THE KNOW YOUR CALLER ACT OF 1999 AND THE TELEMARKETING VICTIM PROTECTION ACT OF 1999

HEARING

BEFORE THE

SUBCOMMITTEE ON TELECOMMUNICATIONS, TRADE, AND CONSUMER PROTECTION

OF THE

COMMITTEE ON COMMERCE
HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTH CONGRESS

SECOND SESSION

ON

H.R. 3100 and H.R. 3180

JUNE 13, 2000

Serial No. 106–117

Printed for the use of the Committee on Commerce

U.S. GOVERNMENT PRINTING OFFICE
65–901CC WASHINGTON : 2000

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CONTENTS

Page

Testimony of:

Brubacher, Steven R., Senior Vice President for Operations, Infocision Management Corporation, representing American Telemarketers Association 69

Frelinghuysen, Hon. Rodney, a Representative in Congress from the State of New Jersey 13

Harrington, Eileen, Assistant Director of Marketing Practices, Federal Trade Commission 26

Hatch-Miller, Hon. Jeff, Arizona House of Representatives 63

Salmon, Hon. Matt, a Representative in Congress from the State of Arizona 9

Tierney, Virginia, Member of Board of Directors, American Association of Retired Persons 67

Material submitted for the record by:

Barton, Richard A., Senior Vice President, Congressional Relations, Direct Marketing Association, latter dated June 13, 2000, enclosing material for the record 93

THE KNOW YOUR CALLER ACT OF 1999 AND THE TELEMARKETING VICTIM PROTECTION ACT OF 1999

TUESDAY, JUNE 13, 2000

HOUSE OF REPRESENTATIVES,
COMMITTEE ON COMMERCE,
SUBCOMMITTEE ON TELECOMMUNICATIONS,
TRADE, AND CONSUMER PROTECTION,
Washington, DC.

The subcommittee met, pursuant to notice, at 11 a.m., in room 2322, Rayburn House Office Building, Hon. W.J. "Billy" Tauzin (chairman) presiding.

Members present: Representatives Tauzin, Deal, Largent, Cubin, Shimkus, Ehrlich, Rush, Wynn, Sawyer, Green, and Dingell (ex officio).

Staff present: Kelly Zerzan, majority counsel; Cliff Riccio, legislative analyst; and Andy Levin, minority counsel.

Mr. TAUZIN. The subcommittee will please come to order.

Good morning. Welcome. The subcommittee meets today to discuss two bills addressing telemarketing.

The practice of telemarketing is certainly not a new practice. To the contrary, there have been telemarketers in business for many years. Telemarketing, however, is an amazing phenomenon when it is connected to the Internet. And now that telephones and computers are merging so rapidly in the Internet world, telemarketing is becoming an incredibly productive tool for the sale of products and services in our country and throughout the world. In fact, I understand that the telemarketing market last year was well over $330 billion. It is an amazingly strong, lucrative market.

However, telemarketing may not be a phenomena as they say electronic commerce is, and complaints regarding telemarketing are dramatically on the rise in recent years. According to FTC estimates, it received over 2,000 complaints about telemarketers in the year 1997, but in 1999 it received well over 17,000 complaints, indicating a rapid increase in consumer concern and complaint about the way in which telemarketing practices occur.

We, of course, can only speculate as to the reason for this rise in consumer complaint. Perhaps more and more people see telemarketing as an intrusion on their personal in-home privacy, particularly during meal time. Don't we all have a sense of that? And perhaps pitches and telemarketing sales pitches and consumer relation practices are becoming more offensive. Who knows? We are going to find out a lot more about that today.

I can only tell you that this last month I was receiving five calls a day from British Columbia. I mean, caller ID was identifying a number of British Columbia. No messages were being left. And I tried calling that number back. It obviously was a computer because I could never reach anyone to find out why British Columbia was calling me.

And most citizens of this country don't have the services of the Capitol Police at their disposal, but I fortunately did. I called the Capitol Police. My concern was—I called my telephone company as well. My concern was that perhaps my telephone was being used as a conduit for some illicit activity or perhaps some scam and that this computer was using my telephone and my telephone number for some bad purpose. I didn't know. How could I know?

The Capitol Police chased it down for me and thankfully shut it down. I am no longer bothered by these calls from British Columbia. But I get a lot of calls that say just personal, unavailable. I don't know who is calling. I can't call them back to tell them quit bothering me; and yet, at the same time, every now and then I get a call from someone who is telling me about a product or service I am really interested in.

Now how do we wade through this, this maze of what I consider to be commercial tension that is developing in this new electronic age where telemarketing is becoming an increasingly important function? In fact, in our privacy session we had at Lansdowne, one of the guest panelists at the privacy sessions told us that when you think about e-commerce, it is telemarketing. It is all about using the new Internet services and eventually the broad band interactive services with incredibly new and powerful techniques by which to sell products by which to broaden the market from the marketplace of easy access and walking or driving distance to a global marketplace. So it really is about telemarketing. It is essential that we examine and think about it today.

What we do know is that the committee indeed has a compelling interest in determining how to bring down the number of complaints and, at the same time, how to keep a vibrant and very productive telemarketing marketplace alive.

We begin today by conducting hearings on two bills which address very specific telemarketing practices that are, I think, worthy of our review. The H.R. 3100, the Know Your Caller Act, which is introduced by Congressman Rodney Frelinghuysen of New Jersey, he is seeking, among other things, to prohibit telemarketers from disabling or interfering with the ability of your caller ID to display a caller's identity and phone number.

By the way, Rodney, apparently some telephone companies are allowing folks to sign up for a service that will not put a call through unless it is identifiable on an ID—on a caller ID. That may work good for some people, but for the last 2 months I haven't been able to call my mother from my telephone in my car because it won't put the call through. And mom for a month now has been trying to disable that system so that I could call her, and thankfully this weekend she announced to me that I could finally start calling her from my car phone again.

H.R. 3180, the Telemarketing Victim Protection Act, which is being introduced by Matt Salmon of Arizona, will direct the FTC

to impose four new requirements and prohibitions on telemarketing. Most important would be that telemarketers could not make any calls between the hours of 5 and 7 p.m., the hours when, obviously, they can generally reach us the best but generally when we want to have family time.

So what is the role of government in this critical 2-hour period when most of us are trying to enjoy our families? We look forward to debate on these proposals and hope to learn more from the witnesses today.

I want to thank you all for being here. I particularly want to welcome my two colleagues, first of all, to the witness panel, the Honorable Matt Salmon and Rodney Frelinghuysen. But, first, I will yield to my friend in Ohio for an opening statement and any other members in order.

Mr. Sawyer is recognized.

Mr. SAWYER. Thank you, Mr. Chairman. Thank you very much for calling this hearing.

As you point out, the direct marketing industry is an enormous and rapidly growing business in this country. Concerning telemarketing, my figures show some $460 billion in the United States. Who knows? By tomorrow, it may be $560 billion.

While telemarketing has in some quarters been a controversial marketing practice, it can provide some benefits for consumers. In many instances, consumers are introduced to new opportunities or products through telemarketing. Telemarketing can also promote the availability of competitive alternatives to incumbent providers and thus facilitate a competitive marketplace.

Unfortunately certain telemarketing practices can also be a significant and intrusive nuisance for consumers as well as promote consumer confusion. In some instances, rote telemarketers can take advantage of this confusion to commit fraud against consumers.

Let me say again, the vast majority of telemarketers are legitimate business people attempting to sell a particular product or service. But some are not.

I am interested in examining the two bills that are before us today, but I am also interested in hearing from our witnesses on a couple of other topics concerning telemarketing practices. I am particularly concerned about two articles that appeared within the last several days in the Washington Post and in Roll Call regarding a company that is a constituent of mine. I am hopeful that, as a product of their presence here today, that they will be able to comment on those articles and some of the suggested allegations that are embodied in them.

In that sense, while I am looking forward to the debate on the new policies regarding telemarketing that are part of this hearing—they are important—I also want to make sure that the Congress is conducting proper oversight on the enforcement of the laws that we have already promulgated.

Concerning the case presented in Roll Call, I understand that the FTC does not investigate complaints about a for-profit company when they are contractors for a nonprofit or political entity. It is also my understanding that the limitations on for-profit advertising and telemarketing are much more rigorous than nonprofit or polit-

ical entities. I believe that is why the FTC does not get involved in such matters.

While the FTC doesn't, I believe the FCC does. If not, I would like to know who does investigate telemarketing activities contracted out to a nonprofit or political entity from a for-profit. It seems to me there is a rather large gap in the law if, in fact, no one has the authority to invetigate these matters.

In reviewing the testimony I think Mr. Brubaker put it best when explaining why rules should apply across the board regardless of nonprofit, for profit or political status. I quote from page 6 of his testimony: "Our experience has been that those who profess to be annoyed at telemarketing contacts are not selectively annoyed, they are universally annoyed, regardless of who the caller is." A telemarketing violation should be subject to the same punishment under the law regardless of who sponsored the call.

Let me also mention that, in just looking through all of this, I came across a report from the Ohio attorney general citing a Better Business Bureau standard avering that a reasonable telemarketing campaign is defined by a return of 65 percent of every donated dollar to the nonprofit. I would welcome alternative views about that and whether or not that is an appropriate standard to apply to telemarketers.

Finally, just let me say, Mr. Chairman, I am interested in hearing from our colleague, Mr. Frelinghuysen, if, in fact, H.R. 3100, the Know Your Caller Act, would apply to for profits working for nonprofits. I am curious to know whether H.R. 3100 would address the ability of the FCC and the FTC to investigate and regulate in those situations.

With that, Mr. Chairman, I yield back the balance of my time.

Mr. TAUZIN. I thank my friend.

I wonder if the original namesake of yours, Tom Sawyer, would have used telemarketing to get someone to come and paint his fence for him?

Mr. SAWYER. He might have. But, given the connotations of the term "white wash", we might use that as well.

Mr. TAUZIN. I thank my friend.

We welcome our first panel. If our two colleagues would join us at the witness table.

While they are joining us, we want to announce on the second panel we will be hearing from the Federal Trade Commission, from Ms. Harrington, about what is going on in the Federal Trade Commission in this area. And we will have other representatives, including the State of Arizona House of Representatives and also from the American Association of Retired Persons and the American Telemarketers Association, so we get a good sense of what is going on not only in the States but in the industry and seniors who very often are the ones who complain to us about the kinds of telemarketing frauds that might occur in the middle of all this good business.

Mr. SAWYER. Mr. Chairman, if I might interrupt, would it be possible to put those two articles in the record?

Mr. TAUZIN. Without objection, the articles will be introduced into the record.

[The articles referred to follow:]

[Sunday, June 4, 2000—Washington Post]

POLITICS

By Mike Allen

Since March, the calls have been going out to thousands of doctors, telling them they have been "nominated for a national leadership award" that is "given to doctors, dentists and community leaders."

The caller says the invitation is from House Majority Whip Tom DeLay (R-Tex.), who is "Pulling out all stops to finally allow physicians like you to have a voice in the health care debate, and to do that, we've created the Physicians Advisory Board.

The doctors are assured that it's "a completely honorary position" that won't take time away from their busy schedules.

The callers are telemarketers from the National Republican Congressional Committee. Physicians who sound interested are invited to call an 800 number, where the find out they can join the "board" a get a handsome certificate for their office walls for a contribution of $300 or more.

Jim Wilkinson, communications director for the House Republicans, said the pitch is one of the committee's most successful programs, and he said the only complaint he has heard is from a Democrat.

"This is a voluntary program," Wilkinson said. "If people support us, they give us money. If they don't like us, they don't give us money. It's called freedom."

Doctors are called at their offices, not at hospitals. The telemarketers say they are "calling from Congressman Tom DeLay and the Physicians Advisory Board in Washington."

The telemarketers are told to brush off efforts to take the doctor away from a patient by saying, "We don't want to interfere with patient care." But then the script tells them to add that they'd "very much like to have Doctor [blank] serve with us, so I hope you'll have him (or her) call me as soon as he (or she) has a chance."

House Republicans have a similar program designed to reach small-business owners.

John DelCecato, a spokesman for the Democratic Congressional Campaign Committee, called the solicitation "deceptive" and "shameless."

Wilkinson replied that House Republicans have out-raised House Democrats "because we're using cutting-edge methods to rally our supporters."

"Democrats are screaming, so it must be working," he said.

[Monday, June 12, 2000—Roll Call]

DOCTORS ANGERED BY FUNDRAISING CALLS OFFERING AWARD IN SWAP FOR DONATION

By John Bresnahan

In the midst of a high-stakes battle on Capitol Hill over health care, House Majority Whip Tom DeLay (R-Texas) is offering doctors a chance to join a "physicians advisory board" in return for campaign contributions.

Democratic officials claim to have received complaints from doctors in at least four states, including New York and California, targeted by DeLay and the National Republican Congressional Committee during the effort.

A call received last week by Dr. Charles DeCarli, a neurologist at the University of Kansas Medical Center, was typical of the DeLay program.

DeCarli's assistant was told her boss was being "recommended for a national award" by the Texas Republican, and was given an 800 number for DeCarli to contact.

But when DeCarli called back the number of the "Physicians Referral Service" that had placed the call, he was told it was actually a fundraising solicitation on behalf of the NRCC.

DeLay and the NRCC were offering DeCarli a chance to belong to a "physicians advisory board"—but to do so would cost DeCarli some money.

Another call to DeCarli said he would be made an "honorary chairman" of the advisory board if he gave $300 to $500.

In return, DeCarli would get his name in an upcoming ad in The New York Times placed by the "advisory board," as well as the chance to participate in conference calls with influential Members of Congress, although those lawmakers were not named.

DeCarli said he was told directly that he would have to make a donation in order to become an honorary chairman.

"I felt very offended by this," said DeCarli, a self-proclaimed "rabid Democrat."

