



# Federal Trade Commission

## **THE IMPORTANCE OF SELF-REGULATION: A VIEW FROM THE FEDERAL TRADE COMMISSION**

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**at the**

**American Teleservices Association Washington Summit**  
**Washington, DC**  
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Good morning. I am delighted to be here with you today to offer some of my views on issues and developments at the Federal Trade Commission that relate to the telemarketing industry generally, and in particular, to the importance and effectiveness of self-regulation in this industry.

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As many of you may know, the Commission is an independent agency of the Federal Government. It is not part of any other branch of the government, and it is not subject to the control of any other agency.

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<sup>1</sup> The views stated here are my own and do not necessarily reflect the views of the Commission or other Commissioners. I would like to express my gratitude to Beth Delaney and Serena Viswanathan, my attorney advisors, for their contributions to this speech.

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<sup>2</sup> In fiscal year 2006, the FTC received more than 1,000,000 consumer complaints alleging DNC violations.

<sup>3</sup> Ryan Kim, “*Telemarketers Getting Through*,” S.F. Chronicle, Apr. 16, 2007, at C1.

protection action – \$5.3 million – to settle FTC charges that a satellite television firm and companies it hired to promote its programming violated the DNC provisions of the Telemarketing Sales Rule.<sup>4</sup> That following January, under a settlement reached by the FTC, a company and its CEO became the first service providers to pay a penalty for allegedly violating the “assisting and facilitating” provision of the TSR.<sup>5</sup> In May 2006, in the FTC’s first case alleging transmission of false caller ID information, the agency sought civil penalties and an injunction against a nationwide telemarketer of mortgage loans for calling people whose numbers are listed on the Registry and doing so without identifying itself.<sup>6</sup>

In June 2006, in the FTC’s first case to highlight the application of DNC provisions to corporate affiliates, a seller of discount drug cards and its telemarketer were ordered to pay \$300,000 and \$50,000 respectively, to settle charges that they violated the DNC provisions of the TSR.<sup>7</sup> The defendants had asserted that they were permitted to call consumers on the DNC Registry on the basis of a purported established business relationship between the consumers and the seller’s corporate affiliates, but the FTC contended that the relationship did not meet the

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<sup>4</sup> *U.S. v. DirecTV*, Civil Action No.: SAC V05 1211 (C.D.Cal 2005). Complaint and Stipulated Judgment and Order available at [www.ftc.gov/os/caselist/0423039/0423039.shtm](http://www.ftc.gov/os/caselist/0423039/0423039.shtm).

<sup>5</sup> *U.S. v. Entrepreneurial Strategies, Ltd.*, Civil Action No.: 2:06-CV-15 (WCO), (N.D.Ga. 2006). Complaint and Stipulated Judgment and Order available at [www.ftc.gov/os/caselist/0523098/0523098.shtm](http://www.ftc.gov/os/caselist/0523098/0523098.shtm).

<sup>6</sup> *U.S. v. Venkataraman*, Civil Action No.: 06-1928 (MCL) (D.N.J. filed May 2006), available at [www.ftc.gov/os/caselist/0523120/0523120.shtm](http://www.ftc.gov/os/caselist/0523120/0523120.shtm).

<sup>7</sup> *U.S. v. Peoples Benefit Services*, Civil Action No.: 06 CV 4612 (S.D.N.Y. 2006). Complaint and Stipulated Judgment and Order available at [www.ftc.gov/os/caselist/0423077/0423077.shtm](http://www.ftc.gov/os/caselist/0423077/0423077.shtm).



customers with whom the seller had an established business relationship. Based on the more than 13,000 comments from consumers received after an initial federal register notice about the VMBC request,<sup>10</sup> the Commission proposed, and invited comments on, an amendment prohibiting prerecorded calls to consumers unless the caller has obtained prior written consent from the consumer. The Commission also has asked for public comments on another proposed amendment to the Rule, which would adjust the methodology used to calculate abandoned call rates.

