FTC Rulemaking: Three Bold Initiatives and Their Legal Impact

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I. Introduction

In the case of the rule establishing the DNC Registry, the Commission did not rely on Section 5, but on a similarly broad statutory provision in the Telemarketing and Consumer Fraud and Abuse Prevention Act (Telemarketing Act)[5] that authorizes the FTC to prescribe rules prohibiting "abusive" telemarketing acts or practices.[6] The FTC's

report,[9] establishing that cigarette smoking is a substantial health hazard, associated with increased death rates, lung cancer, chronic bronchitis and coronary disease, and concluding that the hazards are "of sufficient importance in the United States to warrant appropriate remedial action."[10]

The FTC moved with extraordinary speed, issuing the NPRM even before the Surgeon General had officially accepted the findings of the report.[11] As originally proposed, the rule would have required that on

conveys the sense of the required disclosure."[15] In the Statement of Basis and Purpose accompanying the rule, the Commission took a conciliatory approach to industry, offering to review proposed advertising and labeling disclosures and to reopen the rule-making if petitioned to do so.[16]

Shortly after issuing the final rule, the Commission agreed to delay its effective date so that Congress could consider legislation to regulate cigarette labeling and advertising.[17] A year later, Congress enacted the Cigarette Labeling and Advertising Act of 1965, which replaced the FTC's warning with a considerably watered-down message, "Caution: Cigarette Smoking May Be Hazardous to Your Health."[18] It also prohibited the Commission from requiring any disclosures about smoking and health in advertising until 1969.[19]

B. A Bold Initiative

The Cigarette Rule was not the Commission's first effort to address deceptive cigarette advertising. Prior to this rulemaking, the Commission had challenged such advertising in some 25 cases,[20] and issued cigarette advertising guidelines.[21] Still, the final rule, even though a retreat to some extent from the proposed rule, was a very bold

[15] *Id*. at 8373. Originally, the FTC believed that to allow industry members to formulate different statements could be confusing to consumers and cause them to not fully appreciate the risks. 29 Fed. Reg. 530, 531 (Jan. 22, 1964).
[16] 29 Fed. Reg. 8324, 8373 (July 2, 1964). The Commission provided a number of grounds that could warrant reopening the proceedings: "new or changed conditions of fact or law, the public interest, or special circumstances." *Id.* at 8325.
[17] *FTC Postpones Smoker Warning*, N.Y. TIMES, Aug. 22, 1964, at 19.
[18] Pub. L. No. 89-92 (1965) (codified as amended at 15 U.S.C. § 1333 (2004)).
[19] When the Commission proposed new warnings in 1969, Congress enacted legislation prohibiting the Commission from implementing its rule prior to July 1, 1971. 15 U.S.C. § 1331. In addition, it mandated a new warning for labels: "Warning: The Surgeon General Has Determined that Cigarette Smoking is Dangerous to your Health." Finally, the statute barred cigarette advertisements from the broadcast media after January 1, 1971. As a result of the ban on media advertising, the Commission did not pursue its proposed advertising rule.
[20] 29 Fed. Reg. 8324, 8374 (July 2, 1964) (Appendix A).
[21] *Id*. (Appendix B).

initiative politically. It was very much “out of character” for the Commission of 1964, which had been criticized for its focus on act

C. Legal Analysis

The Statement of Basis and Purpose for the Cigarette Rule was thorough and carefully crafted in anticipation of legal challenges to the rule and ultimately Supreme Court review.[29] It laid out a number of different grounds for the rule, both traditional and non traditional, under both deception and unfairness theories, any one of which would be sufficient to sustain the rule.

Deception

The deception analysis drew upon traditional legal principles to address the many forms deception can take.[30] Applying these principles, the Commission found that the vast bulk of cigarette advertising was deceptive in representing that smoking was attractive and satisfying, thus fostering an impression of safety, without disclosing the dangers to health from smoking.[31] The Commission also found it deceptive, even without implied claims of safety, to market such a dangerous product, which consumers

with consumers, "especially when the product is dangerous to life and health."[38] The bottom line:

> [C]igarette advertising, by virtue of its magnitude, techniques, content, media and other factors, and above all by its failure to disclose the dangers of smoking is unfair to the public and consequently . . . unlawful under Section 5.[39]

the seriousness of the risks they pose[45] and the extent and manner in which they are marketed.[46] It cautioned against applying "mechanically or uncritically" the principle requiring disclosures of a product's hazards,[47] and made clear that the Cigarette Rule "should not be regarded as precedent compelling similar regulation" of other industries.[48] In short, the Commission was arguing that this politically and legally bold initiative should have little or no impact beyond cigarettes.