"I thought the assumption was that the Congressman was interested in a national award I had won," he said in an interview. "It was really insulting to me."

Another Kansas-based doctor, speaking on the condition of anonymity, was told she "received a national award."

"They didn't say they were a political party or anything," said the doctor.

InfoCision Management Corporation, an Akron, Ohio-based telemarketing firm that often runs such programs for the NRCC, is placing the calls.

A supervisor named Brian Gray at the physicians Referral Service, which placed the call to DeCarli, insisted the award "doesn't cost anything," although he acknowledged that the calls were designed to raise money for the NRCC.

InfoCision officials didn't return several calls seeking comment.

"We've received half a dozen complaints here at the [Democratic National Committee] from real doctors, some of them Republicans, who resent this misleading appeal by the Republicans," said DNC Press Secretary Jenny Backus.

"Now we know that they are willing to risk real patients' best interests by calling doctors away from tending to patients to listen to yet another fundraising appeal," she added.

GOP officials, for their part, dismiss the Democratic complaints as much ado about nothing.

"It is my general understanding that this is a successful fundraising program to grow the majority by getting citizens to participate," said Jonathan Baron, communications director for DeLay.

"Telemarketing is a standard aspect of fundraising and Mr. DeLay wants to support the NRCC and its efforts," he added.

Baron said the script for the fundraising appeal was appropriate and denied that there was any link between GOP efforts to solicit money from doctors at the same time health care legislation is high on the House's legislative schedule.

Both the House and the Senate are scheduled to vote in the coming weeks on various pieces of legislation covering HMO reform, a prescription drug plan for Medicare recipients and a so-called "Patients' Bill of Rights."

Baron, however, insisted, "When Washington is affecting peoples' lives, voters have not only a right, but an obligation, to speak up."

"The only people who seem to be mad about this voluntary program are the Democrats because we out-raised them in the last quarter and the cycle," said Jim Wilkinson, the NRCC communications director.

Several GOP insiders claim the organization has raised millions of dollars through telemarketing programs focusing on industry groups facing legislative initiatives, including the program targeting doctors. And much of the success of the NRCC's fundraising campaign relies on DeLay's popularity.

The NRCC devotes considerable time and resources to its telemarketing efforts, despite all of the media attention on blockbuster fundraisers with big political stars such as Texas Gov. George W. Bush (R). Telemarketing will account for as much as "one-third" of the $130 million-plus the NRCC expects to rake in this cycle. according to an informed GOP source.

Republican leaders also used a similar program during the last election cycle, although that too attracted complaints.

Late in 1998, the NRCC, using then-Speaker Newt Gingrich's (R-Ga.) name as the draw, placed tens of thousands of calls offering small-business owners a "national leadership award" while at the same time asking for a "one time" contribution to the party.

Mr. TAUZIN. And the gentleman asked unanimous consent that all written statements of our witnesses and of members be allowed into the record, without objection.

[Additional statements submitted for the record follow:]

PREPARED STATEMENT OF HON. STEVE LARGENT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OKLAHOMA

Mr. Chairman, thank you holding for this morning's hearing on H.R. 3100, the Know Your Caller Act, introduced by our colleague, Mr. Frelinghuysen, and H.R. 3180, the Telemarketing Victims Protection Act, introduced by our colleague, Mr. Salmon.

I believe that these two bills serve as a wake up call to the telemarketing industry. I, along with most Members of Congress, have received correspondence from constituents who are tired of receiving calls from telemarketers during what is traditionally considered "dinner time." They are further frustrated that when they go

to answer the phone, there is no one on the other end of the line because the call has been generated by an autodialer.

In 1991, congress enacted the Telephone Consumer Protection Act requiring telemarketers to follow "do not call" requests, restricting telemarketing calling hours from 8:00 a.m. to 9:00 p.m., instructing telemarketers to give the name of the solicitor, phone number and address where that person can be contacted, as well as providing for a private right of action.

In addition, the Federal Trade Commission has established telemarketing sales rules requiring telemarketers to make certain disclosures while banning fraudulent sales practices.

Despite these safeguards, consumers complaints continue to rise. From 1997 to 1999, complaints to the FTC have grown from 2,260 to 17,423.

As a consumer myself, I too am sometimes annoyed by telemarketers, and would hope that the telemarketing industry would do a better job in policing itself. However, I think it is important to note that this is an industry that employs 3.4 million people nationwide with annual revenues of $550 billion. It's apparent that millions of Americans take advantage of the opportunity to purchase goods and services offered by telemarketers and therefore, we should carefully consider the impact of restricting legitimate business practices.

One of my concerns is a provision included in both H.R. 3180 and H.R. 3100 that would make it illegal for someone making a telephone solicitation to circumvent a caller I.D. device. I believe that that is a laudable goal, however, it's my understanding that many telemarketing calls originate from T-1 or trunk lines that do not go through a local switch, thus creating technological barriers to display the originating phone number. To rectify this problem could cost millions of dollars. I'm interested to learn if there are other alternatives to allow consumers to determine who is calling without imposing an unfunded Federal mandate.

My other concern is that H.R. 3180 exempts non-profit organizations and political campaigns from the 5:00 p.m. to 7:00 p.m. do not call period. I suspect that people who don't want to be called by commercial telemarketers during these particular hours do not want to be called regardless of who is making the solicitation.

I commend the authors of these two bills for raising the awareness on this issue. And once again, I believe the legislation before us serves as a wake up call to the telemarketing industry that it needs to balance people's privacy with their own commercial interests.

Mr. Chairman, I look forward to hearing from our witnesses and I yield back.

PREPARED STATEMENT OF HON. BARBARA CUBIN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WYOMING

Thank you, Mr. Chairman, for holding this important legislative hearing on two bills that would further restrict the activities of telemarketing companies.

Although marketing and selling products over the telephone is an important way in which companies provide their customers with goods and services, there's no question that many people find the constant barrage of telemarketing phone calls one of the most annoying occurrences in our society today.

Legislative and regulatory measures have tried to protect consumers from abuses, but a few bad actors have given the telemarketing industry a black eye.

I understand the necessity of legislating additional measures to protect the public from telemarketing abuses.

It worries me, however, that the legislative initiatives before us today seem to blur the lines between a phone solicitor and someone who has a legitimate reason for not wanting their identity known when placing a phone call.

For example, my husband is a physician and frequently makes calls from our home in Wyoming to his patients.

We have a caller I.D. block on our phone because we don't necessarily want those who we call to know our home phone number. That, I'm sure, is not uncommon.

H.R. 3100 makes it unlawful for any person, in making any telephone solicitation, to interfere with or circumvent the ability of a caller I.D. service.

I would like the author of the legislation, who will be testifying on behalf of his bill this morning, to clarify where the line will be drawn between a telephone solicitor and a person who makes business calls from their house and wants their privacy protected.

Furthermore, how do the proper federal and state agencies go about regulating and enforcing these laws and drawing these seemingly narrow lines?

I have some of these same concerns regarding the other bill we are considering today.

Although both bills merit a great deal of attention and must be thoughtfully considered to protect consumers from intrusive and annoying telemarketers, this Subcommittee must take into consideration the sometimes ill-gotten side effects that this type of all-encompassing legislation brings about.

Mr. Chairman, I look forward to learning more about these issues and getting some answers to the questions I have just outlined.

Thank you. I yield back the balance of my time.

PREPARED STATEMENT OF HON. TOM BLILEY, CHAIRMAN, COMMITTEE ON COMMERCE

Thank you, Mr. Chairman.

For years this Committee has reviewed the regulation of unwanted solicitations to consumers. Of specific concern today is telemarketing. As you all know, this particular business practice has been, and continues to be, a controversial one.

There are thousands of reputable telemarketing companies that provide a benefit to consumers by offering a broad range of consumer options and opportunities. In fact, we will hear from one such company today.

Increasingly, however, consumers are concerned about their personal privacy, claiming that telemarketers are intruding into their homes. Moreover, we continue to hear stories about fraudulent telemarketing scams that separate citizens from their savings. The telemarketing complaints lodged with the Federal Trade Commission seem to underscore these concerns—in 1997 there were 2,260 complaints—in 1999, that number rose to 17,423.

We must be vigilant to ensure that the consumers' concerns for privacy and safety are addressed. However, we must be also be mindful of striking the appropriate balance between the consumers right to privacy and safety, and the telemarketer's legitimate business interests.

I look forward to learning more about the two bills that have been introduced in the House to address telemarketing. I remain interested in finding ways to protect consumers as well as our thriving commercial industry.

I thank today's witnesses in advance for their thoughtful testimony and I thank Mr. Tauzin for holding this hearing this morning.

PREPARED STATEMENT OF HON. GENE GREEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. Chairman: How many of us have sat down at night to have dinner with our families and had the phone ring?

Is that phone call a friend or family member? Probably not.

If you eat dinner between 5 p.m. and 7 p.m. at night then that call is probably a telemarketer.

We have all been asked to buy something over the phone from life insurance to burial plots.

For some people this type of information is useful and provides companies with an inexpensive way to reach a target consumer group.

However, for most consumers telemarketers represent a daily unavoidable annoyance.

But, consumers can take steps to limit the number of calls telemarketers make to their homes.

By purchasing caller identification systems and placing your name on industry "do-not-call" lists consumer can limit the number of calls they receive.

Unfortunately, attempts by consumers to limit sales calls using caller ID is running into problems.

The telemarketing industry, while not an official policy, is using readily available technology to hide their true identity from consumers caller ID devices.

I am pleased that Mr. Frelinghuysen's bill would make it illegal for telemarketing companies to "interfere or circumvent" caller ID.

I would not answer the phone if I knew I was about to get a sales pitch.

In addition, Mr. Salmon's legislation will reserve more of the dinner time for uninterrupted family time by not allowing telemarketing calls to start until after 7 p.m.

Currently, telemarketers can call your home between the hours of the 8 a.m. and 9 p.m.

Even though you can receive calls at just about anytime during the day it is the dinner hour when most sales calls are placed.

While I understand that 5 p.m. to 7 p.m. is the time telemarketers most likely to catch consumers.

Calls at this hour disrupt one of the only daily events that all family members are present.

This time is even more important given the fact that parents are working longer hours and seeing their families less and less.

Mr. Chairman, I support both bills because they empower our constituents with the ability to regulate whom they receive calls from.

I think these are both important pieces of legislation and I look forward to hearing the panel discussion on the benefits each will provide our constituents.

Thank you Mr. Chairman and I yield back the balance of my time.

Mr. TAUZIN. We will proceed now to hearing from our two colleagues. First of all, the Honorable Matt Salmon, who will be telling us a little bit about the Telemarketing Victim Protection Act, H.R. 3180. Mr. Salmon.

STATEMENT OF THE HON. MATT SALMON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA

Mr. SALMON. Thank you, Mr. Chairman. I commend you for bringing attention to this important matter and for your work on protecting consumers.

As you know, last year I introduced the Telemarketing Victims Protection Act of 1999, also known as the Do Not Disturb My Dinner Act. Actually, I think the biggest opponents of this legislation are the makers of Alka Seltzer and Pepto-Bismol because their sales flourish when their telemarketers call during the dinner hour. It is a joke.

Mr. TAUZIN. "Tums up" for that.

Mr. SALMON. It is also interesting to note, I was recently on a talk show program—popular radio talk show program back in Arizona; and part of my bill actually disallows the telemarketers from calling during the dinner hour, which is important to especially us family people with children who don't get an opportunity to see most of them during the day. Dinner hour is the only time we really get to talk, and it really is frustrating to be disturbed during that time.

But when I announced to him that this bill would disallow them from calling between the hours of 5 and 7, he said, I don't like your bill. I said, really? You think that is too intrusive, too heavy-handed government? He said, no, I want you to ban them 24 hours a day.

The bill directs the Federal Trade Commission to promulgate rules and regulations which require telemarketing firms to notify consumers that they are eligible to be placed on State do-not-call lists. If a consumer elects not to be called, the telemarketing firm must report that request to the appropriate State or national authority. Additionally, the legislation prohibits telemarketing firms from blocking the identity of their phone number in order to evade caller ID services.

Mr. Chairman, I have the same experience. My parents bought the call blocking device, and my father just had open heart surgery. I can't call him from Washington, DC. I have to call and wait. And it is sad that we have come to this, that people have to spend money out of their pockets to try to protect their privacy.

To that end, I also support Congressman Frelinghuysen's bill, which would achieve the same result.

Furthermore, the bill requires telemarketing firms to obtain and reconcile with their own lists the appropriate do-not-call list. It also amends the time of day telemarketers are allowed to call, as I mentioned earlier. Under current law, the telemarketers are prohibited from calling consumers from between the hours of 8 a.m. and after the hours of 9 p.m. As I mentioned, my bill would amend current law to prohibit pesky telemarketers from disturbing families during the dinner hours. My legislation does not affect organizations that are already exempt from the current law.

As you know, Congress has spent the last decade trying to help consumers cope with an industry which at times is out of control. The problem is twofold—consumers are being robbed of their money and privacy.

Despite Congress' efforts, great advances in technology have helped enable fraudulent telemarketers to continue to flourish. According to numerous sources, it is estimated that consumers lose $40 billion a year to fraudulent telemarketers. As fraudulent telemarketing operations become more sophisticated, so must our laws governing the industry.

Many consumers—especially seniors in my home State—have been victimized. The FTC has repeatedly reported that the elderly are disproportionately represented among victims of telemarketing fraud. If fact, it seems like Arizona has become a haven for the business of fraudulent telemarketers. According to the FBI, Arizona continues to be a high target area for illegal telemarketers due to the State's significant number of elderly residents. They believe that the average Arizona victim loses between $20,000 to $100,000.

Some telemarketing firms believe that my bill will not help combat fraud. They are wrong. My bill clearly redefines for telemarketers what is legal and what is fraudulent. If we arm law enforcement with clear, no-nonsense regulations, I believe that we will enhance their ability to crack down on telemarketing fraud.