The comment period for these amendments was extended until late December 2006 and the Commission has received over 600 comments – including one from the ATA – in response to these proposed amendments. Because these issues are still being considered – in fact, staff is working on this project as I speak – I am unable to discuss them further. However, I can mention, as you probably already know, that during the pendency of this rulemaking, the Commission has extended its forbearance policy on enforcement action against sellers or telemarketers that place telephone calls delivering prerecorded messages to consumers with whom the seller has an established business relationship.<sup>11</sup>

With respect to the Registry, I would like to mention one more thing. Shortly after the Telemarketing Sales Rule was amended to establish the Do Not Call Registry, Congress passed

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<sup>10</sup> Notice of Proposed Rulemaking, 69 Fed. Reg. 67287 (Nov. 17, 2004).

<sup>11</sup> See Press Release, FTC Approves Federal Register Notice on Enforcement of the Call Abandonment Provisions of the Telemarketing Sales Rule (Dec. 18, 2006), available at [www.ftc.gov/opa/2006/12/fyi0682.shtm](http://www.ftc.gov/opa/2006/12/fyi0682.shtm).

the Do-Not-Call Implementation Act, which gave on the Commission the specific authority to “promulgate regulations establishing fees sufficient to implement and enforce the provisions” of the DNC Registry.<sup>12</sup> That authorization expires this year and Senator Mark Pryor has introduced legislation to re-authorize the Registry. We expect to work closely with Congress and industry on this important issue so that we can continue to protect consumers’ privacy.

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Now, I would like to spend a little time talking about another important topic – and the reason we are here today – self regulation. Meaningful self regulation provides a critical complement to the FTC’s law enforcement actions. It can offer flexibility and timeliness that may not always be present in enforcement actions. The judgment and experience of an industry in crafting rules also can be of great benefit, especially where, as here, the business practices are complex and industry members have inside knowledge on how best to craft best practices. The FTC strongly encourages self-regulatory efforts that provide clear guidance to industry and create effective enforcement mechanisms to protect consumer rights.

First off, I would like to compliment you on the thoughtful and thorough job that your organization has done in undertaking this comprehensive self-regulatory initiative. I commend your organization on this effort.

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<sup>12</sup> Pub. L. No. 108-10, 117 Stat. 557 (2003).

Second, I thought it might be helpful for me to discuss some of the agency's history and experience with self-regulation, to give you a sense of how we view these initiatives, and what has worked well in the past.

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<sup>13</sup> Editorial, "*The FTC as National Nanny*," Wash. Post., Mar. 1, 1978 at A14.

<sup>14</sup> See "*About the Children's Advertising Review Unit*," available at [www.caru.org/about/index.asp](http://www.caru.org/about/index.asp).





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“always accompanied by promotion of a food or drink high in calories or low in nutritional value, it is unclear whether a true ‘healthy lifestyle’ message will be conveyed.” *See* Chairman Deborah Platt Majoras, “*Advertising Resolutions for the New Year*,” Association of National Advertisers, (Jan. 17, 2007), *available at* [www.ftc.gov/speeches/majoras/070117adresnewyear.pdf](http://www.ftc.gov/speeches/majoras/070117adresnewyear.pdf)



the FTC, which could otherwise result in civil penalties of as much as \$11,000 per violation. Violators that opt for this alternative make voluntary payments to the U.S. Treasury in an amount slightly less than the civil penalty the FTC would seek in a law enforcement action, pay annual administrative fees to the NFDA, and participate in industry-led training and competency testing. They remain in the program for three years and certify completion of the program to the National Funeral Directors Association.

Importantly, this option is only available for certain violations – violations of other provisions, such as embalming without consent or imposing illegal tying arrangements, are outside the scope of this program, and the Commission addresses those violations through conventional law enforcement.