D. Long Term Legal Impact

The Commission's admonition that the Cigarette Rule should have limited precedential effect may have alleviated political concerns. As noted earlier, Congress did not limit the Commission's general rulemaking or unfairness authority in response to the rulemaking. But the Commission itself did not follow its own admonition. Within a few years, it was using the cigarette rulemaking as precedent to support a number of far-reaching rulemaking proposals,[49] encouraged in these efforts, no doubt, by the Supreme Court's 1972 decision in *FTC v. Sperry & Hutchinson Co.*,[50] upholding the Commission's unfairness authority and approving the three-factor unfairness test articulated in the cigarette rulemaking.[51] Although the 1964 Commission surely did not contemplate or intend these developments when it issued the Cigarette Rule, it had, in fact, laid the foundation for the subsequent development of the unfairness doctrine.

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[45] *Id.* at 8362. In addition, unlike the risks of other products, the risks of cigarettes were largely unknown to the public. *Id.*
[46] *Id*. at 8363.
[47] *Id*.
[48] *Id*.
[49] *See* William J. Baer, *At the Turning Point: The Commission in 1978* in MARKETING AND ADVERTISING REGULATION: THE FEDERAL TRADE COMMISSION IN THE 1990'S 94 (1990).
[50] 405 U.S. 232 (1972).
[51] *Id.* at 244 n.5 (quoting the FTC's definition of unfairness used to support the Cigarette Rule).

III. Children's Advertising Rulemaking

A. Overview

In 1978, the Commission issued an NPRM seeking comment on a number of proposals to regulate televised advertising directed to children.[52] Events leading up to the NPRM included four petitions seeking such a rulemaking,[53] and a comprehensive Staff Report addressing issues raised by the petitions and recommending that the Commission begin a rulemaking proceeding to explore possible unfairness and deception in children's advertising.[54]

The NPRM did not propose a specific rule but invited comment on three specific approaches to children's advertising recommended in the Staff Report, namely:

1. A ban on all television advertising at times when the audience is composed of a substantial percentage of children "too young" to understand the purpose of advertising (defined by the Staff Report as children under the age of eight);
2. A ban on TV advertising of highly sugared food (posing serious risks of tooth decay) at times when the audience is composed of a substantial percentage of "older" children (defined by the Staff Report as children between ages 8 and 12); and
3. A requirement that TV advertising of other sugared food products be balanced with disclosures about health and nutrition when the audience is composed of a substantial percentage of "older" children.[55]

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[52] 43 Fed. Reg. 17,967 (Apr. 27, 1978).
[53] Petitions were filed by four public interest groups: Action for Children's Television, the Center for Science in the Public Interest, Consumers Union, and the Committee on Children's Television. They sought various bans, limits, and informational disclosures in televised advertising aimed at children. *See* 46 Fed. Reg. 48,710 (Oct. 2, 1981).
[54] FTC Staff Report on Televised Advertising to Children (Feb. 1978) [hereinafter *Staff Report*].
[55] *Id*. at 345. *See also* 43 Fed. Reg. 17,967, 17,969 (Apr. 27, 1978).

The NPRM also sought comment on alternative, less far-reaching remedies, *e.g.*, affirmative disclosures or limits on advertisements instead of bans,[56] and it invited comment on a broad range of fundamental legal and factual issues.[57]

After six weeks of legislative hearings in early 1979,[58] Congress terminated the rulemaking proceeding. Responding to strong and widespread criticism of what became known as the "Kid Vid" rulemaking, Congress enacted the FTC Improvements Act of 1980,[59] that allowed the rulemaking to proceed, but only under a theory of deception,[60] and only if the Commission first published the text of the rule and any alternatives it might adopt.[61]

The Commission directed the staff to review the hearing record and consider the options available under the new law. After an unsuccessful attempt to craft voluntary advertising standards, the staff recommended, and the Commission agreed, that the rulemaking proceeding should be ended.[62]

