people were talking, so I  
9 didn't pick up on the discussion up until now.

10 MS. HARRINGTON: Well, that's why I gave you a  
11 lengthy ramp-up with my own sort of take on it.

12 MR. DUNCAN: Very much appreciated. I was, in  
13 fact, going over the comments that some of our members  
14 have given us, and they are concerned about the rule  
15 being inadvertently too broad. In fact, one of the  
16 companies that contacted me was concerned about the  
17 face-to-face requirement in the rule as it exists now,  
18 because they -- precisely because of the example you  
19 gave of notices to consumers about an upcoming sale or  
20 something like that, whether or not that would be  
21 covered by the rule, even though the purchase is made  
22 in the store without a, quote, "presentation" taking  
23 place, a meeting or a presentation. So, I know the  
24 concern is still out there among our members.

25 MS. HARRINGTON: On the other hand, I can tell



1 you that in one of these cases that I'm describing that  
2 we've brought recently, one of the victims was  
3 Nordstrom, not a small business, but -- you know, so if  
4 we take Nordstrom as sort of the prototypical retailer  
5 that makes use of the telephone to contact its  
6 customers and also has been a victim of one of these  
7 website cramming telemarketing scams -- and let me tell  
8 you how that worked was that the telemarketer called  
9 and said that the business could have a free trial  
10 period for the online advertising service, I think it  
11 may have been a Yellow Pages service, and it would be  
12 billed on their phone bill and they could cancel after  
13 X number of days and have no obligation to pay.

14 The problem -- the problems include, number  
15 one, that the billing was put through right away, that  
16 by the time it showed up on the phone bill and was  
17 picked up in the payment office, the so-called free  
18 trial period had already expired, the period for taking  
19 action on the negative option had passed, and the  
20 amounts that are being charged for these services and  
21 the descriptors on the bill are such that they won't  
22 necessarily be picked up quickly.

23 This, in other words, is from our standpoint a  
24 classic telemarketing scam where there are cold calls  
25 placed carefully to the wrong people in a business,

1 mischievous use of "verification" is made, you know,  
2 the verifications may, in fact, be taped, but they're  
3 completely bogus, because they don't reflect what has  
4 been described up until that point in the transaction,  
5 and the person who is purportedly authorizing the  
6 purchase has no authority to do that, is not the line  
7 subscriber who is obligated to pay the bill, and, you  
8 know, the -- and the businesses just don't catch this.

9           You can appreciate that if there's a \$19.95  
10 charge on the phone bill, but if it's for every store  
11 in the Nordstrom network, for example, that adds up  
12 quickly to a lot of money, and it's not likely to be  
13 picked up quickly because the descriptor is vague.

14           Allen, do you want to add something?

15           MR. HILE: And because they're using an  
16 unexpected billing and collection system, namely the  
17 telephone bill.

18           MS. HARRINGTON: Susan?

19           MS. GRANT: One of the confusing -- Susan  
20 Grant, National Consumers League.

21           One of the distinguishing characteristics of  
22 this kind of scam is there is no preexisting  
23 relationship between the vendor and the business, so I  
24 think that you could fashion a provision in the rule  
25 that would cover this situation and still would not

1 encompass Mallory's members.

2 MR. DUNCAN: So that -- so that I understand  
3 the situation, the call went in to the Seattle  
4 headquarters of Nordstrom and was taken there or how  
5 did -- I'm trying to determine --

6 MS. HARRINGTON: I don't think so.

7 MR. DUNCAN: -- how it got onto several stores'  
8 billing or telephone billing.

9 MS. HARRINGTON: I don't know.

10 MR. DUNCAN: I would be happy to look into that  
11 situation.

12 MS. HARRINGTON: Well, and we're seeing that in  
13 other areas, as well, and, you know, in this particular  
14 case that I'm describing, Nordstrom happened to be a  
15 victim. In the others, there have been, you know,  
16 thousands of small businesses and nonprofits that have  
17 been scammed. It's a lot like the toner scam deal,  
18 except that it's very clear to us that the people who  
19 are running this appreciate that toner is covered by  
20 the rule, and what they're doing isn't.

21 And, you know, we have -- since the rule became  
22 effective, we have done numerous organized enforcement  
23 sweeps with the states that have enabled us to get  
24 national injunctive provisions against these office  
25 supply telemarketing scams, and we have a problem if

1 we're not within the scope of the rule, then it's just  
2 us, able to get the nationwide relief.

3 MS. SEALS: Avonne Seals again.

4 This is a question to the Commission. I'm  
5 presuming that the nondurable office supply coverage  
6 was based on a history of the fact that toner-phoner  
7 type cases were plentiful to find.

8 MS. HARRINGTON: Yes.

9 MS. SEALS: If that is the case, then I think a  
10 history of finding patterns of abuse in other areas  
11 should justify consideration of this particular area.  
12 I mean, it may be that on a case-by-case basis, the  
13 rule will need to be amended to cover those areas where  
14 we see abuse. So, for that reason alone, I would  
15 suggest that this is good fodder for an amendment.

16 The other thing I wanted to add about the  
17 particular case of the website cramming, Susan had  
18 hinted to the fact that there was no preexisting  
19 relationship. There is also the fact that -- some of  
20 the issues that we discussed yesterday, that there is  
21 no disclosure that there will need to be an affirmative  
22 act to cancel. The free trial period often starts  
23 being billed prior to its expiration --

24 MS. HARRINGTON: Right.

25 MS. SEALS: -- and there is an additional setup

1 fee that is never mentioned. In the cases that  
2 Illinois looked at, that setup fee was as much as  
3 \$49.95 --

4 MS. HARRINGTON: Right.

5 MS. SEALS: -- in addition to the monthly fee  
6 for the website hosting, design and maintenance  
7 service. So, you've got the whole issue of pretrial  
8 offer problems, lack of disclosure regarding  
9 cancellation, no preexisting relationship. It's really  
10 the type of scenario that I think would be classic for  
11 the rule to cover.

12 MS. HARRINGTON: We -- there was a hearing  
13 before the Senate Select Committee on Small Business on  
14 this problem not long ago, and I think that the members  
15 of that committee, Senator Bond particularly, were  
16 concerned to learn from us that the rule does not cover  
17 this.

18 Keith?

19 MR. ANDERSON: I just wanted to sort of remind  
20 the people here why that exemption was put in in the  
21 first place. I don't think it was Mallory's members,  
22 because Mallory's members are, in fact, calling  
23 consumers. It was -- it was the IBMs, it was the  
24 hardware people who --

25 MS. HARRINGTON: Right.

1           MR. ANDERSON:  -- who emphasized to us the  
2           great extent to which businesses use telemarketing in  
3           -- telemarketing in contacting other businesses.  They  
4           were telling us that face-to-face visits of salesmen to  
5           businesses were sort of a thing of the past.  They had  
6           just gotten too expensive.  So, I think we would need  
7           to be careful.

8           MS. HARRINGTON:  Right.

9           MR. ANDERSON:  I mean, Avonne's suggestion of  
10          tailoring it, I mean, we have now got a history of  
11          these internet things, carving that one out isn't  
12          totally appealing, because it leaves avenues for people  
13          to try and invent around it, but I think -- my own  
14          feeling, and I don't think that -- I don't think we've  
15          got that crowd here today, is that we have to be  
16          careful, because I think there are a lot of these  
17          business-to-business people who would get concerned.

18          MS. HARRINGTON:  Well, on the other hand, let  
19          me just play devil's advocate on the matter of  
20          narrow-narrow.  What is it in the rule that -- in terms  
21          of required disclosure that we would think that a  
22          reputable company wouldn't be providing if they're  
23          calling on a business customer to sell them something?

24          You know, I think the first time we sat down to  
25          work on the rule, Keith, there was, you know, a great

1 deal of anxiety on the part of some in the business  
2 community that the FTC was going to write a rule that  
3 it and the states would use to run around rounding up  
4 legitimate businesses who goofed from time to time, and  
5 I think that we have a history of very vigorous  
6 enforcement of this rule, not of that type. So,  
7 hopefully the anxiety is a little bit lower on this  
8 go-round so that we can roll up our sleeves and do the  
9 right thing on this business-to-business problem.

10 And I will tell you, I'm not sure I know what  
11 the right thing is. I'm hoping for some discussion.  
12 And maybe we don't have the right people here,  
13 especially since none of them -- ah, Mallory's tent  
14 just went up. Jerry, you had yours up, too. Okay, you  
15 first, Jerry.

16 MR. CERASALE: I think the FTC was trying to  
17 tell me something when they gave me one that wouldn't  
18 stand up. Jerry Cerasale, Direct Marketing  
19 Association. I just want to say that from remote sale,  
20 from remote sales and the growth of remote sales in the  
21 U.S., business-to-business sales are growing  
22 significantly faster than consumer -- than  
23 business-to-consumer sales, and in all the evidence  
24 we've seen so far on e-commerce, and I know that's not  
25 the subject here, but on e-commerce, is

1 business-to-business is the predominant player in  
2 e-commerce as far as dollars and so forth.

3 I think that -- I know that it was the -- it  
4 was the pattern of -- I suddenly lost it, but the  
5 cleaning supplies and so forth and toners that created  
6 the exemption to the exemption in the rule, and I think  
7 that the fear from our members -- and we'd have to go  
8 back a little bit more on this and I think this is a  
9 subject that maybe you have to expand to get some more  
10 comments on as we go forth, this is probably not  
11 exactly the right group to be here, not all of them,  
12 some of us are the right ones, but not -- I think there  
13 are some that are missing, let me put it that way.

14 But the fear that in a business-to-business  
15 relationship, you tend to always have the same -- it's  
16 a replacement of a face-to-face meeting. So, you have  
17 Jerry Cerasale in a -- even in a cold call operation  
18 trying to call Mallory Duncan at a business, and  
19 Jerry -- if Mallory becomes the customer, Jerry is  
20 going to consistently call Mallory. So, you try to  
21 work that kind of relationship.

22 I think the fear is the script situation, that  
23 you suddenly take away from Jerry the ability to be the  
24 salesman, because I'm trying to create over the phone  
25 as opposed to person to person a personal relationship.



1 So, I think that's the thing we want to try -- which is  
2 a little bit different from the telemarketing to  
3 consumer. You don't have one telemarketer going to a  
4 specific consumer all the time, even if they -- after a  
5 cold call they become a customer. The relationship is  
6 not the same. It's a brand relationship.

7 Here in the business-to-business, it's both  
8 brand and individual relationship is what the  
9 businesses are trying to do. So, that's all -- that's  
10 what we have to be careful of here.

11 I don't think from the DMA's standpoint that  
12 you sit here and say that we shouldn't go out there and  
13 try and stop fraud. I mean, some of our members are  
14 victims of fraud, too. I mean, they are businesses, as  
15 well. So, that's all -- that's the caveat I bring for  
16 making this too broad or making the exemption to the  
17 exemption too broad or eliminating the total exemption  
18 altogether. I think that's -- and we'll get back to  
19 you, as well, from our perspective, and I now turn it  
20 over to Mallory.

21 MR. DUNCAN: Well, thank you, Jerry.

22 I -- giving it a moment's more thought, I think  
23 it's going to be very difficult to come up with a list  
24 of indicia of fraud. I mean, Avonne mentioned some of  
25 the characteristics that indicate fraud, but it's

1 probably not going to be consistent from case to case,  
2 and I really believe that probably the best approach is  
3 to identify those specific areas where we've seen a  
4 history of problems, possibly expand the rule to  
5 incorporate those, like the internet online scam you  
6 mentioned with Nordstrom, and then use a case-by-case  
7 approach to signal, and maybe when we revisit this  
8 again, come back and expand the rule at that point.

9 MR. HILE: Let me throw something out. 310.3  
10 deals mostly with the material that has to be disclosed  
11 and the misrepresentations that can't be made in a --  
12 in a script, and it's geared, as you say, Jerry, to  
13 sales by a business to consumers, but there's also a  
14 more general part here in 310.3, which is 310.3-A --  
15 310.3-B-4, making a false or misleading statement to  
16 induce any person to pay for goods or services.

17 Would that be a better fit for a  
18 business-to-business provision? That would have the  
19 advantage of not wedding it to the kinds of disclosures  
20 that are appropriate in a business-to-consumer  
21 relationship; at the same time it would give the states  
22 the handle that they need to protect small businesses  
23 under the rule.

24 You haven't found it?

25 MR. CERASALE: Yeah, I think I've found it. I

1 think it's 310.3-A -- no, not A-4 -- 310.3-A-3-B.

2 Well, whatever, I finally found it.

3 MR. HILE: Anyway, it's a deceptive practice  
4 and a rule violation to make a false statement or a  
5 misleading statement to induce a person to pay for  
6 goods and services, it's very general.

7 MR. DUNCAN: I'm not certain what the false  
8 statement was in the example that --

9 MS. HARRINGTON: Free trial period.

10 MR. HILE: Free trial period.

11 MS. HARRINGTON: Yeah, free trial period would  
12 be it for starters.

13 MR. DUNCAN: If, in fact, the trial period --  
14 well, in your example, you're right, they started  
15 billing immediately.

16 MS. HARRINGTON: Yeah, and they always do.

17 MR. DUNCAN: But if the notice came in late,  
18 there may have been a trial period with a late  
19 follow-up notice.

20 MS. HARRINGTON: Well, sure, but that can  
21 happen and we don't sue companies that send their  
22 notices late inadvertently and make, you know, make  
23 people whole if that's what's required. I mean, I  
24 would -- Allen, I would add to your -- to that  
25 provision the -- the disclosure requirements in 1, in

1 Part 1, not the prohibitive misrepresentations, because  
2 some of those I think could be troublesome in a  
3 business-to-business context, but if the -- I mean, the  
4 material terms and conditions that are required  
5 specifically to be disclosed in Part 1 of the rule  
6 would be -- it is inconceivable to me that those would  
7 not be disclosed in the course of the sales call.

8 MR. CERASALE: Would that be 310.3-A-1?

9 MS. HARRINGTON: Yeah, but not A-2.

10 MR. CERASALE: Right.

11 MS. HARRINGTON: Susan?

12 MS. GRANT: Not only do they not provide the  
13 terms and conditions and disclose everything about the  
14 transaction, but they also often make misleading  
15 statements in these advertising services inducements  
16 about the amount of traffic that you can expect.

17 For instance, if it's a website, to get the  
18 amount of profit that ultimately you can expect to  
19 make. So, I think that we'd have to deal both with the  
20 disclosures as well as misrepresentations that are  
21 made.

22 MS. HARRINGTON: The provision -- Susan, the  
23 provision that Allen cited to is very broad.

24 MS. GRANT: Um-hum.

25 MS. HARRINGTON: Would that -- would that be

1       satisfactory?

2               MS. GRANT: I think it would be.

3               MS. HARRINGTON: Heather?

4               MS. MCDOWELL: One other point I wanted to note  
5       about some of the business-to-business calls that you  
6       may see, and one of the issues about, for instance, the  
7       disclosures that are referred to in Part 1, the total  
8       cost and quantity and the material restriction, let's  
9       say I'm a regional sales, you know, rep for a company  
10      and I've got a lot of existing customers on my account  
11      list and prospective customers. I mean, I may make  
12      three or four sales calls. It's a -- a sales call may  
13      be part of -- it may be covered in the sense of a plan  
14      or a campaign, but it may be a course of negotiations  
15      over the phone, and so it's not necessarily that I'm  
16      going to disclose the total cost and quantity, because  
17      there's going to be a back and forth there between the  
18      purchaser and the seller.

19              And I think also you're looking at -- again,  
20      there's obviously some businesses who have been  
21      victimized, and there's maybe a need to explore further  
22      how to deal with that, but at the same time, I would  
23      share that concern about going too broadly in that  
24      you're dealing with who needs the protection here, too.  
25      You've got in many cases, when a business-to-business

1 transaction is at issue, a very sophisticated  
2 purchaser, and this is somebody whose job it is to know  
3 what the company needs, what they don't need. I mean,  
4 they're a purchasing agent.

5 MS. HARRINGTON: Right. And that -- well, and  
6 in these cases they typically solicit from someone who  
7 is not the purchasing agent or from a business that  
8 doesn't have a purchasing agent. I mean, your point  
9 about sophisticated purchasers is well taken. The --  
10 our complaint database reflects a real growth in this  
11 kind of fraud, and an inference that I draw from that  
12 is that the bad guys have figured out that this is an  
13 area that isn't covered by the rule and that the states  
14 can't get after them on under the rule, and that's the  
15 the situation that we had before we had the rule. So,  
16 it's a problem area, and a lot of organizations that  
17 you all care about enormously are being victimized, you  
18 know, churches, nonprofits, smaller businesses.

19 Oh, good, Char?

20 MS. PAGAR: Yes, Char Pagar, PMA.

21 Just two quick thoughts. On Allen's idea of  
22 expanding the provision that deals with, you know, the  
23 prevention of making false statements, I don't know  
24 that that raises so much in the way of concerns, but in  
25 actually requiring the making of all of the disclosures

1 in every B-to-B call strikes me as perhaps putting too  
2 much into the pot, because you are going to have a  
3 situation in B-to-B calls where you have repeat  
4 dealings, you know, you are going to have -- if I'm a  
5 representative, a sales representative making calls on  
6 clients, I'm going to make a number of calls per day to  
7 people who I've spoken to many, many times in the past  
8 who know what the terms are, and I'm, you know, calling  
9 them again to say, do you want to get X at, you know, Y  
10 price and, you know, maybe I don't put all my refund  
11 information on there, but I think that if you have a  
12 provision that simply prevents the making of  
13 misrepresentations, I think you can cover what you want  
14 to cover without throwing too much in.

15 MS. HARRINGTON: Okay.

16 Avonne?

17 MS. SEALS: I was thinking about what Susan  
18 said in terms of misleading statements and about the  
19 actual product with respect to the website cases, and I  
20 recall that one thing we did research was whether or  
21 not these websites were of any value.

22 MS. HARRINGTON: Right.

23 MS. SEALS: And one thing we found is that in a  
24 lot of cases, they really were not. I mean, it's --  
25 you know, I guess it's one man's meat is another man's

1     poison with respect to the character of the actual  
2     website, but we did look at some websites that were  
3     questionable in terms of quality.

4             Another area of concern was the registration of  
5     the name or the URL. I don't recall the actual  
6     technical terms, but I'm certain people here who are  
7     familiar with the web will know that you've got to do  
8     certain pre -- there are certain preconditions before  
9     you can actually be a website, and these things had not  
10    been done with respect to the particular websites that  
11    were being solicited. So, they were valueless.

12            And in my eye, that's either a failure to  
13    disclose something or an omission of a material fact.  
14    So, once we start going down the road of what is going  
15    to apply to business-to-business transactions, we'll  
16    need to be very careful that we cover everything.

17            MS. HARRINGTON: Keith?

18            MR. ANDERSON: I want to suggest, just my  
19    looking -- and I'm not a lawyer -- that maybe rather  
20    than cover one -- include one and let two out, I would  
21    exclude one and put two in. You can't misrepresent any  
22    of this stuff, but -- but to address the issue that  
23    some of the business people have pointed to that  
24    occurred to me, as well, that, you know, you have got  
25    this ongoing relationship, you have dealt with them 20



1 times before. You don't need to affirmatively state  
2 all this stuff. It's understood. Well, you're not  
3 misrepresenting it then, that maybe -- assuming that  
4 we're going to go down this road, that might be the way  
5 to go.

6 Let me raise another question here that will  
7 also apply on the face-to-face exemption and maybe  
8 apply more on the face-to-face exemption, which is in  
9 reviewing the rule the other day, I noticed that the  
10 exemptions apply across the board to the rule. They  
11 exempt you totally out of the rule. They exempt you  
12 out of the abusive practices part. They except you out  
13 of the do-not-call part. They exempt you out of the  
14 hours part. I'm wondering if there's any  
15 justification, particularly in the face-to-face but  
16 also in the business-to-business.

17 There was at least one or two small business  
18 commenters who said I can't get people to quit calling  
19 me. I tell them not to call me, and they continue.  
20 Well, under the rule, it's clear they don't have to  
21 quit calling, and I'm wondering if there's any  
22 justification at all for remaining that way and why we  
23 don't carve that one back out.

24 MS. HARRINGTON: Very good question.

25 John?

1 MR. HESSE: Regarding -- John Hesse with the  
2 Direct Selling Association.

3 Regarding specifically the face-to-face  
4 exemption, we would not be agreeable to carving out any  
5 other part of the rule. As we've stated in our  
6 comments, which I won't rehash here, our distributors  
7 make select calls to a network of people, it's either  
8 their family or acquaintances, and they follow that up  
9 with the face-to-face meeting, which is covered by the  
10 cooling-off rule. So, making any part of the  
11 Telemarketing Sales Rule applicable to their phone  
12 calls we think would be duplicative and unnecessarily  
13 burdensome.

14 MS. HARRINGTON: Jerry?

15 MR. CERASALE: Yeah, I wanted to -- I know  
16 Keith brought up the do-not-call stuff and  
17 business-to-business, and there's some real potential  
18 problems with that. If you are well aware, the FCC has  
19 determined that it's the telephone number, not the  
20 individual. If you go to a business and a business  
21 says don't call me and it could be, you know, just like  
22 the telemarketing -- the scammers try and hit the wrong  
23 person, you could get anyone. So, if anyone at IBM  
24 says don't call me, does that take IBM off the list?  
25 The individual leaves IBM, does IBM stay on the list

1 and so forth?

2 It creates a huge nightmare of dealing with do-  
3 not-call when you go to businesses, because a person is  
4 at least generally speaking I would say the person for  
5 his or her whole life, and I -- the individual at IBM  
6 is not, so -- that's not the case. But -- so, that's  
7 the problem we face -- we face with that, and I just  
8 have one question for Allen.

9 Were you -- in your point, now that I've looked  
10 at it and thought about it, so you would change the  
11 existing -- your thought, anyway, would --

12 MR. HILE: And it was just a --

13 MR. CERASALE: I'm not putting you down, Allen,  
14 your thought would be -- for example, the exemption  
15 would be the telephone calls telemarketer any business  
16 except calls involving nondurable goods, et cetera, and  
17 violations of 310 --

18 MR. HILE: Something like that --

19 MR. CERASALE: -- 310.3-A-4 --

20 MR. HILE: Yeah.

21 MR. CERASALE: And then provided however 310 --  
22 whatever it says.

23 MR. HILE: And that really doesn't take it much  
24 beyond Section 5.

25 MR. CERASALE: That's correct.

1           MR. HILE: What it does do is give the states  
2 the right to enforce it, and it gives us an additional  
3 remedy at civil penalties.

4           MR. CERASALE: I'm smiling because we're here  
5 talking about helping states go to federal court. When  
6 we try and push federal court -- federal preemption, we  
7 get totally destroyed by the states, but I get a good  
8 -- so, I'm getting a little bit of a chuckle out of  
9 this discussion from that score.

10           MS. SEALS: We like to have our cake and eat  
11 it, too.

12           MS. HARRINGTON: I'm not sure you should say  
13 that into the microphone so it goes in the record,  
14 Avonne.

15           MR. CATLETT: Jason Catlett from Junkbusters.

16           I would like to come back to Keith's question  
17 about the repeated solicitations to small businesses.  
18 Junkbusters gets a lot of e-mail from small businesses  
19 who say how do I stop these telemarketers from calling  
20 me? Often this is a mom and pop operation, it's a  
21 single business line. They say, does the Telephone  
22 Consumer Protection Act do me any good? And I have to  
23 say no, it specifically exempts calls to businesses.

24           And they say, is there anything I can do to  
25 stop them calling me? And there is really very, very

1 little, and it's very onerous on the small business  
2 owner. They have to pick up the phone, because it  
3 might be an order coming in, and caller ID is not  
4 available. Really, the -- there should be a provision  
5 that allows small businesses or anyone to say do not  
6 call this number, and it doesn't matter if it's a  
7 number registered to a business.

8 MS. HARRINGTON: Jerry, can businesses sign up  
9 for the DMA's Telephone Mail Preference Service?

10 MR. CERASALE: No, it's -- no, it's only  
11 consumers.

12 MS. HARRINGTON: Bob?

13 MR. BULMASH: Bob Bulmash, Private Citizen.

14 Piggybacking on what Jason was mentioning, I've  
15 gotten calls particularly at Private Citizen from  
16 businesses, small businesses, which were machine shops,  
17 our machine shops, small ones, one and two-man machine  
18 shops, and when they -- when the phone rings, they have  
19 to go to the phone, and many times the lathe is kept  
20 running, and that -- that work piece is destroyed,  
21 because the phone call comes in from a telemarketer  
22 commonly. So, it's not just the annoyance. It's some  
23 -- sometimes substantially detrimental to their  
24 revenue.

25 MS. HARRINGTON: Dennis?

1           MR. MCGARRY: I'm a small business owner, and I  
2 answer all my calls even though I could have them  
3 screened, that's just my policy, and I really don't  
4 have that many calls in my business coming in. I do  
5 have an occasional stockbroker call on me and  
6 occasionally an office supply company, but it just  
7 hasn't -- at least in my experience, it's not been a  
8 problem.

9           MS. HARRINGTON: Okay. I'd like to talk about  
10 a different exemption, and that is the general media  
11 advertisement exemption. Has that exemption provided  
12 adequate protection for consumers? Maybe we'll have a  
13 reading of the exemption here to refresh everyone's  
14 recollection here. That would be 310.6-E.

15           Currently exempt from the rule are telephone  
16 calls initiated by a customer in response to an  
17 advertisement through any media other than direct mail  
18 solicitations, provided, however, that this exemption  
19 does not apply to calls initiated by a customer in  
20 response to an advertisement relating to investment  
21 opportunities, goods or services or advertisements that  
22 guarantee or represent a high likelihood of success in  
23 obtaining for or arranging for extensions of credit,  
24 advanced fee sorts of things. That's the gist of the  
25 current exemption and exception to the exemption.

1           Again, this exemption and the take-back were  
2 drafted carefully to make certain that the most  
3 abusive, deceptive, fraudulent practices that we had  
4 seen and that the states had seen in our enforcement  
5 experience involving calls in response to general  
6 advertising would still be subject to the rule, and I  
7 would note that there's been a lot of enforcement in  
8 the advanced fee loan area, taking advantage of this  
9 exception to the exemption, but the question is are  
10 consumers well served by this provision as currently  
11 crafted? Are there areas that are falling out of our  
12 enforcement scheme here that we need to cover?

13           Susan?

14           MS. GRANT: Susan Grant, National Consumers  
15 League.

16           The answer to your question is no, this leaves  
17 glaring gaps in the rule and puts consumers really in  
18 an unfair position. There are especially certain  
19 categories of telemarketing fraud, for instance,  
20 work-at-home scams in which consumers are lured to call  
21 a number on the basis of a classified ad in the  
22 newspaper, or the buyers' club scams that we're seeing  
23 where consumers may be responding to an ad on the  
24 television. And the hallmark of all of these scams is  
25 that the information that the consumer needs in order

1 to make an informed buying decision is not contained in  
2 the ad. It's given on the phone at the point where the  
3 consumer calls and responds to the ad, and it's at that  
4 point that the consumer makes a commitment whether or  
5 not to make the purchase.

6 It makes a lot of sense for the rule to exclude  
7 catalog sales, because in catalogs you're getting all  
8 of the details so that when you make that call to -- in  
9 response, you have all the information. You're not  
10 relying on what the person tells you on the phone. But  
11 in these other instances, you're totally relying on  
12 what you're told on the phone in order to get the  
13 information, all the details, the terms and conditions,  
14 what exactly is it that's being offered, and in those  
15 instances I think that the rule should cover consumers.