The Telemarketing Victims Protection Act amends current Federal law to subject violators of FTC telemarketing sales rules to civil penalties of up to $10,000 per violation. And, finally, it requires the FTC to study and recommend appropriate penalties for telemarketers who repeatedly violate the law.

Opponents also argue that banning dinner time calls will only increase the number of post-dinner time calls. This is a ridiculous argument to not pass the bill. We shouldn't be held hostage to those who continually violate our privacy with unwarranted, unsolicited calls.

As I mentioned previously, it is just as important to protect consumers from assaults on their privacy. Even law-abiding telemarketing firms seem to push the limits of decency. Many States are beginning to recognize that telemarketers are invading people's privacy. Texas, California, Georgia, Indiana, Pennsylvania, Florida, Missouri, Colorado, New York, Idaho, Maryland and Pennsylvania, to name a few, have or are considering legislation to set up a do-not-call list.

Last year, the legislature in my home State reformed its laws governing in-State telemarketing. The new law, which will be described in greater detail later by Arizona Representative Jeff

Hatch-Miller, goes a long way to protecting the privacy of Arizonans. It prohibits telemarketers from call-blocking their number, limits automated random dialing, prohibits intentionally dialing cellular phones or pagers, prohibits phoning prerecorded messages without your prior consent, and requires these businesses to maintain a do-not-call list. As usual, meaningful reform begins at the State level and my bill will enhance these efforts.

Most consumers are not even aware of their rights dealing with professional telemarketers. A survey by the American Association of Retired Persons, AARP, found that seniors, on the whole, were less familiar with their consumer rights than younger people, and they were less suspecting of deceptive sales practices. For consumers who know their rights and ask to be placed on a do-not-call list, it usually takes months before their request is honored—if at all.

Invading the privacy of consumers doesn't seem to concern many of these telemarketing businesses. That is why I believe that my legislation, particularly the consumer information section, is desperately needed. The FTC, which has been working diligently on this matter, agrees with me. Recently, the FTC Chairman Robert Pitofsky wrote me to say that the Commission generally favors the underlying goal of H.R. 3180, which is to support consumer choice in the matter of whether to receive telemarketing calls.

The FTC is simply reflecting our Nation's desire to protect our privacy. Recently, AARP released findings in New York of a poll that showed the majority of people surveyed by an independent pollster favored stricter telemarketing regulation of telemarketers. In Minnesota, 86 percent of the 1,021 adults polled earlier this year said they favor a State-run do-not-call list that they could sign to keep telemarketers away. When contacted, Gary Winter, a 54-year-old teacher from Rochester, said, "I think our privacy is overly invaded. If I want to talk to someone, I will call them."

In Denver, polls overwhelmingly support legislation to curb telemarketing practices. In a Statewide poll conducted by Dan Jones & Associates, 85 percent of the respondents said they favor creating such a no-call list in Utah; and 84 percent indicated they would like to put their names on it.

The issue is neither partisan nor political. Leaders on all sides of the political spectrum have joined in the fight to help protect consumers against telemarketing abuses, including President Clinton and Republican Presidential nominee George W. Bush. And my bill is cosponsored by 40 percent on both sides of the aisle.

I believe this issue is best summarized by a recent Buffalo News editorial which said that "telemarketing has gotten completely out of control, with seemingly no outside regulation. It is an invasion of privacy and has made me a prisoner in my own home."

Again, I thank you for holding this important hearing; and I urge my colleagues on the committee to move forward with a comprehensive telecommunication privacy bill which provides consumers with the protections sought by Mr. Frelinghuysen and myself.

[The prepared statement of Hon. Matt Salmon follows:]

PREPARED STATEMENT OF HON. MATT SALMON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA

Mr. Chairman, I commend you for bringing attention to this important matter and for your work on protecting consumers. As you know, last year I introduced the Telemarketing Victims Protection Act of 1999, also known as the Do Not Disturb My Dinner Act. The bill directs the Federal Trade Commission (FTC) to promulgate rules and regulations which require telemarketing firms to notify consumers that they are eligible to be placed on national and state do-not-call lists. If a consumer elects not to be called, the telemarketing firm must report that request to the appropriate state or national authority. Additionally, the legislation prohibits telemarketing firms from blocking the identity of their phone number in order to evade caller ID devices. Furthermore, it requires telemarketing firms to obtain (and reconcile with their own lists) the appropriate do-not-call list. It also amends the time of day telemarketers are allowed to call consumers. Under current law, telemarketers are prohibited from calling consumers before 8 a.m. or after 9 p.m. My bill would amend current law to prohibit pesky telemarketers from disturbing families during dinner hours. My legislation does not affect organizations already exempt from current law.

As you know, Congress has spent the last decade trying to help consumers cope with an industry that, at times, is out of control. The problem is twofold—consumers are being robbed of their money and their privacy. Despite Congress' efforts, great advances in technology have enabled fraudulent telemarketers to continue to flourish. According to numerous sources, it is estimated that consumers lose $40 billion a year to fraudulent telemarketers. As fraudulent telemarketing operations become more sophisticated, so must our laws governing the industry.

Many consumers—especially seniors in my home state—have been victimized. The FTC has repeatedly reported that the elderly are disproportionately represented among victims of telemarketing fraud. In fact, it seems like Arizona has become a haven for the business of fraudulent telemarketers. According to the FBI, Arizona continues to be a high target area for illegal telemarketers due to the State's significant number of elderly residents. They believe that the average Arizona victim loses $20,000 to $100,000.

Some telemarketing firms believe that my bill will not help combat fraud. They are wrong. My bill clearly redefines for telemarketers what is legal and what is fraudulent. If we arm law enforcement with clear, no-nonsense regulations, I believe that we will enhance their ability to crack down on telemarketing fraud. The Telemarketing Victims Protection Act amends current federal law to subject violators of FTC telemarketing sales rules to civil penalties of up to $10,000 per violation. And finally, it requires the FTC to study and recommend appropriate penalties for telemarketers who repeatedly violate the law. Opponents also argue that banning dinner time calls will only increase the number of post-dinner time calls. This is a ridiculous argument not to pass this bill. We shouldn't be held hostage to those who continually violate our privacy with unwanted, unsolicited calls.

As I mentioned previously, it is just as important to protect consumers from assaults on their privacy. Even law-abiding telemarketing firms seem to push the limits of decency. Many states are beginning to recognize that telemarketers are invading people's privacy. Texas, California, Georgia, Indiana, Pennsylvania, Florida, Missouri, Colorado, New York, Idaho, Maryland, and Pennsylvania, to name a few, have or are considering legislation to set up a do-not-call list. Last year, the legislature in my home state reformed its laws governing in-state telemarketing. The new Arizona law, which will be described in greater detail by Arizona Representative Jeff Hatch-Miller, goes a long way to protecting the privacy of Arizonans. It prohibits telemarketers from call-blocking their number, limits automated random dialing, prohibits intentionally dialing cellular phones or pagers, prohibits phoning prerecorded messages without your prior consent, and requires these businesses to maintain a no-call list. As usual, meaningful reform begins at the state level and my bill will enhance these efforts.

Most consumers are not even aware of their current rights dealing with professional telemarketers. A survey by the American Association of Retired Persons (AARP) found that seniors, on the whole, were less familiar with their consumer rights than younger people, and they were less suspecting of deceptive sales practices. For consumers who know their rights and ask to be placed on a do-not-call list, it usually takes months before their request is honored—if at all.

Invading the privacy of consumers doesn't seem to concern many of these telemarketing businesses. That is why I believe that my legislation, particularly the consumer information section, is desperately needed. The FTC, which has been working diligently on this matter, agrees with me. Recently, the FTC Chairman

Robert Pitofsky wrote me to say that "the Commission generally favors the underlying goal of H.R. 3180, which is to support consumer choice in the matter of whether to receive telemarketing calls."

The FTC is simply reflecting our nation's rising desire to protect our privacy. Recently, AARP released findings in New York of a poll that showed the majority of people surveyed by an independent pollster favored stricter regulation of telemarketers. In Minnesota, eighty-six percent of the 1,021 adults polled earlier this year said they favor establishing a state-run "don't call" list that they could sign to keep telemarketers away. When contacted, Gary Winter, a 54-year-old teacher from Rochester said "I think our privacy is overly invaded. If I want to talk to someone, I'll call them."

In Denver, polls overwhelmingly support legislation to curb telemarketing practices. And, in a statewide Deseret News/KSL-TV poll conducted by Dan Jones & Associates, 85 percent of the respondents said they favor creating such a no-call list in Utah—and 84 percent indicated they would like to put their names on it.

The issue is neither partisan nor political. Leaders on all sides of the political spectrum have joined in the fight to help protect consumers against telemarketing abuses—including President Clinton and Republican Presidential nominee George W. Bush. And, my bill is cosponsored by 40 members from both sides of the aisle. I believe the issue is best summarized by a recent Buffalo News editorial which said that telemarketing "has gotten completely out of control, with seemingly no outside regulation. It is an invasion of privacy and has made me a prisoner in my own home." Again, I thank you for holding this important hearing and I urge my colleagues on the committee to pass these bills.

Mr. TAUZIN. Thank you, Matt.

Now we will hear about the Know Your Caller Act of 1999. Rodney.

STATEMENT OF HON. RODNEY FRELINGHUYSEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. FRELINGHUYSEN. Thank you, Mr. Chairman and members, for the opportunity to appear before your committee along with my colleague, Congressman Salmon, to talk in support of my bill H.R. 3100, the Know Your Caller Act.

As you know, Mr. Chairman, our bills are similar. We hope we can work out the differences. I believe the bills are straightforward and provide a simple but important consumer protection.

Mr. Chairman, here is a caller ID box. This happens to be a Bell Atlantic caller ID box. Incidentally, 30 percent of Bell Atlantic customers, or about 8 million of them, have these caller ID boxes, so a lot of people have them.

Many consumers or constituents purchase and pay for this service for several reasons: first and foremost, to protect their privacy; second, to provide for their safety and security by identifying incoming calls and to allow them the opportunity to decide before picking up the receiver whether they want to answer that call or not.

But, guess what? Some of the most frequent calls from those telemarketers appear with the message "Out of the Area." Mr. Chairman, telemarketing is a commercial enterprise, as we know. As such, what would be the reason for not disclosing your business telephone number? There simply is none. I believe that all commercial enterprises that use the phone to advertise or sell their services, to solicit contributions, to encourage the purchase of property or goods, or for any commercial purpose should be required to have the name of their business and their business telephone number disclosed on caller ID boxes. Telemarketing enterprises block out

caller ID. Yet these same companies know your name, your address, and your telephone number. Isn't it only fair that they share their company name and telephone number so a person can make sure that they are actually legitimate callers?

Also, if you are like me and politely ask to have your name removed from their list, I think you should also be able to track the name and number of these callers to ensure that they don't call back again. My legislation will simply require any person making a telephone solicitation to identify on their caller ID devices their names and their telephone numbers.

Mr. Chairman, this legislation will help separate the legitimate telemarketers from fraudulent telemarketers. While a majority of them are legitimate business people attempting to sell a particular product or service, there are some unscrupulous individuals and companies violating telemarketing rules and scamming consumers.

Consumers, as we are aware, pay a monthly fee to subscribe to the caller ID service because they want to protect their privacy and their pocketbooks. But they have little recourse because most telemarketers intentionally block their identity from being transmitted to caller ID devices.

Mr. Chairman, we already require telemarketers to identify themselves over the telephone and via telephone fax transmissions. This bill would extend that protection by giving full disclosure to consumers with caller ID devices.

H.R. 3100 won't solve all problems, but it will provide some additional consumer protection.

In closing, when someone knocks at your door, don't you usually look out the window to see who it is before answering it? Well, caller ID acts as a window to let you know who is calling before you answer the telephone.

Mr. Chairman, I thank you for the public service you and your committee are rendering by having this hearing and encourage to you take a serious look at both of our pieces of legislation.

[The prepared statement of Hon. Rodney Frelinghuysen follows:]

PREPARED STATEMENT OF HON. RODNEY P. FRELINGHUYSEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Thank you, Chairman Tauzin, for the opportunity to appear before your subcommittee today along with my colleague, Congressman Salmon, to testify in support of my bill, H.R. 3100, the Know Your Caller Act. As you know, Mr. Chairman, Congressman Salmon and I have similar bills pending before your subcommittee. Both bills are very straightforward, and provide a simple but important consumer protection. It is my hope that Congressman Salmon and I can work out any small differences between our two bills, and provide you with one bill that will be favorably considered by your subcommittee.

Mr. Chairman, here is a "caller ID box." Many consumers purchase and pay for this service for several reasons: to protect their privacy, to provide security by identifying an incoming call and to allow them the opportunity to decide before picking up the receiver whether or not to answer the call.

But, guess what? Some of the most frequent calls—those from telemarketers—appear with the message "Out of the Area." Mr. Chairman, telemarketing is a commercial enterprise. As such, what would be the reason for not disclosing your businesses telephone number? There simply is none. I believe that all commercial enterprises that use the phone to advertise or sell their services, to solicit contributions, to encourage the purchase of property or goods, or for any other commercial purpose, *should* be required to have the name of their business and their business telephone number disclosed on caller ID boxes. Telemarketing enterprises block out caller ID. Yet, these same companies know *your* name, *your* address and *your* tele-

phone number. Isn't it only fair that they share *their* company name and telephone number so a person can make sure that they are a legitimate company.

Also, if you are like me, and politely ask to have your name removed from their list, I think you should also be able to track the name and number of these callers to ensure that they don't call back again. My legislation will simply require any person making a telephone solicitation to identify on caller ID devices their names and their telephone numbers.

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Consumers, pay a monthly service fee to subscribe to caller identification service because they want to protect their privacy and their pocketbooks. But, they have little recourse because most telemarketers intentionally block their identity from being transmitted to caller ID devices.