B. A Bold Initiative

In some respects, the proposed children's advertising rulemaking was not a singularly bold move for the Commission. By 1978, FTC rulemaking was not

[56] 43 Fed. Reg. 17,967, 17,969 (Apr. 27, 1978).
[57]

C. Legal Analysis

The legal analysis in support of the NPRM was contained in the Staff Report. It was not based on a hearing record, but on the staff's study of the extensive research on the issues at stake, nor was it a document formally adopted by the Commission.

advertising practices were unfair under any of these tests, it largely made the case for unfairness by applying the three criteria of the cigarette rulemaking. In doing so, the

advertisers over children through their use of the powerful medium of television to promote their potentially harmful products.[81]

Finally, the staff argued that all advertising to children too young to understand the selling purpose of advertising is "inherently unfair and deceptive."[82] Among the staff's arguments: that the advertising directed to such young children was a subversion of the "classical justification for a free market . . . that assumes at least a rough balance of information, sophistication and power between buyer and seller."[83] To address this problem, staff argued that an informational remedy, *i.e.*, giving notice of the commercial nature of the advertising message, would be ineffective for very young children. [84] Although acknowledging the difficulty of crafting advertising bans based on the make-up television audiences, the staff left the problem for later.[85]

The NPRM and Staff Report were only preliminary documents in the rulemaking proceeding, but they did signal the direction the Commission was taking. Critics claimed the rulemaking symbolized the "unbounded scope of the term 'unfair.'"[86] The Staff Report was criticized for a number of unfairness theories posited by the staff.[87]

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[81] *Id*. at 220.
[82] To support this position, staff looked to the position taken by the Federal Communications Commission that "advertisers would have an unfair advantage over listeners if they could not differentiate between the program and the commercial message", and were thus unable to consider the paid status of the latter in assessing the message." *Id.* at 221 (citing FCC, Report of Policy Statement: Children's Television Program, 39 Fed. Reg. 39,401). FTC staff argued that if it was unfair or deceptive to advertise to adults who do not recognize a commercial message, then certainly it is unfair or deceptive to advertise to children incapable of understanding the purpose of the message. Staff Report, *supra* note ___ , at 221.
[83] Staff Report, *supra* note ___ , at 225.
[84] *Id.* at 300.
[85] *Id*. at 228.
[86] Statement of the American Association of Advertising Agencies, Unfairness: Views on Unfair Acts and Practices in Violation of the Federal Trade Commission 151-52, Senate Committee on Commerce, Science, and Transportation (Committee Print) (1980) [hereinafter *Senate Unfairness Report*].
[87] Caswell O. Hobbs, *Unfairness at the FTC: The Legacy of S&H*, Senate Unfairness Report, at 27, 31-32 (pointing to, *inter alia*, the staff' broad claims of unfairness where there is an "imbalance of sophistication" between advertisers and children, and "*ex cathedr*a" statements that advertising sugared foods for children "achieves a high level of offensiveness").

The most frequent target of critics was the staff's conclusion that it was unfair to put parents in a position to have to say "no" to children's nagging.[88]

Analysis in Terminating the Rulemaking

When the staff recommended termination of the rulemaking in 1981, it did so on the grounds that the hearing record did not support viable regulatory solutions to the problems identified.[89] It chose not to opine on the legal analyses in the Staff Report, focusing instead on the practical difficulties of crafting and implementing the proposed remedies.

The record had revealed that children six or under make up such a small percentage of any viewing audience that no ban would be meaningful unless it applied to audiences where only about 20% of the audience was so young. Such a ban would have been over-inclusive, restricting the flow of information to 80% of the audience with more advanced cognitive skills; a higher percentage cut-off, *e.g.*, 30 to 50%, would have affected only one network program, making this approach under-inclusive.[90] Although staff's analysis was not based on the First Amendment, it reflected the serious constitutional concerns raised by the proposed remedy.[91]

With regard to proposals to ban or regulate the content of advertising of sugared products, the staff found that evidence was insufficient in several respects. First, there was not solid evidence regarding the impact of such advertising on children's attitudes