16 MS. HARRINGTON: Heather?

17 MS. MCDOWELL: Heather McDowell with ERA.

18 I guess we would take a different view,  
19 particularly where we're talking about a broadcast ad  
20 or something of that nature, where our view really is  
21 that the ad itself does contain a lot of the material  
22 disclosures or at least it provides an opportunity for  
23 people to do that, and it's another forum for providing  
24 those disclosures, and marketers really ought to have  
25 the opportunity to decide whether they are going to put



1 it in a television ad rather than the call.

2 I mean, I think the Commission determined years  
3 ago that these kinds of calls were -- on the one hand  
4 were not generally subject to the same sort of  
5 deceptive inducement that was common in some of the  
6 other areas, and secondarily, that where there might be  
7 a case-by-case issue, that the -- that there remained  
8 tools to deal with that on a case-by-case basis, under  
9 the general authority under unfair and deceptive trade  
10 practices, which the states share sort of under the FTC  
11 Act. It's not as though the states are without remedy  
12 without changing the rule.

13 MS. HARRINGTON: What if the rule -- what if  
14 the exemption was changed to exclude calls in response  
15 to general advertisement where the general  
16 advertisement clearly and conspicuously discloses the  
17 material terms and conditions, so that the flexibility  
18 for the marketer would be retained, but there would be  
19 an enforcement mechanism under the rule where those or  
20 that information is not provided in any of the  
21 solicitation efforts?

22 Mallory?

23 MR. DUNCAN: My memory is that this was a  
24 particularly difficult exemption to craft in the rule,  
25 and there were a couple of considerations. Among them

1 were the fact that we aren't talking about outbound  
2 calls, we're talking about inbound calls generally,  
3 which lessens the effect to some extent.

4 MS. HARRINGTON: Um-hum.

5 MR. DUNCAN: And that we were getting beyond  
6 the scope of pure telemarketing and we're talking about  
7 effects on general forms of media. I think it was  
8 recognized that we weren't trying to get -- we weren't  
9 trying to create new rules for media generally but  
10 really were trying to focus on the telemarketing  
11 problem.

12 In this case or in the example you just gave, I  
13 can see people being encouraged to call to place an  
14 order based on an advertisement, a Hecht's ad that  
15 occurs on two pages of a newspaper, and yet probably  
16 not in that ad will you see information about refunds  
17 and exchanges one way or the other. So, I think there  
18 might be some inadvertent effects on general media  
19 advertisements if you went quite that far in terms of  
20 rewriting this.

21 MS. HARRINGTON: What about changing the  
22 exception -- changing the exemption so that  
23 work-at-home business opportunities are covered by the  
24 rule, calls in response to advertisements for  
25 work-at-home business opportunities?

1           You are not Rita Cohen.

2           Rita, do you see that he's holding up your name  
3 tag here?

4           Michael?

5           MR. PASHBY: Michael Pashby with the MPA.

6           I think the additional disclosures on general  
7 media advertising, however important, would concern our  
8 members because of the assisting and facilitating  
9 provisions. Our members obviously, the magazines,  
10 generally do not vet advertising copy, and we would be  
11 concerned about the assisting and facilitating  
12 provisions of the bill.

13          MS. HARRINGTON: Peter?

14          MR. DRYMALSKI: I kind of hate to sound  
15 anticonsumer on this, but I think first of all it's my  
16 experience that work-at-home schemes usually don't  
17 involve telephone calls. It's usually send \$2, get  
18 more information on how you can make a thousand dollars  
19 at home. There's usually no telephone, it's all mail.

20          But the other thing is I think that there's a  
21 big difference between responding to a newspaper  
22 advertisement, however brief, and responding to a  
23 solicitation that comes directly to your house in the  
24 mail. I think the consumer has much more choice in  
25 responding to a classified ad and there's much less

1 chance of being overbearing or intimidating to such a  
2 consumer than when a consumer is responding to  
3 something that is directed at him personally by coming  
4 to his house or even more so in a telephone call.

5 So, I don't see as much need to apply the  
6 telemarketing rule to a situation where a person is  
7 responding to a work-at-home ad that's in the  
8 classifieds or somewhere else for that matter, in a  
9 Metro Station.

10 MS. HARRINGTON: Well, I would just note that  
11 Consumer Sentinel, which is the fraud complaint  
12 database which the FTC maintains, which includes  
13 complaints that Susan's group gets, over a hundred  
14 better business bureaus, us at the FTC, a very large  
15 complaint -- well, the number one most -- the greatest  
16 monetary loss category is for business opportunities,  
17 and many of those are home-based, work-at-home, and the  
18 BBBs report to us and the data that we get from them  
19 reflects that work-at-home is the largest loss  
20 category.

21 There's a surprising amount of telemarketing  
22 involved in these work-at-home schemes; that is, it is  
23 not uncommon for the classified advertisement to make a  
24 very attractive claim about how much money can be  
25 earned, call this number to learn more, and it's on

1 that call where the deal is sealed, the  
2 misrepresentations are made.

3 There also has been no greater area of  
4 enforcement in the FTC's consumer protection program in  
5 the past five years than this area. If you look at the  
6 cases that we've brought, the largest number of cases  
7 have been in the business opportunity area, and many of  
8 those are work-at-home sorts of schemes. So, our --  
9 I'm just, you know, engaging here as an advocate, which  
10 is not what we usually do, but there really is a huge  
11 problem here, and the states can't go after it under  
12 the Telemarketing Sales Rule. That's our actual  
13 experience.

14 John?

15 MR. HESSE: On the surface -- John Hesse, DSA.

16 I don't think we have a problem with what  
17 you're suggesting, but I have a question. What would  
18 be the effect of including business opportunities  
19 within the exemption, as you've termed it? What would  
20 you see the effect being, that there would have to be  
21 disclosures on the call or in the advertisement or both  
22 or --

23 MS. HARRINGTON: No, that would work the same  
24 way that the mail -- calls in response to mail  
25 presently works; that is, you know, we give marketers a

1 choice now under the rule about when they want to make  
2 those disclosures. They just have to make them before  
3 payment information is requested.

4 MR. HESSE: Then I have one more question.  
5 Would we be -- would you be using the FTC's current  
6 definition of a business opportunity?

7 MS. HARRINGTON: Well, in the -- we have  
8 another rulemaking that's going on under a different  
9 set of statutory requirements which make it very slow  
10 by virtue of meeting those requirements, the franchise  
11 and business opportunity rule rulemaking, and in that  
12 rulemaking we are in the process of separating out  
13 franchise disclosure requirements from business  
14 opportunity disclosure requirements, but we are a long  
15 way off from being able to complete that, and even when  
16 we do, it will not cover all of these work-at-home --  
17 it may not cover the work-at-home kind of deals.

18 Right now, business opportunities are covered  
19 by the rule, but there's a \$500 mandatory payment  
20 threshold that has to be met. So, what we have is a  
21 whole series -- is a whole category of transactions  
22 that are covered neither by the Telemarketing Sales  
23 Rule nor the franchise and business opportunity rule,  
24 which means that we go after them under Section 5 of  
25 the FTC Act, and the states can't in federal court.

1           MR. HESSE: I guess my question would be, would  
2 we be -- excuse me, would we then be talking about  
3 defining business opportunities within the  
4 Telemarketing Sales Rule, or would you -- would we  
5 reference whatever ultimate definition comes out from  
6 that separate rulemaking?

7           MS. HARRINGTON: I think what we would be  
8 covering in the Telemarketing Sales Rule would be calls  
9 in response to general advertising for certain kinds of  
10 business opportunities, and certainly we would I would  
11 think want to exclude from the coverage of the  
12 Telemarketing Sales Rule anything that is covered in  
13 the other rule. That's the whole scheme that the  
14 Commission set out here and is the general federal  
15 scheme for imposing regulations, so that there are not,  
16 you know, two rules, two agencies, two whatever.

17           Avonne?

18           MS. SEALS: Well, the states have recommended  
19 that the media exemption just be abandoned entirely,  
20 and there's really I think rather a simple rationale  
21 behind it. We've pointed out that the Telemarketing  
22 and Consumer Fraud and Abuse Prevention Act covers all  
23 telemarketing. We know that there is telemarketing in  
24 response to these ads. Where there's telemarketing,  
25 there's potential for fraud. And I guess the basic

1 point is that we don't see the reason for this carving  
2 out just based on the means by which consumers are  
3 approached. So, that's just the kind of simple  
4 rationale we've used, and I'm sure there is some  
5 response that industry might want to make to that.

6 However, to the extent that there is potential  
7 for abuse in these calls that are made in response to  
8 the ads, I think that there is an argument that the  
9 media exemption should be abandoned.

10 MS. HARRINGTON: Susan?

11 MS. GRANT: Susan Grant, National Consumers  
12 League.

13 I agree, and I don't think that we should limit  
14 our concern just to work-at-home or business  
15 opportunities. I don't see any rationale, if the terms  
16 and conditions and everything that the consumer needs  
17 to know are not in the ad itself and are going to be  
18 provided on the phone and that's the basis on which the  
19 consumer makes the buying decision, why the rule should  
20 not apply.

21 MS. HARRINGTON: Char?

22 MS. PAGAR: Char Pagar from the Promotion  
23 Marketing Association.

24 We think that the exemptions as they're  
25 currently drafted have worked really well, and I think



1 to some extent you can look at the fact that, you know,  
2 the Commission hasn't done, at least to the best of my  
3 knowledge, an awful lot of enforcement actions  
4 involving general media advertising that then follows  
5 up with telemarketing.

6 I would also say that to the extent you think  
7 the current exemptions need to be modified maybe to  
8 deal with the work-at-home situation and perhaps treat  
9 that more like the direct mail exemption, that's  
10 something that, you know, may be worked out, but we  
11 would not support at all huge changes to the current  
12 exemptions.

13 MS. HARRINGTON: Keith?

14 MR. ANDERSON: Let me just note to the people  
15 that are recommending sort of getting rid of the  
16 general media exemption in total, what you wind up  
17 doing then is you wind up covering every call to a  
18 flower shop because I look it up in the Yellow Pages,  
19 calls to airlines if I respond to a newspaper ad. It  
20 seems to me that we then wind up sort of making the  
21 Telemarketing Sales Rule an all-purpose extension of  
22 Section 5, I mean, if we just wind up covering almost  
23 everything -- every kind of business that goes on,  
24 rather than it being a tailored product.

25 Now, maybe that's desirable and maybe it's not,

1 but that's where that exemption came from five years  
2 ago, and that's what -- I mean, that's the concern we  
3 were trying to address.

4 MS. HARRINGTON: Susan, did you want to say  
5 something?

6 MS. GRANT: Yes, Susan Grant, National  
7 Consumers League.

8 That is desirable. When you call the airline  
9 and you order tickets, they take great pains to explain  
10 to you not only the times of the flights and the fact  
11 that perhaps it's a nonrefundable ticket that you're  
12 buying, there may be some special check-in requirements  
13 or other things that you need to know.

14 When you're calling and ordering flowers,  
15 you're also told what you need to know about what to  
16 expect, and I don't think that consumers are entitled  
17 to any less than that when they're making a commitment  
18 to buy something on the phone.

19 MS. HARRINGTON: We'll take another couple  
20 minutes on this, and then we're going to move on.

21 Jerry, your tent -- your tent flopped.

22 MR. CERASALE: The total exemption, I mean, you  
23 look at 310.5, I mean, you just virtually destroy the  
24 use of the telephone as an incoming device, and that's  
25 -- there's no catalog that can survive without having

1 the telephone, and they don't have to do any outbound  
2 telephone, so they need it. Businesses require it to  
3 have inbound -- inbound phone calls, and you can't just  
4 willy-nilly put this rule on all of them. You just  
5 would destroy this means of communication by putting up  
6 regulatory schemes that would increase costs so  
7 dramatically that you diminish the value of it, and you  
8 dramatically would hurt commerce in the United States.

9 MS. HARRINGTON: Okay, we are going to hear  
10 from Heather, Char and Avonne, and then we are going to  
11 move on to the next two questions.

12 MS. MCDOWELL: This is Heather McDowell with  
13 ERA.

14 Another I think piece on -- sort of  
15 piggybacking on that is, you know, how would you --  
16 there are a lot of provisions of this rule that just  
17 don't work in an inbound context, things like, you  
18 know, disclosure requirements that you have to state,  
19 you know, who's calling and the purpose of the call.  
20 Well, who's calling is not that big a deal, you are  
21 going to identify yourself when you say hello when a  
22 consumer calls, but I mean the consumer in an inbound  
23 situation determines the purpose of the call. So, how  
24 is the marketer to do that?

25 And, you know, calling time restrictions, I

1 mean, there are other provisions in the rule that just  
2 don't lend themselves to application in an inbound  
3 situation.

4 MS. HARRINGTON: Char?

5 MS. PAGAR: And I would just simply add, just  
6 using Susan's examples, even though the TSR doesn't  
7 apply right now to the airlines and to the florists,  
8 they do make those disclosures. I mean, the idea would  
9 be as long as -- you know, there isn't a sort of  
10 general problem here, so let's not regulate where there  
11 isn't a problem, that disclosures are largely being  
12 made, and I think that's why the exemption was crafted  
13 the way it was.

14 To the extent that there may be problems in  
15 specific areas, maybe we can work on that, but that's  
16 -- that's really I think the better approach.

17 MS. HARRINGTON: Avonne, you will have the last  
18 word on this.

19 MS. SEALS: Just an overriding principle, I  
20 think that good points have been made and it's  
21 something for the FTC to consider, but I think the main  
22 point here in response to Keith is the question of what  
23 is the purpose of the rule. Is the purpose of the rule  
24 to protect business and its interests, to make its life  
25 easy in terms of trying to cater to its market, or is

1 its purpose to make life easier for consumers who are  
2 the likely targets of the bigger, broader business  
3 world? So, I -- that's the only point I wanted to  
4 make, is that we've got to keep in focus what the  
5 purpose of the rule is as we consider I think the very  
6 good points that have been made from both sides.

7 MS. HARRINGTON: All right. I think we've  
8 heard some comment from John on the face-to-face  
9 exemption already. Would anyone else like to comment  
10 on the adequacy of the face-to-face exemption?

11 Peter?

12 MR. DRYMALSKI: I have one comment on it, and I  
13 don't see any purpose in exempting the calls from the  
14 do-not-call requirement. If the purpose of the call is  
15 not to make a sale but to set you up for a sale later,  
16 it's still an intrusion into your home, and it still  
17 should be covered by the do-not-call requirement.  
18 You're being solicited for the purpose of being  
19 solicited later, and I don't see any difference to the  
20 recipient of this call and the annoyance that it  
21 causes. He's still got to respond to a call he doesn't  
22 want, and I think they should be covered for that  
23 purpose.

24 MS. HARRINGTON: Okay.

25 Jason?

1           MR. CATLETT: I'd just echo Peter's comments  
2 there. We get a lot of e-mail to Junkbusters from  
3 consumers who say when they try to exercise their right  
4 not to be called, that the aluminum siding salesman  
5 says, well, we're not actually selling you aluminum  
6 siding in this call, we're offering you the opportunity  
7 for a free quote, and I don't think that that stands up  
8 to any rigorous legal or analytical analysis, but many  
9 consumers are being told that and are having their  
10 rights abused because of it.

11           MS. HARRINGTON: So, the suggestion is that the  
12 exemption in 310.6-C should be -- that there should be  
13 an exception from that exemption with respect to the  
14 do-not-call provisions of the rule.

15           Jeff?

16           MR. KRAMER: Yeah, Jeff Kramer with AARP.

17           We would agree with that, as well. A lot of  
18 our members have the same problems. They get repeated  
19 calls from these people, and we're sitting out there  
20 trying to make consumers aware of the do-not-call  
21 provisions, and then they try and enforce them or use  
22 them, and they're being told no, they can't, and these  
23 people continue to call them and harass them. Even  
24 though they don't show up at their house maybe because  
25 they don't make the appointment, they continue to call.

1 MS. HARRINGTON: Okay. Anything else on this  
2 face-to-face exemption before we move to the direct  
3 mail?

4 John?

5 MR. HESSE: Yeah, we would not be agreeable to  
6 that largely because our distributor force couldn't  
7 afford to maintain a list. You're talking about real  
8 microenterprises where people earn on average less than  
9 -- well, 50 percent of them, of our 10 million  
10 distributor sales force, earns less than \$5,000 a year  
11 on their direct selling activities. So, in order for  
12 them to maintain individually a do-not-call list would  
13 be completely prohibitive.

14 MS. HARRINGTON: Are most of the calls that  
15 your members making intrastate? I mean, with the  
16 exception of, you know, extremely weird areas, like the  
17 Washington metropolitan area?

18 MR. HESSE: Well, you run into that, but you  
19 also run into the situation where they're calling  
20 family that may be located in different states,  
21 where --

22 MR. ANDERSON: But John -- John, if one of your  
23 members -- if somebody tells -- if one of your members  
24 calls me and I say, no, I'm really not interested,  
25 please don't call me again, they are not going to call

1 me again, are they?

2 MR. HESSE: No, they are not going to call you  
3 again.

4 MR. ANDERSON: Then is this an issue?

5 MR. HESSE: And largely you will know them from  
6 someplace, you will have met them from someplace, you  
7 will have some kind of a relationship with them. It's  
8 only an issue if what we're talking about becomes  
9 applicable to them. I mean, my mother sells Amway. If  
10 she calls me from Florida to offer me soap --

11 MR. HILE: Don't call me again, mom.

12 MR. HESSE: I mean, we're talking -- I mean,  
13 that could be covered, I mean, I -- and to ask my  
14 mother to maintain a do-not-call list because I've  
15 asked her not to call me is kind of silly.

16 MS. HARRINGTON-MCBRIDE: I would suggest that  
17 just asking her might be enough. That would probably  
18 get you out of the loop.

19 MS. HARRINGTON: Jason?

20 MR. CATLETT: Could I suggest that the  
21 requirement to maintain a do-not-call list is mandated  
22 by the Telephone Consumer Protection Act of 1991? Now,  
23 John, are you telling us that your members are unable  
24 to comply with that law?

25 MR. HESSE: No, we're currently exempt from



1 complying with that.

2 MS. HARRINGTON: From the Telephone Consumer  
3 Protection Act? That's the --

4 MR. CATLETT: On what basis are you exempt?

5 MR. HESSE: Through -- well, we're exempt  
6 through the face-to-face exemption, because all of our  
7 calls --

8 MR. CATLETT: There is no face-to-face  
9 exemption.

10 MS. HARRINGTON: No, different law, we are  
11 talking about a different law. There is an overriding  
12 federal statute --

13 MR. HESSE: You are talking about the statute  
14 administered by the Federal Communications Commission?

15 MS. HARRINGTON: Right.

16 Where's Mary Romano? I saw her walk in the  
17 door. Raise your hand, Mary. She was here, from the  
18 FCC.

19 MR. HESSE: There are -- see, I don't have that  
20 particular statute in front of me, so I can't speak to  
21 it exactly, but we are -- there is an exemption that  
22 covers our activities within that rule, within that  
23 statute.

24 MR. CATLETT: I believe I have a copy of it  
25 here for you.

1 MR. HESSE: Well, thank you.

2 MS. HARRINGTON: Well, we'll -- that's an area  
3 for further exploration.

4 The direct mail exemption -- Keith, did you  
5 have a question?

6 MR. ANDERSON: Oh, no.

7 MS. HARRINGTON: The direct mail exemption.  
8 Jason, did you have a comment on that or --

9 MR. CATLETT: I'm sorry, that was from the  
10 previous.

11 MS. HARRINGTON: We're resetting the clock.

12 John, did you want to talk about the direct  
13 mail exemption or anything else? Your tent is up.

14 MR. HESSE: I'll wait for Jason to pass me a  
15 copy of the Telephone Consumer Protection Act.

16 MS. HARRINGTON: It's coming down the table.

17 MR. HESSE: Then I reserve the right to respond  
18 to his question.

19 MS. HARRINGTON: You have no rights here to be  
20 reserved, but we'll --

21 MR. HESSE: I respectfully ask for the right to  
22 respond to his question.

23 MS. HARRINGTON: -- but we'll call on you  
24 again.

25 Does anybody want to say anything about the

1 direct mail exemption? It seems to be working?  
2 Everybody can live with it? Heads nodding all around  
3 the table, okay.

4 What about other exemptions to the TSR, anyone  
5 have anything to say about the exemptions?

6 MR. DUNCAN: Just a general comment --

7 MS. HARRINGTON: Mallory?

8 MR. DUNCAN: Just a general comment from our  
9 members. They have felt that the exemptions were  
10 properly crafted the first time around. They have  
11 worked well. They are comfortable with them. They  
12 understand how they work, and they feel there has not  
13 been a misuse on the part of their side or the consumer  
14 side.

15 MS. HARRINGTON: Susan?

16 MS. GRANT: We noted in our written comments  
17 some problems with exemptions, for instance, for  
18 advanced fee sales of credit cards. One of the scams  
19 that we hear about a lot at the National Fraud  
20 Information Center, these are not real financial  
21 institutions offering credit cards, but consumers don't  
22 know that, and they are companies that are asking for  
23 fees in advance of getting the credit card under  
24 various ruses, and the consumer either never gets a  
25 card or gets the type of card that really is only a

1 charge card that can be used at the vendor's own  
2 catalog. So, we are concerned about instances like  
3 that that seem to fall through the cracks.

4 MS. HARRINGTON: I'm unaware of a crack on  
5 that.

6 MS. GRANT: Okay.

7 MS. HARRINGTON: I think that those are covered  
8 under the exception to the exemption for direct mail.  
9 There's a larger jurisdictional issue, of course, that  
10 the FTC has with respect to our jurisdiction, which is  
11 not a Telemarketing Sales Rule issue. It has to do  
12 with the Federal Trade Commission Act's -- the  
13 limitations on the coverage of the Federal Trade  
14 Commission Act. We do not cover federally chartered  
15 financial institutions, federally insured financial  
16 institutions.

17 MS. GRANT: Right, I'm not talking about mail  
18 solicitations, though, I'm talking about telephone  
19 solicitations for credit cards.

20 MS. HARRINGTON: Right, and those are -- those  
21 are subject to the rule unless they're made by an  
22 entity that is not -- those are subject to our rule --

23 MS. GRANT: Right.

24 MS. HARRINGTON: -- unless they are made by an  
25 entity that is not subject to our jurisdiction, but the

1 question of whether they are subject to the states'  
2 authority under our rule is a different question.

3 MS. GRANT: There is nothing, though, that  
4 prohibits asking for a fee in advance of getting a  
5 credit card under the rule, and with the exception of  
6 secured credit cards, for which there's a good reason  
7 to ask for something in advance, money goes into a bank  
8 account to cover the credit line, I don't really know  
9 of any legitimate institution that asks for advanced  
10 fees. Usually the fee appears on the first month's  
11 bill.

12 It would be very helpful to have a prohibition  
13 against this, especially since for consumer education  
14 the more bright you can draw that line about what  
15 consumers should look for, what should tip them off  
16 that there's a fraudulent situation, the better, and  
17 that certainly would be very helpful.

18 MS. HARRINGTON: John?

19 MR. HESSE: Back to the Telephone Consumer  
20 Protection Act, there are two exemptions that our  
21 members feel cover the activities of their  
22 distributors, and they're within the definition of  
23 telephone solicitation and a prior existing business  
24 relationship exemption or the prior express invitation  
25 exemption.

1           Typically the way that a distributor will make  
2 a call, he will either ask permission or he will know  
3 the person. So, we feel that those two exemptions  
4 within the Act cover our activities, and we've argued  
5 for a business relationship exemption to be included  
6 within the rule that we're talking about here, and, in  
7 fact, we have asked for a personal relationship  
8 exemption. So, I would refer you to our comments on  
9 that, and if you want to debate the legality of it, I  
10 would suggest that we do that outside of the record.

11           MR. CATLETT: Well, I'd just comment that the  
12 requirement to maintain a do-not-call list is incumbent  
13 on anyone making a solicitation.

14           MR. HESSE: Unless you're exempted by the  
15 statute.

16           MS. HARRINGTON: Anything else on exemptions?

17           Well, here's what we'll do. We will take our  
18 break that was not scheduled until 10:30, and we will  
19 resume at 10:35 to discuss disclosure, okay?

20           (A brief recess was taken.)

21           MS. HARRINGTON: We are now onto the subject of  
22 the disclosure requirements in the existing rule, and  
23 the first question is really one that we're hoping to  
24 hear from the business side on, initially at least, and  
25 that is where the current disclosure requirements and

1 the requirement that they be made promptly, clearly and  
2 conspicuously, have those been burdensome to  
3 telemarketers?

4 Matt, I'm going to start with you. Have the  
5 disclosure requirements been burdensome?

6 MR. MATTINGLY: Matt Mattingly, ATA.

7 Well, I recognize that there's a point of view  
8 on the part of some that any disclosure is burdensome.  
9 I think for the most part, now that we have had five  
10 years to operate under the TSR, that most of industry  
11 is comfortable with the disclosure requirements that  
12 are contained there. They've had five years to do it,  
13 to become acquainted with it, become familiar with it,  
14 to become skilled at it, and I think that the  
15 legitimate telemarketer accepts this as a cost of doing  
16 business.

17 And as we discussed to a point yesterday, I  
18 think there's also a recognition that a properly  
19 rendered disclosure statement is in the best interests  
20 of the telemarketer as well as the consumer. I think  
21 the concern that we hear from our membership is that we  
22 are reluctant and we are concerned with proposals for  
23 additional disclosures. It seems sometimes that no  
24 matter how we craft a disclosure statement, it's never  
25 good enough. We always need to disclose something

1 more. When is enough enough? Do we keep going to the  
2 point where we have a script that looks like this,  
3 where we have 95 percent disclosure and 5 percent  
4 marketing?

5           Some of the disclosure requirements that we  
6 hear from time to time cause considerable concern. In  
7 our recent legislative conference here in Washington,  
8 we had a chance to discuss these issues with members of  
9 Congress that have enacted some of the statutes that  
10 apply here, and some of the things that we heard would  
11 amount to a Miranda warning to be presented to the  
12 consumer before you are able to commence your compact.

13           Certainly I would hope that it never comes to  
14 that. Where we have a reasonable requirement based on  
15 a history, a significant history, where there is a  
16 demonstrated need to clarify, then I think any  
17 legitimate businessman would be willing to accept  
18 revision or change, but additional disclosures for the  
19 sake of disclosure, disclosures to disclose  
20 disclosures, at some point there needs to be a better  
21 balancing act between the interests of consumers and  
22 the interests of business.

23           If we carry this to extremes, we will  
24 eventually have -- and this is not a telemarketing  
25 example -- but when the Girl Scouts come to your door



1 to sell you Girl Scouts cookies, will they need to  
2 begin with a Miranda warning to appraise you of the fat  
3 and cholesterol content of the cookies? Let's not have  
4 that same situation in telemarketing.

5 MS. HARRINGTON: Peter?

6 MR. DRYMALSKI: I have a question for the  
7 telemarketers. Do all of you operate in the State of  
8 Maryland and have you reported -- do your members  
9 report any complaints about doing business in Maryland  
10 by telephone? I have a reason for asking, but I'd like  
11 to know if Maryland has a bad reputation.

12 MR. MATTINGLY: I -- Peter, I can't give you  
13 any direct specifics, but I'll be glad to ask the  
14 question. If there are, I'm sure we'll hear about it.

15 MS. HARRINGTON: Well, Nancy certainly operates  
16 in Maryland.

17 MS. MATSON: Yeah, I do a lot of business in  
18 Maryland, and I have not heard that there -- I mean, we  
19 certainly get requests for do-not-calls, and we honor  
20 those, but I haven't heard any specific complaints from  
21 anything in that state.

22 MR. DRYMALSKI: The reason I ask, and it's  
23 leading to my comment on the rule, is that Maryland has  
24 a state rule that says that a telephone solicitation --  
25 an agreement made as a result of a telephone

1 solicitation is not binding on the consumer -- is not  
2 enforceable on the consumer, I should say, until it's  
3 reduced to writing and signed by the consumer, which  
4 means that if you operate in Maryland, the consumer can  
5 avoid the agreement if you don't get a signature on it.  
6 That's why I asked if Maryland has a bad reputation.

