

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

In The Matter Of Telemarketing Rulemaking -

User Fee Comment. FTC File No. R411001

**COMMENTS OF INTERACTIVE TELESERVICES
CORPORATION ON PROPOSED RULE 16 CFR 310.9
REVISIONS TO THE TELEMARKETING SALES RULE**

I. INTRODUCTION

1. Interactive Teleservices Corporation (“ITC”) is a service bureau providing teleservices on an outsourced basis to Fortune 500 companies, primarily in the banking and insurance fields. Our company is based in Columbus, Ohio and operates telemarketing centers in Ohio (3), Nebraska (1) and Wyoming (1), with scheduled openings of two new centers in Illinois (1) and Kentucky (1). We currently employ close to 2,000 people, many of whom are single mothers, members of minority groups and former welfare recipients. We will employ over 500 additional people when our new offices open. We have offices in three states, soon to be five states, and locate those offices in high unemployment areas. We create good jobs quickly, with little drain on a community’s infrastructure and resources and, therefore, are a sought-after employer in these high unemployment areas. This desirability is reflected in State economic development incentives received from the States of Ohio, Wyoming, Illinois and Kentucky.

2. The products our company markets for our clients tend to be directed to low to moderate income people and small businesses. We make low-cost products and services available by telephone to people and businesses whose needs involve products that are not high priced enough and/or high volume enough to justify more costly sales efforts such as person-to-person direct sales and media advertising. These products and services include low-cost life and health and property and casualty insurance, access to credit for people who are not wealthy enough or do not have credit ratings high enough to otherwise obtain credit, business products for small businesses that are not big enough to be the target

of high cost marketing from suppliers, etc., and are bought in large quantities by customers over the telephone because they find the products and services useful and/or helpful, they enjoy the convenience and cost-effectiveness of telephone purchases and they may not have known of the existence of the product or service had they not received the telemarketing call.

3. We are writing to offer our comments concerning the proposed revisions to the Telemarketing Sales Rule.
4. ITC welcomes and encourages reasonable regulation that will help eliminate abuses in our industry. In that regard, we support the recent efforts of the FTC to investigate and eliminate fraud in the industry and we support the existing Telemarketing Sales Rule as drafted.
5. ITC fears, however, the very substantial and sometimes unintended negative consequences of over-regulation, no matter how well-meaning the original intent. These consequences can destroy the economics of an industry, cost hundreds of thousands, perhaps millions of jobs and result in increased prices to consumers. Proposed Rule 16 CFR 310.9 is an example of just such over-regulation.
6. While not the subject of this comment, ITC believes that the Proposed Rule creating the National Do Not Call Registry goes far beyond the FTC's congressional mandate to regulate fraudulent and abusive telemarketing practices, apparently using as a basis a patently improper and unsupported theory that any unwanted telemarketing call is "abusive". The FTC's proposal does not seek merely to protect from "abusive or fraudulent" practices, but, without Congressional mandate, to put the federal government in the business of maintaining a list for its citizens of what type of phone calls they do and do not wish to receive, and then to invent a new "abusive" practice, i.e., failing to comply with the list which they had no basis to create in the first place. This logic, if applied widely, equally and without discrimination against any one industry or marketing/sales method, would require the FTC to brand as "abusive" any marketing or sales activity that reached people who did not want to be reached. How many people would resist the temptation to put their names on a list not to permit commercials on their TV's, radios and computers? Highway billboards? Leaflets in the street? These and many other sales pitches are not necessarily always welcomed, but are they abusive? The answer, absent some other circumstances or culpable conduct, is obviously no – not any more than a telemarketing call to an unreceptive customer is abusive, despite the FTC's position to the contrary.