In 2006, the FTC made undercover visits to 100 funeral homes in seven states to assess their compliance with the Funeral Rule. This time around, compliance was substantially improved – we found violations at 12 funeral homes and faced with the prospect of FTC lawsuits that could lead to a court order and civil penalties, these funeral homes elected to participate in the Offenders Program.<sup>23</sup> As part of the Offenders Program, these funeral homes will receive on-site compliance training, legal review of price list disclosures required by the Funeral Rule, and

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<sup>23</sup> See Press Release, *FTC Tests Funeral Homes for Compliance With Funeral Rule; New Brochure Explains Consumer Rights Under Federal Law*, Dec. 13, 2006, available at [www.ftc.gov/opa/2006/12/funeralsweeps.shtm](http://www.ftc.gov/opa/2006/12/funeralsweeps.shtm). We also sent enforcement letters 32 other funeral homes, warning them to correct technical violations of the Rule.

regular testing and compliance monitoring.<sup>24</sup>

I am confident that the ATA's self-regulatory standards have the potential to be even more effective and encompassing than the examples I have just cited. There are a couple of things in particular that I found notable. First, the draft Standards do a good job of incorporating the many federal and state laws and regulations that affect the teleservices industry. I think it is efficient and useful to set up a comprehensive framework like this.

Second, the drafters of the proposed Standards worked hard to identify areas where there was confusion, vagueness or undefined terms. Precise terminology and consistency in interpreting these terms will help ensure that everyone is on a level playing field, and will assist in making sure that compliance with the regulations is both accurate and high.

Another component of the proposed Standards that impresses me is the effort that the drafters undertook to sift through and then synthesize the various opinions and law enforcement actions of the FCC, the FTC and the States. Before returning to the FTC a year and a half ago, I was a private practitioner for 41 years, first at the McCutchen firm in San Francisco, then for the last 11 years at Latham & Watkins in San Francisco. Over that period of time, I did a lot of corporate and compliance counseling. So I know what an advantage it is for you to have had the drafters examine things like Civil Investigative Demands issued by the various agencies, in order

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<sup>24</sup> Since initiation of the program, more than 2,000 funeral homes have been "shopped," and 247 homes have participated in the Offenders Program.

to craft comprehensive compliance and record-keeping standards.

I would like to add that appropriate compliance, auditing and enforcement mechanisms are also necessary components in a self-regulatory program like this. In this current draft, the compliance program includes written policies and procedures; employee training; monitoring; and record-keeping. I would suggest that you also might want to consider an independent auditing component. The FTC has some experience in this area with respect to safe harbor programs established under the Children’s Online Privacy Protection Act. In order to be approved, self-regulatory guidelines implementing COPPA must include an “effective, mandatory mechanism for the independent assessment” of the participants’ compliance with the safe harbor guidelines.<sup>25</sup> In the COPPA context, organizations such as CARU, TRUSTe, and the Entertainment Software Rating Board, perform audits of their members to ensure that they are complying with the safe harbor guidelines.

In developing the enforcement standards, look to both your program’s internal mechanisms for fostering compliance with the Standards, as well as an external mechanism – or “third-party review” – for resolution of disputes about whether a particular practice violates the Standards. Under similar circumstances, the Commission has recommended that a third-party review system be: (1) impartial and objective; (2) be public; and (3) apply standards

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<sup>25</sup> 16 C.F.R § 312.10 (b)(2).

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<sup>26</sup> See *Alcohol Marketing and Advertising, A Report to Congress*, Sept. 2003, at pp. 8-9, available at

pattern of violative conduct.<sup>30</sup> These are all things that you may want to consider as you move forward in finalizing your Standards.

Finally, I would like to add, to the extent that the draft Standards go beyond what is legally required, and propose Best Practices for the industry, that reinforces the true value of a self-regulatory program. Not only are you complying with the basic requirements, but you are also offering additional benefits to consumers, thereby improving your own goodwill and reputation.

I appreciate the opportunity to speak with you today. Thank you.

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<sup>30</sup> 16 C.F.R § 312.10 (b)(3).