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In closing, when someone knocks at your door, don't you usually look out the window to see who it is before answering it? Well, caller ID acts as a window to let you know who is calling before you answer the telephone.

Mr. Chairman, thank you again for allowing me to testify before you today and I hope you will favorably consider my proposal.

Mr. TAUZIN. Thank you very much, Rodney.

Let me start by recognizing myself for 5 minutes and members in order and see if we can understand a little bit more about the bills and the underlying reasons and the philosophy of the two bills. They are a little different.

Obviously, Matt, you have got some of Rodney's protections in your own bill, but you go further by allowing the creation of the State-run don't call list. Let me ask you, first of all, the bill doesn't start with the presumption that people can't call you during those hours. It starts with the presumption that they can unless you have said no, unless you have put your name on a list that says don't call within these hours. Right?

Mr. SALMON. Right.

Mr. TAUZIN. So it is, essentially, an opt-out that the industry can—the telemarketers can call me unless I decide I want out, I don't want you to call now, put my name on the State-run list, is that right?

Mr. SALMON. Well, if they put themselves on a do-not-call list, then the telemarketer cannot call for any reason at any time. My bill currently under Federal law or under FTC regulations, they cannot call before 8 in the morning at all, they cannot call after 9 at all, anybody, whether they are on a do-not-call list or not. My bill would also add to those requirements the dinner hour.

Mr. TAUZIN. So in that hour it is an absolute prohibition against calling.

Mr. SALMON. An absolute prohibition.

Mr. TAUZIN. Suppose I don't mind, I want people to call me then, your bill would prohibit that?

Mr. SALMON. During the dinner hour, it would.

Mr. TAUZIN. Who operates the State do-not-call list and who pays for it?

Mr. SALMON. The State do-not-call lists, in different States they are handled differently. Some are handled by nonprofit organiza-

tions; some are handled by the State entities themselves. But I think it would work hand in hand with the States that do set up.

Mr. TAUZIN. In the case, though, where you are federally mandating it, you know we do have a provision that we were very successful in passing in Congress. We were not going to mandate the cost on the States without putting up the money. Does this create a cost on the State that we may have to fund?

Mr. SALMON. It doesn't tell the States how they have to set up a do-not-call system, so it doesn't say that you have to set up——

Mr. TAUZIN. It may or may not.

Mr. SALMON. Right.

Mr. TAUZIN. The phone book itself is a fairly good example—in fact, it was used as an example of an opt-out system in our recent privacy seminars in Lansdowne. The phone book was described as essentially that, as a great opt-out mechanism. Our names are all in that phone book. Our phone numbers, our addresses are in that phone book. And the phone company doesn't have to call each one of us and ask us and fill out forms and we don't have to go through an expensive and very difficult process of getting our names in the phone book. In fact, we get upset when they leave us out, which happened in my own community just recently and the—some of the local businesses were left out. They raised hell. They want to be in that phone book.

But any time I want I can call them up and say I don't want to be in the next phone book. I want an unlisted number. I want my number listed, but I don't want to you have my address listed. I don't want people knocking on my door.

So it is a very good opt-out system. Why doesn't that work? I want to keep people from calling me at any hours of the day, I can just get an unlisted number and give the number out to my friends.

Mr. SALMON. You may want to be accessed by people in your church, coworkers. You may not know exactly everybody that may have a reason to call you at any given point in time.

I think that the point here is we do have regulations in virtually every city in America as far as sales, door-to-door sales, when they can approach your home, when they can't. With the new technologies actually knocking on a person's door isn't required anymore, but you can call them on the phone.

Mr. TAUZIN. Well, Rodney, you mentioned that. So let me switch to you very quickly.

Mr. FRELINGHUYSEN. My bill only requires telemarketers not to intentionally interfere with these devices. People buy caller ID service, and they assume this is going to afford them some protection.

Mr. TAUZIN. I have one at home, and I am really upset whenever I see unavailable or private call or out of market. I can't tell who is calling me.

Mr. FRELINGHUYSEN. But there are a lot of other frustrations I would like you to address. You pay for this service. This is primarily what I am aiming at.

Mr. TAUZIN. If I pay for the right to look out the window and see who is knocking at my door, I want to identify them. You can't come in wearing a mask. You can't come in hooded. I have to be able to see who you are before I let you in on my phone in this

case. We often do that in this committee. We try—as we think through these new telemarketing e-commerce issues, we try to think about how they apply in the brick-and-mortar world and try to make rules that are comparable in the new electronic world.

In this case, what you are saying is, sure, people can knock on my door on most hours of the day. Some communities have prohibitions against knocking on your door at certain hours. A lot of that has to do with safety and interference and privacy concerns. What you are saying is, in all cases where I paid for the right to know who is calling me, I ought to be able to know that; and no one ought to be able to block that.

You also made a very interesting statement that you can't imagine a business who is trying to sell products that wouldn't want me to know who they are. But there are a lot of businesses like that, aren't there?

I am told of a business, for example, that calls our homes just to find out if we are there, if we are answering the phone, and they hang up quickly, and building data bases which they then sell of people who are at home between the hours of 8 and 9 and 9 and 10 and 10 and 12 and 12 and 1. Those data bases become valuable data bases for whom? For other telemarketers who then can target the calls to people they know are home. So there is all——

Mr. FRELINGHUYSEN. Often, there is no voice on the other end of the phone, which is even worse.

Mr. TAUZIN. It is like the British Columbia machine that was calling me. I was totally helpless there because the machine wouldn't answer the phone so I could find out what was going on. If I didn't have the help of law enforcement, I would never have known whether I was being scammed or whether my phone number was being co-opted to conduct a scam on someone else and whether I would wake up 1 day to read a headline that Congressman Tauzin's phone has been used to scam 20 senior citizens. It could have happened. I didn't know if it was happening.

So we have got some real problems here that I think your two bills are attempting to address and going to wrap up. Then I will move on.

Mr. SALMON. I want to further address the question about—you asked about, doesn't the phone book actually provide the kind of benefit that we need to enforce the privacy? I personally have two phone lines at my home. One of them is listed. The other one is not listed in the phone book. We still get telemarketing known calls on the unlisted numbers.

Mr. TAUZIN. Because of rotary dial. They just dial every number. The computer just dials every conceivable number in that area code and therefore picks up your unlisted number.

Mr. SALMON. My unlisted number gets nearly as many of these unwanted unsolicited calls as my listed.

Mr. FRELINGHUYSEN. Mr. Sawyer recognized the issue—I think it was more than a rhetorical question—my legislation does not affect organizations that are already exempt under current law. So in terms of nonprofits, it would not interfere with nonprofits.

Mr. TAUZIN. I will give Mr. Sawyer a chance right now. Mr. Sawyer is recognized for 5 minutes.

Mr. SAWYER. Thank you, Mr. Chairman. Those were really more directed at the FTC and the FCC.

Mr. FRELINGHUYSEN. Excuse me.

Mr. SAWYER. But I would expect that you would have done exactly that.

How many States maintain do-not-call lists?

Mr. SALMON. There are very few currently that maintain do-not-call lists.

Mr. TAUZIN. Somebody is saying 11. Is that right?

Mr. SAWYER. Do you have any sense of——

Mr. SALMON. There are probably about another 10 to 15 that are considering.

Mr. SAWYER. Do you have any sense of how those are paid for? If we look to the brick-and-mortar counterpart, when you opt out of the phone book you pay a fee for being unlisted in order to maintain the work that it takes to do that. It would seem to me that is one possible source of a revenue stream to sustain a do-not-call list. Do you know whether that is done in any——

Mr. SALMON. In our own State it is maintained by the Secretary of State's Office. So it is actually covered for by the State government.

Mr. SAWYER. I see. For either one of you, are there particular areas that we ought to look for where there will be problems in reconciling your two pieces of legislation?

Mr. FRELINGHUYSEN. I think—generally, I wouldn't want to characterize my colleague's bill as somewhat more restricted than mine, but I think we can work out some differences. I think we are on the same path. We have the same goals.

Mr. SALMON. The overall goal is privacy and invasion of privacy, and we absolutely are more than happy to work together to come up with something that works hand in hand together. Absolutely.

Mr. SAWYER. Thank you, Mr. Chairman.

Mr. TAUZIN. Thank you, Mr. Sawyer.

The Chair recognizes the gentleman from Georgia, Mr. Deal, for a round of questions.

Mr. DEAL. Thank you, Mr. Tauzin. I would yield to my colleague, Mrs. Cubin.

Mrs. CUBIN. Thank you very much, Mr. Deal.

I have but one question. As we are sitting here today, everyone is well aware that we are talking about telephone solicitors, someone trying to sell you something. But sometimes when we pass legislation there are unintended consequences. I just wanted to ask if you, both of you, think that this is something that might need to be clarified in the language of the bill or if it is something that would have an effect that you would intend to happen.

As you know, I am married to a physician; and a lot of times he calls from our home to patients' homes. Sometimes those are return calls, and sometimes he calls to just check and see how the patients are doing. And if everybody—if all of his patients had his phone number, I can tell you he would never have a day off and he would probably never get a full night's sleep. So I wanted to make sure that there were some exceptions like that that were included in your legislation or find out if there were.

Mr. SALMON. If I can start, under current law, this only affects telemarketing firms.

Mrs. CUBIN. And in Rodney's bill the language says in making any telephone—in any telephone solicitation. I just—again, I just wanted to make sure that the doctor calling to check and see how the patient is—and I don't know, sometimes doctors—Wyoming they don't, but I know sometimes they do charge for that call. I just want to make sure that that isn't an unintended consequence.

Mr. FRELINGHUYSEN. Private citizens can call block, and I think there is a difference between commercial telemarketers and, you know, individual physicians and professionals. Again, I think there can be a distinction made.

Mrs. CUBIN. I would be more comfortable if a distinction were made in the legislation. Because I do think there are some times—and I am all in favor of the privacy that you are trying to achieve, absolutely. I just get furious when I get those calls. But I just want to make sure that people aren't affected that don't want to be or need not to be. Thank you.

Thank you, Mr. Chairman. I yield back to Mr. Deal.

Mr. DEAL. I have two further questions or comments.

First of all, I think any time we undertake Federal legislation on any issue there are two questions we should ask. The first is, is it necessary that the Federal Government act, as opposed to the States acting? We heard the comment about 11 States—and I believe mine is one of those—that has State legislation. I would like to hear your comments a little more detailed as to why States cannot adequately regulate this. I assume part of this is across the State lines interstate commerce.

The second question is, we do have Federal regulatory agencies that supposedly can adapt regulations and rules to meet changing situations. And we are going to hear from the FTC I believe in just a minute. Would you comment on whether or not you think there is adequate statutory authority currently to address this by rule and regulation; and, if not, why is your legislation necessary as a basis for further action?

Mr. FRELINGHUYSEN. I am not qualified enough in the law to tell you. I think the FTC could tell you. But all I can tell you is that our constituents who pay for these devices feel that these devices are being thwarted, and I assume that the Commission can testify actually to what exists now and substantiate that this is a national issue. And nothing in my bill would preempt States, in some cases, enacting more restrictive laws. The Commission has jurisdiction, but I just don't know enough of their mission.

Mr. SALMON. The Congress has historically given this kind of guidance to the FTC. The current laws under which the FTC operates regarding telemarketing was promulgated by statute. All I can say is that the FTC people that we have spoken with are very supportive of the legislation that I have introduced. Obviously, there are some gaps, some holes, because people's privacy is still being invaded.

As far as the States rights issue, I mean, having served on the State legislature—and I think I am just about as conservative on that issue as anybody here—and having voted a few years ago for the unfunded Federal mandates legislation, I very much am cog-

nizant of that issue. But we do have interstate commerce going on. And the States really cannot do anything when somebody from Texas or British Columbia is calling Arizona. The Federal Government has to become involved.

Mr. DEAL. One other quick question: In the event States do not set up a do-not-call list, does your legislation mandate a Federal do-not-call list?

Mr. SALMON. No.

Mr. DEAL. Thank you, Mr. Chairman.

Mr. TAUZIN. Thank the gentleman.

The Chair recognizes the gentleman from Texas, Mr. Green.

Mr. GREEN. Thank you, Mr. Chairman.

And to follow up my colleague from Wyoming, the concern about physicians, my wife is a high school teacher, and one of her requirements is that she call parents. And she will intentionally not call from our house because of the caller ID.

Mr. FRELINGHUYSEN. This is only for commercial telemarketers. It is not for individuals, private citizens.

Mr. GREEN. Currently, I have a similar system on the phone system I have in Houston to block calls that are not ID'd.

Mr. SALMON. It is not offered in all jurisdictions, but I know it is the same way in my State. In fact, I think Congressman Tauzin and myself were just talking about that dilemma—I don't know if you have ever faced it—but my folks have purchased that because they are sick and tired of these telemarketers——

Mr. FRELINGHUYSEN. You pay extra for it.

Mr. SALMON. [continuing] the other debate. Why should she have to do that? But now I can't from—try to dial from Washington DC or from your Washington office to one of those phones, and you won't be able to get through.

Mr. GREEN. So we block ours?

Mr. SALMON. Yeah, for some reason, I can't call from my office, and Congressman Tauzin is saying the same thing. My father just recently had open heart surgery, and I have been trying to get in contact with them. I can't call from the phone here.

Mr. GREEN. Because we block our numbers going out.

Mr. SALMON. Right.

Mr. GREEN. Our district offices aren't that way, because I have returned phone calls. And the constituents—the phone—when they say U.S. Government, they think I am the IRS.

Mr. SALMON. It is also interesting—one of the arguments I hear back from the people within the industry is, well, hey, if they don't want the phone call—the phone book issue has been brought up, and I think I have dealt with that. The other one is, just don't answer your phone. If you are like me—I have teenagers. They are out all over the place. Are they calling because they are in need or are they calling because they have a problem? I have elderly parents, one that has just had open heart surgery. You can't just not answer the phone.