II. OPPOSITION TO PROPOSED 16 CFR 310.9

1. The FTC Has Significantly Underestimated The Cost of Establishing and Maintaining The National Do Not Call Registry.

The FTC estimates that the cost of establishing and maintaining the national registry to be approximately \$5 million in the first year. (This includes making the telephone calls from consumers toll free so that they do not even have to pay the price of a phone call for inclusion on the list.) Estimates from the industry, which has actual commercial experience in developing and maintaining databases for this type of use, as well as the experience of States in this area, indicate that this is a fanciful number. Aside from the telephone charges, maintaining the accuracy and integrity of such a registry with potentially many, many millions of participants, free from fraud, misuse and errors, is a daunting and expensive task. As one small example, people move, telephone numbers are abandoned, changed and recycled. There are hundreds and thousands of possibilities for error, fraud and abuse spread over millions and millions of entries. *It is our understanding that the FTC has received estimates of costs of maintaining the registry of \$100 million per year from industry groups with experience.* Use of the \$5 million FTC estimate will either (1) result in a very, very significant revenue shortfall to cover actual costs, or (2) necessitate maintaining such a shoddy, error-ridden and corruption-susceptible registry as to be worse than none at all.

2. Consumers Should Be Charged For Adding Their Telephone Numbers To The Registry.

A.) If there is a benefit to be derived from the National Do Not Call Registry, it is to the consumer, not the telemarketer.

The FTC reasons that the registry will be a “thing of value” to telemarketers since it will permit them to focus their efforts on consumers who have no objection to receiving such solicitations. If it is of such value, why have the overwhelming majority of telemarketing businesses and trade associations opposed the creation of the registry on the grounds, among others, that it will have a disastrous impact on their businesses and cause the loss of, perhaps, millions of jobs? *Simply stated, the FTC is attempting to substitute its business judgment for the judgment of those actually in the business in an attempt to justify its conclusion.* Among the many reasons for the industry’s conclusion is the surface attractiveness of a registry that prevents telemarketing calls from legitimate telemarketers, without examination of the real costs in terms of the easy availability of low cost products, increased prices as a result of increased marketing costs and higher unemployment in the nation as a result of the loss of jobs. Taking an example from outside telemarketing, if asked if they wanted to add their name to a list, at no cost to them, to prevent commercials from appearing on their

television sets, common sense says that people would flock to the list by the millions. However, if asked if they would like to add their names to that list, but by doing so the end result would likely be the elimination of “free” broadcast TV, a substantial reduction in the availability and range of programming, etc., far fewer would sign up. The Do Not Call Registry, as proposed, would be like the first part of the example – marketed as all benefit and no cost, likely resulting in not only non-buyers being on the list, but also many people who currently take advantage of telemarketing calls to purchase products and services.

On the other hand, consumers who utilize the Registry are clearly being offered a “benefit”. They are being given the opportunity, through the government Do Not Call Registry, to insulate themselves from the speech of all telemarketers, not just “abusive” and “fraudulent” activities, as contemplated by Congress in the Telemarketing Consumer Fraud and Abuse Prevention Act.

The FTC also points to a benefit to telemarketers in that, if the National Do Not Call Registry is enacted, the list will enable them to comply with the law and it will therefore benefit them. This is nothing more than a bootstrapping argument pursuant to which there would never be a case where regulators, simply by the fact that they are regulating, cannot force the subject of the regulations to pay for them.

The simple fact is that, cutting through all the smokescreen arguments, the Do Not Call Registry is meant (whether rightly or effectively is another question) to benefit those consumers whose names will be on the list, not the telemarketing industry. If enacted, it will be over the overwhelming objections of the industry that doesn't believe it will benefit, but, to the contrary, will be hurt badly - and the lower the up-front cost to the consumer to take advantage of the list, the more the industry will be hurt.

B.) Payment of user fees by consumers will help eliminate fraud and overuse.

Easy enrollment in the Do Not Call Registry by telephone, using telephone numbers or other easily obtainable and misused information, opens the door for mischief and fraud. Requiring payment of a fee will help in a significant way to reduce the likelihood of this mischief and fraud. Bad actors will think twice about whether what they are doing is worth it if they have to pay to do it.

