

**Prepared Statement of
The Federal Trade Commission**

**Before the
House Committee on Energy and Commerce
Subcommittee on Commerce, Trade, and Consumer Protection
United States House of Representatives**

**Washington, D.C.
September 11, 2008**

Chairman Rush, Ranking Member Whitfield, and members of the Subcommittee, I am Lois Greisman, Associate Director of the Division of Marketing Practices, Bureau of Consumer Protection at the Federal Trade Commission (“Commission” or “FTC”).¹ I appreciate the opportunity to appear before you today regarding H.R. 1776, provisionally titled the “Call Center Consumer’s Right to Know Act.” The bill would require call center employees to disclose, in telephone calls with consumers, the physical location of the call center.

This testimony begins by describing the Commission’s experience with fraud and abuse perpetrated over the telephone in order to assist the Subcommittee in its consideration of H.R. 1776.² This testimony also provides comments aimed at ensuring the bill meets its intended purpose.

I. FTC’s Law Enforcement Experience

The Commission’s experience with call centers is primarily based on its extensive program to battle fraudulent and abusive telemarketing practices through its vigorous enforcement of the Telemarketing Sales Rule (“TSR”), which includes enforcement of the privacy protections of the National Do Not Call (“DNC”) Registry.³

¹ The views expressed in this statement represent the views of the Commission. My oral presentation and responses to questions are my own and do not necessarily reflect the views of the Commission or any individual Commissioner.

² The FTC has broad law enforcement responsibilities under the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. 41, *et seq.* The statute provides the agency with broad jurisdiction over most economic sectors. Certain entities or activities, however, such as depository institutions and companies engaged in common carrier activity, and companies engaged in the business of insurance, are wholly or partly exempt from FTC jurisdiction. In addition to the FTC Act, the agency has enforcement responsibilities under more than 50 other statutes and more than 30 rules governing specific industries and practices.

³ In December 2002, the Commission adopted amendments to the TSR that, among other things, established the National Do Not Call Registry, prohibited call abandonment,

A. History of the FTC’s Telemarketing Fraud Law Enforcement Program

The Commission has a strong and longstanding commitment to rooting out telemarketing fraud. From 1991 to the present, the FTC has initiated more than 375 telemarketing cases. The vast majority of these involved fraudulent marketing of investment schemes, business opportunities, sweepstakes pitches, and the sales of various goods and

required (where feasible) transmission of Caller ID identifying information, and established important new safeguards in situations where telemarketers use preacquired account information. 68 Fed. Reg. 4580 (Jan. 29, 2003). The TSR was also recently amended to, among other things, bar telemarketing calls that deliver pre-recorded messages (so-called “voice blasting” or “robo calls”), unless the consumer previously has agreed to accept such calls from the seller. Those amendments will become fully effective in September 2009. TSR Final Rule Amendments, 73 Fed. Reg. 51164 (Aug. 29, 2008).

⁴ 15 U.S.C. § 45(a).

⁵ 15 U.S.C. §§ 6101-6108.

In cases involving the anti-fra

⁹ Harris Interactive, *National Do Not Call Registry: Seven In Ten Are Registered And All Of Them Will Renew Their Registration* (October 31, 2007), http://www.harrisinteractive.com/harris_poll/index.asp?PID=823).

¹⁰ Quote from Humphrey Taylor, Press Release, FTC, Compliance with Do Not Call Registry Exceptional (

substantially improved by legislation, all of which is currently under consideration by Congress, that provides the agency with civil penalty authority in the areas of data security, telephone records pretexting, and spyware, similar to that provided under the Telemarketing Act. Civil penalties are important in these areas because the Commission's traditional remedies, including equitable consumer restitution and disgorgement, may be impracticable or not optimally effective in deterring these particular unlawful acts.

¹⁴ These DNC cases are included in the more than 265 TSR cases noted above.

¹⁵ <http://www.ftc.gov/opa/2007/11/dncpress.shtm>.