Mr. GREEN. When your children are past their teenage years you are still wondering if that is them calling you.

Rodney, in your bill, in one of the parts of it, it says that do-not-call lists are maintained by the Direct Marketing Association, utilized only by DMA members. More specifically, are the DMA mem-

bers required to use that do-not-call list so they don't keep contacting customers who have been added to that list? I was under an impression that list was available, but telemarketers aren't required to use that list.

Mr. FRELINGHUYSEN. It is self-regulating. It is not required.

Mr. GREEN. Because over a period of time—I don't know if you have had heard from your constituents, but I have had people contact me, and I have asked to be taken off the list. I dump calls, and then I continue to get them. So what we do is end up going to the—saying we will contact the FTC for you, and if you will do it, we will so that telemarketers—direct telemarketers are not required to use that list as a membership of their organization.

Mr. FRELINGHUYSEN. Legitimate businesses subscribe to that list. We are after the fraudulent, illegal, illegitimate businesses that totally ignore that list.

Mr. GREEN. Like my colleague again from Wyoming, I understand the frustration because—not only personally but also from our constituents. And, hopefully, we can put the two bills together, not unlike Congressman Wilson and I did with our spam bills. And thank you, Mr. Chairman, for that. Because we have full committee mark-up for that and put the bills together so we can address it.

Thank you, Mr. Chairman. I yield back.

Mr. TAUZIN. Thank you, Mr. Green.

Let me announce to the committee that the spam language apparently has been worked out. We are prepared to mark it up in full committee tomorrow. So we might be prepared to deal with that very important issue tomorrow.

The Chair is pleased now to welcome the gentleman from Illinois, Mr. Shimkus, for a round of questions.

Mr. SHIMKUS. Thank you, Mr. Chairman. It is great to be with my colleague here, and I appreciate their legislation.

I, too, like most consumers today, have the caller ID; and I, like most consumers, they don't know who is calling us. But I have—my phone number is listed; and, as Congressman Ehrlich and I were talking, I probably receive less calls now today as a Member of Congress at home——

Mrs. CUBIN. Because you are never home.

Mr. SHIMKUS. [continuing] than I did with my other employment. But this raised the issue, and I know for sure that the calls originating from here to my home in Illinois are blocked. And the industry has been telling me that call—and, Matt, you were formerly in this business, is that correct?—calls originating on a telephone service outside the consumer's local area which are routed over a switchline that is different from the consumer's local service provider will not allow the caller's name or any other identification to be displayed. In your research of legislation—obviously, I believe technology can overcome all these obstacles, but the industry at least is claiming that there are some obstacles in technology to do this because of the, you know, the different service areas.

Mr. SALMON. My personal feeling is that we can—I know I worked in telecommunications for 13 years before I came to Congress, and these are issues that we can resolve. Technologically, we can resolve these issues. I think this debate is probably—to me, it is a cop-out just to say we can't come up with a solution. We are

smart enough to come up with a solution. I think the technology exists that we can solve the problem.

I mean, if worse came to worse, one of the reasons that their calls are not identifiable is because they haven't an automated system that does all the phone calling. If they go back to the calling one by one where they have got the line of people calling on the phones, those are identifiable. So, you know, I really believe it is just a cop-out to say technologically we can't make it happen. I think we can—if we put our heads together, we can make it happen.

Mr. SHIMKUS. And, Congressman Frelinghuysen, can you talk about in your bill H.R. 3100 the difference between the intentionally interfere with or unintentionally interfere with?

Mr. FRELINGHUYSEN. The caller ID service is available in some places; in some places, it is not available.

Mr. SHIMKUS. So that was the intent of the language, just the availability?

Mr. FRELINGHUYSEN. Some parts of the country have this big time, and others do not.

Mr. SALMON. That is one of the reasons that I have included some other language in addition to the just you can't block your caller ID. Why have we gotten to that point in our society if you really don't want your privacy invaded you have to spend money on a monthly basis to protect your privacy?

Mr. TAUZIN. Would the gentleman yield?

Mr. SHIMKUS. I would.

Mr. TAUZIN. Just to point out, too, we passed Federal laws that gave us the right to call people and tell them not to call us. But if we can't know who it is that is calling us so that we can stop the calls when we want to, then it is a right without a remedy, and we need to think about that. What we have done is we have given the people a right they can't use.

I have also got another question that popped up in my mind out of your questions. Mr. Shimkus, if you don't mind, let me ask it.

Does either one of your bills cover political solicitations? There is a new phenomena in political campaigning of computer-generated calls where people's homes are dialed, and if you are home then a real person gets on the phone. If you are not, then a recorded message is left on your machine asking you to vote for someone. And it is—often, it is a little fraudulent. Very often, it is—the message is made to sound like a real one, that this is the President of the United States, and I am calling to you tell you I am on the ballot tomorrow and sure appreciate—people say, the President called me. You know, I got to go vote.

It is a little kind—there is a little kind of fraud involved in the way those calls are generated. Either one touches political solicitations?

Mr. FRELINGHUYSEN. Evidently, it is exempt under the law.

Mr. TAUZIN. First amendment problem, right?

Mr. SALMON. My bill doesn't change any of the existing laws. You might want to talk to the FTC folks.

Mr. TAUZIN. We will.

Mr. SHIMKUS. But the issue is all the stuff that we talked about would be, except under your time constraints, would be legal if they would just identify their phone number. Truth in advertising.

Mr. FRELINGHUYSEN. We want to know where they are calling from, who they are. They know everything about us.

Mr. SHIMKUS. Thank you, Mr. Chairman. I yield back.

Mr. TAUZIN. I thank the gentleman.

The Chair recognizes in her own time the gentlelady, Mrs. Cubin, if she would like some.

Ms. CUBIN. [Shaking head].

Mr. TAUZIN. Thank the gentlelady.

The gentleman from Oklahoma, Mr. Largent, for a round of questions.

Mr. LARGENT. Thank you, Mr. Chairman I have an opening statement I would like to submit for the record.

Mr. TAUZIN. Without objection, opening statements are part of the record.

Matt and Rod, let me ask you a question, if you were to say the principal problem that you are trying to address with each of your pieces of legislation is the fact that the caller ID is blocked or is it the calls themselves?

Mr. SALMON. I will answer that first.

My problem is just that there are a lot of people out there that don't want to be bothered, and their requests ought to be honored. So, in addition to knowing that who is calling, if they request they are not called anymore, I would like to see that they are not called.

The other issue again is that right now the hours that telemarketers are prohibited by current statute from calling is before 8 in the morning for obvious reasons and after 9 p.m. I am trying to add to that the hours of 5 to 7. Steve, you know as well I as I do with the busy schedules that we have, that every family has, the only time that you ever really get a chance to sit down and chat with your children or with your family or with your spouse is during the dinner hour. And yet you get—that is the time that they call because they know you are there. So between the hours of 5 to 7 you get 45 different telemarketers calls and you got indigestion after you are done. So I am trying to add to the hours the hours of 5 to 7 just to make it a little bit more user friendly.

Mr. FRELINGHUYSEN. My response if I can give it to you as well, our constituents or consumers should have a right to pick up the call or not. And this bill, our bills are basically saying people ought to identify who they are, then have you the choice as to whether you want to pick up that call or not.

Mr. LARGENT. Is it your understanding, Rod, that these telemarketers are intentionally blocking their caller ID.

Mr. FRELINGHUYSEN. Absolutely. That is my gut feeling. I think that is what the evidence shows.

Mr. LARGENT. That 100 percent of them are blocking.

Mr. FRELINGHUYSEN. So I think what we are talking about, there are some that are abiding by the rules, then there are others out there just doing their own thing.

Mr. LARGENT. A 100 percent of the ones that are blocked, they are doing it intentionally.

Mr. SALMON. Some of them really truly are technological reasons. They have been using that I think really as a cop out. I think as I addressed earlier, I think we can come up with some technical solutions but to their defense part of the problem is technical.

Mr. TAUZIN. Would the gentleman yield? For example, the call from your office to a constituent would show up as a blocked caller ID. The reason is they are not identifiable to your office right now. That could maybe get cured but in fact if the gentleman would further yield we mention as a real problem my mother and Matt's father purchased blocking devices through their local telephone company to stop these calls from coming in because the call from my office is unavailable. If I call mom to find out, you know, who died there this week and at home that I would like to keep up with those kind of things, that with my constituents she has been my best eyes and ears on the ground, she can't receive my call because it is unintentionally blocked. So we have got both problems.

Mr. LARGENT. That is what your mother is telling you. She may be——

Mr. SALMON. They actually changed their address.

Mr. TAUZIN. It could well be. I don't know.

Mr. LARGENT. The reason I ask that question is it was my understanding that some of these calls you can't identify them because they are on T-1 lines or that sort of thing, and that it is just maybe there are technological solutions that will cost real dollars to fix and perhaps it would. I mean, I guess I am thinking, you know, when I don't want to take any phone calls I take my phone off the hook. It is a real easy solution. I turn my cell phone off. You know I get more disgruntled with—I mean I literally spend more time taking my junk mail out of my mailbox into the trash can than answering solicitations over the phone. I mean, I could get disability for, you know, my back carrying all this junk that I get out of my mailbox.

Mr. TAUZIN. If you can make it through the NFL I know you can carry a little junk mail.

Mr. LARGENT. Carrying the mail. But so I guess I'm just trying to seek some balance here. I mean I can appreciate the fact that, you know, I get those calls too. And when I get them I say no, thanks, and I hang up and it is the end of the story and it takes me 5 seconds. I keep going back to what Nathan said. I wonder if this is something that really requires Federal intervention here and perhaps we will hear that from our next panel. So I appreciate you having this hearing because we get constituent calls, I get those calls in my home as well. So I look forward to hearing the next panel.

Mr. TAUZIN. I thank the gentleman. The Chair now is pleased to recognize the gentleman from Maryland, Mr. Ehrlich, for a round of questions.

Mr. EHRLICH. Two real brief questions to you and maybe the chairman, I will direct it to Matt and Rod and you, Chairman. One question, Matt, you talked about whether the technology exists. You characterize it a cop out. Do you know for a fact that technology exists, to follow up to John's question, or is that just your speculation?

Mr. SALMON. Yes, I know for a fact that technology exists. It may be right now costly, but, yes, it exists. Absolutely.

Mr. EHRLICH. Intuitively——

Mr. SALMON. One example that I used before, yeah, the telemarketers could actually go back to physically dialing on individual phones instead of these automated systems. And yes, they could comply. It might cost them some money to comply with it, but they could comply.

Mr. EHRLICH. I do not know the answer to that in regard I guess to the constitutional history of calling within prohibited hours and expanding, which is what this bill does, expanding it in the statutory prohibition, what has been the commerce clause foundational challenge to this prohibition and do you not think expanding it to dinner time, which I understand is your purpose, would give rise clearly to a court challenge? Are you familiar with I guess the Constitutional history of case law?

Mr. SALMON. I just know that for the last several years we have already had restrictions in place on the hours per the FTC guidelines regulations. You cannot call before 8 in the morning, you cannot call after 9 p.m. So the precedence already exists for limiting the times that they can call. I can't speak to whether or not there have been challenges.

Mr. TAUZIN. Would the gentleman yield? That is the point. I don't think there have been challenges.

Mr. EHRLICH. I guess we will hear from the expert testimony.

Mr. TAUZIN. But keep in mind that commercial free speech is generally treated differently under the Constitution than political free speech. So there is a little more latitude.

Mr. EHRLICH. Clearly you have a little more authority to do that given the easier standard to meet. But when you now take that extra yard and——

Mr. TAUZIN. Would the gentleman yield again? I am not sure it is clear. I think there could be a constitutional challenge even in the commercial free speech area. We are going to get some research done on it. But what I am saying is that it would clearly pose a problem if you went to trying to regulate political speech as well, which we are not doing in this bill.

Mr. EHRLICH. But even commercial speech in this context could raise a problem. I yield back.

Mr. TAUZIN. I thank the gentleman. Let me thank both of our friends for their efforts. Let me tell you both as you complete your session with our committee, we are not through with this issue. You have raised some very intriguing concepts and some very intriguing subjects for further debate. I would urge all the members to read these two bills, think them through, get with their staffs and maybe we will have another little session with the committee where we can get some thoughts from all of you as to how you might like to proceed and whether you want to see these two bills somehow merged into a single concept that makes some sense. But I have to agree with you I think you touched a very hot button here that people across America are going to obviously appreciate us paying a lot more attention to than perhaps we have so for. I thank you both for raising the level of interest in these subjects to our committee. Thank you very much.

The Chair is now pleased to welcome the second panel, beginning with Ms. Eileen Harrington, who is Assistant Director of Marketing Practices for the FTC. And we are pleased to welcome the honorable Jeff Hatch-Miller from the Arizona House of Representative, who will give us some idea of what is happening on the State level. Then Ms. Virginia Tierney, a Member of the Board of Directors of the American Association of Retired Persons, which has a big interest in this issue; and Mr. Steven Brubaker, the Senior Vice President of Operations of InfoCision Management Corporation, who will be speaking on behalf of the American Telemarketers Association, one of the organizations of the telemarketers in our country who try their best as I can understand it to self regulate the business practices of telemarketers. We are pleased to have you all here.

We will begin with the FTC. Welcome again, Eileen, we are always pleased to have you and we are always extraordinarily educated by your testimony. We appreciate your testimony. Remember all of your written statements are part of our record, if you can use your 5 minutes to summarize for us the high points of your testimony.

Ms. Harrington.