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[88] *See e.g.*, Statement of the American Association of Advertising Agencies, Senate Unfairness Report, at 151-52; Hobbs, *supra* note ___ , at 32.
[89] Final Staff Report, *supra* note____, at 2-4.
[90] *Id*. at 38.
[91] Staff understandably stayed clear of First Amendment analysis that might later be used against its exercise of regulatory authority. However, under the commercial speech doctrine of *Central Hudson*, discussed at note_____ *infra*, neither proposed remedy would seem to past muster. It is unlikely that the 20% cut-off would be found no more restrictive than necessary or that the 30-50% cut-off would be found to directly advance the government's interest.

toward nutrition,[92] or on harmful consumption.[93] As to dental harm from sugared products, the record revealed no scientifically accepted methodology for determining the extent to which any individual product contributes to dental cari

Act[98] which further refined the test for unfairn

The FTC's National DNC Registry, established by the Commission in a rule promulgated in 2003, is the most innovative tool created by the Commission to deal with unwelcome telemarketing calls. It was one of the latest initiatives in its decades-long efforts to fight deceptive and abusive telemarketing practices. In the first decade and a half of this effort, the Commission focused on bringing cases in federal court under Sections 5 and (13(b) of the FTC Act to halt telemarketing fraud and obtain redress for victims.[101]

In 1994, the Telemarketing Act gave the Commission broad new authority to issue rules that would define and prohibit "deceptive" and "other abusive" telemarketing practices.[102] Among the specific abusive practices the Act required be addressed was "a pattern of unsolicited telephone calls which the reasonable consumer would consider coercive or abusive to such consumer's right to privacy."[103] When the Commission issued the Telemarketing Sales Rule in 1995 (original Rule), it used that privacy provision to support a prohibition on the practice of soliciting "a person when that person previously has stated that he or she does not wish" to be called -- a "company specific" do not call requirement.[104] The original Rule took effect without legal challenge.

In 1999, the Commission commenced a comprehensive, statutorily-mandated review of the original Rule.[105] The Commission's approach to this review was an

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[101] *See* David R. Spiegel, *Chasing the Chameleons: History and Development of the FTC's 13(b) Fraud Program*, 18 ANITRUST MAG. 43, 44 (Summer 2004). In the 1980's, the "vast majority" of the FTC's federal cases involved telemarketers pitching fraudulent investment schemes; in the next decade, an expanded fraud program targeted, *inter alia*, bogus weight-loss products, phony prize promotions, charity scams and credit "repair"ST M(s tTD-0.00.0037.-0.0024 0)4. 24J-17.4942 - in 8,[3eTw[(sc(d)w[(sc(d)w[(sc7i8)0.002 Tc.( )Tj6.46

example of how much the rulemaking process had changed since the Children's Advertising Rulemaking. The rule review began with public forums to explore with outside experts and interested parties how the telemarketing industry and its practices had changed since 1995, the impact of new technologies, and the effectiveness of the original Rule's provisions. The first forum focused on the do not call provisions of the original Rule;[106] a second forum focused on all other rule provisions.[107] Thus, by the time the Commission issued its NPRM to amend the original Rule, it had compiled a good deal of information from knowledgeable sources on which to base its proposals.[108] One wonders how the Children's Advertising Rulemaking might have fared if the Commission had begun with similar public forums to explore the difficult issues involved in that proceeding

The NPRM proposed a number of changes to the original Rule;[109] among the most dramatic was the proposal to establish a National DNC Registry.[110] The public response to the proposed rulemaking was overwhelming. The Commission received over 64,000 comments, the vast majority of which spoke to the proposed Registry.[111] Those who favored the Registry outnumbered those who opposed it by almost three to one.[112] The Commission had "struck a nerve," resulting in the creation of an impressive record to support the need for its bold initiative.

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[106] The forum's roundtable discussion occurred in January 2000, with 17 participants, including associations, individual businesses, consumer groups and law enforcement agencies. 68 Fed. Reg. 4581 n.64 (2003).
[107] *Id*. at 4581.
[108] *E.g*., the record from the public forums had already revealed concerns about the effectiveness of the original do not call provision. *Id*.
[109] *E.g.*, a ba disclosing co569e7TD0.05 osrns

The rulemaking record showed that the company-specific approach was inadequate to carry out the Telemarketing Act's mandate to prevent unsolicited telemarketing that is abusive of consumer privacy. Among its shortcomings: (a) it was burdensome for consumers to request each telemarketer to put them on its do-not-call list; (b) requests to be placed on lis

requires telemarketers or sellers to access the list and "scrub" their sales lists to ensure they call only consumers who wish to receive telemarketing sales calls.[118]

