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Via courier and e-mail (tsr@ftc.gov)

Office of the Secretary
Room 159
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: Telemarketing Sales Rule
Supplemental Comment of the Consumer Choice Coalition
FTC File No. R411001

Dear Sir or Madam:

Thank you for inviting the Consumer Choice Coalition ("Coalition") to participate in the most recent public forum on the Commission's proposed rulemaking amending the Telemarketing Sales Rule (the "Proposed Rule") and for the opportunity to submit supplemental comments. This letter supplements the Coalition's previously submitted Comments and Recommendations ("Coalition's Comments") and other record evidence submitted by the Coalition regarding the Proposed Rule.

I have attached a copy of both the Executive Summary and National Survey Topline for the 2000 consumer national survey conducted by the Luntz Research Companies ("Survey") referenced at page seventeen of former Chairman Miller's June 5, 2002 Economic Assessment prepared for the Coalition ("Assessment") and page seven of the Coalition's Comments. These materials were also referenced during the Commission's June 6, 2002 public forum.

The results of the Survey and related portions of the Assessment and the Coalition's Comments are important for the Commission to carefully consider in connection with Proposed Rule Section 310.4(a)(5) for three principal reasons. First, based upon the Coalition's review of the record, the Survey is the only independent, quantifiable and statistically significant record evidence regarding the understandability and fairness of the use of "pre-acquired billing information in combination with trial offers and/or negative option plans" (as described in 67 Fed. Reg. 4513) offered to consumers ("Trial with Billing Transfer Offer").

Second, the results of the Survey, based upon the actual language of the Trial with Billing Transfer Offer script read to 2000 consumers by actual telemarketers, demonstrate that the disclosures provided in the script are indisputably clear and understandable:

- **Understandable. 85% of respondents said that the Trial with Billing Transfer Offer is understandable.**

- **Fair. 87% of respondents said the company offering the product was acting fairly and the disclosures were sufficient.**

- **Responsible. 86% of respondents said the disclosures made it clear that the consumer is responsible for whether he or she will cancel the product/service or be charged for it.**

Third, the Survey results were almost identical regardless of age or education of the consumer. As summarized by Luntz, "we cannot name a single instance where public opinion was this uniform or this unanimous." In short, the Survey is powerful evidence - from consumers themselves - that Trial with Billing Transfer Offers are not per se "unfair" or likely to mislead consumers. Accordingly, that marketing/billing method is neither "deceptive" nor "abusive." See 103 F.T.C. 110; 67 Fed. Reg. 4510, n.176.

In sharp contrast to this independent, quantifiable and statistically significant consumer evidence, the principal proponents of Proposed Rule Section 310.4 (a)(5), including the Minnesota Attorney General's office and a group of Attorneys General who filed collective comments (collectively the "AG Group"), have made conclusory statements regarding "opportunities for abuse and deception" and "vulnerable groups." See 2000 Comment of the AG Group at pp. 10-11. In support, the AG Group references only a handful of anecdotal consumer complaints and examples of allegedly deceptive scripts as well as voluntary assurance agreements with five companies and voluntary settlements with two others. See 2002 Comment of the AG Group at p.30, n.73. Consumer complaints received by regulatory/law enforcement entities regarding companies using Trial with Billing Transfer Offers or "pre-acquired account marketing", however, are simply not substantive evidence that consumers do not or cannot understand billing disclosures. For example, records of consumer complaints received from the Commission in response to a Freedom of Information Act request filed by the Coalition dated March 5, 2002 indicate only that particular consumers with complaints "did not recall" authorizing the disputed charge. Further, critics have argued that the multistate activities of certain of the Attorneys General are evidence of little more than "governmental lawsuit abuse against unpopular industries." Michael DeBow, Restraining State Attorneys General, Curbing Lawsuit Abuse, Cato Institute Policy Analysis No. 437 at p. 1, May 10, 2002; see also, Michael France, White Knights or Loose Cannons, Business Week, June 17, 2002. Moreover, as the Coalition representative stated for the record at the June 6 forum, the number of such "unauthorized charge" consumer complaints collected by AG/regulators that pertained to legitimate companies using the subject billing method represent a tiny fraction of those consumers electing to use that method over the same period. In short, consumer complaints cannot be viewed in a vacuum, but must be viewed in context of the total number of consumers accepting an offer.

As discussed during the June 6 forum, any potential for harm to consumers posed by the misuse of the transfer of billing information is easily avoidable by consumers themselves and is heavily outweighed by the countervailing benefits to consumers and legitimate businesses that use the billing methodology. See Assessment at pp. 16-18. Moreover, the following sound self-

regulatory practices provide meaningful consumer protections, including satisfactory resolution of unauthorized charge complaints:

- the Electronic Retailing Association's Advance Consent Marketing Guidelines;
- corporate privacy/information sharing policies (including the Gramm-Leach-Bliley Act requirements);
- strict charge-back limitations imposed by credit card merchant processors; and
- the liberal refund policies of legitimate companies using "pre-acquired account" billing methods. See Coalition's Comments at pp. 7-9.

Additionally, as detailed in the Coalition's Comment, requiring consumers to provide billing information to a telemarketer on an outbound call (as required in the Proposed Rule) would very clearly increase, rather than decrease, the possibility of misuse or theft of consumer billing information. See Coalition's Comment at p. 8 and Assessment at pp. 16-18. In short, "pre-acquired account" billing methods provide substantial benefits to both consumers and marketers. The elimination of this important billing methodology would cost legitimate businesses at least $1.5 billion per year – costs that will be passed on to consumers in the form of increased costs of goods and services with no significant benefit to consumers. See Assessment at pp. 16-18.

For all of the above reasons and those previously expressed by the Coalition on the record, the Coalition urges the Commission to reconsider the Proposed Rule amendments and to carefully balance any changes so as to avoid undue burdens on consumers and legitimate businesses.

Respectfully submitted,

McINTYRE LAW FIRM, PLLC

James T. McIntyre

Enclosure