STATEMENTS OF EILEEN HARRINGTON, ASSISTANT DIRECTOR OF MARKETING PRACTICES, FEDERAL TRADE COMMISSION; THE HONORABLE JEFF HATCH-MILLER, ARIZONA HOUSE OF REPRESENTATIVES; VIRGINIA TIERNEY, MEMBER OF BOARD OF DIRECTORS, AMERICAN ASSOCIATION OF RETIRED PERSONS; AND STEVEN R. BRUBACHER, SENIOR VICE PRESIDENT FOR OPERATIONS, INFOCISION MANAGEMENT CORPORATION, REPRESENTING AMERICAN TELEMARKETERS ASSOCIATION

Ms. HARRINGTON. Thank you. I want to begin by wishing you happy birthday. I know it is not until tomorrow, but I wanted to tell you.

Mr. TAUZIN. You realize what you have done: I am going to get all kind of calls between 5 and 7 p.m.

Ms. HARRINGTON. I found turning 40 to be really traumatic and I hope it is easier for you.

Mr. TAUZIN. You are very sweet.

Ms. HARRINGTON. I am pleased to be here again before the committee to present the views of the Federal Trade Commission on this issue, and I am going to comment a little bit I think on some of the issues that were raised in the first round of questioning as I summarize our views.

First of all, the Congress did a very good job of defining telemarketing in the act that directed the FTC to issue its telemarketing sales rule. That definition is tied to phone calls that are part of a plan, program or campaign designed to induce the sale of goods or services. And so questions, for example, from Mrs. Cubin about calls from her husband the physician would not be and from Mr. Sawyer and Mr. Green, those would not be considered under the statutory definition to be telemarketing because they are not part of a planned program or campaign to induce the sale of goods or services.

The FTC right now is in the process of reviewing its telemarketing sales rule. We review all of our trade regulation rules every so often to see to it that the rules still make sense, and that they are effective. And the Congress asked us to review the telemarketing sales rule after 5 years and we are in the process of doing that now and preparing a report back to Congress as well as looking at the rule to see whether it needs to be changed. We expect to have that report back to you by late this year or early next year. The rule review will be finished before that time.

In January, we held the first public workshop as part of this rule review and it was focused exclusively on this issue of do not call. We learned a fair amount at the workshop on this issue. First of all, we took a look at our own complaint data base and we see that while we have a lot of complaints about telemarketing, almost all of them concern allegations of fraud. Only about 1 in 10 of the complaints that we have concern unwanted calls.

At the workshop we asked questions about whether there are technological fixes on the horizon or applications that would give consumers greater sovereignty to protect against unwanted calls. We did hear about some technological applications that are already extant. They aren't being used much but they are in existence and would enable telemarketing companies to be able to block calls to telephone numbers owned by consumers who have said that they don't want to receive calls. We also heard that the reason that caller ID frequently fails to identify the caller has in the minds of some at least to do with technical shortcomings on T-1 and trunk lines.

On the other hand, just yesterday folks on our staff working on this visited Bell Atlantic and the Bell Atlantic folks told them that that is not so. I think we have to do some more investigation to find out what the truth is about why calls aren't adequately revealed and displayed on caller ID. We learned that many States, as you have heard this morning, have adopted statewide opt-out lists for telemarketing. We also learned that in some instances at least those State laws have more exemptions in them than, you know, the holes in a piece of Swiss cheese and so that the exemption really swallows the rule.

For example, we heard from an Assistant Attorney General in the State of Kentucky who told us that there are 20 some exemptions to Kentucky's "do not call" law and that those exemptions include calls from insurance companies, calls from charities, and so forth. Now, as to these specific bills H.R. 3180 would require telemarketers to tell consumers that they have the right to be placed on centralized "do not call" lists and to actually see to it that the consumer is enrolled.

As Mr. Salmon noted, the Commission generally favors the underlying goal of this legislation. We favor the notion that consumers should have greater choice. On the other hand, we recognize that there are costs that are going to be imposed by this kind of regime and we have some concern about that. We know from the Direct Marketing Association, which right now operates a voluntary mail phone preference service list, that its costs in maintaining that has really skyrocketed and certainly if this became a mandatory scheme the cost would increase greatly.

And so the question is who pays those costs? And how are they borne directly and indirectly? Our assumption is that if telemarketing companies have to pay costs to have their lists scrubbed against "do not call" lists, as they do now under many State laws, there would be costs passed on indirectly to consumers. So the question is who has to bear the cost and are consumers who want greater privacy willing to bear those costs. That is a hard question.

I can also say that under our current "do not call" regime, consumers have the right to tell specific individual telemarketing companies not to call them again. I think it is very difficult for consumers to know whether their wishes are being respected because it is a company-by-company deal. So you almost have to keep a record by your phone about who specifically you asked to not call and when you told them not to call, and so on and so forth. A general opt-out provision would give consumers a more meaningful way to know whether their wishes are being respected. But it would come with costs.

I would also observe that under the current regime there are exemptions from the FTC's jurisdiction, and in my experience as a consumer it is the parties who are exempt who keep calling me. I generally tell any telemarketers to put me on the "do not call" list because that is my preference. I can tell you that the calls I receive at my home generally are from financial institutions that aren't subject to our jurisdiction, phone common carriers that aren't subject to our jurisdiction and nonprofits that aren't subject to our jurisdiction.

We have raised to the committee before on other Internet e-commerce related issues concerns about these ongoing limitations in the FTC's fundamental jurisdiction, particularly with regard to common carriers. I think that it just doesn't make sense that a common carrier doesn't have to comply or arguably doesn't have to comply with fundamental consumer protections because some time ago the Federal Trade Commission Act was written to exclude common carriers at a time when common carrier had some real meaning in the telecommunications area. I think that with convergence and the growth of e-commerce, Mr. Chairman, you have it just right that telemarketing is e-commerce, and the question is whether some telemarketers have to play by the rules and others don't.

On the issue of blocking identity of callers that is raised in H.R. 3100, we certainly would favor greater information to consumers, not less. We also favor the scheme that gives consumers a private right of action but would caution that if consumers can't tell who is calling them, a private right of action doesn't do them a whole lot of good. That would conclude my remarks, and I'd be happy to answer any questions.

[The prepared statement of Eileen Harrington follows:]

PREPARED STATEMENT OF EILEEN HARRINGTON, ASSISTANT DIRECTOR OF MARKETING PRACTICES, FEDERAL TRADE COMMISSION

Mr. Chairman, I am Eileen Harrington of the Federal Trade Commission's Bureau of Consumer Protection. The Federal Trade Commission is pleased to provide testimony today on two bills now under consideration, the "Telemarketing Victims Pro-

tection Act" (HR 3180) and the "Know Your Caller Act" (HR 3100).[1] Both of these bills address consumer protection issues relating to telemarketing, a longstanding focus of Commission concern both in the law enforcement and the regulatory arena.

THE COMMISSION'S AUTHORITY

As the federal government's principal consumer protection agency, the FTC's mission is to promote the efficient functioning of the marketplace by taking action against unfair or deceptive acts or practices, and increasing consumer choice by promoting vigorous competition. To fulfill this mission, the Commission enforces the Federal Trade Commission Act ("FTC Act"), which prohibits unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce.[2] There are two primary modes open to the Commission to enforce the prohibition against unfair or deceptive acts or practices. The Commission may pursue such acts or practices through administrative litigation that may ultimately result in the issuance of a cease and desist order. In addition, Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers the Commission to file law enforcement actions in federal district courts to obtain preliminary and permanent injunctive relief, restitution for injured consumers, and, where restitution is not practicable, disgorgement of ill-gotten gains from fraud operators.

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 efforts 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[3] ("the Telemarketing Act" or "the Act"). The Act directed the Commission to promulgate a Trade Regulation Rule prohibiting "deceptive telemarketing acts or practices and other abusive telemarketing acts or practices."[4] The Telemarketing Act also reached beyond hard-core fraud and deception, directing the Commission to include in the rule provisions designed to bolster consumers' right to privacy in their own homes, and their sovereignty over the issue of whether to receive telemarketing calls.

Specifically, the Telemarketing Act mandated that the rule include prohibitions against any pattern of unsolicited telemarketing calls "which the reasonable consumer would consider coercive or abusive of such consumer's right to privacy,"[5] and restrictions on the hours of the day and night when unsolicited telephone calls can be made to consumers.[6] Accordingly, the Commission adopted the Telemarketing Sales Rule ("TSR") on August 16, 1995, which, *inter alia*, defined and prohibited certain deceptive telemarketing practices,[7] prohibited calls by any telemarketer or seller to any consumer that had previously stated the wish not receive such calls from that telemarketer or seller,[8] and prohibited calls to consumers before 8:00 AM or after 9:00 PM, local time for the consumer.

The Telemarketing Act enhanced the Commission's law enforcement tools by enabling the Commission to seek civil penalties of $11,000 for each violation of the Rule, in addition to the equitable relief already available to the Commission under

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

[2] 15 U.S.C. § 45(a). The Commission also has responsibilities under 45 additional statutes, *e.g.,* the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.,* which establishes important privacy protections for consumers' sensitive financial information; the Truth in Lending Act, 15 U.S.C. §§ 1601 *et seq.,* which mandates disclosures of credit terms; and the Fair Credit Billing Act, 15 U.S.C. §§ 1666 *et. seq.,* which provides for the correction of billing errors on credit accounts. The Commission also enforces approximately 30 rules governing specific industries and practices, *e.g.,* the Used Car Rule, 16 C.F.R. Part 455, which requires used car dealers to disclose warranty terms via a window sticker; the Franchise Rule, 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. §§ 6101-08.

[4] 15 U.S.C. § 6102(a)(1).

[5] 15 U.S.C. § 6102(a)(3)(A).

[6] 16 U.S.C. § 6102(a)(3)(B).

[7] 16 C.F.R. § 310.3.

[8] 16 C.F.R. § 310.4(b)(1)(ii).

Sections 5 and 13(b).[9] As discussed in greater detail below, the two bills currently under consideration would build further on the consumer protections adopted by the Commission under the Telemarketing Act. In this regard, it is important to note that the Commission is also in process of reviewing whether the TSR could be strengthened to provide greater consumer protection, consistent with avoiding any undue compliance burden on legitimate telemarketers, as part of a broad regulatory review of the TSR.[10] As the opening action of this process, the Commission held a workshop conference on January 11, 2000, that focused on "do-not-call" issues. The regulatory review of the TSR will evaluate the costs and benefits of the Rule and its overall regulatory and economic impact since its adoption in 1995. Based on the information received during this rule review, the Commission will determine whether to recommend modifications to the Rule or to retain the Rule unchanged. The Commission will report its findings to Congress at the conclusion of this evaluation of the Rule's operation.

The Commission generally favors the underlying goal of the bills under consideration, which is to support consumer choice in the matter of whether to receive telemarketing calls. The Commission's views, set forth below, on each of the various requirements of the bills are informed by oral and written comments supplied to the Commission at the workshop and in the regulatory review comments received to date, as well as the Commission's long law enforcement experience in the area of telemarketing.

THE "TELEMARKETING VICTIMS PROTECTION ACT" (HR 3180)

HR 3180 would amend the Telemarketing Act to mandate that the Commission include in the TSR the following:[11] (1) a requirement that telemarketers notify any consumer whom they call that the consumer has the right to be placed on the "do-not-call" list maintained either by the Direct Marketing Association ("DMA") or by the consumer's state; (2) a requirement that, if the consumer elects to be placed on a "do-not-call" list, the telemarketer notify the DMA or the appropriate state, as the case may be, within a reasonable time; (3) a requirement that telemarketers obtain and reconcile, on a regular basis, the "do-not-call" lists maintained by the DMA and the states with the telemarketers' lists of prospective purchasers; (4) a prohibition against telemarketing calls between 5:00 p.m. and 7:00 p.m.; and (5) a prohibition against telemarketers evading consumers' "caller-ID" devices. Like the existing provisions of the TSR, all of these additional rule provisions would be enforceable by both the FTC and the state attorneys general in federal court actions.[12] The bill would also mandate a study by the Commission within one year covering violations of the Telemarketing Act, "especially of repeated violations by a single telemarketer."

THE "KNOW YOUR CALLER ACT" (HR 3100)

HR 3100 would amend the Telephone Consumer Protection Act[13] ("TCPA") by adding a provision that declares it unlawful for any person making "any telephone solicitation to interfere with or circumvent the ability of a caller identification serv-

[9] While the FTC is empowered by Section 16(a) of the FTC Act, 15 U.S.C. § 56(a), to file its actions for injunctive relief, restitution, disgorgement and other equitable relief through its own attorneys, FTC actions 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. § 6108. 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 limited to activities within the jurisdiction of the FTC as delimited by the FTC Act. 15 U.S.C. § 6105(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. § 44, and also expressly excludes the activities of several specific types of entities from coverage under that Act. The exclusions are: "banks, savings and loan institutions described in section 57a(f)(3) of this title, Federal credit unions described in section 57a(f)(4) of this title, common carriers subject to the Acts to regulate commerce, air carriers and foreign air carriers subject to part A of subtitle VII of title 49, and persons, partnerships, or corporations insofar as they are subject to the Packers and Stockyards Act, 1921, as amended (7 U.S.C. § 181 *et seq.*), except as provided in section 406(b) of said Act (7 U.S.C. § 227(b))." 15 U.S.C. § 45(a)(2). Also, the McCarran-Ferguson Act generally exempts the "business of insurance" from the FTC Act. 15 U.S.C. § 1012(b).

[12] The FTC, through the Department of Justice, could file actions seeking civil penalties of $11,000 per violation, as well as injunctive relief. States are empowered only to recover restitution for their citizens, and to obtain injunctive relief. 15 U.S.C. § 6103(a). There is also a private right of action with a jurisdictional threshold of $50,000.

