

FOR FURTHER INFORMATION CONTACT:
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forum on January 11, 2000, to discuss issues relating to the "do-not-call" provision of the Telemarketing Sales Rule, 16 CFR Part 310.

DATES: The public forum will be held on January 11, 2000, in Washington, DC, from 8:30 a.m. until 5:30 p.m. Notification of interest in participating in the forum must be submitted on or before December 10, 1999.

ADDRESSES: Notification of interest in participating in the public forum should be submitted in writing to Carole I. Danielson, Division of Marketing Practices, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Room 238, Washington, DC 20580. The public forum will be held at the Federal Trade Commission, 600 Pennsylvania Avenue, NW, Room 432, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Catherine C. Harrington-McBride (202) 326-2452 (email cmcbride@ftc.gov), Karen Leonard (202) 326-3597, (email kleonard@ftc.gov), or Carole I. Danielson (202) 326-3115 (email cdanielson@ftc.gov), Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Section A. Background

On August 16, 1994, President Clinton signed into law the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act" or "the Act"),¹ which directed the Commission to prescribe rules prohibiting deceptive and abusive telemarketing acts or practices. In response to this Congressional directive, the Commission promulgated its Telemarketing Sales Rule ("the Rule"), 16 CFR Part 310, which became effective on December 31, 1995.²

The Telemarketing Act directed the Commission to include in its rules "a requirement that telemarketers may not undertake a pattern of unsolicited telephone calls which the reasonable consumer would consider coercive or abusive of such consumer's right to privacy."³ Section 310.4(b) of the Rule sets forth two prohibitions on sellers and telemarketers which were intended to effectuate this requirement of the Act. First, § 310.4(b)(1)(i) prohibits causing any telephone to ring, or engaging any person in telephone conversation, repeatedly or continuously with the intent to annoy, abuse, or harass any

person at the called number.⁴ The second provision in the Rule intended to limit unsolicited telephone calls is the "do-not-call" requirement set forth in § 310.4(b)(1)(ii). This section prohibits any telemarketer from initiating, or any seller from causing a telemarketer to initiate, an outbound telephone call to a person when that person previously has stated that he or she does not wish to receive such a call made by or on behalf of the seller whose goods or services are being offered. This provision is modeled on a similar provision included in the FCC's regulations,⁵ adopted pursuant to the Telephone Consumer Protection Act ("TCPA").⁶

Although both the FTC and the FCC have similar regulations prohibiting sellers or telemarketers from calling persons who have stated that they do not wish to be called, there are differences in the enforcement of the TCPA and the Telemarketing Sales Rule. The Rule may be enforced by the Commission or the States.⁷ In addition to injunctions, each violation can result in a court's assessment of civil penalties up to \$11,000 per violation, or an order to pay redress or disgorgement under Section 13(b) of the FTC Act, 15 U.S.C. 53(b). By contrast, the TCPA "do-not-call" provisions primarily have been enforced by consumers. The TCPA provides a private right of action for a consumer who receives more than one telephone call within any 12-month period by or on behalf of the same entity in violation of the FCC's regulation.⁸ Such a plaintiff can recover the greater of \$500 or actual damages.

Because of the differences in the agencies' "do-not-call" provisions, the Commission declined to make a blanket pronouncement that compliance with the TCPA's "do-not-call" procedures would constitute compliance with the Telemarketing Sales Rule.⁹ Nonetheless, the Commission has clarified that sellers and telemarketers need compile only one list of consumers who wish not to be called in order to comply with the

recordkeeping provisions of both the TCPA and the Rule.¹⁰

While much of the TSR takes aim against fraudulent telemarketing, an equally important goal of the TSR is to protect consumers' right to privacy. In the five years since the Rule became effective, consumers increasingly have become interested in choosing what information is available about them and with whom and under what circumstances that information may be shared. In response to these concerns, local telephone companies and others have begun to market products that allow consumers to screen out calls from telemarketers, for example, by playing a message stating that no telemarketing calls are accepted or by blocking all calls except those from specific numbers selected by the consumer. Many states have responded to consumer concerns by enacting "no call" legislation,¹¹ under which consumers may have their names placed on a list maintained by a centralized list-holder of persons who do not wish to receive telemarketing calls.¹² Sellers or telemarketers who call any of the persons on that list would be in violation of state law. Increased consumer awareness of the right to be placed on a "do-not-call" list also has resulted in the Commission receiving numerous consumer inquiries on how to stop receiving telemarketing calls and how to assert the right to sue an offending seller or telemarketer under the TCPA.¹³

During the year 2000, the Commission will be conducting a review of its Telemarketing Sales Rule.¹⁴ Simultaneously with this rule review, the Commission intends to conduct a broader study of telemarketing. The planned result is a separate report on the technological, social, business, and

¹⁰ *Id.*

¹¹ See, e.g., *Alabama, 1999 Ala. Acts 589; Alaska, 1996 Alaska Sess. Laws 142; Arkansas, 1999 Ark. Acts 1465; Florida, Fla. Stat. § 501.059; Georgia, Ga. Comp. R. & Regs. r. 515-14-1; Kentucky, 1999 Ky. Rev. Stat. Ann. § 367.46951 (Michie 1999); Oregon, 1999 Ore. Laws 564; Tennessee, 1999 Tenn. Pub. Acts 478.*

¹² The idea of a central "no-call" list is not new. For many years, Direct Marketing Association ("DMA") has maintained a no-call database called the "Telephone Preference Service." Consumers may place their names and numbers on a list, which is provided to all DMA members. To remain in good standing with the DMA, its members agree to check the list regularly and remove from their call lists any person who has requested not to be called.

¹³ FTC staff refers consumers to the FCC for assistance on how to assert their rights under the TCPA.

¹⁴ The Telemarketing Act directs the Commission to conduct a review of the Rule and its impact on fraudulent telemarketing after 5 years following its promulgation, and to report the results to Congress. 15 U.S.C. 6108.

⁴ This provision is modeled on a similar provision in the Fair Debt Collection Practices Act ("FDCPA"). 15 U.S.C. 1692(d)(5). The legislative history of the Telemarketing Act indicated Congress' intent that the Commission consider the FDCPA in establishing prohibited abusive telemarketing acts or practices. See, e.g., H.R. Rep. No. 20, 103rd Cong., 1st Sess. at 8.

⁵ 47 CFR 64.1200(a)-(f), 64.1200(e).

⁶ 47 U.S.C. 227.

⁷ See 15 U.S.C. 6102(c), 6103. In addition, a person who suffers more than \$50,000 in actual damages has a private right of action under the Rule. See 15 U.S.C. 6104.

⁸ See 47 U.S.C. 227(c)(5).

⁹ 60 FR at 43855.

¹ 15 U.S.C. 6101 *et seq.*

² 60 FR 43842 (August 23, 1995).

³ 15 U.S.C. 6102(a)(3)(A).

other forces that have shaped the practice of telemarketing over the past two decades. The report will also look forward, assessing emerging trends for the future. The Commission will publish a separate **Federal Register** notice shortly to solicit comments and opinions in connection with both the rule review and the broader report on the telemarketing industry. In addition to requesting written comments and academic studies, the Commission plans to hold a series of public forums to afford staff and interested parties an opportunity to explore relevant issues.

The first forum in this series will address the "do-not-call" issue. By devoting an entire forum to this single