7 Now, if you can do business in Maryland and  
8 comply with that law, it seems to me that the national  
9 law ought to at least require that the consumer be  
10 given a written confirmation of just what agreement he  
11 entered into, because like I say, the more disclosures  
12 you get, then they are going to be harder for the  
13 consumer to remember what they were, and my point is  
14 that the national law should include at the very least  
15 the requirement that whatever the contract is the  
16 consumer be given a written copy of it, preferably with  
17 the right to back out if he doesn't like what he's  
18 reading.

19 MS. MATSON: This is Nancy with Verizon, and  
20 although we don't have an issue in Maryland and our  
21 customers have the right, if they choose to change  
22 their mind or choose to disconnect the service, they  
23 can certainly do that. There is also an option that  
24 the customer is informed of when they purchase our  
25 services that allows them to change their mind within

1 certain days and be charged absolutely nothing. So, I  
2 think if we added a written consent where we actually  
3 had to get something in writing from every customer  
4 that we sold services to, it would be very burdensome.

5 MS. HARRINGTON: Well, let me move on to the  
6 next question, which is are these disclosures, in fact,  
7 being made promptly, clearly and conspicuously, and  
8 have the disclosures required in the rule been  
9 beneficial to consumers?

10 Laura?

11 MS. POLACHECK: Thank you, Laura Polacheck from  
12 AARP.

13 We are very concerned, as we were with the  
14 initial rulemaking on this, about the timing of the  
15 disclosures. I think the initial rule, as issued by  
16 the FTC, had the requirement that their disclosures be  
17 made before payment was requested, which means that  
18 when you were making a decision about whether or not  
19 you want to go ahead with the -- and agree to buy the  
20 goods and services that are the subject of the call,  
21 that you know exactly what you're getting into.

22 The way the rule is now, you can get these  
23 disclosures much later, it's before you pay, can be in  
24 writing, doesn't have to be conspicuous, but it  
25 certainly is after the fact, after the consumer has

1 already listened to the sales pitch and made the  
2 decision to make the purchase, and when they come much  
3 later, it can have much -- it has much less of an  
4 effect on their decision and the way it's made at the  
5 time they're actually making the decision of whether or  
6 not to buy.

7           We had a lot of discussion about this five  
8 years ago about before payment is requested or before  
9 the consumer pays, and the fact that it can come  
10 perhaps weeks later, if the consumer hasn't paid yet,  
11 as long as the consumer hasn't paid, you can make these  
12 disclosures in writing after they think they already  
13 knew what they agreed to. It's just not as effective.  
14 You're selling something sight unseen, unsolicited.

15           People keep saying, oh, when you go to a store,  
16 try to make the analogy that it's the same thing as  
17 going to a retail store, which, of course, it's not.  
18 You're not seeing the item, you don't know the quality  
19 of the item, you don't know necessarily about all the  
20 policies on refund and shipping and handling fees, et  
21 cetera, and so if you're going to make a truly informed  
22 decision about exactly the deal you're getting, the  
23 disclosure should be made before you agree to it.

24           And I know for our membership in particular, I  
25 think they feel once they've made a decision, it's very

1 difficult to back out. They feel like I've already  
2 committed to this, and now I'm finding out all these  
3 other conditions of the sale, and it's very difficult  
4 for them to think they can change their minds about  
5 whether or not to go ahead with it.

6 MS. HARRINGTON: Nancy?

7 MS. MATSON: I just wanted to ask, is this  
8 primarily from outbound telemarketing versus inbound,  
9 correct? In other words, it's not customer initiated,  
10 it's initiated by the company to contact the customer?

11 MS. POLACHECK: Yes.

12 MS. MATSON: Okay.

13 MS. HARRINGTON: Mallory, I'm sorry.

14 MR. DUNCAN: I just wanted to make a general  
15 comment on this based on comments I've received from  
16 our members. They have found -- again, I can't speak  
17 for every company out there, but they are making the  
18 disclosures promptly, they're saying who they are,  
19 they're giving them terms and conditions of the  
20 contract, and they have found that it works very well.  
21 It's -- the rule is clear enough that they can follow  
22 it, and they felt that it actually has a benefit in  
23 terms of the ultimate sale to consumers, as well,  
24 because when the disclosures are made, in a sense, it  
25 moderates the expectations of the individuals. They

1 know what the limitations are. And the rule seems to  
2 work very well as it's presently constructed.

3 MS. HARRINGTON: Thank you.

4 Susan?

5 MS. GRANT: I don't know if this is more of a  
6 problem in outbound calls than inbound, I don't have  
7 any statistics for that, but I think that it really  
8 doesn't matter, that what's important is that the  
9 disclosures be made to consumers, and especially if a  
10 consumer, as we discussed before, is responding to an  
11 advertisement that doesn't have all this information,  
12 then even in an inbound call, it's very important for  
13 the disclosures to be made up front, before the  
14 consumer has made any decision about whether or not to  
15 buy.

16 MS. HARRINGTON: Bob?

17 MR. BULMASH: Bob Bulmash, Private Citizen.

18 I believe the disclosures include an up-front  
19 statement from the caller saying that this is indeed a  
20 sales call. Am I correct in that? I believe it's in  
21 there. That --

22 MS. HARRINGTON: There is a requirement that  
23 there be prompt disclosure of the identity of the  
24 seller and the purpose of the call.

25 MR. BULMASH: That is not happening.

1 MS. HARRINGTON: Matt?

2 MR. MATTINGLY: Matt Mattingly, ATA.

3 I note the comments on the timing of  
4 disclosure, that it's been recognized that this issue  
5 was discussed at considerable length five years ago.  
6 Unfortunately, I was not present in Chicago. I am --  
7 unfortunately, because I understand it was quite  
8 entertaining, among other things, but five years ago,  
9 that issue was decided, and we see it now as it's  
10 promulgated in the TSR.

11 Okay, five years later, what has changed? Is  
12 there a body of evidence present here to show that that  
13 doesn't work, something more than anecdotal or opinion  
14 or speculation?

15 MS. HARRINGTON: Anyone else want to say  
16 anything about disclosures?

17 Avonne?

18 MS. SEALS: From the states' perspective, we do  
19 feel that "promptly" needs to be defined, and 310.4-D  
20 requires oral disclosures, it does state that these  
21 disclosures should be disclosed promptly, but promptly  
22 is pretty much left to the latitude of the  
23 telemarketer, and that's problematic.

24 MS. HARRINGTON: Do the states have a proposal  
25 for how that should be defined?

1 MS. SEALS: Yes, we did propose that it should  
2 require disclosure at the onset of the call, of the  
3 caller's true first and last name, the seller's name,  
4 and the fact that the purpose of the call is to sell  
5 goods or services. So, that does not go back to your  
6 310.3, I think A, disclosures, but it does go to the  
7 required ones that should be made initially, so that  
8 the consumer realizes that they're about to be pitched  
9 to buy something.

10 MS. HARRINGTON: Okay.  
11 Heather?

12 MS. MCDOWELL: I wanted to mention -- I'm not  
13 sure that there isn't guidance already in the  
14 Commission's statement of purposes about what is meant  
15 by "prompt." I mean, not every word in a rule can be  
16 defined, and I think the Commission has offered its  
17 guidance, and that being that those disclosures that  
18 have to be made promptly should be made before any  
19 sales pitch or before any substantive presentation  
20 about the product or service, and I think that's a  
21 workable, flexible standard in that it allows a  
22 marketer to do some initial, you know, hello, to be  
23 polite to the consumer, to establish some rapport, but  
24 certainly it makes them identify who they are, what  
25 they're calling about before they get into the



1 substance of it.

2 MS. HARRINGTON: Susan?

3 MS. GRANT: I think that the distinction that  
4 Laura drew about before payment is requested and before  
5 payment is made is especially important given the  
6 change that we heard about yesterday, the trend to  
7 telemarketers having pre-acquired account information  
8 for consumers.

9 MS. HARRINGTON: Laura?

10 MS. POLACHECK: Yeah, I want to go back to the  
11 point about the fact that this was discussed five years  
12 ago. I mean, I believe everything was discussed five  
13 years ago, and we're all here today again to see  
14 whether or not there should be any changes or see how  
15 it's working. So, I think the point that it was  
16 discussed before is really not apropos today.

17 We -- there have been a lot of complaints from  
18 consumers in the states. I do a tremendous amount of  
19 work at the state level, with the state telemarketing  
20 laws, cases of people that do not believe they got  
21 adequate disclosures, and that is why dozens of states  
22 have passed stronger telemarketing laws than the  
23 federal law, because they believe more protections are  
24 needed for consumers to fully understand what they're  
25 getting and who is calling them and what the deal is

1 before they agree to make the purchase.

2           So, clearly there is a need that's perceived at  
3 the state level among many state attorneys general that  
4 the disclosures are not necessarily adequate and that  
5 the timing is not necessarily adequate and that  
6 protections at the federal level can go beyond what  
7 they are. I think when the federal rule was initially  
8 issued, maybe -- it was made clear that this was a  
9 floor protection and the states were free to go beyond  
10 this floor, and we have in AARP gone state by state and  
11 worked with the states to go beyond.

12           Now, whether or not the federal rule is going  
13 to change or not is a different story, but clearly  
14 there is room for additional protection for consumers.  
15 So, if you want -- if you want, I can give you  
16 statistics state by state of complaints, of people who  
17 feel they have not gotten adequate disclosures at the  
18 time they needed it to make a decision.

19           MS. HARRINGTON: Katie?

20           MS. HARRINGTON-MCBRIDE: There seems to be a  
21 little bit of perhaps confusion or just -- we are in  
22 two different parts of the rule here, I think, and just  
23 to clarify, the 310.4-D disclosures that I think we're  
24 talking about here, where the requirement is that they  
25 be made promptly, clearly and conspicuously, the

1 definition of "prompt" is not included in the rule;  
2 however, in a footnote in the statement of basis and  
3 purpose, it's made clear that "prompt" is -- we're  
4 looking at sort of the dictionary definition, which I  
5 believe we've said is at once or without delay.

6 So, I mean, that's -- the Commission has  
7 certainly spoken on that, and I think what we're trying  
8 to get at is that still I guess leaves some room for  
9 interpretation. Reasonable people might -- you know,  
10 at once or without delay, is it adequate for consumers?  
11 Are they finding that it's being done at once?

12 MS. HARRINGTON: Avonne?

13 MS. SEALS: Just briefly to respond to that, we  
14 did note in our comments that there was a footnote that  
15 defined it, the usual meaning of the term should apply,  
16 prompt defined as done, performed, delivered, et  
17 cetera, at once or without delay. Apparently, based on  
18 what I'm hearing from Laura, and perhaps Susan could  
19 echo those concerns, that's not been interpreted the  
20 way it should, and perhaps it's not enough.

21 I'm suggesting for the states that we -- if we  
22 could define it a little more precisely, that perhaps  
23 that would happen. I think there is a little bit of  
24 leeway there. I mean, if you get into hi, how you  
25 doing, and you start getting into how's your daughter

1 doing, you know, you could go on with this for a long  
2 time, get a very good rapport, particularly with the  
3 senior citizen, what have you, and basically kind of  
4 break down some of their initial reluctance to even be  
5 on the phone.

6 MS. POLACHECK: Could I just make a point to  
7 that?

8 I think what we're talking about, disclosures  
9 that have to be made that are material do not have to  
10 be made promptly. They just have to be made before the  
11 consumer pays, but what -- the disclosures that have to  
12 be made promptly are about the nature of the call but  
13 not the material disclosures. So, there are two  
14 different levels of disclosure.

15 MS. HARRINGTON: Jerry?

16 MR. CERASALE: Yeah, actually, I was going to  
17 say -- sort of say was Laura was saying, that we're  
18 talking about two different sections of the rule and  
19 two different requirements. I mean, promptly as  
20 defined by the FTC in the footnote is prompt, you  
21 couldn't -- I have to differ with Avonne, you couldn't  
22 go and -- on a long discourse before you said it was a  
23 sales call. That's not allowed.

24 If, in fact, as Mr. Bulmash -- Bob says,  
25 Bulmash says, is that it isn't happening, then that's a

1 violation of the rule. So, you go after them. You  
2 don't have to change the rule on that. It's a  
3 violation.

4           The other, on the -- going back to Laura's  
5 point, before a customer pays for the goods and  
6 services, failing to disclose in a clear and  
7 conspicuous manner the following information, and  
8 that's the total cost and so forth, we see, you know,  
9 right before you pay in discussions that we've had, in  
10 other rules and other rulemakings, right before you pay  
11 is the time when you have to make the final decision,  
12 and that's the time you want to make sure that that is  
13 made and done.

14           It's interesting, Laura said that something  
15 coming later was not as good, and yet we hear from  
16 another person here that -- with Maryland that they  
17 want to have it required that you get something in  
18 writing later, which is kind of an interesting  
19 juxtaposition. Remember that this is a situation where  
20 you're on a telephone call, so you really don't want to  
21 go through all these disclosures twice, so you do it  
22 right at the time when you get the authorization in  
23 payment, that's when it seems to make the most sense to  
24 us, and we think the rule is working adequately there  
25 and should stay as it is.

1 MS. HARRINGTON: Bob?

2 MR. BULMASH: Bob Bulmash, Private Citizen,  
3 Incorporated.

4 The reason I had talked about the fact that the  
5 disclosure that this will be a sales solicitation call  
6 was not necessarily to suggest that it be enforced, but  
7 it was I guess to counter the statement of some of the  
8 industry that says that the rules are being followed.  
9 They're not necessarily being followed, and in the  
10 majority of cases, they're not being followed in the  
11 initial disclosure concerning this is a sales call,  
12 because indeed if you got a call at home that started  
13 off with, hi, this is a sales call, you're off the  
14 phone.

15 I think it goes to the basic sense of what the  
16 industry is about. These calls are called courtesy  
17 calls, they're called informative calls or friendship  
18 calls or -- who knows, they come up with so many  
19 euphemisms, it spins your mind, but if the consumer  
20 picks up the phone and hears, this is a sales call,  
21 that call is over, and that's all there is to it, and  
22 when the industry says that the TSR is being followed  
23 in that regard, that is not true.

24 MS. HARRINGTON: Good news, there's coffee  
25 outside. We're not going to stop, but if anybody wants

1 to get up and stroll out and get some --

2 MS. EASON: And pastries.

3 MS. HARRINGTON: And pastries. Katie, take  
4 over.

5 Actually, what I'm thinking here is that I'd  
6 like to move on to the next question here about  
7 multiple payments, where the transaction requires  
8 multiple payments, what -- how are these disclosures,  
9 the cost disclosures, being made, how should they be  
10 made, are things working? And does anybody need  
11 anything from outside while -- while I'm up? I'll  
12 bring --

13 MS. MCDOWELL: Just bring the cart in.

14 MS. SEALS: I had a question. Did we discuss  
15 dual-purpose calls?

16 MR. HILE: Not yet.

17 MS. HARRINGTON: It's coming up.

18 MS. HARRINGTON-MCBRIDE: Susan?

19 MS. GRANT: This remains a problem, and I'd  
20 hate to inform my friend from the Magazine Publishers  
21 Association, but magazine sales complaints to us are  
22 actually rising, they're number two so far in 19 -- in  
23 the year 2000 after sweepstakes and prize offers, and  
24 it's still a problem that consumers are not being given  
25 the total costs for these magazine subscriptions, that

1 they're being described to them in terms of the low  
2 monthly costs, but when a multiyear commitment is being  
3 made, the consumer doesn't find out until later, after  
4 the commitment is made, how many hundreds of dollars it  
5 really is.

6 MS. HARRINGTON-MCBRIDE: I -- would you like a  
7 chance to respond to that, Michael?

8 MR. MATTINGLY: His card's not up.

9 MS. HARRINGTON-MCBRIDE: No, but I could see  
10 that he was eager to speak.

11 MR. PASHBY: Just responding to the complaints,  
12 I'm sorry if we are number two on the list, I think we  
13 were number two on the list before, as well.

14 MS. GRANT: No, you're up.

15 MR. PASHBY: That's the first time I've heard  
16 that, and I -- you know, I'd like to talk to you about  
17 that afterwards.

18 As to -- not now. As to total cost, we've  
19 always taken the position that the consumer should be  
20 aware of what they're going to be paying, when they're  
21 going to be paying it, and if a consumer is going to be  
22 charged \$20 a month for five months, they should be  
23 aware that that is how it is going to be charged, and  
24 we think that adequately defines total cost and gives  
25 the consumer enough disclosure on that.



1           I'd also point out that in most magazine sales,  
2 certainly in the multiyear sales, no written contract  
3 is required of that consumer or asked for of the  
4 consumer, and therefore it's not an enforceable  
5 contract, and so the consumers frequently do not pay  
6 the ending balances on those -- on those agreements.  
7 We've always pointed out that we do have full  
8 cancellation and refund policies within the industry,  
9 and we like to follow those.

10           MS. HARRINGTON-MCBRIDE: Avonne?

11           MS. SEALS: The states also have found some  
12 problems with respect to magazine sales, and in  
13 particular, as Susan referenced, in -- and I don't want  
14 to be repetitive, but just to give an example that we  
15 cite in our comments, it's just a big difference for a  
16 person to hear that they're going to be charged \$3.45  
17 per week for 48 months versus more than \$700. That's a  
18 substantial difference in terms of just what one  
19 thinks.

20           I mean, \$3.45 to me is less than what it would  
21 cost for me to have lunch on a particular day. So, I  
22 would think that I could afford that for a week;  
23 however, when I think about \$700 and I think about  
24 magazines, then a completely different decision-making  
25 process kicks in, and that's the bottom line there.

1           You know, we advocate that consumers are  
2           advised as to total cost, what it will be to purchase  
3           the entire product.

4           MS. HARRINGTON: While there's a pause in the  
5           discussion, we thank the Electronic Retailers  
6           Association for coffee and yummys, and so not only  
7           will magazine sales be exempt, but all electronic  
8           sales, as well. I'm sorry that we've moved past the  
9           exemption part of the day.

10          And the record will reflect that people are  
11          laughing and that's a joke, but thank you very much.  
12          That's very kind.

13          Laura?

14          MS. POLACHECK: Yes, thank you. I think it  
15          gets back --

16          MS. HARRINGTON: If you would buy coffee and  
17          pastries, we would exempt the whole AARP membership  
18          from having to answer the phone.

19          MS. POLACHECK: We would greatly appreciate  
20          that.

21          I think this gets back to the quality of  
22          disclosures, and I know we've gone off that, but I  
23          think when Peter was talking about the rules in  
24          Maryland, the written disclosures after the fact were  
25          not a substitute for disclosures made during the call.

1 It's a memorialization of what you think you agreed to,  
2 and the same thing is true here. What did you agree  
3 to? What did you think you were getting into?

4 And clearly you want to know that before you  
5 think you've agreed, yes, you're going to go ahead with  
6 this, and getting a disclosure much later when you're  
7 about to pay is just not adequate enough. And learning  
8 when you have installment payments, it's not -- I don't  
9 want to analogize it to a rent-to-own situation, but  
10 there are certain situations where it seems like a good  
11 deal, based on how it's presented, but if you don't get  
12 the full picture of the total cost, then you're not  
13 getting a full story of what you're agreeing to.

14 MS. HARRINGTON: Is there anything else on the  
15 issue of multiple payments?

16 Okay, let's move back -- oh, I'm sorry,  
17 Mallory.

18 MR. DUNCAN: Just briefly, you asked the  
19 general question as to how it was being done. In  
20 talking with companies, the rule -- they feel the rule  
21 offers sufficient flexibility. Some companies, for  
22 most purchases, it is the total cost. This will cost  
23 \$200, we are going to put this on your blank card bill  
24 if you would like, but there are certain items that are  
25 purchased on a recurring basis, and my understanding is

1 that those are quoted in terms of the recurrence.

2 So, the cost -- so, if it's something that's a  
3 monthly item, the charge would be this is the cost per  
4 month. If it's a yearly item, this is the cost per  
5 year.

6 MS. HARRINGTON: Susan, did you want to add?

7 MS. GRANT: Yeah, I just -- I would note that  
8 yesterday one of the forecasts that we heard was that  
9 we'd see more and more sales where the payments are  
10 broken down instead of the consumer paying the total  
11 cost at one time. So, I think it's appropriate to  
12 really look at this and think carefully about how it  
13 can be improved to ensure that consumers know that  
14 total cost.

15 MS. HARRINGTON: Michael?

16 MR. PASHBY: I think as certain industries move  
17 to a till for bid service, continuous service type  
18 model, certainly with magazines, is that becomes very  
19 difficult to give a total cost if that purchase is  
20 going to occur over many, many years, and therefore the  
21 cost that someone is agreeing to pay in a periodic  
22 period is much more important to that consumer. It  
23 gives them absolute knowledge of what is being charged  
24 at what time for how long a period, and I think that's  
25 important.

1 MS. HARRINGTON: Jerry, we'll give you the  
2 final word on this, and then we are going to move to  
3 dual-purpose calls.

4 MR. CERASALE: Some of the problems, think  
5 about -- I don't know if any of you know, but a  
6 telemarketing call from a newspaper that you want to  
7 subscribe to, a newspaper, and it costs 20 bucks a  
8 month or it costs \$5 a week, whatever it is, would you  
9 like to subscribe, yes or no? It's impossible to give  
10 the total cost, because you don't know when you're  
11 going to stop the subscription, so that they -- so, you  
12 have to be a little bit careful here in this  
13 definition.

14 MS. HARRINGTON: Okay, let's move to  
15 dual-purpose calls. In these calls, when are  
16 disclosures being given?

17 Keith?

18 MR. ANDERSON: Can I add to your question?

19 MS. HARRINGTON: Of course.

20 MR. ANDERSON: But I have to chew.

21 MS. HARRINGTON: Okay, well, we'll just hum  
22 while you chew.

23 MR. ANDERSON: I guess I would be interested in  
24 knowing are dual -- by "dual-purpose," I take it we  
25 don't mean up-selling calls, we mean -- or maybe we do,

1 but I'll make my question deal with the problem that we  
2 faced five years ago, the survey that turns into a  
3 sales call, and I'm wondering whether that is still a  
4 prevalent problem, whether it -- whether it's as great  
5 a problem as it was five years ago, more of a problem,  
6 less of a problem, that kind of thing.

7 MS. HARRINGTON: Well, let's turn to Katie to  
8 find out what we mean.

9 MS. HARRINGTON-MCBRIDE: We mean the latter  
10 instance, that's what we're talking about, where a call  
11 is made for two purposes. For example, customer  
12 satisfaction, how is that thing we sold you working  
13 out? Great. Well, did you know we have another thing  
14 too -- and that's the instance that we're capturing  
15 here.

16 MS. MATSON: Okay, this is Nancy Matson from  
17 Verizon, and in response for Verizon, to give you an  
18 example, we have a program, for instance, in  
19 Massachusetts right now where the customers can now  
20 consolidate their bills at no cost. If they have  
21 multiple billing numbers, they can put them all under  
22 one billing number. When we are contacting customers  
23 to notify them of this, and at the same time, we will  
24 be up-selling, and at the point where we're going to go  
25 into the sale, we actually ask the customer permission

1 to explain some additional offers that we have  
2 available for them regarding whatever we're looking at.

3 So, we don't go into that sale as a straight  
4 pitch. We actually ask the permission of the customer,  
5 if they would give us the time to talk to them about  
6 some additional offers that we have.

7 MS. HARRINGTON: Is it clear in that  
8 transitional message that they're -- presumably the  
9 billing consolidation option doesn't cost additional  
10 money, or does it?

11 MS. MATSON: Correct, it does not.

12 MS. HARRINGTON: Okay. So, you're offering a  
13 service at no cost, and then --

14 MS. MATSON: Right.

15 MS. HARRINGTON: -- you want permission to talk  
16 about some other services that --

17 MS. MATSON: Yes, and we actually go into what  
18 the specific services are based on whatever we feel is  
19 beneficial to the customer.

20 MR. HILE: Does that work well, or do most  
21 customers say, no, I really don't want to hear about  
22 this?

23 MS. MATSON: Well, this is the first time that  
24 we have done this in this kind of an environment that  
25 I'm aware. I can't tell you whether it will work well

1 or not. I'll know in about a month.

2 But the point is that the object of the actual  
3 contact is to really consolidate that customer and give  
4 them benefits, and if we -- we have the opportunity to  
5 sell that customer, that's great, and if the customer  
6 wants to buy, that's great, and if the customer  
7 doesn't, that's okay, too.

8 MS. HARRINGTON: Nancy, I really appreciate you  
9 volunteering information about this campaign, so -- I  
10 really appreciate that. Now we are going to pick it  
11 apart.

12 MS. MATSON: Okay.

13 MS. HARRINGTON: You know, so no good deed goes  
14 unpunished.

15 MS. MATSON: That's okay.

16 MS. HARRINGTON: But I'm interested to know,  
17 when we go from the we're offering you this service to  
18 the sales portion of the call, the rule requires a  
19 disclosure of the nature of the call, but -- that it is  
20 a sales call. How do you see that point of demarcation  
21 being disclosed for the consumer? Because I think that  
22 reasonably, if I'm getting something at no cost, and  
23 then the subsequent services that are described are  
24 available at a cost, if I don't know that --

25 MS. MATSON: I think it's very clear based on



1 what our actual offers are. In other words, when we --

2 MS. HARRINGTON: So, how would you -- what  
3 would you be offering me?

4 MS. MATSON: So, we would say that the  
5 customer, is that Mr. and Mrs. Smith, I would like to  
6 discuss some additional regional toll calling plans  
7 with you if you have a few moments. There's a  
8 possibility I could either increase your calling  
9 capabilities, possibly even save money, because we  
10 don't know until we actually -- and then we have to --  
11 of course, we go in and we ask permission to check  
12 their records.

13 MS. HARRINGTON: Okay.

14 MS. MATSON: So, at that point in time, they  
15 have an absolute option to say, no, I don't want to  
16 hear it, or fine, I'll give you a few moments.

17 MS. HARRINGTON: Okay, Jerry?

18 Thank you.

19 MS. MATSON: Um-hum.

20 MR. CERASALE: Yeah, the -- what we find, and  
21 I'll use an example that many of us have had, the  
22 alumni directory type of phone call, which tends to be  
23 -- which is a dual-purpose call, the first being to try  
24 and ensure that the information is correct so the book  
25 that they're preparing has value, and then trying to

1 sell it to you.

2           The disclosures normally come -- we find come  
3 in the following -- the identity of the seller,  
4 although it's not necessarily the seller, but the  
5 caller is generally made up front, and then if there's  
6 information that has to be given out, that's required  
7 for the dual purpose, it's done for gathering  
8 information from them, and then normally it -- in the  
9 type of thing when you're asked information on  
10 something that you are, in fact, then going to try to  
11 sell, would you be -- are you interested in purchasing  
12 this book or whatever. So, you already know who it is,  
13 and then it goes to the sale, and then how much it is  
14 and so forth, so that the sales disclosures come when  
15 you switch from what you needed to get by in the first  
16 place.

17           Now, on a survey, surveys, we have a little bit  
18 less -- I have a less clear example, but the survey,  
19 you get the survey, and then would you be interested in  
20 something that -- some marketing technique or some  
21 marketing plan that the collector of the survey has  
22 done. Generally speaking, you have been at least told  
23 the name of the survey-taker, so that that disclosure  
24 wouldn't come when you switched the purpose. You would  
25 then get the purpose, would you be interested in

1 whatever it is, so those disclosures on the sale would  
2 come later.