[13] Codified at 47 U.S.C. § 227.

ice to access or provide to the recipient of the call" information to be specified in regulations that the bill directs the Federal Communications Commission ("FCC") to adopt within six months of enactment. HR 3100 further directs that the mandated FCC regulations must require that telephone solicitations be made in such a manner that the consumer on the receiving end who has a caller identification service will be provided with a name and number the consumer can use to assert his or her "do-not-call" rights. In addition, HR 3100 directs that the mandated FCC regulations must prohibit any telephone solicitor to whom a consumer directs a "do-not-call" request from using that consumer's name and telephone number "for any other telemarketing, mail marketing or other marketing purpose (including transfer or sale to any other entity for marketing use)" other than to effectuate the "do-not-call" request. The FCC would have responsibility for enforcement, but HR 3100 also would expand the TCPA's private right of action for failure to honor a "do-not-call" request, so that a consumer could also sue in state court to enjoin violation of the "Know Your Caller" provisions or regulations promulgated under them, and to recover actual damages or $500 for such violation. States' attorneys general could also bring such actions in federal court.[14] At the court's discretion, these damages could be tripled for willful or knowing violation. Finally, HR 3100 provides that there will be no preemption of state law that imposes more restrictive intrastate requirements or regulations on, or which prohibits interfering with or circumventing, caller identification services.

Requirements That Telemarketers Notify Any Consumer Whom They Call That the Consumer Has the Right to Be Placed on a "Do-Not-Call" List, and That Telemarketers Notify the DMA or the Appropriate State of the Consumer's Desire to Be Placed on Such a List.

The "do-not-call" notification requirement in HR 3180 likely would benefit consumers. Some consumers object to receiving telemarketing calls because they view such calls as an intrusion on their privacy and a burden on their time. "Do-not-call" requirements give consumers the right to avoid receiving telemarketing calls. Consumers, however, need to be aware of this right if they are to make use of it. HR3180's "do-not-call" notification requirement likely would increase consumer awareness of the right not to be called, thereby assisting them in their exercise of this right.

The "do-not-call" notification requirement, however, also likely would impose costs on telemarketers. Telemarketing is likely to be less effective if consumers are promptly[15] notified of their opt-out right. The "do-not-call" notification requirement also would charge telemarketers with the responsibility for communicating consumers' wishes to a centralized "do-not-call" list. While a telemarketer itself may fairly be required to comply with a consumer's stated desire not to be called again, it may be an undue burden to require the telemarketer to communicate to a third party the consumer's preferences as to other telemarketers.

Assuming that the "do-not-call" notification requirement is imposed, HR 3180 as drafted does not address the fact that many states administering "do-not-call" lists require payment of a fee by consumers who wish to be included on the list. Thus, it is not clear how such a fee, where applicable, would be paid or by whom. As an alternative, HR 3180 could require only that telemarketers inform consumers of the existence of "do-not-call" options or that they inform them of the existence of the options and provide the information about how consumers may directly contact the appropriate association or state regulatory body.

Even beyond the issue of fees, the Commission might be concerned about whether this approach would impose an undue burden on DMA, the industry association that developed its own "do-not-call" list and makes adherence to it a condition of membership.[16] During the Commission's recent workshop conference on TSR "do-not-call" issues, DMA representatives noted that the cost of maintaining the list was high and growing.[17] Requiring that all telemarketers—even non-DMA members—specifically tell consumers about the DMA's "do-not-call" list may result in substantially

[14] 47 U.S.C. § 227(f).

[15] Like other disclosures mandated under the TSR, *see* 16 C.F.R. § 310.4(d), the "do-not-call" notification presumably would be required to be made "promptly and in a clear and conspicuous manner."

[16] The "do-not-call" list maintained by the DMA for its members is currently offered as a free service to consumers.

[17] DNC Tr. 98:4-99:12 (statement of Bob Sherman for the DMA, noting that their list is "getting out of control cost-wise."). 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 www.ftc.gov/bcp/rulemaking/tsr/dncforum/index.html.

increased consumer use of that service. Legislation should encourage self-regulatory initiatives like DMA's "do-not-call" list, but not impose additional burdens on them.

The Requirement That Telemarketers Obtain and Reconcile the "Do-Not-Call" Lists Maintained by the DMA and the States with the Telemarketers' Call Lists.

The DMA requires that its members obtain and reconcile the DMA "do-not-call" list with their call lists. HR 3180 would add the force of law to that private requirement, and would enlarge it to encompass non-members of DMA. Currently, non-members of DMA can purchase the list to avoid making calls to consumers who have expressed a desire not to be called by telemarketers. HR 3180 requires telemarketers to offer consumers the opportunity to be placed on either DMA's "do-not-call" list or an appropriate state list. Since inclusion on DMA's list is free for consumers and inclusion on a state list may require payment of a fee, it is likely that DMA's list would effectively become a centralized, national "do-not-call" list. Since a number of states already administer their own "do-not-call" system, this requirement raises issues of federalism. Consideration should be given to including in HR 3180 language that makes explicit whether and to what extent Congress intends the proposed federal scheme to preempt existing state schemes.[18]

The Prohibition Against Telemarketing Calls Between 5:00 p.m. and 7:00 p.m.

If enacted, HR 3180 would prohibit telemarketing calls from 5:00 p.m. to 7:00 p.m. This would benefit consumers who do not want to be called by telemarketers during the dinner hour. On the other hand, it may be more difficult for telemarketers to sell their goods and services if they are prevented from making calls during this particular two-hour period, a time when many consumers are likely to be at home. As noted above, pursuant to the mandate of the Telemarketing Act to include "restrictions on the hours of the day and night when unsolicited telephone calls can be made to consumers,"[19] the Commission specified in the TSR that such calls may be made only "between 8:00 a.m. and 9:00 p.m. local time at the called person's location."[20] The Commission specified these times in order to achieve consistency with existing similar restrictions included in regulations enforced by the Federal Communications Commission under the Telephone Consumer Protection Act of 1991.[21]

At the Commission workshop focusing on the "do-not-call" provision of the Rule, some participants suggested technological solutions which currently exist or may soon be available to give consumers the ability to accept and reject telemarketing calls selectively based on their individual schedules. It is important, however, to bear in mind the cost to consumers of technological solutions. A consistent thread in comments by consumers received thus far in the rule review suggests that consumers resent having to pay for the privilege of being free from telemarketing calls. In the ensuing stages of the TSR regulatory review, the staff of the Commission will be soliciting and reviewing information about possible technological solutions to give consumers sovereignty vis-a-vis telemarketers, including technologies that would enable consumers to determine the times they are willing to receive telemarketing calls.

Provisions Addressing the Evasion of Consumers' "Caller-ID" Devices by Telemarketers.

Both bills contain provisions designed to empower consumers to use their "caller-ID" equipment to screen unwanted telemarketing calls. The language in HR3180 as drafted would prohibit telemarketers, through FTC regulation (including the threat of civil 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]

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[18] Industry representatives and others at the workshop conference on TSR "do-not-call" issues strenuously argued in favor of ensuring that if a national "do-not-call" list were to take effect, it preempt existing state lists. *See* DNC Tr. 185:5-197:4.

[19] 15 U.S.C. § 6102(3)(B).

[20] 16 C.F.R. § 310.4(c).

[21] 47 U.S.C. § 62.1200 *et seq.;* 47 C.F.R. § 1200(e).

[22] DNC Tr. at 113:10-114:1 (comments of Annette Kleckner, a representative of MCI WorldCom, noting that telemarketing calls go out over T-1 or trunk lines and not through a local switch that would pick up a specific telephone number that could be transmitted to "caller-ID" equipment).

By contrast, HR 3100 takes a two-fold approach to accomplishing similar goals.[23] It prohibits any affirmative interference or circumvention of consumers' "caller-ID" service, and at the same time requires, via FCC regulation, that telephone solicitations transmit 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 which 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 state attorneys general in federal court.[24]

The approach taken in HR 3100 to require disclosure of identifying information has the added benefit of helping to remedy the situation where consumers answer calls only to find no one on the other end of the line. Telemarketing calls give rise to this occurrence because telemarketers use "predictive dialers." These systems—designed to maximize the time each telemarketing representative spends selling—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 back 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 TSR "do-not-call" 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 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 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, as amended by HR 3180, is enacted, such a 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 Bureaus, Canada's Phone Busters, and other federal and state sources. The Commission uses the database to assess the extent of law violations, to spot emerging trends, and to target its 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 future. The goal of this study is to document the historical trends that have shaped the practice of telemarketing, and to document factors likely to shape its future, including technological innovations, shifting markets, consumer at-

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[23] Because HR 3100 amends the TCPA rather than the Telemarketing Act, it does not incorporate the jurisdictional limitations written into the FTC Act, and included by reference in the Telemarketing Act (described, *supra,* at note 11).

[24] As a practical matter, it would likely be difficult for consumers to bring a private right of action for violation of the "Know Your Caller" requirements, since such violation would deprive the consumer of a piece of information essential to bringing an action, namely, the identity and location of the potential defendant. Moreover, the consumer experiencing violation of these requirements would not have a realistic alternative for discovering this information.

[25] *See generally,* DNC Tr. 109:8-121:25.

[26] HR 3100 may raise other issues that would more appropriately be addressed by the FCC, the designated enforcement agency under that bill.

titudes about choice, regulatory and law enforcement efforts at the state and federal levels, and telemarketers' self-regulatory efforts. The results of this study will help legislators, regulators, and law enforcement to better understand telemarketing and to anticipate and respond more effectively to changes on the horizon.

In conclusion, the Commission appreciates the efforts of the sponsors of HR 3100 and HR 3180 to protect the consumers' ability to chose whether to receive telemarketing calls, and to know the identify of callers so that they can decide whether to accept such calls. The Commission also is appreciative of the opportunity the Subcommittee has provided to present testimony today on theses legislative proposals, and I would be pleased to answer any questions.

CONCURRING STATEMENT OF COMMISSIONER ORSON SWINDLE
in *Miscellaneous Matters - - Director (BCP)*, File No. P004T01
(FTC Testimony Concerning the Telemarketing Victims Protection and Know Your Caller Acts)

Although I generally support the views of the Commission reflected in its testimony, I do not think that the testimony accurately reflects the magnitude of the irritation to consumers from unwanted telephone calls. The testimony correctly recognizes that "some consumers object to receiving telemarketing calls because they view such calls as an intrusion on their privacy and a burden on their time." *See* Prepared Statement of the FTC on "Proposed Legislation: The Telemarketing Victims Protection Act (H.R. 3180) and The Know Your Caller Act (H.R. 3100)." Before the Subcommittee on Telecommunications, Trade and Consumer Protection of the Committee on Commerce, United States House of Representatives (June 13, 2000), at 8. The testimony, however, is likely to understate the actual extent of the irritation because it does not fully account for the effects of the apparently significant number of calls by entities over which the Commission's jurisdiction is entirely or partially limited, such as political fund raisers, charities, banks, telephone companies, etc. *See id.* at 5, n. 11. I think that it is important to underscore for the Congress that even bills that address unwanted calls by entities over which the Commission has jurisdiction would not remedy a significant amount of the irritation from unwanted telephone calls.

APPENDIX 1

FTC TESTIMONY

area. We have no exceptions. We don't exempt the not-for-profits, the politicals, the insurance companies or the stock brokers.

It is a terrific supplement to the Telemarketing Sales Rule. It is getting out of control cost-wise. Cost is an issue here. I'm telling you that DMA subsidizes about 80 to 90 percent of the cost of that list. In other words, the marketers who subscribe, who rent, who get the tapes and run the tapes before they prospect only pay about 15, at maximum 20 percent of the cost of running that list. The list has grown, and the list in the year 2000, it is predicted that it will have about 3 million names on it.

Now, what is the reason for the dramatic increase? DMA probably receives somewhere between 12 and 15,000 telephone calls a year by consumers generally, and it's called the mail order as well -- it's their action line. It's not limited to a specific medium. Of those, quite a number of those have to do with telemarketing, and of those, the overwhelming majority recently was the dead air, the hang-up problem, and so we've -- yes, DMA has seen a dramatic increase in the number of consumers that have signed up on TPS, but it is an issue that although directly related is not really specifically covered by the rule -- well, it may

be, it may be covered by the rule, I don't want to say what is and isn't covered.

So, that's my full statement, that we have had an increase in subscribers to TPS. TPS is a very expensive program run by DMA at its own expense. The increase is largely attributed to the hang-up and dead air issue. We're trying to address that. We are meeting with both the manufacturers of the predictive dialers as well as their users. We have guidelines in place. We're getting the word out about proper use of that technology rather than trying to say it's no good altogether.

But at the end of the day, I think the threshold question has to be, before we start changing or tinkering or fixing this rule or talking about national lists, we ought to know what is the source of the issue. I'm not even calling it a problem, because if it's not covered by the rule, it's not yet a problem. It's a consumer issue. And my suspicion is that a lot of companies not covered are the ones that the consumers are getting annoyed at, and that ought to be addressed at least with respect to the finding out. I think there's some research that has to be done.

MS. HARRINGTON: That's a point well made, Bob. We do not know at the FTC from our complaints anything

I guess for a more unbiased view of how people feel about telemarketing, it comes from Telemarketing Magazine, back in 1991 when a survey was published by the Walker Research Organization, which stated that 70 percent of residents find telemarketing to be an invasion of privacy and 69 found -- 69 percent found telemarketing to be an offensive way to sell.

You had put on the table the issue of how to make sure that Caller ID information is not blocked by telemarketers. That in my view isn't really the issue. Predictive dialers use equipment and telecommunications lines which essentially doesn't transmit Caller ID. It's not that they block Caller ID. It's just that there's no Caller ID information transmitted. And that's an important distinction, because if we say or if the regulatory agency says you can't block Caller ID, well, the same problem will still continue. I think it must be put in the affirmative, you must transmit Caller ID.

MS. HARRINGTON: How is it that those calls don't generate ANI?

MR. BULMASH: In my understanding they use trunk lines, T-1 lines, which don't have a particular phone number that is transmittable, and since they don't have that particular number to transmit, you can't block it.