The final Rule does not eliminate the company-specific approach. It remains available to individuals who do not want to sign up for the Registry but want to stop calls from individual telemarketers, and for those who want to stop calls from certain telemarketers exempt from the rule's Registry provisions, *e.g.*, for-profit telemarketers for charitable organizations and companies with whom the consumer has "an established business relationship."[119] Other entities outside the FTC's jurisdiction, *e.g.*, common carriers and banks, are subject to the National DNC Registry,[120] pursuant to rules promulgated in 2003 by the Federal Communications Commission (FCC).[121]

B. Subsequent Actions

The Congressional response to the FTC's final Rule, unlike its response to the Cigarette Rule and the Children's Advertising Rule.3 493001 Tw[(to tursuant to)5.8nt to Na9946r the Regi

Commission lacked authority to establish the DNC Registry,[123] Congress enacted a law that expressly ratified the Commission's action.[124]

Unlike the other rules discussed in this article, there were challenges to this rule in a number of courts on a number of grounds.[125] To date, the Commission has been successful in defending the rule.[126]

C. Another Bold Initiative

The idea of giving consumers the right to stop unsolicited telephone calls to their homes was not new, nor was the idea of a do not call registry. By the time the final Rule was issued, 27 states had passed legislation creating registries for residents of their states, and numerous other states were considering similar bills.[127] But it was a novelty to provide consumers with a simple, "one-stop" opt-out mechanism to reduce significantly the number of unwelcome telemarketing calls nationwide. It was an innovative use of technology that shifted power from telemarketers to consumers, with a profound impact on the marketplace. Within 72 hours of beginning to accept telephone numbers for the National DNC Registry, more than 10 million numbers had been registered;[128] at the one-year anniversary of the Registry, the number had grown to 62 million.[129]

D. Legal Analysis

Unlike the other two rulemakings, where the FTC had launched far-reaching initiatives under its broad Section 5 authority, it was proceeding here under a specific

[123] Mainstream Mktg. Servs., Inc. v. Fed. Trade Comm'n, 283 F. Supp.2d 1151 (D. Colo. 2003).
[124] An Act to Ratify the Authority of the Federal Trade Commission to Establish a Do-Not-Call Registry, Pub. L. 108-82, 117 (2003).
[125] *See e.g.*, Mainstream Mktg. Servs. v. Fed. Trade Comm'n, 358 F.3d 1228, 1250 (10th Cir. 2004); U.S. Security v. Fed. Trade Comm'n, 282 F. Supp.2d 1285 (W.D. Okla. 2003).
[126] *See* notes___*infra* and accompanying text discussing the legal challenges and courts' rulings.
[127] 68 Fed. Reg. 4580, 4630 n.592 (Jan. 29, 2003).
[128] *See* FTC Press Release, June 30, 2003, located at *http://www.ftc.gov/opa/2003/06/dncregistration.htm.*
[129] *See* FTC Press Release, June 24, 2004, located at *http://www.ftc.gov/opa/2004/06/dncanny.htm.*

statute giving it authority to issue rules regulating "deceptive" and "other abusive" telemarketing practices. With respect to the creation of the DNC Registry, the principal legal issues were whether the FTC had statutory authority to establish the Registry and whether it placed restrictions on commercial speech in violation of the First Amendment.

Authority to establish the DNC Registry

There were colorable claims that the FTC lacked statutory authority to establish the Registry. The Telemarketing Act was silent on the subject, but Congress had explicitly given the FCC the authority to establish a national do not call database.[130] The FTC was on solid ground, however, in arguing, as it did in its Statement of Basis and Purpose, that the Telemarketing Act should not be read narrowly to place limits on the Commission that were not specifically spelled out in the statute.[131] To do so would undermine the aim of the statute by denying the Commission the authority to devise the most effective means for carrying out one of its principal mandates, *i.e.*, to prohibit unsolicited telephone calls that abuse consumer privacy. Perhaps the stronger argument, however, made in briefs to the courts, was that the post-rule enactments by Congress had ratified and confirmed the Commission's authority.[132]

In *Mainstream Marketing Services v. FTC*, an appeal in which four cases challenging the DNC Registry had been consolidated,[133] the Tenth Circuit Court of Appeals gave short shrift to the claim that the Commission lacked authority to create the

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[130] *See* note_____ *supra* and accompanying text.