3 The reason being that if I am -- if I do not  
4 want any sales call, I don't want to hear a sales  
5 pitch, I can hang up, but the information that's needed  
6 beforehand you want on a separate purpose. Whether or  
7 not there's a sale or not, the alumni directory wants  
8 my name, address and so forth correct whether or not I  
9 purchase, and so that's how it's -- from our  
10 estimation, from our discussions with my members,  
11 that's when the switch comes. Normally you know who it  
12 is, and then the switch to the sales portion and the  
13 disclosures come after the first purpose is done.

14 MS. HARRINGTON: Susan?

15 MS. GRANT: What was missing in the telephone  
16 company example, you know, we may have other services  
17 that you'd be interested in, were the words that we'd  
18 like to sell you or that you might want to purchase,  
19 and I think at that point it's really important to  
20 convey somehow that now you're talking about a sales  
21 situation.

22 MS. HARRINGTON: Avonne?

23 MS. SEALS: Well, the states noted a problem  
24 particularly in the context of the magazine sales  
25 because of the language in 310.3-A-1(4)(5). It appears

1 that if prize promotion is deemed to be the actual  
2 purpose of the call that one could make these  
3 disclosures before disclosing what is required in sub  
4 (i), (ii) and (iii). So, we were concerned that the  
5 primary purpose of a sales call should be that a sale  
6 is being made.

7 And here, in this case, I think at least there  
8 has been an argument -- we encountered an argument in  
9 one of our cases that if it's dual purpose and prize  
10 promotion, it's one of those purposes that prize  
11 promotion and all that goes with it could be talked  
12 about prior to the sales portion of the call. So, our  
13 ultimate recommendation is that if a sale is the  
14 primary purpose of the call, that that has to be  
15 disclosed up front before any other nonsales purpose of  
16 a call is mentioned.

17 MS. HARRINGTON: What about simply saying that  
18 if it's a dual-purpose call, part of which is a prize  
19 promotion and part of which is a sale, that you  
20 disclose the prize stuff or the sale stuff -- that you  
21 disclose the sale stuff first? You know, I just am  
22 pushing back a little because getting into notions of  
23 primary purpose is very difficult, I think. And I  
24 don't think you guys would mind if -- if the -- if  
25 there's the disclosure that this is a -- and, of

1 course, the rule does not require a verbatim statement  
2 that this is a sales call but some disclosure that  
3 tells a reasonable consumer something to that effect.

4 If that came before the prize part -- I can see  
5 that the concern is that you get people all hooked in  
6 on the prize thing and hyped up, and there have been  
7 hearings galore on that -- on the particular nature of  
8 that problem.

9 MR. PASHBY: Yeah, I'm thinking this through as  
10 we go.

11 MS. HARRINGTON: I'm sorry, you can take a  
12 minute to think.

13 MR. PASHBY: The one thing that does come to  
14 mind is with the sweepstakes obviously there is no --  
15 there is no purchase necessary, and one doesn't want to  
16 confuse the consumer with the idea that there is a  
17 purchase --

18 MS. HARRINGTON: Right.

19 MR. PASHBY: -- which is a requirement of  
20 entering the sweepstakes, because there is no purchase  
21 necessary in any sweepstakes promotion. That's just a  
22 thought that comes to mind straight away.

23 MS. HARRINGTON: Well, and that's a tricky  
24 problem, too, because you can -- you know, you can have  
25 the unintended consequence of reinforcing the notion

1 that my chances are improved, so never mind, we'll  
2 retract that suggestion.

3 MR. PASHBY: Thank you.

4 MS. HARRINGTON: That's why we're having these  
5 discussions.

6 Keith?

7 MR. ANDERSON: I want to go back to Jerry's  
8 example of how the survey call was handled, because my  
9 recollection of this whole dual-purpose conversation  
10 five years ago was that the reason this was put in the  
11 law was specifically to deal with the situation in  
12 which a survey turned into a sale, because the  
13 survey-takers -- I mean, this was, as I remember,  
14 something that the survey-takers wanted, because they  
15 were finding consumers unwilling to take nonsales  
16 surveys out of fear that it would turn into a sales  
17 call, and I guess I'm wondering whether doing the  
18 survey and then saying now I'm going to turn it into a  
19 sales call complies with the rule.

20 I mean, the rule says that -- that you must  
21 promptly disclose that the purpose is a sale, promptly  
22 at the beginning of the call. So, it's not clear to me  
23 that you could do a three-minute -- you know,  
24 technically -- and technically under the rule whether  
25 you could do a three-minute survey or a five-minute

1 survey and then tell the consumer that you've got  
2 something you'd like to sell to them.

3 MR. DUNCAN: We're just reminiscing about five  
4 years ago, I also recall there was a -- there were some  
5 calls where it wasn't -- where there was a survey taken  
6 and it wasn't clear that it would turn into a sales  
7 call -- a sales call unless the customer was satisfied  
8 with the product to date. If they were dissatisfied  
9 during the survey, then it would not become a sales  
10 call. So, it wasn't clear at the outset.

11 MS. HARRINGTON: Laura?

12 MS. POLACHECK: Yeah, I understand that,  
13 Mallory, but again, the purpose is to eventually try to  
14 sell something. I mean, you're taking the survey  
15 because at the end you want to try to market something  
16 to them. It's not solely just because you want to see  
17 if they're satisfied or not. So, I think if the intent  
18 is to gauge where the customer is and then try to pitch  
19 them something, it's a sales call, and I think a  
20 concern of the survey-takers was that they did not  
21 think there were legitimate market research surveys  
22 that were conducted that ended up with someone trying  
23 to sell you something.

24 They didn't think that -- the companies that  
25 truly did this in an academic way did not end it with a

1 pitch, and they were concerned that it -- I think as it  
2 was remarked before, that it did taint the integrity of  
3 what they considered a more legitimate way to survey  
4 customers or consumers about particular buying trends,  
5 but a sale kind of took it out of the legitimate survey  
6 role, and, you know, you have to look at -- I guess you  
7 have to look at the intent, and as you say, it's very  
8 difficult to do that sometimes, but if the intent is to  
9 try to sell something, then it's a telemarketing sales  
10 call.

11 MR. HILE: What you're saying is there's a  
12 difference between a survey that's a screener for  
13 prospects for the subsequent pitch and surveys that are  
14 really gathering --

15 MS. POLACHEK: Right, exactly.

16 MR. HILE: -- information.

17 MS. HARRINGTON: Well, but the Commission did  
18 advise in this publication complying with the  
19 Telemarketing Sales Rule on page 16 that in  
20 multiple-purpose call situations, the disclosures must  
21 be made promptly during the first part of the call  
22 before the nonsales portion of the call takes place.  
23 So, that's our position on what the rule requires. So,  
24 if some of you aren't doing that, reread your  
25 compliance guides.



1           MR. DRYMALSKI: It says you have to do it even  
2 though the seller plans to terminate the call if the  
3 consumer is not satisfied, in the second paragraph.

4           MS. HARRINGTON: Yes.

5           MS. SEALS: But I just question --

6           MS. HARRINGTON: All right, into the  
7 microphone, Avonne, for our internet listeners.

8           MS. SEALS: I still think I just question the  
9 "promptly" definition. I think that there's some  
10 question, particularly in this context where so much is  
11 going to be going on, and when you have various kinds  
12 of introductions that you need to make just to get a  
13 consumer to be comfortable.

14          MS. HARRINGTON: Bob?

15          MR. BULMASH: Bob Bulmash, Private Citizen.

16                I'm wondering if there is -- I'm wondering what  
17 the interpretation is if it's not a dual-purpose call  
18 but a dual call in a series, the first call being to --  
19 and let me give you an example. An automatic dialing  
20 announcing machine calls you at your residence to ask  
21 the following questions, it's a survey, you earn over X  
22 number of dollars and you're married and are you, you  
23 know, between 35 and 65 years or whatever. Come back  
24 with the right answers, okay, congratulations, you're  
25 going to get a free color TV because you took the

1 survey, and we are going to be calling you with that  
2 free color TV and information where to pick it up.

3           You get the call back, and it's Happy Harry's  
4 Resort Vacation System, and you come out and pick up  
5 the TV, sit through a presentation, and we'll -- so,  
6 the initial survey call was, indeed, both sweepstakes,  
7 a survey and a sales call all at once, but it did not  
8 include a sales presentation. Where does that stand  
9 with the FTC as far as the Telemarketing Sales Rule?  
10 Do they have to give the disclosure on the first call,  
11 that this is a sales call?

12           MS. HARRINGTON: I think so.

13           MR. BULMASH: It doesn't mention that.

14           MS. HARRINGTON: I think so.

15           MR. ANDERSON: Of course, if they gave the  
16 disclosure, then the whole call would be illegal,  
17 because they are using the automated dialer recorded  
18 message in a sales call.

19           MS. HARRINGTON: Right, that's an FCC issue,  
20 but that's right.

21           Anything else on dual-purpose, multi-purpose,  
22 because we have another important issue here, and that  
23 is whether the -- I'm sorry, Mike?

24           MR. GOODMAN: Michael Goodman at the FTC.

25           I have a question for the consumer advocacy

1 groups. I'm wondering if you're finding complaints  
2 where consumers are making inbound customer service  
3 calls and then they are then, at the conclusion of the  
4 customer service portion, up-sold a product by the same  
5 telemarketer. I'm wondering if you have any complaints  
6 where the caller is not receiving the disclosures they  
7 could use, whether or not they're required, are they  
8 getting them for the sales portion of the call?

9 MS. GRANT: Susan Grant, National Consumers  
10 League.

11 It's hard to answer that question exactly,  
12 because we don't have a category that we capture that,  
13 but anecdotally I would say that we probably don't hear  
14 much about that kind of scenario.

15 MR. GOODMAN: Is that because the disclosures  
16 are being made or because there aren't problems with --  
17 in that context where the disclosures maybe aren't  
18 needed?

19 MS. GRANT: My educated guess would be -- and  
20 maybe I'm not understanding your question correctly,  
21 but I'm picturing a situation where somebody has a  
22 preexisting relationship with a vendor and is calling  
23 customer service for something, and I don't think in  
24 those cases that there's the kind of abuse that we see  
25 in situations where consumers are dealing with vendors

1 with whom they don't already have a relationship.

2 MS. HARRINGTON: Okay, let's turn to the  
3 assisting and facilitating issue, which is not a  
4 disclosure question but -- whoops, I'm on the wrong  
5 part of the program. Never mind, we're not talking  
6 about assisting and facilitating here. We're talking  
7 about refunds and cancellations, just testing to see if  
8 you're all awake.

9 Are the disclosures for refund and cancellation  
10 policies adequate?

11 Laura?

12 MS. POLACHECK: Yes, Laura Polacheck, AARP.

13 MS. HARRINGTON: Yes, they are, we love them.

14 MS. POLACHECK: No, I can't say that, but  
15 again, I think that -- not to be too repetitive, but  
16 when you are making a decision about a purchase, you  
17 need all the material terms and conditions explained to  
18 you before you say yes or no, and the refund policy is  
19 a material consideration, and certainly, as the rule  
20 states, you need to know that there is no refund  
21 policy, but I don't know that it would take a  
22 tremendous amount of time, and I think it's actually a  
23 marketing advantage, to let the consumer know what the  
24 refund policy is.

25 I know that DMA before, and I don't want to

1 speak for DMA, has said -- you know, has said that they  
2 think that that's a big selling point, that they offer  
3 full refunds after a call, and that certainly is an  
4 advantage to a consumer to know, hey, if I don't like  
5 this item, these are the terms and conditions of how I  
6 can get my money back or how I can return the item or  
7 cancel the service contract.

8 I don't see any reason why that should not be  
9 part of their decision-making and part of the initial  
10 disclosures made before payment is requested.

11 MS. HARRINGTON: Thank you.

12 Heather?

13 MS. MCDOWELL: Heather McDowell with ERA.

14 We would certainly agree that if you're -- if  
15 you don't have a refund policy, that's something that  
16 ought to be disclosed under the rule and is required  
17 under the rule, and where a marketer advertises or  
18 competes with other marketers based on, you know, a  
19 refund policy, they're saying, well, look, you are  
20 going to get a great deal with us, because we are going  
21 to give you all your money back if you're not satisfied  
22 in 30 days or something like that. Sure, you need to  
23 disclose, well, what does that mean, 30 days, and what  
24 are the obstacles, if any, to doing that? So, you need  
25 to disclose the terms and conditions.

1           But we think that the rule should cut the right  
2   -- sort of achieve the right balance and say, but  
3   marketers don't necessarily have to advertise what  
4   their policy is.  If they choose not to compete on that  
5   basis, if they choose not to mention that, they should  
6   be free to decide what they advertise, how they compete  
7   with their competitors, what features and services they  
8   want to highlight for consumers, and again, with the  
9   exception that if they're not going to allow a refund,  
10  they certainly need to make that clear.

11           MS. HARRINGTON:  Rita?

12           MS. COHEN:  I think --

13           MS. HARRINGTON:  Let me note for the record  
14  that Rita Cohen has joined us from the Magazine  
15  Publishers, and can you speak into the microphone,  
16  Rita?  Thanks.

17           MS. COHEN:  I usually talk loud enough without  
18  one.

19           I think the rule does allow that to work  
20  perfectly, because if you want to talk about your  
21  refund policy, then you do have to talk about all the  
22  restrictions or limitations that there might be.  So,  
23  if it is, in fact, a good refund policy, you're proud  
24  of it, you're going to present it and you're going to  
25  tell people if there are any caveats.

1           If you other -- and if you don't have a refund  
2 policy, certainly that's covered, as well, and if you  
3 have what we consider, we always have good refund  
4 policies, that that is just assumed, you don't really  
5 need to add that, that the idea is to keep the calls as  
6 compact -- you have a lot of material information to  
7 disclose, and I think that you have to have that right  
8 balance. And if that's not as important as some of the  
9 other things, then you don't want to have to disclose  
10 it.

11           MS. HARRINGTON: Keith, a question?

12           MR. ANDERSON: I guess -- I mean, the issue  
13 here, you know, is what consumers think -- I mean, the  
14 -- the no statement position is there's a refund policy  
15 there, but what do consumers think that refund policy  
16 consists of? I mean, I don't know that this has been a  
17 big problem, but -- but we have seen cases in the fraud  
18 area where there are innumerable hoops to jump through  
19 to get a refund, many of which are virtually impossible  
20 to satisfy, and -- and you wouldn't wind up violating  
21 the rule, because you wouldn't say anything about your  
22 refund policy.

23           If consumers not being told about a refund  
24 policy think that that means a full refund policy, and  
25 I don't know that that's the case, that's a research

1 question, then that would seem to be problematic. I  
2 mean, I guess in the cases we've seen they've actually  
3 touted their refund policy and haven't remained silent.

4 MS. HARRINGTON: Right, and we've alleged that  
5 they misrepresented their refund -- where -- where --

6 MR. ANDERSON: We've alleged it? That makes it  
7 sound like there's some question about it. It's  
8 definitely true.

9 MS. HARRINGTON: No, we're lawyers. We've  
10 alleged it and then we've proved it.

11 Susan?

12 MR. HILE: We didn't just assume it.

13 MR. ANDERSON: What was that, Allen?

14 MS. HARRINGTON: Allen notes we didn't just  
15 assume it.

16 Susan?

17 MS. GRANT: I continue to be mystified why this  
18 isn't a requirement already under the rule. I think  
19 that the Commission really erred initially by not  
20 including it, and I think it ought to be included now.  
21 I mean, how is this information that consumers should  
22 not know before making their buying decisions? And I  
23 would point out that in many states, there are  
24 requirements that retail establishments provide that  
25 information before the sale is made.



1           In the OECD's electronic commercial guidelines,  
2           this is one of the very important disclosures that  
3           governments are encouraged to consider requiring of  
4           online vendors. How is telemarketing any different,  
5           and why should it not be included in this context?

6           MS. HARRINGTON: Heather?

7           MS. MCDOWELL: One thing I want to just sort of  
8           raise as a possibility, and I haven't polled our  
9           members about this, so I have no idea what sort of  
10          reaction we would have to it, but just sort of  
11          hypothetically speaking for marketers generally, is the  
12          notion -- I mean, many marketers have very generous  
13          refund policies. They might take a refund or a  
14          cancellation request for a year, you know, they may be  
15          like Nordstrom, they may take tires back even though  
16          they don't sell them, but there may also be a  
17          perception that if they advertise that, if that is  
18          something they're required to promise, that there will  
19          be -- people will sort of feel invited to cancel no  
20          matter what sort of agreement they've made to sort of  
21          make a purchase, and that -- I would be concerned about  
22          sort of any perverse result that if you say to people,  
23          you know, you've got to advertise on this that you may  
24          see some people with very generous policies make them  
25          less so.

1 MS. HARRINGTON: Rita and then Keith, a  
2 question?

3 Oh, okay, Rita.

4 MS. COHEN: And I think it's also the case that  
5 it may be that there are a lot of choices. For  
6 instance, if someone wants to make a change on a  
7 magazine, they may want to exchange for a different  
8 magazine, or if a magazine went out of business, they  
9 might be offered a substitute. So, there are a lot of  
10 terms that really could add to the call. They don't  
11 really hurt you. You could ultimately get your money  
12 back, but there are alternatives that you could be  
13 offered and substitutions. And I just think that if  
14 you force people to go through everything, you're going  
15 to be getting a lot of detail.

16 MS. HARRINGTON: Peter, then a question from  
17 Allen, or Allen, do you want your question right now?

18 MR. HILE: Let Peter go.

19 MR. DRYMALSKI: I think that this reinforces --

20 MS. HARRINGTON: Peter, would you speak into  
21 the microphone?

22 MR. DRYMALSKI: I think that reinforces a point  
23 I made earlier, that you can pile on so many  
24 disclosures and so much information that a consumer is  
25 not going to understand it or retain it in his memory,

1 and you really need to follow up with written  
2 confirmation of the terms, and if it's a complex  
3 transaction with a lot of terms, the consumer should  
4 have the right to cancel once he gets those written  
5 terms and has a chance to consider them.

6 MS. HARRINGTON: Thank you.

7 Allen?

8 MR. HILE: I wonder if anyone's aware of any  
9 research on what the consumer's expectation is with  
10 respect to a refund or cancellation policy in  
11 telemarketing. I think that in a face-to-face  
12 transaction, the norm and the expectation is that you  
13 be able to take a product back, regardless of whether  
14 you're dealing with Home Depot or Sears or Nordstrom,  
15 but I wonder if the assumption is any different when  
16 you're doing distant selling. Anybody know of any  
17 research on that?

18 MS. HARRINGTON: Any research?

19 Susan?

20 MS. GRANT: Well, we haven't done research in  
21 that regard with telemarketing, but we did do a survey  
22 last fall of consumers concerning electronic commerce,  
23 and about half of the consumers thought that they had  
24 an automatic three-day right of rescission for  
25 purchases made online, which isn't true.

1 MS. HARRINGTON: Avonne?

2 MS. SEALS: I can echo Susan's comments having  
3 worked as an Assistant Attorney General in consumer  
4 fraud for several years. It is absolutely amazing  
5 about the ignorance, consumer ignorance of cancellation  
6 rights. Everybody seems to think that every  
7 transaction involves a three-day right to cancel.

8 A more immediate area in which I've seen an  
9 assumption about cancellation rights is in the context  
10 of the direct mail certificates advertising travel to  
11 Florida and the Bahamas. The consumers, they give a  
12 deposit by credit card, via telephone, and you can't  
13 imagine how many of them think that once they decide  
14 they are unable to go, they can simply just get their  
15 money back. So, I'm dealing with that issue regularly  
16 with respect to those kinds of solicitations.

17 MS. HARRINGTON: Jerry?

18 MR. CERASALE: The DMA -- Jerry Cerasale,  
19 Direct Marketing Association.

20 DMA has done some research concerning why  
21 people don't purchase remote and so forth, and the  
22 inability, the extra effort, whether or not shipping  
23 and handling is recovered in a refund, whether they  
24 have to pay -- they pay to ship it back, do they get  
25 that money back and so forth is one of the things that

1 people consider on whether or not to purchase remote in  
2 general, not telemarketing, just general on remote.

3 We don't have anything specific -- any survey  
4 looking at specific medium used in the sale, just  
5 looking at remote in general, and so that the -- the  
6 refund situation is part of what they -- you know,  
7 where they think, which is where -- so, that's where  
8 DMA believes that there's no refund policy, they ought  
9 to state it, but then if their -- if the refund -- if  
10 you advertise, satisfaction guaranteed or money-back  
11 guarantee, if there are any restrictions to the  
12 money-back guarantee, you have to tell them what those  
13 restrictions and limitations are.

14 And it's different from the retail, because you  
15 have to go -- you have to spend additional resources  
16 out of pocket to send merchandise back.

17 MS. HARRINGTON: Laura?

18 MS. POLACHECK: Yes, I just want to comment on  
19 this notion that it could be used for marketing but you  
20 don't necessarily want to talk about it if it's not a  
21 great policy. I mean, that really goes to the fact  
22 that it's even more important for the consumer to know  
23 if it's not a great policy. It's not just supposed to  
24 be a marketing technique. I mean, it certainly could  
25 be, but it's very important if a consumer is going to

1 be stuck, they should know that.

2           And I think if somebody has a great policy, the  
3 notion that a consumer might take advantage of being  
4 able to return something, you know, if they have some  
5 sort of psychosis of buying, but it's still a -- an  
6 inconvenience to a consumer to return something if they  
7 don't like it. I mean, it's a very good option, of  
8 course, it's great consumer protection. It's still an  
9 inconvenience, and I can't imagine that someone would  
10 buy something with the idea that they want to instantly  
11 return it, but they certainly want to know they have  
12 that option if they're not satisfied.

13           MS. HARRINGTON: Mallory?

14           MR. DUNCAN: If we can just step back for a  
15 second from this discussion and look at what's going on  
16 here, I think everyone would agree that theoretically,  
17 consumers make better decisions when they have perfect  
18 information, but we also know that as a practical  
19 matter, trying to get perfect information is virtually  
20 impossible, as I think Peter and Keith would both point  
21 out.

22           We've got a limited amount of time in which to  
23 speak during a call, and I think the Commission tried  
24 to do was to balance that limited amount of time  
25 against what consumers' reasonable expectations were,

1 and the assumption was made, I believe correctly, that  
2 people expect some sort of refund policy. So, if  
3 there's no policy at all, then it should be  
4 specifically stated, because you're violating  
5 consumers' reasonable expectations. If you start to  
6 talk about your refund policy, then that's in a sense a  
7 trigger term, and you should explain it in greater  
8 detail.

9           The rule does strike the right balance, and if  
10 the -- if you go any further than that, then I think  
11 we're going to have telemarketing calls that are far,  
12 far longer than they are now, because we're going to  
13 then open the doors to other terms as to what -- that  
14 are marginally material that we might say suddenly  
15 become material.

16           MS. HARRINGTON: Anyone else want to add  
17 anything on this issue?

18           Okay, would anyone like to say anything at all  
19 about disclosures, anything else, any other thoughts  
20 other than what has already been said or discussed?  
21 We're not going to have restatements, but any  
22 additional -- Bob?

23           MR. BULMASH: The only thing, I think it's  
24 already been mentioned, but I think disclosures point  
25 out the need for the ability to tape record

1 conversations from telemarketers to prove it up. These  
2 -- they are invasions of privacy. Let's not worry  
3 about the telemarketers' privacy. Let's tape record,  
4 show that they are not disclosing, show that the  
5 violations are occurring and move forward.

6 MS. HARRINGTON: I would just note, and you did  
7 also make that point yesterday, that the restrictions  
8 on a consumer's legal ability to tape record  
9 conversations are a matter of state law.

10 MR. BULMASH: Perhaps you can override it on  
11 the issue of telemarketing. This is a specific type of  
12 call. This is one where the privacy really isn't the  
13 issue. Indeed, it's the loss of our privacy that we're  
14 talking about.

15 MS. HARRINGTON: Susan, and then Peter?

16 MS. GRANT: We think it's really important for  
17 sweepstakes solicitations, telemarketing sweepstakes  
18 solicitations, for the disclosures to include the fact  
19 that making a purchase does not improve your chances of  
20 winning.

21 MS. HARRINGTON: Okay.

22 Peter?

23 MR. DRYMALSKI: I believe in response to Mr.  
24 Bulmash's point that you will probably find in every  
25 state that tape recording is legal if both parties



1 consent. So, the way to finesse the issue is to  
2 require the telemarketer to consent on request.

3 MS. HARRINGTON: Bob?

4 MR. BULMASH: Let's give it -- let's give it --  
5 if you're a telemarketer, you automatically give  
6 consent, that's part of the TSR.

7 MS. HARRINGTON: Rita?

8 MS. COHEN: I don't believe that --

9 MS. HARRINGTON: Would you speak into the  
10 microphone?

11 MS. COHEN: I just wanted to respond. I think  
12 on the sweepstakes and prize promotions, you do have to  
13 say that no purchase is necessary or language to that  
14 effect.

15 MS. HARRINGTON: Right, I think that there's a  
16 difference between saying no purchase is necessary and  
17 a purchase will not improve your chances. I think  
18 those are two different concepts, as I understand her  
19 comment.

20 Anything else before we break? Anything else  
21 on disclosures? Disclosures going once, disclosures  
22 going twice?

23 Well, this is really -- this is great. We're  
24 ending early, and we're going to resume on time. So,  
25 we will start up again at 1:30. You have a little bit

1 longer for lunch today than yesterday. What's Mr. Ming  
2 serving today, who knows?

3 UNIDENTIFIED SPEAKER: Fish.

4 MS. HARRINGTON: Fish. Well, you have longer  
5 today to go out if you want.

6 (Whereupon, at 11:45 a.m., a lunch recess was  
7 taken.)

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1 AFTERNOON SESSION

2 MS. HARRINGTON: Good afternoon. We thought  
3 about and actually my first instinct was to have a big  
4 blow up of this on the easel outside of the room, but  
5 then I thought someone will misinterpret that.

6 This is our final session. That is, this  
7 afternoon is the final session. We do have a break  
8 scheduled I think. Yes. And we are -- we've actually  
9 saved two of the best topics for last, and I would have  
10 to say that the very best topic has been saved for the  
11 3:35 to 4:15 segment, and that is consumer education,  
12 which is not an issue of regulation and mandate, but is  
13 clearly where the most important work can be done.

14 However, before we get to that topic, we're  
15 going to talk about abusive practices, which is why we  
16 thought this cartoon was especially appropriate to  
17 begin our afternoon session.

18 So let's turn to the abusive practices segment  
19 of the rule and the discussion and ask a question I'm  
20 sure that we'll stimulate some discussion, and that is,  
21 Should the sale or use of lists of victims of  
22 telemarketing fraud be an abusive practice, and thus  
23 prohibited by the rule?

24 I'll ask a question, a subset, how would you  
25 define a list of victims? Anyone who wants to comment

1 on this, Jeff?

2 MR. KRAMER: Jeff Kramer with AARP. Let me  
3 start off by saying, yeah, we think that sale and use  
4 of lists of victims should be an abusive practice.  
5 Especially looking at the other practices that are  
6 considered abusive, this is certainly one of them.

7 How you define the list, well, I know I would  
8 have to really defer to law enforcement on that because  
9 I know they have ways of finding out who the victims  
10 are and finding those lists from the telemarketers, but  
11 certainly anyone who is using this kind of list and is  
12 a legitimate telemarketer would think that they would  
13 not want to do.

14 So even if these people down the line may  
15 purchase other goods and services from a telemarketer,  
16 the fact that they've been victims, victimized and are  
17 obviously the kind of person who may be susceptible to  
18 it again we just feel is in and of itself an abusive  
19 practice.

20 MS. HARRINGTON: Are you saying, Jeff, that  
21 anyone who has ever been a victim of a fraudulent  
22 telemarketing scheme should not be on any other  
23 telemarketers' call list, or are you saying that it  
24 should be a prohibited practice to take a list of  
25 victims from a scam and pass it on as a list of people

1 who previously fell for the scam?