As mentioned above, a fear of the industry is that the surface attractiveness of a registry that prevents telemarketing calls, without examination of the real costs in terms of the easy availability of low cost products, increased prices as a result of increased marketing costs and higher unemployment in the nation as a result of the loss of jobs, will

cause it to be overused. A small user fee from the consumer, i.e., a small up-front cost for the privilege of never receiving a telemarketing call (whether it is “abusive” or “fraudulent” or not), will go a long way to help with this problem.

- C.) **A fee of \$5 to \$10 per telephone number per year should be charged to consumers.**

Given the likely real cost of developing and maintaining the Registry, a fee in this range will be required to cover the cost. Since everything is based on estimates (of costs and the numbers of users paying a fee), it is best to err on the side of fiscal conservatism and use numbers that will more likely result in a surplus than a deficit.

A fee in this range renders moot the discussion of whether it is worth collecting a fee of only a few cents.

3. **To Prevent Fraud, Mischief, Error and Overuse, Subscription To The Registry Should Be By Written (or Internet) Form And Require Some Proof Of Ownership Of The Telephone Number Being Registered.**

It is just too easy and too subject to error, misuse and fraud to allow subscription to the registry by telephone. There is a high propensity for error and an ease of use for bad actors. Requiring a written (or internet) subscription, together with some form of identification or proof to show ownership of the telephone number being registered, is essential if we are really serious about having a list with integrity and accuracy that fulfills the functions for which it is intended.

4. **The National Do Not Call Registry Should Not Make A Toll Free Number Available To Consumers.**

As stated above, it would be better not to have telephone subscription at all. If it is to exist, however, in addition to the problems previously mentioned, surface appeal and lack of immediate identifiable cost will lead to fraud, mischief, error and overuse. For that reason, the provider of the registry should not fund the cost of the telephone call to subscribe.

5. **If Telemarketers Are To Be Charged A User Fee, Only One Use Fee Should Be Applied To The Telemarketer, Not A Separate Fee For Each Client Of The Telemarketer.**

- A.) **Requiring the telemarketer to pay a separate fee for each of their clients (sellers) will result in immense overpayment and duplication of fees.**

Service bureaus like our company typically represent multiple clients. It is also typical for our clients to use multiple telemarketing companies as

vendors. Therefore, several telemarketing companies would end up paying the fee several times for the same seller.

A better approach would be to require only one fee from each entity, whether it is a telemarketing company or a seller using a telemarketing vendor.

- B.) **Many clients (sellers) employing telemarketing firms are not subject to FTC regulation, but the proposed regulation would nevertheless cause a fee to be paid on their behalf, perhaps exceeding the FTC's jurisdiction.**

6. If Telemarketers Are To Be Charged A User Fee, Telemarketers Should Each Be Charged A Flat Fee, Rather Than By Area Code.

While there is some rationale for charging by area code based on the fact that some telemarketers might not need every area code, there are other, perhaps more compelling rationales for charging in another manner, e.g., one telemarketer might need all areas codes, but only engage in one short, limited telemarketing campaign in an entire year. Another might only need a few area codes in a major metropolitan area, but conduct constant campaigns throughout the year in that area. Under the area code charging method, the charges paid would bear little relation to actual use. Each different method will have its pros and cons. A flat fee has the advantage of being simpler and easier to administer.

7. If Telemarketers Are To Be Charged A User Fee, There Should Not Be An Exception To The Requirement Based On A Small Number Of Area Codes.

As mentioned in #6 above, the number of area codes selected may be a poor indicator of the extent of actual use and actual telemarketing. While ITC disagrees strongly with the concept of charging telemarketers a user fee, if it is to be done, there should be no exceptions, particularly exceptions based on criteria that are not predictive of actual use. In addition, a structure without exceptions is simpler and easier to administer.

ITC appreciates the time the Commission has invested in studying these issues and its commitment to continue modifying these proposals. We urge the Commission to continue looking at the overall negative impact that these proposals will have on jobs, our community and the economy as a whole. Thank you for your consideration and we would be happy to assist the Commission in the future.

Dated: June 27, 2002



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