¹⁶ *U.S.A. v. Planet Earth Satellite, Inc.*, No. 2:08-cv-1274-PHX (N.D. Tex. 2008); *U.S.A. v. Star Satellite, LLC*, No. 2:08-cv-00797-RLH-LRL (D. Nev. 2008). The latter consent agreement also settled charges that the defendants abandoned calls by conducting “voice blasting” campaigns that delivered prerecorded messages in cold calls to thousands of consumers. A

prosecution to federal and state prosecutors through its Criminal Liaison Unit. Since October 1, 2002, federal and state criminal authorities have charged 271 persons with crimes involving telemarketing fraud arising from acts investigated or prosecuted by the Commission. Of those 271 persons charged, 165 were convicted or pleaded guilty. The rest are awaiting trial, are in the process of extradition from a foreign county, or are fugitives from justice.

E. The FTC Pursues Third Parties That Facilitate Telemarketing Fraud

Telemarketers' deceptive and abusive practices often are aided or made possible by third parties such as list brokers who sell personal information about consumers to shady telemarketers, or by unscrupulous payment processors, who enable fraudulent telemarketers to reach into consumers' bank accounts.

List brokers can play an important role in facilitating telemarketing fraud. The FTC has brought a number of cases challenging the sale of such databases to fraudulent telemarketers. In December 2007, the FTC sued one such information broker, Practical Marketing, Inc., charging that it assisted telemarketers by selling "full data leads" – lists that include a consumer's financial account numbers – to telemarketers perpetrating advance-fee loan scams in violation of the TSR.²² To halt this operation, the FTC joined forces with the U.S. Postal Inspection Service and the United States Attorney's Office for the Southern District of Illinois, which brought federal criminal charges against Practical Marketing for identity theft. In addition to

²² *FTC v. Practical Marketing, Inc.*, No. 3:07 cv-00685 JPG-DGW (N.D. Ill. 2007), <http://www.ftc.gov/opa/2007/10/listbrokers.shtm>.

²³ In 2002, the FTC sued three other information brokers that allegedly knew or consciously avoided knowing that they supplied lists of consumers

5147 (E.D. Pa. 2007). *See also* <http://www.ftc.gov/opa/2007/12/yma.s>

that provides customer-based service and sales assistance or technical assistance and expertise to individuals located in the United States via telephone, the Internet, or other telecommunications and information technology.” It is unclear whether the reference to the Internet is intended to bring within the bill’s scope all on-line transactions, including on-line service assistance. Resolution of this ambiguity would facilitate enforcement of the bill, if enacted, and would also help those entities potentially subject to the bill’s requirements to understand what they must do to comply.

Third, the requirement in Section 2(b) of the bill for annual certification by every U.S. corporation or subsidiary that “utilizes a call center to initiate telephone calls to, or receive telephone calls from, individuals located in the United States” represents a potentially costly burden for any agency tasked with enforcement of this bill. Additionally, as drafted, the bill provides no apparent enforcement mechanism for failure to comply with the certification requirement.

Fourth, jurisdictional issues could significantly complicate FTC enforcement of this bill’s requirements. As noted above, the proposed legislation would impose disclosure burdens on all entities that communicate with consumers by means of a call center. The entities that currently utilize call centers overseas – presumably the key concern of this bill – include depository institutions, airlines, and insurance companies, among others. Under the FTC Act, the FTC has limited or no jurisdiction over many of these large users of overseas call centers. Moreover, the Commission would encounter significant practical, legal, and logistical problems e

should also be noted that the FTC's expertise derives from its enforcement against "unfair or deceptive acts or practices" under Section 5 of the FTC Act and related regulations. As described above, that experience is broad and robust but does not touch upon the kinds of labor and foreign trade issues that are at the heart of H.R. 1776. An agency well-versed in labor and foreign trade issues would likely be better suited than the FTC to administer and enforce H.R. 1776.

III. Conclusion

The Commission would be happy to provide further assistance as may be relevant in the drafting of this legislation to achieve the result that best serves the public interest. The Commission will continue to enforce vigorously the laws that protect American consumers from fraud and from unwanted telemarketing calls, and looks forward to working with the Committee as it considers H.R. 1776.