2 MR. KRAMER: Well, certainly I think that's the  
3 case, the second one, and I think -- although obviously  
4 it's more difficult to monitor, but I also think it  
5 should be prohibited, if there are people on a list who  
6 are known to be victims of telemarketing fraud, that  
7 they should also be -- those names should be prohibited  
8 from being passed along.

9 Does that make sense?

10 MS. HARRINGTON: I think I understand your  
11 sentiment. I'm not sure that it's constitutional.  
12 There's a suggestion that so and so who has been  
13 victimized four or five times should be purged from  
14 every call list, that the government would prohibit  
15 that person from having the freedom to receive calls?

16 MR. KRAMER: Well, no. I don't think --

17 MS. HARRINGTON: Okay.

18 MR. KRAMER: No, but certainly if there's lists  
19 that are being passed around of people who have been  
20 defrauded before and that that list is being used for  
21 that purpose because they know that these people are  
22 susceptible to that, then I think that should be  
23 something.

24 MS. HARRINGTON: Okay. Jerry?

25 MR. CERASALE: Jerry Cerasale from DMA. I just

1 have a question on this to go back so I can better  
2 understand it and hopefully give a more intelligent  
3 response if that's possible for me, but are we looking  
4 at this from the point of view that here's a list of  
5 people who have in fact been defrauded or I imagine the  
6 list would be more so, here's a list of people who sent  
7 in money for this home -- this home work kit, let's use  
8 that one, the work at home kit, so that's the list that  
9 I received.

10 And let's say that that initial sale turns out  
11 to be viewed as a fraudulent or deceptive act in its  
12 own right, so that's what we have. Whether it's before  
13 the fact or after the fact I guess is another question,  
14 and you would say that it's per se abusive practice  
15 that states and the FTC can go after you just because  
16 you took that list, called those people and offered  
17 them a subscription to The Washington Post that was a  
18 true subscription to The Washington Post?

19 I want to see where that -- where that's at.  
20 I'm not saying that -- I'm not giving a DMA position  
21 here.

22 MR. KRAMER: Right, I'm not either. I  
23 understand. That's obviously -- obviously it's a  
24 company that's fraudulent from the start, and they  
25 called people and had no product or service, then those

1 people were obviously defrauded, and they may want to  
2 purchase other telemarketing goods and services.

3 I'm thinking more of the people who you end up  
4 going into these boiler rooms and finding these mooch  
5 lists that law enforcement ends up taking, and these  
6 people have been defrauded from time to time. You find  
7 out they bought all these trinkets and all other kinds  
8 of things.

9 Those are the people -- those are the ones I'm  
10 most concerned about. I don't know how you craft the  
11 rule to handle those people, but those are the ones  
12 we're concerned about.

13 MR. CERASALE: And just look from the police  
14 idea, the enforcement idea, as to what this would --  
15 what this adds or doesn't add to your quiver. Does  
16 this -- if you had this as a fraudulent practice --  
17 it's an abusive practice to use this list, so you go  
18 into a telemarketer that's conducting fraudulent  
19 schemes, and you find a list that they have used,  
20 people who have been defrauded before. What does that  
21 give you that you don't now have?

22 I'm just trying to understand what the need --  
23 what you see as the need for this from the enforcement  
24 side? I'm sure it's from the enforcement side because  
25 it's automatically a telemarketing -- it's a fraud

1       whether -- when I call Allen, whether he's been -- and  
2       try and scam him, whether he's been scammed a hundred  
3       times or not, it's a fraud right now if I'm trying to  
4       scam him at this point.

5               I'm just trying to understand here, not to be  
6       difficult.

7               MS. HARRINGTON: No, and I think, Avonne, this  
8       came from NAAG, this session in the comments, so maybe  
9       you could answer Jerry's comments.

10              MS. SEALS: Our comments are pretty short on  
11       words, but I think what's behind this is that there's a  
12       disincentive, if there is a prohibition for the sale of  
13       lists back and forth between companies.

14              MS. HARRINGTON: But if deception is prohibited  
15       in the first instance and the rule prohibits general  
16       and specific misrepresentations and requires  
17       disclosures and so forth and people are still making  
18       misrepresentations, what further disincentive do you  
19       think it would create in the rule to the sale of lists?

20              MS. SEALS: Well, you're looking at two  
21       practices. One is a deception. The other is a selling  
22       of a list that is particularly made up of victims. I  
23       can give you an example of a case that I worked on  
24       prior to I think the promulgation of the rule where it  
25       was a slamming case, and it was totally egregious.



1           A large, large portion of Hispanic consumers in  
2 the Chicago area were just blindly slammed, and the  
3 company was based in Atlanta, Georgia, and ultimately  
4 went into bankruptcy, and then that spurred a bunch of  
5 bankruptcy hearings and proceedings and whatnot.

6           One of the things that several states that were  
7 prosecuting this company were interested in was in  
8 trying to get an injunction against the company  
9 providing this list to someone else, and we had some  
10 concerns about whether we could do that because it's  
11 not -- it made -- there may be some issues with respect  
12 to whether or not you can stop a company from  
13 exercising certain rights to call individuals, but we  
14 knew that this was list comprised of people who did not  
15 largely speak the English language and were not able to  
16 discern what was going on in the so-called check that  
17 they endorsed to have their service switched.

18           We've had other cases where we know that a list  
19 has been comprised of vulnerable types, and we are very  
20 concerned always about people in the industry passing  
21 that list along to their partners in the industry for a  
22 double scamming.

23           So I just think that that practice in and of  
24 itself outside of deception and outside of having to  
25 prove whether some piece is deceptive is something that

1 should be covered. I mean, it's conceivable that you  
2 could have a list of victims and have a legitimate  
3 telemarketing scheme vulnerable to other people.

4 MS. HARRINGTON: I would just note that the  
5 Federal Trade Commission routinely seeks -- in  
6 permanent injunctions that we pursue in not only  
7 telemarketing fraud but other kinds of fraud cases, we  
8 routinely seek an injunctive prohibition on the  
9 defendants distributing any customer lists.

10 And I believe that we have some litigated  
11 injunctions and final orders that have those provisions  
12 in them, if they would be of assistance to the states  
13 in terms of precedence value because there's an issue  
14 here about prohibiting something generally and in the  
15 abstract versus obtaining an injunction against it  
16 where you know that the defendants have engaged in  
17 wrongful practices.

18 And you certainly would not want people who had  
19 engaged in a fraudulent scheme selling the lists of  
20 their victims to someone else for the purpose of  
21 defrauding those customers again.

22 We have no issue with that as an important  
23 remedy. I think we would have some concern with the  
24 breadth of that kind of prohibition and the notion that  
25 you could somehow define victim in a way that would not

1 have the effect of the government saying, Because you  
2 were defrauded once, Jerry, we're not going to let you  
3 get any more phone calls. I think that might create  
4 some problems, constitutional and otherwise.

5 Does that seem reasonable to you?

6 MS. SEALS: I understand that, and I think we  
7 had those issues raised in our other case, and perhaps  
8 this was a way to try to deal with that, but certainly  
9 if those issues are there, we would like to have those  
10 explored before we would abridge legitimate business  
11 interest's rights.

12 MS. HARRINGTON: And since we're in the last  
13 afternoon, we can really range. I know who you're  
14 talking about in that case, who the wrong doers were in  
15 the case that you refer to, and I would just note that  
16 the people who were responsible for that had previously  
17 run several other completely different scams, were  
18 under injunction, were violating those orders, you  
19 know, have been I think incarcerated criminally and are  
20 still doing this.

21 They are what you would call recidivists, so  
22 sometimes we can't regulate recidivism out of  
23 existence.

24 Peter?

25 MR. DRYMALSKI: I see a few issues with this.

1 MS. HARRINGTON: Could you speak into the  
2 microphone so our listeners can hear you?

3 MR. DRYMALSKI: Excuse me. I see a few issues  
4 with this, although I am very sympathetic to the  
5 concept, but one issue is why limit it to victims of  
6 telemarketing fraud. Why not lists made up of previous  
7 victims of any kind of direct mail solicitation fraud  
8 or computer fraud or anything like that?

9 Secondly, one problem, let's talk about victims  
10 of fraud. Who's going to determine the fraud and at  
11 what stage? If I'm on the list because I previously  
12 dealt with the company which may have engaged in  
13 unethical or illegal practices but was never declared  
14 by a court of law to have engaged in a fraud, and it's  
15 out of business.

16 Now, who's going to determine that I got on a  
17 list because of a previous company's fraud when it's  
18 all after the fact? Now, I see a problem with  
19 determining that somebody is on a list because of a  
20 solicitation that took place years ago, which we're now  
21 going to decide was a fraudulent plan.

22 And I guess would this apply -- United States  
23 Purchasing Exchange recently entered into a big  
24 settlement agreement. Are all the people on that going  
25 to be considered victims of fraud even though there was

1 a settlement? This is an issue which I'm not sure how  
2 it's going to be resolved.

3 And finally what's a victim? Is it somebody  
4 who responds to one of these solicitations or somebody  
5 who's actually lost money as a result of one of these  
6 solicitations?

7 MS. HARRINGTON: Good questions. Jason?

8 MR. CATLETT: Thanks very much, Eileen. The  
9 issue of mooch lists is extremely troubling if you look  
10 at any of these cases, and the reloading schemes which  
11 essentially go back to the victims who have a proven  
12 track record of gullibility and take any more money  
13 that they might have on the lie of reclaiming all  
14 money, it's just grossly offensive.

15 And the people who sell these mooch lists are  
16 usually just straight criminals operating on their own  
17 behalf, and the selling of the lists in this case, I  
18 think there's no resemblance to the selling of lists in  
19 the legitimate direct marketing business. As much as  
20 I've been a critic of the legitimate direct marketing  
21 business critically, it's really a completely different  
22 category here.

23 So I don't know how you would effectively  
24 approach the sell of mooch lists as much as I would  
25 dearly love to prohibit it, I just have a suggestion,

1 which is to take a trick out of the direct marketing  
2 industry's book which is to seed lists, to put a phone  
3 number on the lists if you have an opportunity to --

4 MS. HARRINGTON: We have done that in some of  
5 our cases, and the order has permitted us to seed  
6 lists. There also is an assisting and facilitating  
7 provision in this rule that can be used to address  
8 knowing or apparently knowing sale or distribution of  
9 victim lists.

10 MR. CATLETT: Okay. So I don't have a solution  
11 to these terrible wrongs that are done with mooch  
12 lists, but to get to Peter's question of why not be  
13 more general. We can look to a statute governing the  
14 sale of names and addresses for the Postal Service.  
15 The Postal Service operates a mandated process called  
16 prohibitory orders where anybody who doesn't want to  
17 receive further messages from a given sender can have  
18 the Post Office record this fact, and subsequent  
19 solicitations to the person making the report are  
20 violative and illegal in the federal law.

21 Now, we could have conceivably something  
22 analogous for telemarketing. For example, if a number  
23 is on a do not call list of a state or if nationally  
24 mandated do not call lists comes into effect at some do  
25 not call list, it would then be an offense to sell the

1 number on a marketing list for telemarketers.

2 And I think that's entirely reasonable, that  
3 it's incumbent upon someone making a sale of a list to  
4 a party that's going to make calls to pre screen it for  
5 people who have expressly stated that they don't want  
6 to be called.

7 So I think that might be one way of doing it,  
8 and then the victims could put their numbers on this  
9 list along with the people who simply don't want to be  
10 called or to have their numbers sold, and at least that  
11 what cover the mooch list, even if doesn't address it  
12 in the extreme means that I think it deserves.

13 MS. HARRINGTON: Jeff?

14 MR. KRAMER: Yeah. Well, I understand the  
15 problems with doing something like this, and again what  
16 we're really after is trying to get rid of this  
17 practice, and if the way to do it is make it an abusive  
18 practice or the way to do it is to lower the assist and  
19 facilitate standard so you can prosecute it more  
20 easily, I think that's what we're looking at doing, so  
21 whichever way.

22 I don't know what's better for law enforcement,  
23 but we're just looking at a way to get rid of this  
24 practice. I understand it's hard to do.

25 MS. HARRINGTON: Mallory?

1           MR. DUNCAN: Again, our views are consistent  
2 with those that have been expressed around the table.  
3 This obviously is a bad practice that ought to be  
4 stopped. I would be cautious as to how it's  
5 accomplished because we don't know all the purposes for  
6 which a list might be used. Jerry gave a very good  
7 example of the case of a newspaper list that you  
8 obviously wouldn't want to restrict.

9           It also occurs to me, if I can use another  
10 area, ID theft has received a lot of publicity in the  
11 last several years. A number of businesses are  
12 actively trying to find consumers who have suffered  
13 identity theft because it allows them to put a higher  
14 level of protection when someone claiming to be that  
15 person comes in and asks to get a credit card.

16           I don't know of any case where these kinds of  
17 lists are being used for that purposes at this point,  
18 but I can envision a situation where you might want to  
19 treat those individuals differently than you would  
20 treat other individuals, and that would be done by  
21 reputable companies.

22           So I think we have to be extremely careful as  
23 to how we limit the dissemination of this information.  
24 Clearly if a list is being circulated with knowledge  
25 that the individuals have been defrauded and knowledge



1 that's being sold for the benefit of defrauding them  
2 again, that we would like to stop, but I do think the  
3 assisting and facilitating language probably goes a  
4 long way toward handling that.

5 MS. HARRINGTON: Peter, did you want to add  
6 something?

7 MR. DRYMALSKI: No. Excuse me.

8 MS. HARRINGTON: That's okay. I think I would  
9 like us to move along to the next question which is  
10 really a different potentially abusive practice or an  
11 abusive practice that potentially could be defined in  
12 the rule as one, and that is the practice of call  
13 centers being staffed by prison inmates.

14 We heard a really compelling presentation at  
15 the end of the day yesterday on that subject, so let me  
16 ask the question: Should the practice of employing  
17 prison inmates to conduct telemarketing be defined as  
18 an abusive practice and prohibited in the rule? Does  
19 anyone want to comment on that? Susan?

20 MS. GRANT: It sounds like a good idea to me.

21 MS. HARRINGTON: Jeff?

22 MR. KRAMER: To me as well. What really  
23 confounds me is how not only that these telemarketers  
24 allow this to happen, but that there's obviously a  
25 state agency or somebody involved who's allowing these

1 telemarketing firms to contract.

2 MS. HARRINGTON: There are two issues. We were  
3 actually -- some of us on the FTC staff were discussing  
4 this a little bit today over lunch and thinking about  
5 the outbound call situation, which is what we heard  
6 about yesterday afternoon. Then there's the inbound  
7 call, and I think that there are -- to the best of my  
8 recollection, I seem to recall having read some stories  
9 about inbound call centers that are being picked up on  
10 by airlines, that is when you make an airline  
11 reservation that actually may be the case that the call  
12 center is at a prison. Jason?

13 MR. CATLETT: Yes, that's the case. Some  
14 states when you call tourist information the states  
15 have prisoners behind bars answering those calls, and I  
16 think that we see -- there's obviously exactly the same  
17 risk there, that a conversation which starts out  
18 supposedly on what the topic is supposed to be turns  
19 into an exercise in social engineering the identity  
20 from a teenager in the case that we heard yesterday,  
21 and that the risks here are obviously great and really  
22 intolerable, so...

23 MS. HARRINGTON: On the inbound call situation,  
24 we were saying, Well, would that be -- is that  
25 different if there's a disclosure. Now, I also

1 observed -- I can see Jay Leno running with this, Well,  
2 did you hear that the Federal Trade Commission is now  
3 requiring prisoners to disclose that they're prisoners  
4 when you call them.

5           It would be a real sort of scorn and ridicule  
6 point I think, but is this an issue that disclosure on  
7 inbound calls -- not outbound calling, but on calls  
8 that are coming into a call center if there was  
9 disclosure to the person calling that you are speaking  
10 to an inmate at such and such a prison, would that cure  
11 the problem?

12           MR. HILE: Or if there was a disclosure in a  
13 solicitation that urged you to call, if you call this  
14 number you'll be speaking to an inmate. Would that do  
15 the trick?

16           MS. HARRINGTON: Jason?

17           MR. CATLETT: I can imagine calling to find out  
18 about the Grand Canyon and it says, Thank you for  
19 calling tourist information, your estimating wait time  
20 is three minutes, if you would like to speak to a  
21 convicted felon about this, press 1, and you're  
22 expected wait time will be reduced to 30 seconds.

23           It's just preposterous. You can't --

24           MS. HARRINGTON: Just exploring all the  
25 options. Keith?

1           MR. ANDERSON: I'm not sure that the risk isn't  
2 actually greater on the inbound calls than the outbound  
3 calls. The outbound calls, when they work right, which  
4 they clearly didn't in the instance that we heard of  
5 yesterday, the inmates aren't supposed to have that  
6 kind of personal information.

7           Included in Ms. Jordan's submission was some  
8 stuff from the state of Washington, since I'm from  
9 there I read those things more carefully, where  
10 apparently the state of Washington was using prisoners  
11 in their tourism office, and when you call information  
12 from the tourism office, the whole point is you're  
13 going to give your name and your address because that's  
14 your -- you want information.

15           They can't give you -- they can't send you the  
16 information if you don't give them an address, and it  
17 had become a problem because a prisoner had picked up  
18 names of women and started sending suggestive cards  
19 around to them or threatening cards so...

20           MS. HARRINGTON: Michael?

21           MR. PASHBY: I think most of the people around  
22 this table feel it's part of the practice anyway. It  
23 is a broader issue as well of what prisoners are doing.  
24 I know of at least one state where the prisoners input  
25 tax return information on the consumers of that state

1 where they are getting not only name, address, Social  
2 Security number, but every bit of pertinent financial  
3 information.

4 MS. HARRINGTON: We are having the IRS rule  
5 workshop next week. Is there any one --

6 MR. PASHBY: I'm trying to point out that--

7 MS. HARRINGTON: Right, there is a broader  
8 issue. Is there anyone at the table who would like to  
9 speak on behalf of -- give us some information, Jerry?  
10 Do you have information to provide here about the  
11 benefit of inmate telemarketing? Jerry?

12 MR. CERASALE: No. We heard yesterday on the  
13 tape, the second tape with the discussion with the  
14 prison official when he discussed the federal program  
15 to try and rehabilitate and provide jobs for inmates  
16 when they get -- for when they leave the prison.

17 It's my understanding that that's what occurs.  
18 Generally what happens we've found, and we've supported  
19 -- the DMA has supported legislation banning the use of  
20 inmates. I think it was part of the juvenile justice  
21 bill that sadly we didn't go any place in the Congress  
22 but we had done that.

23 We also think that -- in some instances we  
24 found, it tends to be a subcontractor of a  
25 subcontractor, and we try to warn our members to be

1 diligent on your subcontractors and so forth where it's  
2 at.

3 I do have to agree with Jeff. I mean, it's one  
4 of those things where you would hope also that the  
5 state wouldn't be having these -- this happening in its  
6 own rights, so we have to look at it in both ways.  
7 From the DMA's point of view we shouldn't do it.

8 I don't know if you have the -- I haven't  
9 looked at the statutory authority of what you think you  
10 can and can't do, but we have supported and will  
11 continue to support federal legislation on that go  
12 around because as I said for any remote sale you have  
13 to get personal information if you're going to make a  
14 sale.

15 MR. HILE: Do you think it would be a good idea  
16 to do this in the context of this rule, not to put you  
17 on the spot or anything?

18 MR. CERASALE: If we were supporting it in  
19 federal legislation, I don't see where I'm not going to  
20 support it in a rule. It doesn't cover -- it doesn't  
21 have the same breadth. I mean there are other areas.

22 MS. HARRINGTON: Okay. There seems to be --  
23 I'm looking around the table seeing a lot of heads  
24 nodding in the affirmative from all quarters, that it  
25 is not a good idea to have inmates doing telemarketing.

1 Yes Peter?

2 MR. DRYMALSKI: Although I generally am  
3 agreeing with you, I'm uncomfortable what the fact that  
4 there's nobody here to -- there's probably something to  
5 be said for job training for prisoners, and I would  
6 hope that organizations who represent prisoners would  
7 be given notice of what's going on if they want to make  
8 comments.

9 MS. HARRINGTON: Jason.

10 MR. CATLETT: I would just like to propose that  
11 everyone who would recommend to the Commission that the  
12 use of prison labor for telemarketing be made an  
13 abusive practice raise their hand. I see Susan's in  
14 favor. I see three hands.

15 MR. HESSE: In the affirmative.

16 MR. CERASALE: I have no idea what he said.

17 MR. CATLETT: I propose that we recommend that  
18 the Commission make -- deem the use of prison inmates  
19 for telemarketing an abusive practice so the answer to  
20 the second question is yes, and do you agree with that?

21 MS. HARRINGTON: I think that the comments and  
22 the discussion on the record really is what we're  
23 looking for here and not a show of hands, but I think  
24 we're ready probably to move on. I'm sorry, Avonne?

25 MS. SEALS: Illinois doesn't have a direct

1 experience, but what we do know is that a party that  
2 has had quite a few complaints lodged against his  
3 operations in our state for many, many years has  
4 attempted to enter into a contract with another state  
5 to hire inmates to do a solicitation portion, not  
6 sales, of the telemarketing program.

7 And the inmates, according to what the other  
8 state mentioned, are not to sell to residents of that  
9 state, but to other states including Illinois, and this  
10 is a little bit different take on it that may pick-up a  
11 little bit with what Peter was talking about, about  
12 what it does for inmates.

13 My concern because, of this particular  
14 operator's -- what I think are his motives based upon  
15 my investigation of this case which has been with me  
16 since I've been with the Illinois AG's office, is that  
17 he may be creating a potential labor force for his  
18 company when these men are discharged, because my  
19 understanding is that these would be your minimum risk  
20 prisoners who will be let back into society at some  
21 point in the near future.

22 If they are being trained the way I suspect,  
23 and I have heard from some disgruntled ex employees and  
24 others people are being trained, then it really turns  
25 the whole aim of that work ethic principle on its head



1 because what's going to happen is that these  
2 individuals are going to be trained to participate in  
3 telemarketing in a way that is not legal or perhaps not  
4 even ethical, and they may end up back in prison.

5 And so I was looking at that from the  
6 perspective of, Are consumers being hit again with  
7 another brood of employees, and then these employees  
8 coming out and getting into a business that really is  
9 not going to help them at all?

10 So I see a double whammy coming out of this  
11 situation.

12 MS. HARRINGTON: Jason?

13 MR. CATLETT: I would like to just comment on  
14 the double standards of some states, that they're  
15 delighted to have the benefit of the employment of  
16 their convicted felons, but they don't want the  
17 citizens of their own states to be -- to suffer the  
18 risks that come from prison labor being used for  
19 telemarketing.

20 Economists call this a negative externality,  
21 and the way to fix it is to have a uniform standard  
22 across all the parties preventing them from shifting  
23 the burden in that way.

24 MS. HARRINGTON: Okay. I think we have a  
25 common view around the table.

1           Let's move on. Are there additional products,  
2 services or practices that are so commonly the subject  
3 of telemarketing fraud complaints that they merit  
4 inclusion in section 310.4, a section that defines and  
5 prohibits certain practices as abusive telemarketing  
6 practices?

7           Are there any other practices? Susan?

8           MS. GRANT: I apologize, because this is where  
9 I should have brought up the advance fee credit card  
10 offers and not exemptions. I was just thinking in my  
11 head before of what isn't covered, and this is  
12 certainly an area where we see a lot of abuses in, and  
13 it's not sufficiently covered by the rule and we would  
14 like to see a prohibition.

15           MS. HARRINGTON: Let me precisely -- let me try  
16 to understand precisely what it is that you think  
17 should be included in this definition and prohibitive.  
18 What is the practice.

19           MS. GRANT: Asking for a fee in advance of  
20 receiving a credit card or providing a credit card.

21           MS. SEALS: Is that not covered already?

22           MR. HILE: It's covered if there's a  
23 representation made that the credit is a sure thing  
24 basically?

25           MS. SEALS: A high likelihood of success that

1 they will -- because we've sued on that.

2 MS. GRANT: Right, right. But otherwise it  
3 doesn't, if there's no such representation made.

4 MS. HARRINGTON: Are you aware of problems that  
5 people have had where they have been solicited by a  
6 credit card offer, are required to pay a fee and have  
7 not received a credit card?

8 MS. GRANT: Yes.

9 MR. ANDERSON: Sure, we see those all the time,  
10 Eileen, but the question is: Are there instances in  
11 which the guy calls you up and says, Well, I can't be  
12 sure that you'll get a card but send me the money and  
13 I'll try because if he calls you up and says, Send me  
14 the money and you'll get a card, the FTC has  
15 interpreted that as being an offer of credit with a  
16 representation of a high opportunity of success, and  
17 therefore it's already triggered by the other  
18 prohibition.

19 MS. HARRINGTON: Or what is represented as a  
20 credit card isn't. The other situation that we've  
21 seen, Keith, is the gold card, the gold card sort of  
22 situation, and you pay a fee for the gold card, and the  
23 gold card is a gold card all right that enables you to  
24 buy the junk at inflated products, and that's covered.

25 MR. ANDERSON: Have we covered that?

1 MS. HARRINGTON: I'm trying to figure out  
2 what's not covered.

3 MS. GRANT: What's really missing here is a  
4 bright line for consumers. Consumers don't know that  
5 this isn't how legitimate credit card offers are made  
6 or at least I don't believe that it is, and it would be  
7 very helpful for them in the same way that the  
8 prohibition against taking a fee up front for recovery  
9 services and credit repair and advance fee loans.

10 If we could tell them that if that request is  
11 made of you, you know that it's a fraudulent offer.

12 MR. ANDERSON: But I think you can tell them  
13 that because what we're saying is we've brought cases,  
14 Avonne is sitting there nodding her head. They've  
15 brought cases where we've taken exactly that position.  
16 If they offer you a credit card and ask for a fee up  
17 front, that's a rule violation.

18 MS. GRANT: Only if they've made other  
19 representations as part of that. What I'm suggesting  
20 is rather than to show the thornier issue of whether  
21 they represented that it would be easy to get a credit  
22 card regardless of bad credit or anything else, that it  
23 would just be a per se violation.

24 MS. HARRINGTON: Jerry?

25 MR. CERASALE: The only thing that I wanted to

1 ask was: Where does a secure -- I don't know the legal  
2 term, a secured credit card, where does that fit in  
3 where you have to put the money in beforehand and so  
4 forth? Are you trying to make that per se to be  
5 careful and make sure you don't have things like that?

6 MS. GRANT: No, I would be happy to accept  
7 that.

8 MR. CERASALE: So you want to make per se  
9 illegal if I ask for the fee for a credit card up  
10 front, that that's per se deceptive, whether or not I'm  
11 going to give you the credit card or not?

12 MS. GRANT: Any payment up front to receive the  
13 credit card except if it's for the purposes that a  
14 payment is made for a secured card.

15 MR. ANDERSON: But maybe that's the catch right  
16 there, Susan, because I'm wondering whether  
17 particularly the consumers that we're talking about  
18 here, whether they're likely to grasp the difference  
19 between the secured card, where it's legal, and the  
20 unsecured card where it's not.

21 Maybe that's the reason that it's hard to get  
22 the message across, just because it isn't bright.

23 MS. GRANT: Well, there's no representation in  
24 these cases that the money is to put in a bank account  
25 to cover your credit limit. That's not what people are

1 being told, which is what happens with a secured card.  
2 They are being told that this is for an annual fee,  
3 that it's for processing or some other purpose.

4 MS. HARRINGTON: Anything else? Bob.

5 MS. SEALS: Just for the record, I did want to  
6 mention that NAAG had recommended that the practice of  
7 targeting any group which is particularly vulnerable  
8 such as the elderly with a telemarketing scheme  
9 containing any misrepresentation of material fact be  
10 included as an abusive practice under 310.4.

11 MS. HARRINGTON: What would the -- why would  
12 that improve the state's ability to stop deceptive  
13 telemarketing?

