

PREPARED STATEMENT OF
THE FEDERAL TRADE COMMISSION ON
"PROPOSED LEGISLATION:
THE 'TELEMARKETING VICTIMS PROTECTION ACT' (HR 3180)
AND THE 'KNOW YOUR CALLER ACT' (HR 3100) "

Before the
SUBCOMMITTEE ON

The Commission's Efforts Against Fraudulent and Deceptive Telemarketing

Using its authority under Section 13(b) and Section 5 of the FTC Act, the Commission has filed hundreds of law enforcement actions against fraudulent and deceptive telemarketers in the past 15 years. To assist the Commission in its vigorous effort to combat fraudulent telemarketing, Congress, in 1994, added to the range of weapons available to the Commission in this law enforcement work by enacting the Telemarketing and Consumer Fraud and Abuse Prevention Act (the "Telemarketing Act" or "the Act"). The Act directs

the bills are informed by oral and written comments supplied to the Commission a workshop and in the regulatory review comments received to date, as well as the

penalties), from actively blocking identifying information, but the proposal may not reach the widespread technological problem that results in what might be termed "passive blocking." According to representatives from telemarketers and common carriers, telemarketers generally do not actively "block" their identifying information; rather, such information is not transmitted because of the types of phone lines used by most telemarketers.⁽²²⁾

By contrast, HR 3100 takes a ~~wid~~⁽²³⁾ approach to accomplishing similar goals. It prohibits any affirmative interference or circumvention of consumer "caller-ID" service and at the same time requires, via FCC regulation, that telephone solicitations transmitted through "caller-ID" services the name of their company or the entity on behalf of whom they are soliciting and a valid working phone number at ~~whic~~⁽²⁴⁾ the caller may be reached during business hours. The FCC would have enforcement responsibility, but HR 3100 would also be enforceable through a private right of action, and through actions by attorneys general in federal court.⁽²⁴⁾

The approach taken in HR 3100 to require disclosure of identifying information has added benefit of helping to remedy the situation where consumers answer calls or find no one on the other end of the line. Telemarketing calls give rise to this occurrence because telemarketers use "predictive dialers." These systems are designed to maximize the time each telemarketing representative spends ~~selling~~⁽²⁵⁾ simultaneously dial many more phone numbers than could be handled by available telemarketing representatives. If a consumer answers a call when there is no sales representative to handle it, the call is automatically disconnected or abandoned. Consumers who answer calls that are disconnected or abandoned by predictive dialers do so only to find no one at the other end. When a telemarketer hangs up without identifying himself or herself, consumers have no way to exercise their right to request to be placed on a "do not call" list unless the "caller-ID" system shows a number where the telemarketer or seller can be reached. The Commission therefore favors the approach taken in HR 3100, specifying that the phone number displayed be one that is useful to a consumer who wishes to call and request that he or she be placed on the company's "do not call" list.

At the Commission's January 2000 workshop conference on "Spam" issues, participants expressed disparate views on whether it is technologically possible for consumers' "caller-ID" equipment to display a telemarketer's name and phone number when the telemarketer is calling via a trunk line and, if so, at what cost.⁽²⁵⁾ As part of its rule review, the Commission has requested information on the feasibility and cost of transmitting this information. Based on the debate reflected in the TSR review proceeding to date, it may be that broader protection could be achieved through a requirement to disclose ~~certain~~⁽²⁶⁾ identifying information, as in HR 3100, rather than just a prohibition against blocking.⁽²⁶⁾

The Provision That Within One Year the Commission Conduct a Study ~~of~~⁽²⁷⁾ Violations of the Telemarketing and Consumer Fraud and Abuse Prevention Act, "Especially of Repeated Violations By a Single Telemarketer."

If the HR 3180 requirement for a study of the violations of the Telemarketing Act, amended by HR 3180, is enacted, the study would be based largely on the complaint data from the Commission's ongoing TSR enforcement effort. A central component of this effort is "Consumer Sentinel," the FTC's confidential database shared by law enforcement officials throughout the United States and Canada. Numerous organizations contribute complaint data to Consumer Sentinel, including the Federal Trade Commission, the National Fraud Information Center, the Better Business Bureau, Canada's Phone Busters, and other federal and state agencies. The Commission uses the database to assess the extent of law violations, to spot emerging trends, and to target enforcement efforts on the most serious problems. Through Consumer Sentinel the Commission would be able to track trends in violations of the new law in the first year, but a study after the new law has been in effect for a longer time would likely be more informative, as it may take some time for trends to emerge and for consumer awareness of their rights to grow.

In conjunction with the regulatory review of the TSR, the Commission has undertaken a study of the life cycle of telemarketing generally: the historical nature of telemarketing, its current status, emerging trends, and how the industry is changing to meet the 1. The goal of

16 C.F.R. Part 436, which requires the provision of information to prospective franchisees; and the Telemarketing Sales Rule, 16 C.F.R. Part 310, which defines and prohibits deceptive telemarketing practices and other abusive telemarketing practices.

3. 15 U.S.C. §10108.

4. 15 U.S.C. §102(a)(1).

5. 15 U.S.C. §102(a)(3)(A).

6. 16 U.S.C. §102(a)(3)(B).

7. 16 C.F.R. §10.3.

8. 16 C.F.R. §10.4(b)(1)(ii).

9. While the FTC is empowered by Section 16(a) of the FTC Act, 15 U.S.C. §16(a), to file its actions for injunctive relief, restitution, disgorgement and other equitable relief through its own attorneys, FTC for civil penalties are referred to the Department of Justice for filing.

10. The Telemarketing Act requires that five years following the promulgation of the TSR, the Commission review the implementation of the Act and its effect on fraudulent telemarketing and report the results of the review to Congress. 15 U.S.C. §108. On February 28, 2000, the Commission published a notice in the Federal Register soliciting comments on the TSR. 65 Fed. Reg. 10,428.

11. HR 3180 would not expand the scope of the TSR, which, pursuant to the Telemarketing Act, is to activities within the jurisdiction of the FTC as delimited by the FTC Act. 15 U.S.C. §105(a). The FTC Act limits the FTC's jurisdiction to entities which are "organized to carry on business for [their] own profit or that of [their] members," 15 U.S.C. §43, and also expressly excludes the activities of several specific types of entities from coverage under that Act. Exclusions are: "banks, savings and loan institutions

17. DNC Tr. 98:499:12 (statement of Bob Sherman for the DMA, noting that their list is "getting out control costwise."). Note copies of the transcript pages cited in this letter are attached to this statement; the entire transcript may be accessed at the FTC's Web site at