[131] 68 Fed. Reg. 4580, 4638 (Jan. 29, 2003) (arguing that where a statute is broadly written and does not limit the way in which an agency may carry out its mandate, it leaves the method of implementation to the agency's discretion, citing leading administrative law scholars, Kenneth Culp Davis and Richard Pierce).

[132] *See e.g.*, Consolidated Opening Brief of the FTC, FCC & Intervenor U.S.A. at 57-59, Mainstream Mktg. Servs., Inc. v. Fed. Trade Comm'n, 358 F.3d 1228 (10th Cir. 2004). *See* notes___ *supra* and accompanying text describing the two post-rule enactments

[133] 358 F.3d 1228 (10th Cir. 2004). In one of the cases, the district court had concluded that the FTC lacked statutory authority to create the registry. U.S. Security v. Fed. Trade Comm'n, 282 F. Supp.2d 1285 (W.D. Okla. 2003).

Registry. It summarily concluded that the Commission's interpretation of the Telemarketing Act was entitled to deference under the "familiar test" outlined in *Chevron U.S.A., Inc. v Natural Resources Defense Council,*[134] and that the Commission had arrived at a "permissible construction" of the Act.[135] In addition, the court pointed to the post-rule congressional enactments, finding that they made the Commission's authority "unmistakably" clear.[136]

First Amendment

The Commission anticipated that the DNC Registry would be challenged on First Amendment grounds. The Registry restricts commercial speech, including non-misleading speech, which clearly comes within the protection of the First Amendment under the Supreme Court's *Central Hudson* ruling.[137] To meet constitutional standards, the Commission's rule needed to meet the three-part test of *Central Hudson*: it must (1) address a "substantial" government interest, (2) "directly advance" that interest, and (3) be no "more extensive than necessary" to serve that interest.[138]

The Commission had developed a strong record and carefully crafted the Registry provision so that it would pass constitutional muster. First, it was clear that the privacy interests at stake were "substantial" government interests. Numerous federal statutes, including the Telemarketing Act, as well as Supreme Court rulings, indicate the importance of privacy interests generally, and especially the privacy of one's home

[134] 456 U.S. 837 (1984). Under *Chevron*

involved here.[139] Second, the Commission was able to show that the Registry would "directly advance" those privacy interest by reducing significantly the number of unwanted telemarketing calls.[140] Finally, the Commission was able demonstrate that the rule was not overly restrictive. Importantly, the registry had been designed to affect only "core commercial speech," *i.e.,* commercial sales calls.[141] Further, it operates in a manner that does not involve direct restrictions on commercial speech by the government; instead, it gives private individuals a tool to restrict unwelcome speech directed to them, if they choose to use it.[142] In addition, the rule provides individuals with an array of options, including signing up for the Registry, using the company-specific option,[143] or taking no action at all. Finally, the rulemaking record convincingly demonstrated that the less restrictive, company-specific do not call option was not an effective alternative to address the privacy interests protected by the statute.[144]

In *Mainstream Marketing*, the U.S. Court of Appeals ruled that the DNC Registry does not violate the First Amendment.[145] In applying the *Central Hudson* criteria, the court agreed with the Commission's analysis, finding that the Registry addressed a substantial governmental interest, would directly advance those interest by barring a

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[139] *See e.g.,* Rowan v. United States Post Office Dep't., 397 U.S. 728, 737 (1970).
[140] *E.g.,* the record supported an estimate that 40-60% of telemarketing calls would be halted. *See* Consolidated Opening Brief of the FTC, FCC & Intervenor U.S.A. at 35 n.9, Mainstream Mktg. Servs., Inc. v. Fed. Trade Comm'n, 358 F.3d 1228 (10th Cir. 2004).
[141] The Commission had exempted from the Registry charitable solicitation telemarketing, an exemption that was warranted by the record but that the Commission also recognized removed the grounds for a more serious First Amendment challenge to the rule. 68 Fed. Reg. 4580, 4636-7 (Jan. 29, 2003). *See also*

"substantial amount of unwanted telemarketing calls," and was "narrowly tailored because its opt-in feature does not restrict any speech directed at a willing listener."[146]

The importance of the *Mainstream Marketing* ruling may go well beyond its immediate impact on the DNC Registry. The court's opinion strongly affirms the