14 MS. SEALS: Well, once again I think it's  
15 similar to the marketing of victim lists kind of  
16 scenario we discussed, and it may be subject to the  
17 same types of weaknesses or criticisms in the review,  
18 but the idea that there is a per se violation for not  
19 just making a bad sales pitch, but actually profiting  
20 from passing along a list or creating a profile of a  
21 particularly vulnerable group of persons.

22 I mean, I think that's a separate act from the  
23 process of actually making a telephone call which is  
24 problematic.

25 MS. HARRINGTON: But if you have to prove the

1 deception in the solicitation in the first place and  
2 you're not able to get civil penalties for increased --  
3 for additional violations and the states can't get  
4 civil penalties under this rule, I'm not sure what  
5 having a derivative violation gets you.

6 MS. SEALS: I think it's the disincentive to  
7 the practice. I don't know that it's supposed to get  
8 us anything. It's supposed to help clean up the  
9 industry.

10 MS. HARRINGTON: So that would be the purpose.

11 MS. SEALS: So those practices are becoming  
12 more broad and widespread.

13 MS. HARRINGTON: Mallory?

14 MR. DUNCAN: Again while I agree with the  
15 sentiment of what Avonne is saying, I'm not sure how I  
16 would define that so that it would actually work.  
17 Whether a telemarketing campaign that goes into certain  
18 Zip Codes in Florida, for example, might not pick-up  
19 predominantly the elderly, and therefore put the  
20 company at greater risk even though it's intended to be  
21 a legitimate campaign. Again I understand what you're  
22 trying to accomplish, but I don't see how you make it  
23 work.

24 And as to Susan's comments, again this is not  
25 an issue for the National Retail Federation, but I know

1 that mortgage brokers often charge a fee up front.  
2 Second trusts on homes often come with the credit card  
3 component to it, and if there are fees involved there,  
4 I'm not sure you want to make it a prohibitive practice  
5 to offer a home equity loan with a credit card line if  
6 that was to be consummated over the telephone.

7 MS. GRANT: I think it could be more narrowly  
8 tailored.

9 MS. HARRINGTON: Jeff?

10 MR. KRAMER: I wanted to bring up another --  
11 going to other practices. This is something that I  
12 think was discussed when in the rules were first  
13 initiated about five years ago, and I know we commented  
14 on it again, and it's another up front payment type  
15 thing, and it's courier pick-ups, and we have a lot of  
16 concerns with courier pick-ups because again especially  
17 for the elderly or some of the lower income elderly,  
18 they put this money -- it's pressed upon them that they  
19 have to make this payment immediately.

20 They give them the money, and then it makes it  
21 more difficult for them to back out of the deal because  
22 they've already given money. They've already put that  
23 money up front. It's hard for them to get it back, and  
24 we just don't really see the need for a courier pick-up  
25 in this economic system we have now, how money can flow



1 pretty freely without a courier pick-up.

2 MS. HARRINGTON: Any other -- I'm sorry,  
3 Mallory, did you want to say something?

4 MR. DUNCAN: I believe the company that was  
5 most effected by that, again it was not by that, again  
6 it was not an NFR member, it was Owens Mills from  
7 before, and I would suggest you go back and review the  
8 transcript before as to that particular problem, but we  
9 have no position on it one way or the other.

10 MS. HARRINGTON: Susan?

11 MS. GRANT: Charging the consumer's credit card  
12 account or debiting their account during the time of a  
13 free offer I think could be singled out as an abusive  
14 practice.

15 I'm still troubled by the negative option sales  
16 of services as well and don't quite know what to do  
17 about that, but I think that this is a trend as we  
18 heard yesterday and as we're hearing at the fraud  
19 center.

20 MS. HARRINGTON: What would an example of that  
21 be? Could you give me an example?

22 MS. GRANT: A buyer's club is a perfect  
23 example, and the problem with it is unlike things like  
24 record and book clubs where you're getting tangible  
25 things and that reminds you that you're a member, and

1 you're asked every month, You know you're going to get  
2 this unless you tell us not.

3 In these buyer's club situations, consumers  
4 aren't necessarily ever getting anything, and they're  
5 not using the service. In fact, one of the reasons why  
6 they may not be using it is that they're not aware that  
7 they were ever enrolled in it.

8 MS. HARRINGTON: How does telemarketing play  
9 into this?

10 MS. GRANT: Well, two ways. Either they have  
11 called a number in response to a television ad or  
12 another advertisement and perhaps bought a product, but  
13 ancillary to that is that they're now enrolled in a  
14 buyer's club unless they say that they don't want to be  
15 after perhaps getting a welcome packet to it or finding  
16 the charge on their credit card bill or an amount  
17 debited or they actually receive a telemarketing  
18 solicitation which may be specifically for the buyer's  
19 club or it might be for a product again where if you  
20 buy that, then you'll also be enrolled in the buyer's  
21 club.

22 And combined with the fact that in many of  
23 these cases it appears that the vendor already has the  
24 consumer's payment information, turning this into a  
25 negative option type of thing is problematic for me. I

1 don't know that consumers are aware of the fact that  
2 they've been enrolled and have the information that  
3 they would need then to exercise their negative option  
4 in an effective way.

5 MS. HARRINGTON: Michael?

6 MR. PASHBY: Michael Pashby. There's just one  
7 other thing, which I think just to say something on  
8 behalf of industry, which we are plagued with which is  
9 a problem, is the theft of lists, and the theft of  
10 lists and then the reuse of those names and numbers to  
11 either resell, sell other products, sometimes even  
12 passing orders back to the original seller, but it is a  
13 significant problem for this industry.

14 MS. HARRINGTON: And these are employees who  
15 are stealing lists or where is the theft occurring?

16 MR. PASHBY: They are obtaining lists by  
17 deception by claiming to be using the lists for a  
18 legitimate product and then using that list to sell  
19 something else, using that list to -- in the case of  
20 the magazine industry in particular claiming to renting  
21 the list to sell one product, then calling all the  
22 subscribers and renewing those subscribers, and then  
23 passing those orders back to the publisher or not  
24 passing the orders back.

25 There's a huge problem with list theft that we

1 see certainly in our industry, and it's very difficult.

2 MS. HARRINGTON: Is this a reported problem,  
3 that is when a list is stolen or misappropriated, does  
4 the owner report it typically to someone and if so to  
5 whom?

6 MR. PASHBY: If the list is stolen, one really  
7 finds out about it significantly later when it is used.  
8 It's difficult actually to track back and find, Did it  
9 precisely come from -- where it came from and how it  
10 came. It's very difficult to track this down.

11 Usually we work with the Postal Service because  
12 it usually does involve some form of personal  
13 transaction as well to try and track this down, but  
14 it's difficult to prosecute, and having it as a  
15 violation of the TSR would be helpful.

16 MS. HARRINGTON: Heather?

17 MS. MCDONALD: Susan's comments about the clubs  
18 brought to mind sort of -- maybe that's an example of  
19 an area where I wanted to sort of highlight a more  
20 general point on the abusive practices, and I guess  
21 essentially it's this, that no matter what the rule  
22 prohibits or allows, there are going to be some  
23 violations in some corners you're going to see people  
24 that disregard the rule, maybe the recidivists that,  
25 Eileen, you described earlier and maybe people who are

1 uneducated about their obligations under the rule.

2 But you're going to see some of that, and you  
3 may even see from time to time trends about that, but I  
4 think when you're looking at the rule and the impact  
5 that it has not just on those folks but on a broader  
6 industry, there may be a temptation to sort of say,  
7 Well, we've seen a lot of abuses of particular  
8 provisions in the rule, but where the rule is adequate  
9 now to address it, I don't know that you want to say,  
10 Well, because we've seen a lot of violations of that  
11 provision, we now need to list that as an abusive  
12 practices.

13 I don't know that that's really what the rule  
14 was intended to do was sort of allow as a predicate for  
15 moving it from one category to another just because you  
16 may see for a period of time some abuse.

17 MS. HARRINGTON: Let's move to the last point  
18 for discussion during this segment, and that concerns  
19 the utility of self-regulation to improve compliance  
20 with sections 310.4 (b), (c) and (d) which are the  
21 provisions of the rule that deal with causing a pattern  
22 of abusive or harassing calls, the calling time  
23 restriction provisions of the rule and the required  
24 oral disclosures under this segment of the rule.

25 And our question is whether there is more that

1 could be done or something that could be done by way of  
2 self-regulation to improve compliance with these  
3 portions of the rule.

4 And I guess I could get under that question a  
5 little bit and say that I think it's true for the  
6 states. I know it's true in the main for the Federal  
7 Trade Commission that we have targeted our enforcement  
8 work against schemes that really are deceptive, that  
9 are ripping people off.

10 So if we have patterns of violation in these  
11 other areas without the underlying economic injury as a  
12 matter of resource allocation for us, for the states,  
13 it may be that those are not the cases that we're going  
14 to get to most quickly, but we've heard Mr. Bulmash  
15 this morning say that disclosures are not being made,  
16 that was a statement that I'm unaware of anything in  
17 the record from him or anyone to support that, but I  
18 certainly take him at face value that he knows that  
19 there are instances where disclosures aren't being  
20 made.

21 If we have problems with those provisions that  
22 aren't being prosecuted, is there more that could be  
23 done with self-regulation to improve or if they are  
24 being prosecuted, is there something that could be done  
25 in lieu of prosecution by way of self-regulation that

1 would be more effective?

2 This is really kind of an information point I  
3 think for us rather than a notion of somehow  
4 incorporating self-regulation in the rule. Mallory?

5 MR. DUNCAN: Just I guess a quick observation.  
6 I think what's needed here is some evidence that there  
7 in fact is a problem. I mean, Bob Bulmash did say that  
8 he thought there were violations occurring. I have  
9 spoken with some of our members about, for example, the  
10 first one, the pattern, and there are, for example,  
11 predictive dialers that will call a home, and if no one  
12 is there, the machine will hang up and maybe call back  
13 again in half hour or so.

14 And so if a person comes home and looks at  
15 their Caller ID, they might say, My gosh, XYZ company  
16 has tried to call me so many times today, and I assume  
17 that was a harassing effort but in fact no one was at  
18 home, and typically they won't leave an answer on an  
19 answering machine.

20 So I'm not sure yet that we have the evidence  
21 to determine whether there's a problem in each of these  
22 areas, and if there is we would be happy to work on  
23 trying to address that.

24 MR. HILE: One of the issues that is covered  
25 here is the do not call provision. That's one of the

1 three provisions here.

2 MR. DUNCAN: Right.

3 MS. HARRINGTON: Jeff?

4 MR. KRAMER: Yeah, and I guess I would like to  
5 know if there is a better way that industry can  
6 regulate itself. And Direct Marketing Association,  
7 correct me if I'm wrong, Jerry, but don't you take  
8 disciplinary actions against members who you found to  
9 be violating your code of ethics or kicked them out,  
10 whatever you do?

11 MR. CERASALE: We seek to correct first, but  
12 then if they won't, we kick them out.

13 MR. KRAMER: If they say that they are  
14 correcting their actions, do you have a way of  
15 monitoring that, or do any telemarketing firms have  
16 ways of monitoring what they feel may be bad actors or  
17 people straying from what they should be doing?

18 MR. CERASALE: I guess that's pointed to me so  
19 I'll try and respond.

20 MS. HARRINGTON: It could be you. It could be  
21 Mallory. It could be Matt, Michael, Heather, Char.

22 MR. CERASALE: I'll start a response, and  
23 putting Allen's together to respond to Allen's and  
24 yours, the Direct Marketing Association has its peer  
25 ethics review that's been in the process for a long



1 time looking at its guidelines.

2 We do have and started last July over a year  
3 the privacy promise, and we do have employees in the  
4 compliance section in the DMA actually looking to make  
5 sure people are doing that and do not call, do not call  
6 in the sense of the do not call lists that DMA runs  
7 with the 3.2 million names as well as in-house  
8 suppressed, which is basically the do not call list  
9 type situation that the TCPA and the TSR hit are all  
10 part of that that must be complied with and they have  
11 to use our do not call list, that's being monitored  
12 straight right now.

13 I would say -- and also to go a little further  
14 in answer to Eileen. I think that on the  
15 self-regulatory side, we do need I agree with Mallory  
16 some more discussion. We have -- you have to file the  
17 FTC rules and the FCC rules and the state rules as part  
18 of the guidelines.

19 We don't necessarily -- we have some specifics  
20 on of course do not call, on predictive dialers and so  
21 forth, but I don't think we have -- for a TSR we  
22 don't -- we do have that you're supposed to say who you  
23 are, tell people it's a solicitation and so forth in  
24 our general, not just telephone, but we don't have some  
25 of the specifics in here in our guidelines specifically

1 delineated that we would be willing to talk and we  
2 could probably -- if there's some place where you would  
3 like some of that to see some of the -- to see it more  
4 explicitly stated to DMA members and therefore go  
5 through in part our ethics process, I think we can work  
6 with that.

7           But I don't think that we think -- we are in  
8 favor of self-regulation. We want to work with you on  
9 it, but when there is a law, we just tell people you  
10 have to follow -- we try and get our self-regulatory  
11 guidelines to make sure we're not inconsistent with a  
12 law or rule and so forth.

13           MS. HARRINGTON: Michael?

14           MR. PASHBY: Michael Pashby. As you know up  
15 until last week we were pretty happy with our  
16 self-regulatory efforts until we got sued. Certainly  
17 for the magazine industry the issue for the magazine  
18 industry was how -- when abuses do occur when people  
19 don't follow the rule because the magazine industry in  
20 itself, in and of itself, does not use telemarketing,  
21 they use second, third or fourth parties to telemarket,  
22 how did you actually find out who is abusing, breaking  
23 the rules or abusing the consumer?

24           There are instances of it, and I think it was  
25 incumbent upon us to identify those people and

1 terminate those people as sellers of magazines, so we  
2 went further than the rule to try to identify who was  
3 violating the rule, and it is working extremely well.

4 We've identified -- the way it works is for  
5 every order that comes through as a telemarketing  
6 order, the industry requires that there is some form of  
7 identification of the person who sold the order,  
8 whether it's an ENI number or Social Security number or  
9 something of that nature.

10 Those are recorded by the fulfillment houses  
11 that process the order. If there is a pattern of  
12 complaint against an ENI number, Social Security  
13 number, the agents and the sub agents are required to  
14 investigate, and they're required to terminate any  
15 relationship with those people.

16 So I think that has had a significant impact  
17 given the number of people who have indeed been  
18 terminated.

19 MS. HARRINGTON: Susan?

20 MS. GRANT: I know that the Commission is up to  
21 its eyeballs in fraud and other very serious problems,  
22 but I think that the Commission should bring  
23 enforcement actions in this area. I think that that  
24 would strengthen the hand of those who are trying to do  
25 self-regulation.

1 I think it would call more attention to the  
2 seriousness of the violations. I think it would compel  
3 people to adhere to the rules who maybe are not doing  
4 so because nothing's happened to them.

5 MS. HARRINGTON: Well, I think also we had a  
6 whole workshop on do not call in the winter, and I  
7 think that one of the problems that has been identified  
8 with the provision as it is currently written is that  
9 it is often very difficult for us to learn of  
10 violations of the do not call provision because it's  
11 company by company rather than more broadly applicable.

12 MS. GRANT: But you did note at the time of  
13 that public workshop that the Commission receives  
14 complaints in this regard.

15 MS. HARRINGTON: Yep, we sure did.

16 MS. GRANT: And I would hope that you would be  
17 able to identify patterns of abusers.

18 MS. HARRINGTON: We have, stay tuned.

19 MS. GRANT: So that you might have some good  
20 cases.

21 MS. HARRINGTON: We heard about one yesterday  
22 too from down over there, so we need the information.  
23 When the consumer knows the identity of the company  
24 that has called after there's been a request made to  
25 call no more, we need to know that. Heather?

1 MS. MCDONALD: Yeah. I think Elissa mentioned  
2 yesterday ERA now has new telemarketing guidelines for  
3 its members. It didn't -- it didn't have them for a  
4 number of years before in large part because the core  
5 membership did not historically have a lot of  
6 involvement in outbound telemarketing, and inbound  
7 telemarketing was not really a problem.

8 But as that's changed or as we've seen new  
9 issues or concerns or hear anecdotally anyway about  
10 consumer's concerns that states and others communicate,  
11 we saw a need to identify some of those issues and to  
12 do some education for members, so we now have very  
13 comprehensive guides in place.

14 And although in large part, sort of like the  
15 DMA and Mallory's guides, they largely reflect existing  
16 laws and regulations, we've also tried to go beyond  
17 that with some best practices and to a certain extent  
18 even have identified some of the emerging issues that  
19 seem to have come up to try to educate people about  
20 what their obligations are.

21 They get into the free trial offers. They get  
22 into sort of continuity type of issues, and in fact in  
23 one area the guides even mention that there are  
24 continuing regulatory developments and members need to  
25 alert to that because we understand it's an evolving

1 issue.

2           So that's one way in which we have tried try to  
3 educate members about what their obligations are, and  
4 then I think as things continue to evolve, the  
5 guidelines themselves, they're not static, and again we  
6 too would be open to working with people. We're  
7 looking now at sort of the next stage which is  
8 enforcement of the guidelines and how to implement --  
9 subscriptions will be mandatory.

10           We need to look at sort of what the mechanisms  
11 are going to be, and we have some models in place in  
12 connection with our other guidelines to use, but I  
13 would invite anybody who has thoughts about what that  
14 ought to look like to give us a call and let us know  
15 what your thoughts are. We would be interested to hear  
16 from anybody.

17           And then last but not least, I know ERA is just  
18 generally sort of outside of the context of  
19 telemarketing alone, but generally working with members  
20 as to sort of how to develop cooperative consumer  
21 education efforts because it's the core principle that  
22 we have to have confident and comfortable consumers in  
23 order to succeed as an industry. We have to build  
24 consumer confidence, and we want to promote that.

25           And some of the things that are being examined

1 are the possibility of sort of linking it online to  
2 different kinds of places that would provide consumer  
3 education, maybe pro bono, media campaign, and it's  
4 early in the process. We're still looking at sort of  
5 how to do that, but as that develops we would be open  
6 to working with the Commission on ways we can look to  
7 use those tools and harness the creativity that our  
8 members bring to the table to get out consumer  
9 education efforts and business education efforts, which  
10 is really a corollary.

11 MS. HARRINGTON: Well, and that is the focus of  
12 the next segment this afternoon, so hold that thought.  
13 Jason or Peter?

14 MR. DRYMALSKI: I just had a brief comment to  
15 Direct Marketing Association and Direct Selling, do you  
16 handle complaints from your directors about your own  
17 members?

18 MS. HARRINGTON: Jerry?

19 MR. CERASALE: Jerry Cerasale. Yes, we do. We  
20 have -- it used to be called the mail order action  
21 line, but now with the vast arrest way of new media  
22 it's called the consumer action line. We put out a  
23 press release on it, and we do get a significant number  
24 of calls coming in.

25 We do -- complaints, we can get complaints that

1     come in from the point of view of it was deceptive, et  
2     cetera, and that can go to our ethics committee, but we  
3     have the service -- the consumer action service is to  
4     try and be a go between of the marketer and the  
5     consumer with a specific complaint about a product.

6             In other words, I order this, it's not what I  
7     wanted or something and I didn't get money back, they  
8     charged my too much or something like that that is not  
9     really on a -- you look at a full scale scheme but  
10    looks like it's a specific consumer problem. We will  
11    try and be an intermediary on that, not that we -- it  
12    doesn't mean that we -- it's not that we are the  
13    resolver, but we just try to be the facilitator on that  
14    also.

15            MS. HARRINGTON: Jason?

16            MR. CATLETT: Thanks, Eileen. I would just  
17    like to second Susan's comments earlier that fraud is a  
18    terrible thing and many awful things are done with it  
19    fraud has also been the Federal Trade Commission's long  
20    suit because of its statutory authority obviously.

21            But if the only actions that the FTC brings are  
22    on the basis of fraud, then that really is sending a  
23    signal to companies that the other provisions  
24    effectively don't matter to them, and I think even if  
25    just a small number or even one action were brought on



1 the basis of the company breaking the law in a non  
2 fraudulent manner, that would set a good signal and  
3 give the company some incentive to comply.

4 I would now like to go into a couple of  
5 practices that I would ask the trade associations what  
6 their position is on self-regulation and member  
7 education.

8 The first one is the use of auto dialers to try  
9 to get to an answering machine. There are some  
10 companies that deliberately attempt to get an answering  
11 machine and actually hang up if a human answers.  
12 They're programmed to do that, and then they leave a  
13 message on the answering machine.

14 There was an article in the Wall Street Journal  
15 in 1999 that specifically mentioned companies, Voice  
16 Mail Broadcasting Corporate, Irvine, California, and  
17 Broadcast Team of Amite Beach, Louisiana.

18 Now, just last week ABC, the television  
19 company, was reported in ZD Net News as doing this, and  
20 I think that this is illegal under the Telephone  
21 Consumer Protection Act for the same reason I believe  
22 it's illegal for dead ringers.

23 What do the trade groups think of that and have  
24 they educated their members against it or in favor of  
25 it?

1 MS. HARRINGTON: Anyone from the industry side,  
2 trade groups here want to comment on that? I know  
3 that we've certainly heard about this practice as well,  
4 about the programming of predictive dialers to leave  
5 messages on machines and hang-ups on live answers.

6 MR. HESSE: Can I respond to Peter's question  
7 earlier? I think he had posed a question to both  
8 myself and Jerry.

9 MS. HARRINGTON: Sure, and then we'll get back  
10 to Jason's. I'm sorry, John.

11 MR. HESSE: That's fine. Our code of ethics  
12 works in a similar way that the Direct Marketing  
13 Association just described, that Jerry just described,  
14 except that all of the complaints that have come in are  
15 handled by an outside code of ethics administrator.

16 And that person is empowered to take remedial  
17 action which means that he has the power to, for lack  
18 of a better word, force a company to either return a  
19 product or make restitution in some form, and he also  
20 has the power to recommend expulsion from membership in  
21 DSA, and if you want more information I'm happy to  
22 provide that on a one to one basis.

23 MR. DRYMALSKI: I wanted to make a point. One  
24 way to police themselves is take complaints and take  
25 the initiative to make sure that their members are

1 complying with the telemarketing rules, even if that's  
2 not what the consumer knew enough to bring up in his  
3 own complaint.

4 MS. HARRINGTON: Thank you, John. Now, let's  
5 shift back to Jason's question. Heather?

6 MS. MCDONALD: Jason, I'll confess I'm not  
7 entirely sure I understand which practice you were  
8 talking about, but if you're talking about using a  
9 prerecorded message to communicate -- to call residents  
10 and to leave a commercial solicitation message, I mean,  
11 ERA's guides --

12 MR. CATLETT: Correct, specifically seeking an  
13 answering machine, and the auto dialer is programed not  
14 to play the prerecorded message unless it gets an  
15 answering machine.

16 MS. MCDONALD: I guess my sense about it is you  
17 don't even need to get to that level. In ERA's  
18 guidelines, the prerecorded messages doesn't  
19 distinguish between whether it's answering machine or  
20 live person, but that you can't use a prerecorded  
21 message except under the TCPA which is with the  
22 permission or with an established business  
23 relationship.

24 So it's sort of -- we didn't even take it sort  
25 of to the next level because there's a strict limit in

1 the TCPA, so our members's guides reflect that.

2 MR. CATLETT: Actually maybe I should have  
3 brought this up in the question of the abusive  
4 practices, but that should be considered an abusive  
5 product?

6 MS. HARRINGTON: Use of a prerecorded message  
7 or generally as the TCPA does? That's an interesting  
8 suggestion.

9 MR. CATLETT: Would anyone be opposed to that  
10 idea?

11 MR. DUNCAN: You mean subject to the exceptions  
12 that are in the TCPA?

13 MR. CATLETT: Sure. If the library that calls  
14 us with a recorded message saying that the book that I  
15 reserved had come in, that would be accepted similarly  
16 to the way that it is in the TCPA.

17 MS. HARRINGTON: Keith?

18 MR. ANDERSON: I think frankly from reading one  
19 of the comments that the hang-up here is that the  
20 parties that are doing it will contend that it's not a  
21 marketing call, they're not selling anything, and I  
22 think that their -- I mean, I tell my economist friends  
23 that and they laugh.

24 But whether legally that's a problem or not, I  
25 don't know, and if it is, then we're powerless to do

1 anything with it because our rule -- the legislative  
2 language would restrict us, and I think the TCPA does  
3 restrict it as well. The point is that telemarketing  
4 is defined as for purposes of selling.

5 MR. CATLETT: Yes. I think this is an  
6 extremely interesting point with respect to ABC because  
7 the call simply said, Watch our great new fall lineup.  
8 It's not clear that that is a solicitation. They're  
9 not getting any money directly from you watching it,  
10 but what our people's feelings on that? Perhaps it  
11 should be an abusive practice.

12 MS. HARRINGTON: I think we've noted the  
13 suggestion certainly for the record. Mallory?  
14 Mallory.

15 MR. DUNCAN: I assume we will have the  
16 opportunity to go back and determine whether this is  
17 going on. Like I said, the concern I heard was the  
18 flipside which was leaving --

19 MS. HARRINGTON: Mallory, we need you to speak  
20 into the microphone for our listening audience.

21 MR. DUNCAN: I'm sorry. The concern I heard  
22 was the flipside, not leaving a message until you got a  
23 live person, so we would obviously have to have time to  
24 go back and determine whether this practice is at all  
25 prevalent.

1 MS. HARRINGTON: Well, I think we're starting  
2 to really run out of gas here and get a little punchy  
3 because I have to say, Keith, when you talked about  
4 your economists friends, I though you said, I tell my  
5 communist friends which is why we've been a little  
6 stirred up.

7 MR. ANDERSON: You tried that before, Eileen.

8 MS. HARRINGTON: Whoa, I didn't think that was  
9 a relevant term anymore. Well, so that Keith can go  
10 out in the hall and talk to his communist friends and  
11 we can regroup for the last push, I think what we will  
12 do is take our break and resume at three for the final  
13 session and we will round up our consumer ed people  
14 from within the Commission who I think are very  
15 interested in this last discussion.

16 So thank you, and let's resume again at three  
17 o'clock sharp, and we should be finished then and ready  
18 for our open mike session, so if there are any people  
19 who wish to sign up to participate during the public  
20 participation section of the day, you need to do that  
21 now so that we know who you are when we start the next  
22 session and can allocate time accordingly.

23 So let's resume at three. Thank you, and  
24 remember the microphones are live and remain on during  
25 the break.

1 (A brief recess was taken.)

2 MS. HARRINGTON: We are headed down the final  
3 stretch here. Susan, use the microphone, please, so  
4 everyone all over the country can hear what you're  
5 about -- and the world can hear what you're about to  
6 say.

7 MS. GRANT: I have a funny telemarketing story.

8 MS. HARRINGTON: Oh, good.

9 MS. GRANT: My boss just left me a voice mail  
10 message, and she transferred the message to my voice  
11 mail that she had received from a gentleman in India  
12 who just called us because we have a call center, the  
13 National Fraud Information Center is essentially a call  
14 center for giving consumers advice about telemarketing  
15 and online offers and taking information about fraud,  
16 and he was calling from India.

17 He left his very long phone number to call him  
18 back in India offering to do our call center services  
19 for us in India. As we discussed yesterday, this is  
20 obviously a trend. I'm sure we could save a lot of  
21 money if we wanted to hire people in India to take our  
22 fraud complaints and give people advice, but we're not  
23 going to do that.

24 But I just -- I couldn't believe that in the  
25 midst of the TSR workshop we were getting --

1 MS. HARRINGTON: You were getting telemarketed  
2 by someone in India. Well, there you go. It's global.  
3 Let's see, the transition. Yes, we've long been  
4 concerned here at the FTC about the global economy and  
5 so forth, and so it's right on point.

6 All right. We've really sort of saved the best  
7 for last I think. You can't regulate consumer  
8 education or mandate it in any meaningful way I don't  
9 think in a regulation, but the -- Carolyn Shanoff who  
10 is just walking into the room who is the director of  
11 our Office of Consumer and Business Education at the  
12 FTC and integrally involved in everything that we do  
13 often says that we use law enforcement at the FTC to  
14 market consumer education, and there's some truth in  
15 that.

16 We think that there's nothing more valuable  
17 than effective education of consumers to enable them to  
18 know the difference between legitimate and deceptive  
19 offers and to make good decisions so that there never  
20 is loss, so that good businesses thrive, so that  
21 Susan's call center and ours never hearing from anyone.  
22 That would be a happy day I think, but that's not where  
23 we are.

24 So the question we throw open for discussion  
25 here, and it's really a continuing discussion that



1 we've been having at the FTC and with all of you since  
2 the rule was initially promulgated five years ago, that  
3 question is: What strategies for informing the public  
4 of their rights under the Telemarketing Sales Rule are  
5 or would be most effective? Susan?

6 MS. GRANT: Just a couple observations I would  
7 make because we are in the business of consumer  
8 education at the National Consumers League. One  
9 observation is that to the extent there are numerous  
10 exemptions and exceptions from exemptions in the rules,  
11 it makes consumer education very confusing.

12 It's very difficult to explain to consumers,  
13 Well, this call applies but not if this but only if  
14 that. I am always having to refresh my memory myself,  
15 and some of the rationales for why there are these  
16 exceptions and exclusions are also not intuitive so  
17 that that makes it that much more difficult to educate  
18 people about the rule.

19 MS. HARRINGTON: Does it make sense to educate  
20 people about the rule or to educate people about how to  
21 protect themselves from falling victim to bad  
22 practices?

23 MS. GRANT: Well, you obviously need to do  
24 both. You need to educate consumers about what the  
25 danger signs of fraud are, and you need to educate them

1 about what their rights are, and in both of those  
2 contexts exemptions and exclusions make that more  
3 complicated.

4 MS. HARRINGTON: Okay. Bridget?

5 MS. SMALL: I would add from AARP's  
6 perspective, you definitely do need to educate people  
7 about their rights under the rule. The research that  
8 we have done has shown a pretty significant lack of  
9 knowledge of their rights from provisions like the do  
10 not call right they have, the calling hours, different  
11 things there.

12 The highest percent that people were aware of  
13 of those stated rights were half the people knew they  
14 had a do not call right. People 65 years or older, a  
15 third of them -- only a third of them think they have  
16 such a right.

17 I think informing people of their right,  
18 whether it's through public education campaigns or, as  
19 AARP talked about in the do not call hearings, a more  
20 affirmative effort by them, by the callers to let  
21 people know of that right would be useful. People  
22 would exercise that right.

23 As you know in the states, there's been a lot  
24 of interest around people having and then exercising  
25 that right. That would be a great thing to let people

1 know about.

2 MS. HARRINGTON: Any comments on the broad  
3 question? What strategies might be effective? Jerry?

4 MR. CERASALE: In our efforts to try and -- we  
5 have a telephone preference service which, when I  
6 started, DMA had 700,000 names, now has 3.2 million  
7 probably because they knew I went to the DMA, I don't  
8 know, but we found that one of the best ways to try and  
9 publicize was through advice columns in the newspapers.

10 MS. HARRINGTON: So every time Ann Landers  
11 tells people about the DMA mail phone preference list,  
12 what happens?

13 MR. CERASALE: We get a little --

14 MS. HARRINGTON: Your phones crash?

15 MR. CERASALE: Well, they don't crash. We get  
16 a bump -- you get a bump in response, and so we find  
17 that that's a fairly effective and inexpensive way to  
18 try and get some consumer education out.

19 MS. HARRINGTON: Peter and then Jason?

20 MR. DRYMALSKI: In a sense we're talking about  
21 telephone solicitations, perhaps the FTC could explore  
22 working with the telephone companies to include notice  
23 of their rights with the bills because you -- well, you  
24 can put things out into the newspapers and radio, but  
25 unless you reach people at the time that they need the

1 information, they tend to forget about the information.

2 And I think the most relevant way to reach them  
3 is with the phone bill because they will connect that  
4 with the phone solicitation, might remember it. You  
5 can also include stickers and magnets to put on the  
6 phone that would have a brief summary of the do not  
7 call rights.

8 MS. HARRINGTON: Jason?

9 MR. CATLETT: Thanks. I have a suggestion  
10 following on from Peter's, which is you've got to get  
11 people at the time that they can take action. If  
12 there's a disconnect between the time they find about  
13 it and when they can some action, then you're going to  
14 get a less or lower response rate, and magazine  
15 publishers know this very well.

16 And the DMA's telephone preference service, for  
17 example, you could improve the subscription rates on  
18 this by simply allowing people on the DMA's web site to  
19 enter a request to be on the TPS, and indeed the  
20 Canadian Marketing Association does exactly this.

21 So I would like to ask Jerry why the DMA still  
22 doesn't accept TPS requests via its web site?

23 MR. CERASALE: Well, the DMA right now is  
24 investigating. One of the reasons we haven't is that  
25 we have found fraud in the opposite direction of people

1     trying to put names on the list that do not have any --  
2     and they are not the individual putting the name on the  
3     list, so that we used -- every once in awhile we send  
4     out a confirmation for a month. We'll send out a  
5     confirmation, and we get very irate responses back both  
6     on mail and telephone.

7             We haven't done it on the Email list yet.  
8     Email is a little bit different because it can offer us  
9     something, so that we have -- how can you possibly try  
10    and stop people from contacting me and so forth.

11            So we try to make it so we can try and get some  
12    kind of verification, and the telephone -- we allow  
13    Email, people to do it on Email, on the Email list  
14    because we then send back a confirmation to the Email  
15    address.

16            So, in other words, if you give us an address,  
17    the address of J. Smith at AOL.COM and put me on the  
18    list, we write back to J. Smith at AOL.COM a  
19    confirmation, but if you allowed just a telephone  
20    number in there, I have no way to confirm that that's  
21    the number from them. We're trying to work on that  
22    situation right now.

23            MR. CATLETT: Thanks, Jerry. So suppose I'm  
24    intent on committing a fraud and depriving Katie of her  
25    right to receive telemarketing calls from DMA members,

1 and I put basically Katie's telephone number right to  
2 the DMA. I can deprive Katie of this opportunity, but  
3 it seems to me that I'm equally able to perpetuate a  
4 postcard card to Farmingdale to the address for the TPS  
5 as I am through the web.

6 It would cost me an additional 33 cents, I  
7 guess, but I don't see how the confirmation process is  
8 any different. Could you correct me on that, Jerry?

9 MR. CERASALE: Well, it's a time factor, and we  
10 found that that effort to write it in, it tends to be a  
11 protection for us as we look at it. Whether or not you  
12 think spending 20 cents on a postcard or 33 cents on a  
13 letter is not that much of a deterrent, at this point  
14 from our investigation it is to prevent the fraud.

15 MR. CATLETT: Could I suggest that it also  
16 reduces the number of people legitimately who would  
17 sign up for the TPS if you put -- impose on the  
18 additional cost of writing out a letter. You could get  
19 more people on to the TPS who really wanted to if you  
20 made it easier for them.

21 MS. HARRINGTON: Nancy?

22 MS. MATSON: Nancy Matson from Verizon. I just  
23 wanted to indicate that based on the response that  
24 Verizon gave on the rules, we do periodically send  
25 information out to our customer base in the bills, and

1 exhibits were attached to the response.

2 MS. HARRINGTON: Michael?

3 MR. PASHBY: I think education is a long-term  
4 thing. It's not a one-time education of the consumer.  
5 We have found that when editorial comment is made about  
6 telemarketing, whatever topic it may be, it has a  
7 greater impact on the consumer because there is a  
8 higher consumer trust of editorial than advertising  
9 let's say.

10 And I think Jerry would agree that when there  
11 has been enforcement by the FTC, there is an upswing in  
12 the number of people requesting to go on the lists. It  
13 is a long-term thing. It's not something we can expect  
14 to happen overnight.

15 The position that we took initially was that we  
16 had to educate the businesses first so that they were  
17 aware of how to operate and how to act, and if they are  
18 operating and acting responsibly, what that does is set  
19 a clear, bright line for the consumer so there is clear  
20 education there from the beginning.

21 MS. HARRINGTON: I think that's an important  
22 point, that if there isn't a clear distinction between  
23 good practices and bad practices in fact, that is in  
24 the behavior in the business community, that it's very  
25 difficult to teach consumers much of anything.

1 Peter?

2 MR. DRYMALSKI: One suggestion maybe in the  
3 brochures the FTC recommends, you could have a tear off  
4 to be mailed to the telephone preference service that  
5 people could just fill out, tear off and mail in and  
6 get themselves on the do not call list.

7 MS. HARRINGTON: Well, that gives me an  
8 opportunity to tell you that since the beginning of  
9 fiscal year 1996, which is really the year after the  
10 rule was promulgated, the FTC has distributed 3 and a  
11 half million consumer education publications, paper and  
12 electronic, of its own on the subject of telemarketing.

13 And we also have had some really -- seen some  
14 real terrific initiatives from members of the business  
15 community, some who were with us in our partnership for  
16 consumer education on telemarketing fraud from the  
17 start, sending out useful information to their  
18 customers at appropriate moments. We had one company  
19 sending out information with every product shipment  
20 which they thought a happier moment than with the bill.

21 Susan?

22 MS. GRANT: We also send out a lot of your  
23 brochures as well as brochures from DSA and other  
24 resources that produce good objective information for  
25 consumers. About 80 percent of the consumers who



1 contact us, whether it's by phone or through our web  
2 site or Post Office Box, we get letters from consumers  
3 also, are asking for advice and have not yet been  
4 scammed.

5 So a very important thing that we do at the  
6 National Fraud Information Center is educate the  
7 public. Obviously the League also does educational  
8 programs outside of the fraud center.

9 In both cases we get support to do these things  
10 from our members and from businesses, and just looking  
11 around the table, Direct Marketing Association, Verizon  
12 have been two very good supporters of the fraud center,  
13 and we've also occasionally done educational projects  
14 with them and others, and I think that this is  
15 something we have to constantly do.

16 We have new crops of consumers. We have new  
17 kinds of things that occur that people need to be aware  
18 of. It's a constant effort. We can't do it by  
19 ourselves, but we are a more credible source of  
20 consumer information than somebody who may clearly have  
21 another motivation such as advertising, and we can  
22 partner the private sector to effectively do this, and  
23 it's something that we've had a lot of success with but  
24 we can't rest on our laurels.

25 We certainly have to continue doing it, and we

1 would encourage the private sector to come to us and to  
2 AARP and other groups, nonprofit groups, and work with  
3 us, put your money where your mouth is.

4 MS. HARRINGTON: I think one of the most  
5 practically useful publications that we've ever put out  
6 on the telemarketing front at the FTC was done jointly  
7 with the Direct Marketing Association, Complying with  
8 the Telemarketing Sales Rule booklet, which we have --  
9 I can look at the numbers here and give you the number  
10 in a minute, but we have distributed scores of hundreds  
11 or thousands of these booklets which give very  
12 practical direction to the business community, an  
13 important part of the educational work here about  
14 precisely how to comply with this rule.

15 And I think that when we are finished with this  
16 rule review, if there are any changes made to the rule,  
17 that it will be important for us to launch out in  
18 another publication effort for the business community,  
19 so any of you -- just as people who brought coffee and  
20 pastries for this session are now broadly exempt from  
21 all Federal Trade Commission requirements, if you want  
22 to sign up now to help with the publication of the next  
23 business compliance guide, this is for the business  
24 community, it's not too soon to start angling for that  
25 opportunity.

1           Bridget?

2           MS. SMALL: Okay. I wanted to add to Susan's  
3 discussion of consumer information and a couple points  
4 about message. One of the things that AARP has spent a  
5 great deal of time doing is understanding victims and  
6 older consumers who do telemarketing, who purchase  
7 through telemarketing, have complaints.

8           One of the things we found is that the old just  
9 hang-up messages, the blame the victim, the you've done  
10 a foolish or made an inappropriate decision messages  
11 are really a disincentive for consumers to take  
12 self-protective action, and I would urge any of the  
13 entities that want to do consumer protection to use a  
14 message that focuses on the harm.

15           If a person has been harmed by a crime, then  
16 the message should be there and helping them resolve  
17 that rather than focusing on what they've done and  
18 calling it inappropriate.

19           Another thing that has been important to us is  
20 reaching the people, reaching the families who are the  
21 front line of defense, and probably the first ones who  
22 walk in the house and see the packages in the mail or  
23 mom can't balance a checkbook problem, and more and  
24 more of our work is going to be done figuring out how  
25 to help the adult children and the adult family members

1 help people who are having a problem.

2           And another thing that I would suggest is that  
3 telemarketing fraud we found with our members is so  
4 fungible that we have a really hard time necessarily  
5 conveying as broad a message as we want to. If we get  
6 too specific about what to watch for, we're doing a  
7 disservice to folks because they don't -- they don't  
8 necessarily transfer that message so that --

9           MS. HARRINGTON: So what is the message if you  
10 can't be specific? What message are you putting out?

11           MS. SMALL: I can't be specific, but it's more  
12 important to -- materials that we would have written  
13 five years ago wouldn't have talked about maybe  
14 heightened awareness if a caller says he's from Canada  
15 or wants you to ship something to Canada. Today that  
16 would be taken into account.

17           There are other things, different methods of  
18 payment weren't insignificant in fraud several years  
19 ago. They may be more today. What we've been  
20 searching for, and haven't arrived at yet, but are  
21 still searching for is sort of the consumer inoculation  
22 message for some commonalities of fraud rather than,  
23 you're too specific you miss the mark.

24           That's why the work on telemarketing now  
25 includes telemarketed charity, telemarketed investment

1 frauds of various types, but I think in forming the  
2 message, it's not only what we say should be broad, but  
3 how we say it to the people who -- because if we're  
4 talking to victims, they're people who have been harmed  
5 by crime, and it's important to be responsive to that  
6 state of mind.

7           Final point, if you add that disincentive,  
8 consumer complaint data based on what we've found are,  
9 in the number of older consumers complaining to federal  
10 agencies, in the single digits. The last consumer  
11 behavior study we did in 1999 found an overall -- among  
12 all ages 5 percent of people who thought they had been  
13 harmed complained to an agency.

14           We would really like consumers to understand  
15 that there's value in complaining, in taking action on  
16 the problem solving side because the complaints that  
17 you get are the basis of important things happening,  
18 and I think that something telling consumers they need  
19 to complain and how to complain and how to follow up  
20 would be really wonderful.

21           MS. HARRINGTON: I think that's right, and  
22 we've gone through this whole workshop without me once  
23 urging anyone with a complaint or a question to call  
24 toll-free at 1-877-FTC-HELP or go to our web site  
25 [www.ftc.gov](http://www.ftc.gov). You can make an online complaint that

1 goes directly into our database, or certainly you can  
2 write to us at the Federal Trade Commission, 600  
3 Pennsylvania Avenue, Northwest, Washington, D.C.,  
4 20580. That number again 1-877-FTC-HELP.

5 MR. HILE: Operators are standing by.

6 MS. HARRINGTON: Yes, operators are standing by,  
7 and for those of you listening on the West Coast, we're  
8 here until 5:00 p.m. your time.

9 Mallory?

10 MR. DUNCAN: Just a couple of thoughts on this,  
11 and maybe this is directed in part to Bridget and your  
12 communications. It strikes me, and this came up in our  
13 workshop five years ago, there can be too many messages  
14 out there, and what you're really trying to do with  
15 consumers is give them, I believe, essentially two  
16 messages: One is to address the problem of the fraud,  
17 and the second is to address the issue of harassment  
18 and perceived privacy concerns.

19 And those are two very distinct messages, and  
20 they're -- you probably lose people if you try to merge  
21 them, and they should be given distinctly.

22 The first one, the fraud message, can probably  
23 succinctly be discussed in terms of deal with a company  
24 you trust because you can give them all the  
25 characteristics of fraud, but if it comes down to their

1 sense of, Do I trust this company or is there someone  
2 I've dealt with before, they're probably more likely to  
3 not have a problem than if you start asking them to  
4 remember and memorize and be aware of all of the  
5 various telltale signs of a fraud.

6 On the second score, in terms of the privacy  
7 and harassment issue, if it's -- the focus should be on  
8 the do not call, and to some extent perhaps  
9 inadvertently in trying to solve the fraud problem when  
10 we've had messages in the past that said, Just hang-up,  
11 if you really want to activate the do not call part,  
12 you don't just hang-up. You actually have to say,  
13 Please put me on your do not call list.

14 MS. SMALL: We know just hang-up doesn't work  
15 because people who can't just hang-up, that's like  
16 saying, You want to lose weight, don't eat dessert.  
17 Well, thanks. I need something a little more  
18 substantive.

19 To deal with businesses you trust is an  
20 interesting thing. I mean, as you probably know,  
21 fraudulent telemarketers are really good at getting  
22 people to trust them, so we have got yet another  
23 subtlety, deal with where you've gotten a relationship.  
24 I agree, a lot of subtleties.

25 MR. DUNCAN: The concern here is, yes, some

1 fraudulent actors are good at developing that, but  
2 you'll probably do more good overall to have people  
3 dealing with companies they trust and then come back  
4 later and worry about those on the margin. Just a  
5 recommendation.

6 MS. HARRINGTON: Well, we have some furrowed  
7 brows, and I don't want to say now for the companies  
8 you can't trust, here's Michael Pashby. I'm not quite  
9 sure what the furrowed brow's about, Michael.

10 MR. PASHBY: Yeah, thank you. Unfortunately  
11 one of the -- I mean, I agree 100 percent with Mallory,  
12 but unfortunately one of the hallmarks of fraud is the  
13 use of trusted names and trusted names to perpetuate  
14 the fraud, so taking on the mantel of the trusted  
15 company and then perpetuating the fraud, so it is a  
16 problem, so dealing with trusted companies is perfectly  
17 good, but the fraudulent operators know that.

18 MS. HARRINGTON: Jason?

19 MR. CATLETT: Thanks, Eileen. I would like to  
20 ask the table's advice on what to tell consumers in a  
21 very specific case. Junkbusters has on its site an  
22 anti telemarketing script which starts of with a  
23 question like, Are you calling to sell something to try  
24 to confirm if it is, in fact, the call, and takes  
25 through a number of steps getting towards, Put me on



1 your do not call list.

2 And the number 1 complaint that we get is  
3 people who say, Well, I tried the script, but as soon  
4 as I started asking the telemarketer questions, they  
5 just hung up on me. So what should I tell consumers in  
6 this case to do, do you think?

7 MR. DUNCAN: I would say skip the script and  
8 just go straight to, Please put me on your do not call  
9 list, period.

10 MR. DRYMALSKI: They are --

11 MR. CATLETT: They hang up then.

12 MR. DUNCAN: It's a violation.

13 MS. HARRINGTON: Have you asked -- what about  
14 having two points on your script, Who are you calling  
15 for?

16 MR. CATLETT: Yeah. I've actually personally  
17 tried that, a great variety there.

18 MS. HARRINGTON: Note down that -- put me on  
19 your do not call list.

20 MR. CATLETT: There's a drop off in my  
21 experience at various points. In some cases, the  
22 caller was simply intent on perpetuating a fraud. In  
23 some cases, it's a poor highly trained operator who  
24 says, Well, I'm used to asking the questions here and  
25 ends the call, so...

1 MS. HARRINGTON: Well, my personal experience  
2 in asking initially, Is this a telemarketing call, is  
3 that the caller says, No, and then just continues with  
4 the telemarketing call, so I've eliminated from my  
5 personal script the, Is this a telemarketing call,  
6 question and I just say, Who are you calling for, and I  
7 write it down, and then I say, Put me on your do not  
8 call list, and then they hang-up.

9 But they're on notice.

10 MR. CATLETT: Yes.

11 MS. HARRINGTON: So that would be my suggestion  
12 for amending your script. Anybody else have any other  
13 ideas?

14 MR. CATLETT: I think it's important to try to  
15 get the identity of the caller. In fact, it's required  
16 by the TCPA to be volunteered even before the consumer  
17 asks, but if you attempt to get the identity, then you  
18 get a certain drop off of calls, so what should I  
19 counsel consumers to do in this case? What is the  
20 action?

21 It's paradoxical to consumers and say, How can I  
22 do anything because I don't know who to complain to  
23 and even if I knew who to complain to, I wouldn't know  
24 what to tell them.

25 MS. HARRINGTON: Again in my experience when I

1 dial star 69 in that situation, I learn that the caller  
2 is calling from outside of the area, and the identity  
3 can't be determined.

4 So that's actually illustrative of much of what  
5 we've discussed over the past two days when the  
6 consumer can't learn from Caller ID who's calling  
7 because the information isn't displayed, can't learn  
8 from star 69 who's calling because they're calling from  
9 outside of the area and is hung up on.

10 I think we heard yesterday from Chuck, who  
11 hates to be called Charles, that in some areas, the  
12 local exchange carriers are selling a service.  
13 Ameritech sells it as Privacy Monitor I think. Bell  
14 Atlantic is introducing it in the Verizon network.

15 Now, that costs money, but there may be a  
16 service available for consumers to enable them at least  
17 to intercept the calls from those who are likely to not  
18 provide the requested information. I guess the other  
19 thing is to cut off their phone. I mean, they could --

20 MR. CATLETT: I'm reluctant to recommend to  
21 consumers that they pay the phone company for an  
22 additional service, distance the communication to the  
23 people that they want to do, when in fact the practice  
24 that they are suffering from is illegal, and I don't  
25 like the message that there's really practically

1 nothing you can do.

2 MS. HARRINGTON: Do you have any other ideas?

3 MR. CATLETT: Well, that's what I'm asking the  
4 table, particularly the law enforcement folks here.

5 MS. HARRINGTON: Avonne?

6 MR. CATLETT: How would you want such a person  
7 to report to you? It's not very useful for someone  
8 coming and saying, Somebody called me and then they  
9 wouldn't answer my questions.

10 MS. SEALS: You know, what I personally do is  
11 tell them I'm on another call or I'm on a long distance  
12 call. And typically that's when they call me. That  
13 doesn't answer your question in terms of a script. I  
14 mean, I did not realize that the consumer groups had  
15 gone as to provide scripts for consumers, and I'm glad  
16 to hear that you have.

17 What I would do is take the concern back to my  
18 chief, and perhaps we can start thinking about some  
19 initiatives to help you out. We do have brochures, but  
20 I don't know that they go that far. They're just the  
21 typical tips that we give people, and it's just to be  
22 cautious, and really we always tell them to hang-up.

23 And I know that's not good because I'm not the  
24 kind of person that would just hang-up. I may seem  
25 like I would, but I'm not, you know. I really am not,

1 and I do give them more time than most people do, so  
2 it's a personality issue that you're dealing with, and  
3 that's why I know you have a difficult people advising  
4 people.

5 Elderly people, they want to talk. They want  
6 to be kind. They want to be nice oftentimes, and it's  
7 really hard to just hang up. I think this is an area  
8 that's going to require a lot of consideration and just  
9 testing of things, and I don't think that there is any  
10 ironclad advice that I can give you right now or anyone  
11 else at the table.

12 I just don't know any specifics to tell you  
13 now. We'll just keep trying to work on this area, and  
14 maybe we can have some exchange, and I can give you  
15 some brochures from my office, and we can just try to  
16 work -- as you tell me about problems, we can try to  
17 sit down at my office to see what we can come up with  
18 to help resolve them.

19 And maybe even what we hear from consumers will  
20 help because we do get a lot of sophisticated consumers  
21 coming our way.

22 MR. CATLETT: I appreciate that.

23 MS. HARRINGTON: Any ideas in the back row  
24 there from our office of consumer and business  
25 education?

1 MS. SHANOFF: You may want to ask the people  
2 that write into your web site for suggestions. We  
3 might role play some other time where there's more  
4 time? .

5 MS. HARRINGTON: The suggestion is we might ask  
6 the people who write in to Jason's web site for  
7 suggestions and we may role play.

8 MR. CATLETT: They're usually asking me for  
9 suggestions.

10 MS. SHANOFF: I know. What's worked, what's  
11 not worked. For me I always say, Is this is a sales  
12 call. I really just want them off the phone, and it's  
13 just better than instead of saying, Please, do not  
14 call. I've learned something from Eileen. I'll say,  
15 Who's calling, please.

16 MS. HARRINGTON: The other thing, of course,  
17 that works at my house is that I pass the phone to our  
18 16 year old, and no one ever calls again after they  
19 talk to him.

20 MS. SHANOFF: I think we're sitting here  
21 thinking there are no absolutes. In some cases some  
22 things work. In other cases nothing is going to work  
23 100 percent of the time.

24 MS. HARRINGTON: And this is assuming, of  
25 course, that people don't want to receive calls, which

1 is --

2 MS. SHANOFF: Some people do.

3 MS. HARRINGTON: I'll be honest, that's my  
4 preference, but I have had some success actually in  
5 dramatically reducing calls to my house by asking to be  
6 placed on do not call lists, by keeping track of whose  
7 lists I'm on, and by complaining loudly when our rights  
8 are not -- when my requests aren't respected.

9 MR. CATLETT: Certainly the script is effective  
10 in reducing the number of calls, but the case I was  
11 talking about was when the telemarketer prematurely  
12 terminates the call, it's illegal and it's a wrong, and  
13 I'm asked what can be done, and I don't have a good  
14 answer about this billions of calls made in a violative  
15 manner, and I don't know what to tell people about it.

16 MS. HARRINGTON: Katie?

17 MS. HARRINGTON MCBRIDE: I think my eager look  
18 has caught almost everybody's eye, and I don't want to  
19 pretend that I have a solution to the problem. I would  
20 note though for the record though that many of the  
21 comments that we received from consumers who complained  
22 about the no call or the do not call provision noted  
23 this very problem, and I think it's a very troubling  
24 one obviously because you get into a bit of an  
25 information void.

1           And I would be curious to know from the folks  
2 who conduct business in this area if in an instance  
3 where, for example, the seller has been identified but  
4 then there's a hang-up upon invocation of a do not call  
5 request, so there's at least some information. You  
6 maybe don't have a phone number, but you can track it  
7 down somehow.

8           Do you all or do your members hear complaints  
9 about this being treated poorly upon invoking a do not  
10 call request? Is that something that's come up on your  
11 screens?

12           MR. DUNCAN: I have not heard that.

13           MR. CERASALE: I haven't heard that either.

14           MR. HILE: But you have, haven't you, Jason?

15           MR. CATLETT: Yes, yes. Usually they so,  
16 usually they come to me and say, How do I sue them. If  
17 they know that --

18           MS. HARRINGTON: Well, from the law enforcement  
19 side for any kind of a violation, part of the  
20 investigative challenge always is to find out who's  
21 responsible, and whether it's a consumer in that  
22 situation who may have a small claim action or whether  
23 it's us chasing down somebody calling in from Canada,  
24 finding out who's responsible is a big part of the  
25 challenge, and we empathize with the consumers in your



1 situation who are unable to determine who's calling  
2 them.

3 MR. CATLETT: Could I ask Nancy from Verizon,  
4 often consumers think there must be something my local  
5 telephone company can do, I've got this call, can't  
6 they trace it and can't they stop it? So what does  
7 Verizon counsel its customers to do in this case?

8 MS. MATSON: Unfortunately, I'm not a  
9 technology whiz here, so you're probably asking the  
10 wrong person, but we do have a call trace, and when  
11 customers utilize that call trace, then they're  
12 obligated to prosecute when the trace is done and an  
13 investigation is done, but unfortunately I can't  
14 honestly tell you if there's any restriction to how far  
15 that can trace or whether there's limitations to that  
16 trace. That's something I would have to go back and  
17 find out for you.

18 MR. CATLETT: Yeah. What I typically hear is  
19 that the LEC will only release the details of the call  
20 if there is a police investigation and the police  
21 request it.

22 Now, in this case the law has perhaps been  
23 broken, but it's a private cause of action. The  
24 individual wants to sue the party that made the call,  
25 and if the individual can't get the identifying

1 information, then they can't bring that cause of  
2 action.

3 MS. HARRINGTON: But I would just observe that  
4 on the law enforcement side, that is a common problem  
5 across the board. It is not always possible to  
6 identify the wrongdoer, so we understand that  
7 frustration, and at the same time would observe that  
8 this is no different than any other situation.

9 It is sometimes not possible to know who is  
10 responsible, although we get better and better I think  
11 all the time, and here there may ultimately be a better  
12 chance at figuring out who's responsible because  
13 there's some sort of electronic trail. There are many,  
14 many offenses that don't leave trails at all.

15 MR. CATLETT: Yes, but that trail is not  
16 accessible to the private party that received the call  
17 it seems to me.

18 MS. MATSON: This is Nancy Matson again from  
19 Verizon. If you give me your number, I'll do some more  
20 checking on the Call Trace because I think any Verizon  
21 customer has the flexibility to use that service. The  
22 issue being is that they also have to be willing to  
23 prosecute if they utilize that service.

24 I'm pretty sure. I don't want to stake my  
25 reputation on it, but I would like to certainly do more

1 investigation to find out if this might be an  
2 alternative for you.

3 MR. CATLETT: I'd appreciate that, Nancy. Can  
4 I also say that copies of our script are available in  
5 the orange paper, and if anyone doesn't have one, I'll  
6 leave it on the table here for people to pick up, and I  
7 would welcome comments on improvements on that from all  
8 parties.

9 MS. HARRINGTON: A couple more comments here,  
10 and remember that we've strayed a bit off course kind  
11 of but not entirely. The subject here is strategies  
12 for consumer education, and this is certainly either a  
13 strategy for education or empowerment that we're  
14 talking about, Jason. Avonne?

15 MS. SEALS: This may be a little bit farfetched  
16 from that, but as long as we were talking about  
17 capabilities for tracing numbers, I did want to  
18 indicate that in an investigation I am doing of an  
19 unsolicited fax, that we did try to get, Nancy, an AMA  
20 study, I think you might be familiar with that, an AMA  
21 study which traces the origin of a number that would  
22 have dialed into a fax machine.

23 And what came up were some numbers that would  
24 have called about the time the fax was received, but  
25 they were not the number that we needed, so apparently

1 numbers are being blocked at the local carrier level,  
2 and so I would like to be able to exchange cards with  
3 you to find out what it is we can do to get beyond that  
4 point because I'm thinking that you must have captured  
5 -- Ameritech in this case must have captured that  
6 number at some point.

7 But our subpoena from that AMA study was not  
8 able to show it up, so it is difficult, Jason, for not  
9 just the private citizen but law enforcement  
10 authorities to trace information in lots of cases.

11 MS. HARRINGTON: Does anyone else have anything  
12 to say about strategies that we might apply to the  
13 important work of educating consumers?

14 Well, if not we're going to move into the  
15 public participation part of the day, and as we're  
16 doing that I would just like to thank publicly Voni  
17 Eason who's standing up in back getting the microphone.  
18 Voni has handled all of the logistics and details for  
19 this workshop in her usual thorough and wonderful  
20 fashion, so thank you very much, Voni, and I think  
21 everyone here thanks you too.

22 (Applause.)

23 MS. HARRINGTON: It was nothing, she says.  
24 Okay.

25 Let's start today, we have three people who

1 have signed up, Andria McClellan, Diana Mey and April  
2 Jordan, and we look forward to hearing from each of  
3 them. I think today we'll start with Andria because we  
4 heard from Diana and April yesterday, and we very much  
5 want to hear from them again today, but let's start  
6 with Andria.

7 MS. MCCLELLAN: Hi. Good afternoon. Would you  
8 like me to spell my name?

9 MS. HARRINGTON: Sure.

10 MS. MCCLELLAN: Andria is A N D R I A, last  
11 name is M C C L E L L A N and I should introduce myself  
12 to the group. I'm very new to the telemarketing space.  
13 I'm a recovering .Com entrepreneur from the D.C. area,  
14 and I'm doing a little consulting work for a client in  
15 the D.C. area about telemarketing, and I'm very  
16 interested in some of the comments specifically, Jerry,  
17 that you were making.

18 And as I look into this space, I'm trying to  
19 understand why there's not more happening proactively  
20 on the Internet currently to collect consumer's  
21 information, to actively seek their information to be  
22 placed on the do not call list.

23 And as an example I think -- well, I read the  
24 transcripts from the January meeting, I wasn't involved  
25 in the industry then, and I believe some of your

1 comments then, Jerry, were that the TPS list was  
2 prohibitively expensive to administer and to maintain,  
3 and I'm trying to understand why you don't access or  
4 utilize and collect names on your web site because that  
5 certainly would reduce the costs significantly.

6           Additionally it would increase the accuracy of  
7 the data input as well, and then also if I can ask  
8 Avonne, I was wondering from the State Attorneys  
9 General's perspective whether or not an electronic  
10 database if it was distributed to the states,  
11 recognizing they all have different laws, whether or  
12 not they would collect that or not or they would  
13 require a fee on a per person basis for that  
14 information?

15           Are those questions and comments --

16           MS. HARRINGTON: Let's throw those questions  
17 open. Now, first, Jerry, I think that the first part  
18 of Andria's question was directed to you.

19           MR. CERASALE: As I responded to Jason on going  
20 on to the -- we have had reverse fraud in the sense  
21 that individuals who have a customer base who are  
22 trying to eliminate other marketers from calling their  
23 customer base are trying to -- trying to put other  
24 names on the TPS list and on our other lists.

25           MS. MCCLELLAN: Can I --

1           MR. CERASALE: And when we did the response  
2 back, we had irate people complaining that we violated  
3 their constitutional right to receive information,  
4 which is -- I think was absolutely a correct statement  
5 because we were banning people from not -- well, yeah,  
6 our rules, we have an antitrust exemption. Our rules  
7 would in a sense ban people, our members from  
8 contacting these individuals so we were looking at that  
9 kind of a problem.

10           We are still looking at right now trying to set  
11 up a program to collect those names on the web with  
12 some type of ability for us to get some protection from  
13 that other score.

14           Now, we haven't completed that but we're in the  
15 process of doing that.

16           MS. HARRINGTON: Is there any thought that  
17 Digital Signature or the Electronic Signature Act and  
18 the encouragement that that provides to the development  
19 of reliable authentication might solve that problem?

20           MR. CERASALE: That could very well solve it.  
21 We've been a major pusher of that act in the sense of  
22 trying to increase -- encourage ECommerce and the  
23 Digital Signature would help, and we think that will,  
24 in fact, become help as it moves along. I don't know  
25 exactly when we'll see that, but I think that will be a

1 change.

2 I think we're constantly going to look and  
3 change that and of course, you can't just offer that  
4 online because that is not fair to people who don't  
5 have a computer or access to being online, but it can  
6 help us cut down costs so we are looking at it.

7 MR. MCCLELLAN: May I make two quick  
8 suggestions which don't really take a lot of -- I'm not  
9 considering myself to be a rocket scientist here, but,  
10 one, you could confirm with an Email response which  
11 would be automated and very simple embedded with a URL  
12 for automation, recognizing that that could also be  
13 fraudulent but by the same means people could send out  
14 postcards that are fraudulent so in that response  
15 there.

16 And I'm sure the DMA members are utilizing  
17 electronic commerce currently without having their  
18 customers send in a letter to actually purchase things  
19 currently so they shouldn't have a big issue with  
20 having names submitted to a do not call list through  
21 Email or through electronic means of sorts.

22 MS. HARRINGTON: Now, the second part of your  
23 question I think, Jason, go ahead, please.

24 MR. CATLETT: Could I follow up on the first  
25 one? This is a low tech solution, but you could offer



1 the TPS with an 800 number, and an 800 number has an  
2 automatic number identification so it would be  
3 absolutely authoritative that the do not call request  
4 was coming from the number that was dialing.

5 Would you regard that as adequate verification,  
6 Jerry?

7 MR. CERASALE: That's verification, but then we  
8 get into the cost situation. The 800 number is  
9 outrageously expensive for us.

10 MS. HARRINGTON: What about, since the DMA's  
11 mail phone preference service is a voluntary service,  
12 that is, the initiative to establish it was a voluntary  
13 one from industry, and it all operates as a private and  
14 voluntary program, what about the DMA charging for  
15 consumers to register with -- big groan from Jerry, but  
16 if there are better ways for collection.

17 MR. CATLETT: Possibly a 900 number.

18 MS. HARRINGTON: A 900 number we have another  
19 rule -- we have a rule on that too. That's good.

20 MS. MCCLELLAN: Well, I would just suggest that  
21 you augment potentially in addition to having the  
22 written -- having something available on the web site  
23 and/or it needn't be an 800 or toll-free number, but it  
24 could be a regular toll number. I'm sure a consumer  
25 would pay, whatever, the 7 cents, 9 cents, 10 cents

1 they're paying at the moment to make those calls.

2 If indeed -- and only speak as a consumer now  
3 because I'm not in your industry on either side, and as  
4 a consumer, if I don't want to be called, I don't want  
5 to be called, and if telemarketers don't want to call  
6 people who don't want to be called, I would think this  
7 would be something that your members would endorse  
8 significantly.

9 And why are the other associations -- do the  
10 other associations out of curiosity collect these names  
11 for the do not call list for their members?

12 MS. HARRINGTON: No.

13 MR. HILE: But some states do.

14 MS. MCCLELLAN: For a charge, I understand.

15 And I guess that's a good segue to the next question to  
16 Avonne.

17 MR. CATLETT: One more follow on. I just  
18 thought of something. In most cases calling party  
19 number is available from homes unless the consumer  
20 deliberate blocks it. Calling party number is  
21 generally available, the DMA could operate a telephone  
22 service which does not impose on the DMA the cost of  
23 the 800 number call.

24 It's the consumer who would bear the cost of  
25 getting to Farmingdale, New York, or wherever the

1 service was operated, and still CPN is fairly  
2 authoritative. Is that something that the DMA would be  
3 willing to do, given that with only the capital cost of  
4 setting it up and the recurring cost would be very low?

5 MR. CERASALE: Jason, as I say we're looking  
6 into trying to do it on the web site, so there's a full  
7 review internally, and we will see when it comes out.  
8 I am not part of that process, of that review process.

9 MS. MCCLELLAN: I know several very good web  
10 designers who could probably do this in a day, pro bono  
11 probably.

12 MR. CATLETT: Can I ask Jerry to take that  
13 suggestion of using calling party number with a non 800  
14 number service and get the DMA to respond as to whether  
15 that would be a good idea and whether they would regard  
16 it as authoritative?

17 MR. CERASALE: Can I interject? This is not  
18 part of the TSR. I will do that, but it's not part of  
19 the rulemaking.

20 MR. CATLETT: Thank you, Jerry.

21 MS. HARRINGTON: Mallory and then Bridget.

22 MR. DUNCAN: Something just that --

23 MS. HARRINGTON: And then we're going to go  
24 back to the public.

25 MR. DUNCAN: Right, I'm sorry. I think it's

1 important to keep in mind our members, the  
2 overwhelmingly majority of our members who use  
3 telemarketing do use the telephone preference system,  
4 and they go in and they pull those names up.

5 That system only works as long as our members  
6 believe the numbers in the system are accurate, and if  
7 you -- again be very careful that you don't offer an  
8 opportunity for somebody to, say, load a bunch of  
9 numbers in there that as Jerry says he's not certain  
10 are people who want to be removed because once our  
11 members start questioning the integrity of the DMA  
12 list, then they will stop using the DMA and everyone  
13 loses in that result.

14 MR. CATLETT: I appreciate that, Mallory, and  
15 hence my concern with the authoritative nature of  
16 calling party number.

17 MS. HARRINGTON: Bridget?

18 MS. SMALL: This discussion of people's  
19 willingness or the stated desire or whether or not they  
20 have a desire to be on the list is muddied for me  
21 somewhat because I have a recollection that there's a  
22 service or some assistance or consumer information  
23 provided by the DMA to people that think their older  
24 relatives are having trouble with unwanted mail or  
25 phone solicitations offering to let third parties

1 forward the names of people about whom they're  
2 concerned.

3 Is it true that if a third-party in that  
4 situation were to forward to you saying, My Aunt Nellie  
5 is having a terrible problem, please remove her name,  
6 that that would happen? And that goes to your question  
7 about the vendor's concern about the authenticity of  
8 the list. It seems muddied if we're already allowing  
9 that to happen in special circumstances. It might --

10 MR. CERASALE: We spend extra funds to examine  
11 those, so to deal with that from -- and we're not -- so  
12 that's a special case, and we don't just take it. We  
13 do some checking.

14 MS. SMALL: I see. Thank you.

15 MS. HARRINGTON: Andria, we're going to move  
16 along here to our other --

17 MS. MCCLELLAN: Avonne, if I could speak with  
18 you later about the Attorneys General and how they're  
19 administering those databases. I'll get your card.

20 Thank you very much.

21 MS. HARRINGTON: Thank you very much. April?  
22 Welcome back.

23 MS. JORDAN: Thank you, and no equipment this  
24 time, I'll make it short. I appreciate your time  
25 yesterday, and it looks like you guys got the picture

1 as far as outbound calls.

2 There's a little bit of hesitancy on the  
3 inbound side, I understand. But I want you to  
4 understand that the states are using the inmates. Same  
5 prison that called our house also has two contracts  
6 with the state, one of them being for commerce. I  
7 think the other one is travel information. I'm not  
8 sure.

9 What the teachers did within the school  
10 district trying to teach their children about their  
11 state and commerce is they had the children in the  
12 school system call the 1-800 number and get information  
13 from the state all about the state.

14 They did not know until my story broke I guess  
15 May, June, that the teachers had had children calling  
16 inmates. Parents were rather outraged. That program  
17 is still in effect and should end the end of August,  
18 unless of course they move it to another state call  
19 center.

20 So I understand that you want to get some  
21 feedback from them.

22 MS. HARRINGTON: It's very useful.

23 MS. JORDAN: But you're still looking at kids  
24 calling the state and talking to inmates, and that's  
25 just insane. That's even worse than the outbound

1 calls.

2           And you had also mentioned that you wanted to  
3 get some information as to why it was valuable to have  
4 inmates used as telemarketers. I got to listen to the  
5 marketing spiel, didn't get an apology, but I got to  
6 listen to the marketing spiel, and they say that with  
7 inmates they learn to speak politely. They learn how  
8 to speak to the public, something that must of them had  
9 not learned prior to committing their crimes and  
10 serving time.

11           They learn a job ethic as far as getting up,  
12 reporting for a job, sitting in a desk or whatever so  
13 that they can go through and hold a job once they're  
14 released, but in this particular telemarketing company,  
15 even though it had been in the prison for over three  
16 years, he had only hired one prisoner, so --

17           MS. HARRINGTON: Maybe we can look into a  
18 toastmaster's chapter to cover the first need.

19           MS. JORDAN: So it's rather interesting. They  
20 have a number of other programs for the inmates. They  
21 don't need this one.

22           The survey -- well, as an FYI, the entire  
23 process started when I was called at home in the  
24 evening, and I answered the phone. A lady was on the  
25 other end. I would say early 20s, college kid really,

1 nice, sweet, peppy, asked if I had a few minutes. I  
2 said, Okay, and she asked if I would like to see more  
3 family oriented -- family oriented videos available. I  
4 said, Yes, most parents do.

5 She asked, Approximately how many videos do you  
6 buy in a year, no big question. I answered that. And  
7 then she asked if I knew anybody else that felt the  
8 same way that wanted to see more videos available and  
9 if I could provide those name and numbers.

10 And so I did. I'm thinking this is a the basic  
11 legitimate survey, could be sponsored by Disney, who  
12 knows, and she said, Thank you, and hung up.

13 That information -- that was the first call by  
14 SanStar, and that information went into the database.  
15 Two weeks later is when SanStar called except instead  
16 of me they got my sister -- I'm sorry, they got my  
17 daughter, but that's how they had my sister's name.  
18 That's how they had my name.

19 That was extremely deceptive they did not  
20 identify themselves. If they had said I'm with SanStar  
21 Family Entertainment, I would have got the clue this is  
22 a sales call. They're wanting information for a sale.  
23 There was nothing like that.

24 And the flipside of that is what if it had been  
25 my sister and it was my niece. They're in California.



1 She can't tape the calls, and nothing would have  
2 changed. So they need to be able to tape the calls.

3 That's just what I would like for you to  
4 consider. Thank you.

5 MS. HARRINGTON: Thanks a lot. You've really  
6 done a world of good by coming up here and talking to  
7 us the last couple of days. Thank you.

8 MS. JORDAN: Thank you.

9 MS. HARRINGTON: Diana Mey?

10 MS. MEY: Hi. I will only take up a couple  
11 minutes of your time but a couple of the discussions  
12 today made me think of a few things.

13 Jason had brought up the fact that a lot of  
14 consumers complain about being hung up on, and you  
15 addressed that a little bit, and I just wanted to throw  
16 something out. I get a lot of those calls. When I  
17 start to ask the questions I get hung up on, and I  
18 think that one of the problems that I can see is  
19 there's a built in disincentive for telemarketers to  
20 take the time to process your do not call request  
21 because it seems for a large number of telemarketers  
22 that are paid on commission they get, the more sales  
23 that they make.

24 And of course that involves time but they're  
25 going to get paid for it, but the time that they have

1 to take to process a do not call request, obviously  
2 they're actually losing the money, so I think there's  
3 sort of a built in disincentive, just a thought.

4 I would like to echo Susan Grant's comment  
5 earlier that would -- I would ask the FTC to more  
6 aggressively prosecute offenders. I really think that  
7 that would have an impact. I would also like to see  
8 the FTC more aggressively promote their web page that  
9 -- actually their online complaint form, and I think  
10 that a lot of consumers, even my parents --

11 MS. HARRINGTON: Any ideas for how we might do  
12 that?

13 MS. MEY: I don't know. I mean, I think the  
14 first step out would be mailings, maybe mass mailings.  
15 But even my parents who are in their 60s are now  
16 getting on the Internet, and so I think as more people  
17 do get on the Internet, that is such a -- it's much  
18 quicker than filling out, writing a letter, throwing a  
19 stamp on a letter. I think I see more consumers doing  
20 that.

21 MS. HARRINGTON: I don't know whether you  
22 recall Project No Fraud which was an initiative led by  
23 the Postal Service.

24 MS. MEY: I do recall that.

25 MS. HARRINGTON: And the FTC was one of many

1 agencies that cooperated with the Postal Service on  
2 Project No Fraud which sent a mail piece to every Post  
3 Office Box and postal box in the country address.

4 All of the complaint information from that went  
5 into Consumer Sentinel, our database, and the online  
6 complaint form that was used for that was the FTC's  
7 online complaint form, so in a sense we've linked every  
8 house in the country through the mail to that address,  
9 but that was a one-time mail piece.

10 Now, we are going to do Project No Fraud again  
11 this year, and the focus is going to be identity theft,  
12 so there will be a mailing that goes to every household  
13 in the country about identity theft, and that again  
14 will have the FTC online complaint form address so that  
15 people can link to it.

16 We are really open to other suggestions for  
17 ways, within our budget constraint of course, that we  
18 can promote the online complaint form.

19 MS. MEY: But again I think if consumers don't  
20 see that their complaints are taken seriously or any  
21 action is being taken --

22 MS. HARRINGTON: Right. We do -- I hear you.  
23 I understand what you're saying. I will say that we  
24 take complaints very seriously and our enforcement work  
25 is driven by those complaints. We are bringing

1 enforcement actions all the time against the practices  
2 that are the ones that our complaints tell us are the  
3 most prevalent and the most injurious.

4 MS. MEY: Another thought, on your web site, I  
5 believe at one link you have a page of violators that  
6 you've recently prosecuted, not necessarily  
7 telemarketing, but I was thinking that a page of  
8 telemarketing violators that you've processed might be  
9 a good idea too.

10 MS. HARRINGTON: It's a good idea. We can do  
11 that.

12 MS. MEY: And then you were saying that you  
13 wanted to know or hear from consumers that have  
14 complaints -- and let me get to this first. I just  
15 wanted to ask a question.

16 It seems to me that when I share my information  
17 with my neighbors and even talking to telemarketers,  
18 the first response I get other than a hang-up is that,  
19 Well, there's a list that you can get your name on and  
20 the DMA's list quite frequently comes up. In fact,  
21 about a month ago I had a telemarketer tell me that for  
22 \$5 I could get on the DMA's list and they would  
23 guarantee that I would never get another telemarketing  
24 call again. I thought you would find that interesting.

25 What I was wondering is since I find more

1 people, consumers and telemarketers alike, know about  
2 the DMA list, I'm wondering -- I, may have missed this  
3 if it was said earlier, but what does the DMA --  
4 consumers who write in or call in to complain to the  
5 DMA about specific telemarketers and violation of do  
6 not call requests, does the DMA -- does the DMA respond  
7 in some way to those consumers by letter, or if they do  
8 respond, how do they respond?

9 Do they inform the consumer of the status of  
10 any action that they make take against an offending  
11 telemarketer?

12 MS. HARRINGTON: I think that's a question for  
13 you, Jerry.

14 MR. CERASALE: I think so. If it's a specific  
15 complaint that comes in and it goes through our  
16 consumer complaint, if they called we normally would  
17 talk to them on the phone. We might follow up with a  
18 letter. We do have staff that handles letters that  
19 come in to respond back on a one to one, and if it's  
20 something where we can try and be a go between, we  
21 will.

22 We do forward names to the FTC and so forth if  
23 it looks like a violation. On an ethics violation  
24 where it looks like a pattern of stuff, one person  
25 calls up and they were called by someone whom they gave

1 a do not call thing, we -- if you only get one of them,  
2 it's not necessarily a pattern. It could be a mistake.

3 There could be lots of different things that  
4 occurred there as -- it's a violation but how much so  
5 is a pattern of it, but if it comes up to our ethics  
6 proceedings, we then put -- we have a publication that  
7 comes out three times a year which will list what we've  
8 done on ethics, and if there is no satisfactory  
9 correction, we will name the company, but we don't --  
10 so that's how we get it out and get the information  
11 out.

12 MS. MEY: That publication that you talk about,  
13 that goes to your members?

14 MR. CERASALE: Well, yeah. It does go to  
15 members. It got to Congress.

16 MS. MEY: Okay. Thank you.

17 I noticed earlier that someone mentioned that  
18 they knew of no examples of violations of the required  
19 oral disclosures, and I just wanted to tell you that I  
20 recently had a call that at the beginning of the  
21 solicitation, my husband was asked for when I answered  
22 the phone, and I said, He's not here, I'm his wife, and  
23 they immediately said, This is not a solicitation, this  
24 is not a sales call, and then they went on to make a  
25 sales pitch.

1           And I do have that on tape by the way, so I  
2 would be glad to submit that for the Commission's  
3 review.

4           Also since I was here in January, I talked to  
5 you a little bit about some repeated calls that I had  
6 received from MCI WorldCom, and I think it was a couple  
7 weeks after I had been here, I received a call from a  
8 subcontractor of MCI called Reese Brothers, a  
9 supervisor there who placed a harassing phone call to  
10 me over some telemarketing issues.

11           And I do also have that on tape, so if the  
12 Commission would ever be interested in that, I can  
13 supply that.

14           MS. HARRINGTON: Sure, send it right along,  
15 please.

16           MS. MEY: And I thank you very much for giving  
17 me your time.

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(The following public comment was sent via facsimile on July 26, 2000, and is reproduced here for the record.)

P.O. Box 2358  
Woburn MA 01888

July 26, 2000

Federal Trade Commission  
600 Pennsylvania Ave., N.W., Room 432  
Washington, DC 20508

RE: FTC to Hold Two-Day Public Forum on  
Telemarketing  
Attention: Carol Danielson

Dear Federal Trade Commission:

I am writing this letter as I am unable to attend your forum on telemarketing. I have an unlisted phone number, I have registered with the direct marketing association, I have caller ID, and I have my line blocked from calls that block caller ID (but pass calls for which no caller ID is available). What percentage of calls to my home do you think are from

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telemarketers. My caller ID box shows 32/53 calls come up as "UNKNOWN." These are from telemarketers. It has been my experience that telemarketers NEVER transmit caller ID. This would be highly helpful in allowing citizens to track violations in do not call lists, as well as calls made by machine merely to determine if you are home (answering these calls always results in a hang up, hence there is no way to get on a do not call list and prevent them from happening again).

The current laws in place do not offer consumers enough protection from the telemarketing industry, which are using technology that allows them, almost for free, to pester consumers with impunity. I recommend the following steps

1. Telemarketers should be forced by law to transmit caller ID. This will allow citizens to enforce their rights of do not call lists by having a record of which telemarketers call them and when.
2. It should be illegal for telemarketers to call unpublished numbers.
3. Telemarketers should be forced to pay a tax on each call that they make.
4. Telemarketers should not be allowed to

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used automated systems to place calls.

A human must initiate and monitor each call.

I plan to forward this letter to my representatives in the House and Senate. Thank you for your attention to this matter.

Sincerely,

David R. Perticone, Ph.D.

1 MS. HARRINGTON: Thank you very much for  
2 coming. I think that we're at the end of the road  
3 here, and I want to thank our public participants and  
4 all of the round table participants for once again  
5 coming well prepared, for giving your thoughtful  
6 remarks for the record.

7 This record remains open. Stay tuned for the  
8 next set of developments. Is there anything else,  
9 Allen, that we need to do?

10 MR. HILE: Yes, there is. Please don't assume  
11 that because you were here we will be back in touch  
12 with you. Keep your eyes open for our press releases  
13 and our Federal Register notices on these issues. Some  
14 of you sort of lost track of the process here and  
15 almost fell through the cracks.

16 So we just can't call everybody about every  
17 development here.

18 MS. HARRINGTON: Even if you're on our please  
19 do call list.

20 MR. CERASALE: You're not marketing a list here  
21 I guess.

22 MS. HARRINGTON: Peter needs to say anything.

23 MR. DRYMALSKI: Yes, Eileen, I would like to  
24 thank you very much for your chairmanship of this whole  
25 process.

1 MS. HARRINGTON: You're very welcome. Isn't it  
2 fun?

3 MR. DRYMALSKI: You're a great example of the  
4 FTC, they are tolerant and compassionate.

5 MS. HARRINGTON: Fair, tolerant and  
6 compassionate. Well, thank you. That's very nice, but  
7 you know what it really stands for FTC, for the  
8 consumer, for the consumer. Okay. And Voni says make  
9 sure to leave your name tags because these little  
10 envelopes that they're in, they cost you money, you  
11 taxpayers, we taxpayers, and we recycle them.

12 And, Voni, is there anything else that we need  
13 to tell people? Okay. Have a good day.

14 (Time noted: 4:09 p.m.)

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## 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       CASE TITLE:   TELEMARKETING SALES RULE FORUM

4       DATE:   JULY 28, 2000

5

6           WE HEREBY CERTIFY that the transcript contained  
7       herein is a full and accurate transcript of the notes  
8       taken by us at the hearing on the above cause before  
9       the FEDERAL TRADE COMMISSION to the best of our  
10      knowledge and belief.

11

12                                           DATED: AUGUST 11, 2000

13

14                                           SUSANNE BERGLING, RMR

15

16                                           DEBRA L. MAHEUX

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  
21       transcript for accuracy in spelling, hyphenation,  
22       punctuation and format.

23

24                                           DIANE QUADE

25

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