There is just no phone number, but you could put a technological fix in it which would force them to transmit the name of the firm on whose behalf the call is being made, and that can be programmed in, and also the phone number where you can reach that firm.

MR. ANDERSON: That does seem to be right, Eileen, because I have got Caller ID in my office phone, and frequently when I get outside calls, it just says T-1 line.

MS. HARRINGTON: Right, I just wanted to get a discussion of that on our record, and I just am interested in any assessment of costs involved in changing that status quo so that there would be Caller ID information available.

Bob?

MR. SHERMAN: Yes, I wanted to add that point, as well. Our understanding is that it is the use of the trunk lines that doesn't allow for -- it's not that it's being blocked. It just doesn't happen.

On the issue of consumer awareness of their rights, the DMA always takes the position, including in this situation, that consumer education is the right thing. I'll just add anecdotally, there are thousands if not tens of thousands of laws. I don't know which ones consumers are and are not aware of. I don't know

that -- I don't -- I don't know why we would single this one out for special treatment, Gee, there's something wrong, consumers aren't aware of this law.

Well, consumers aren't aware of tens of thousands of laws. Nonetheless, DMA is in favor of consumer education and, in fact, in conjunction with the Federal Trade Commission has published a Shopping By Phone, a One-Stop Guide to Consumer Protection, which specifically references the Telemarketing Sales Rule. That is distributed to all the action line recorders. We always see a little spike in our activity when Ann Landers or Dear Abby does an annual column. The Better Business Bureau gets it. The Telephone Preference Service is in the front of the white pages in about 80 to 85 percent of telephone books around the country. I don't know how much more we could do in that regard.

But having said that, we are in favor of consumer education, and we are not in favor of blocking. If that's going to -- if that's what the Commission and everybody else thinks is an important element here, I don't think we're -- that's really the issue. I think the issue was identified by Mr. Bulmash, and that is that the trunk lines simply don't carry the number, and that's a technological thing that the industry lives with as well as consumers.

But I just wanted to make the point, we are in favor of education. This is but one of thousands of statutes that consumers may or may not be aware of. I don't know that focusing on why consumers aren't aware of this particular law is going to be productive, because we could name dozens if not hundreds of other laws they should know about, as well, but having said it, we would be in favor of an educational program.

MS. HARRINGTON: Thank you.

I think we have someone here from MCI and someone from Bell Atlantic. Raise your hands. Great. Do you have any -- we are just going to call -- wonderful. This is sort of a pop quiz, but could you educate us about the T-1 no-transmission of ANI fact and explain, if you know, what would be involved in modifying that?

You need to come to the table. Great, I don't know who you are.

MR. GARFINKLE: I'm Dean Garfinkle from Callcompliance.com. I could answer that question.

MS. HARRINGTON: We are going to hear from you in a minute, but we want to hear from the LECs first.

MS. HARMS: I would have to do that in a written submission.

MR. CATLETT: Here, take my seat.

MR. MORTMAN: Here's an empty seats.

MS. HARRINGTON: We have seats.

MS. HARMS: I'm from Bell Atlantic. I don't know the answer, but I can put that in our written submission to you.

MS. HARRINGTON: That's great. Could you identify yourself?

MS. HARMS: Shelley Harms from bell Atlantic.

MS. HARRINGTON: Thank you, Shelley.

MS. CLECKNER: Good morning, Annette Cleckner with MCI Worldcom, and, in fact, Mr. Bulmash is correct. Because we telemarket using our own networks, our telemarketing calls go out over T-1 or trunk lines, and the calls do not generally go through a local office or a local switch that will pick up what's called an SS-7 identifier, ANI identifier. So, there is a technological solution that will cost millions and millions of dollars and much time and man/person-power to install. It's a big concern for the companies as well as consumers, as I believe Bob said. There isn't an easy, fast solution for that.

The other concern, of course, is what number do you send? You don't want just the number of that particular ANI or line to go out. You need to send a number that's a value to consumers to call back and

register their concern about do-not-call.

MS. HARRINGTON: Thank you, Annette. Good sports, you people from the LECs or the carriers.

Okay, we are going to -- I am going to go back to my rotation for just a minute. I'll get back to you, Russ.

Marc?

MR. BEAUCHAMP: Yeah, in talking about numbers on the Caller ID, there may be another way to address this, and I don't know if it's already included in the rule proposal, but I can tell you in the securities industry when a broker calls what they're required to do, which does address the telephone number issue. First of all, they can't call before 8:00 or after 9:00 p.m., and when they call they immediately have to tell you their name, they have to tell you what firm they work for, the address and the phone number and that the purpose of the call is to sell you something, so...

MS. HARRINGTON: Okay.

Susan?

MS. GRANT: Susan Grant, National Consumers League.

I want to respond to something that Bob brought up about why consumer awareness is so important here, and that's because the burden is on consumers in this

particular case to specifically say that they do not want to be called again, and let me just throw out now for people to think about for discussion this afternoon the possibility that instead of or in addition to the just regular consumer education that we all do all the time, we might consider whether the rule should be changed to require the telemarketer to tell the consumer if the consumer has expressed any disinterest at all in the offer that they have the right to not be called again and tell them how to sign up for the do-not-call list.

MS. HARRINGTON: Keith, you have a question?

MR. ANDERSON: Yeah, it probably isn't something I should jump out of turn on, but what occurred to me was this Caller ID issue. Is there an issue vis-a-vis service bureaus? I mean, if a service bureau is calling on behalf of some client, what's the number that you want to be given out?

MS. HARRINGTON: Well, yeah, that was the point that I think Annette was making, but -- that that's a problem.

MR. ANDERSON: I mean, is it the service bureau number or is it a number for whoever the client is?

MS. HARRINGTON: Well, we've got Russ and Gordon in that order, maybe if you have anything to say in

furtherance of that point, and then also whatever else you wanted to say.

MR. SMITH: Just a very quick comment on Caller ID and sending the information, it's somewhat like a fax tone. You can buy a piece of test equipment that sends Caller ID equipment for a couple hundred dollars. This could be added to the outbound calling systems and the predictive dialers. It would have some cost, but it certainly would not be millions and millions of dollars.

MS. HARRINGTON: Gordon?

MR. MCKENNA: If you're the outsourcer, maybe I can share with you the complexity of what would be involved. You would have to have all -- I'll give you a for-instance. We were -- Wanda and I were talking, I have a facility in Lexington, Kentucky, and we do all inbound work there. If that facility were an outbound facility, you'd have to have lines dedicated to that particular client that you'd be working for.

In the particular case of that facility, we would have to have tens of thousands of telephone lines because of the numerous amount of clients we have. We employ about 5000 people there, and you would literally have to have so many lines for each client, and you may have 30 clients in that facility. So, you can see the

complexity that today would cost a lot of resources to do that, but it's not undoable, but it's possible to show up for the client. You certainly -- if the consumer really wants to know who's trying to present an offer to them, they would like to know who the company is rather than who the conduit is.

Along with Bob, the reason for my wanting to share some information with you is that the American Teleservices Association does put out a code of ethics for all of our members which has the TPC compliance in it. We also do training classes around the country for are you compliant, keeping all of our members up to date on state and national laws and regulations and guidelines. Then we -- for the consumers, we have consumer guidelines, Using Telephone Wisely and making sure that consumers know how to respond to an unwanted phone call.

MS. HARRINGTON: All right, let me ask a question, if I may. Certainly the TCPA contemplates that consumers should be able to learn who it is that's called and then fail to respect the request to not call, otherwise there's no way to initiate the private right of action, but we're hearing that there are certainly ways in which that information is not conveyed in any automatic sense.

What would the solution be -- if we assume for the purposes of discussion that consumers have a very legitimate need, if not a legal right, to information about the identity of the caller, what's the solution to the problem that we're hearing discussed, that that information is not conveyed? If it can't be done automatically through a technology without costing millions and millions or some dollars, is a mandatory identification such as the type that Marc describes under securities regulations what's called for here, or what suggestions do we have, or do you challenge the proposition that the information is not being conveyed?

Bob?

MR. BULMASH: I think one of the problems with adherence to the regulations of the TCPA regarding identification is that generally what happens is that the caller will place the call and make the following statement, "Hi, my name is Jim Smith, and I'm calling from ABC Corporation, do you want to buy a widget?" And the conversation will continue until suddenly the caller hangs up or declines or on a rare occasion accepts.

It's towards the end of the call when the phone number or address identification would be offered voluntarily, if ever offered. I suggest that in the future, if we're going to have identification

requirements, it should be the name of the firm, the name of the caller and immediately after that, slowly, the address or phone number of the firm on whose behalf the call is being made, and that that should be done within the first 30 seconds of the call.

Statistically, only 33 percent of all telemarketing calls, sales solicitation calls, made in the United States ever get even completed. The pitch is only completed 33 percent of the time. 66 percent of the calls are ended prematurely, either by hang-ups or somebody saying not interested, hanging up. Therefore, the person doesn't really have the opportunity to get the address or phone number portion of the identification.

Furthermore, even when the call is completed, my sense of industry violation of federal law is around 90 to 95 percent on telemarketing sales solicitation calls, and that's an incredible number to say, but most firms, most telemarketing sales solicitation calls made to homes, do not give address or phone number. Most firms, when asked for a do-not-call policy, do not make it available upon demand. Many calls, if not most, when you receive -- when they receive do-not-call requests are ignored, because in my view, once a do-not-call request is made, it must be added to the do-not-call

list, and once it's on the do-not-call list, subsequent calls are a violation.

I feel that the telemarketing industry, for the -- to a large extent, much to a large extent, really is out of control, and I would like to see it put back into control at least through identification requirements.

MS. HARRINGTON: Thank you.

David?

MR. MORTMAN: David Mortman, Callcompliance. I think we're dealing with two issues, and it's really a carry-over from this morning and then -- and now.

First, of course, technology should be investigated for a solution, and if the cost is high now, perhaps with the competitive view or look at it, it will come down drastically or other means will be found.

But our experience in going in to consult with marketers for compliance issues is that the area of training and certification are not highlighted as it relates to telemarketing compliance.

NASD has an audit procedure obviously for other compliance issues, but as part of their audit they include a review of telemarketing compliance by firm. So, when they go in to do their annual audit of a securities company, they actually do do an audit of

telemarketing compliance, and that has raised the bar for marketeers actually following the menu list that Marc just identified.

It seems to me that there has to be -- when we talk about consumer awareness, consumer education, that there has to be some standard that is mandated in the field by the FTC to follow the rules or the legislation they've adopted. I believe that most telemarketers are legitimate. I don't think there's a great schizm between legitimate and illegitimate. I think most people want to do what's appropriate to do and what's reasonable to do. They have to understand they're going to be held to that standard.

Many don't, and many don't have the resources simply to go out and spend whatever monies, however slight or great they are, for something they don't feel -- that is not touching them. The experience in the securities industry is that it touches them, because they have to respond to it on an annual basis. In a nonsecurities field, many outbound callers just don't have an equal sensitivity, because an audit trail is not prompted each year or in a relatively appropriate period of time, and in terms of consumer awareness and education and outbound callers' education, I think that the rulemaker has to have a role in the marketplace for

MS. HARRINGTON: Linda and then Jason.

MS. GOLDSTEIN: Thank you, Eileen. I had three points I wanted to make in response to your specific question.

The first is that I don't think we could even think about or contemplate the concept of a national do-not-call list without some corresponding preemption, because the reality is that there are state laws now that already exist, and based on what we're hearing, it sounds like irrespective of what might be done at the federal level, additional state legislation may be forthcoming. So, that's just a reality I think we have to deal with.

MS. HARRINGTON: Well, that's what we're hearing from you. We're hearing that from -- I'm responding to what I'm hearing from the marketing folks, which is that you see some inevitability in significantly -- in some significant majority of states enacting laws like this.

MS. GOLDSTEIN: But I don't -- that really brings me to the second point which I was going to make the third, but I'll bump it up, which is that it's almost like a Catch-22 and you've really touched on a very delicate issue, which is if -- if additional state regulation is inevitable, why not go to a national do-not-call list, and we wrestled with that issue

ourselves.

I think that the best answer I can give you right now is that I would hate to see us do that almost as a result of default. We looked at this issue very, very carefully five years ago, and we made a determination that company-specific do-not-call lists were the proper approach to take, and I think that judgment is still sound today, and I'd hate to see us walk away from that as a concept almost by default by virtue of the fact that the states are now coming in and implementing do-not-call legislation.

What most strikes me and struck me upon hearing some of the motivation for the state do-not-call lists, and even thinking about national legislaticn or national do-not-call lists, is I think we have to be very careful now to not take steps just for the purpose of adding additicnal regulation because the problem still exists to some extent without carefully thinking where those additional steps would, in fact, cure the problem.

It seems to me what's come out of the discussion thus far is that the -- to the extent that the do-not-call lists have not been as effective as some might like, there are two reasons; either companies simply aren't abiding by them or consumers are not aware of their rights to be removed --

MS. HARRINGTON: Or the third possibility, and that is that the -- that some of the companies that don't respect do-not-call wishes are not subject to the FTC's jurisdiction.

MS. GOLDSTEIN: Right, correct, but -- and that we can't cure here, but I agree with you.

As to the first two, it doesn't seem to me that a national do-not-call list really addresses either of those issues, so that all we have is a different mechanism in place, but it's not a mechanism that necessarily -- that directly addresses the problem of how do we make consumers aware or how do we make sure companies comply.

The companies that aren't complying with the obligation to maintain a company-specific list I don't think are going to be any more likely to comply with the obligation to subscribe to a national list. So, what I think I would like to see in the next phase, based on everything we're hearing, to be candid, is some restraint on the part of the states or some coordination between what the states are doing and what we have at the national level rather than a rush to a floodgate of more state legislation and perhaps a focus on more consumer education so that we can better get the word out to consumers as to how they can exercise those

rights.

I mean, I wonder -- I would just be curious to know, for example, when calls come in to states or came into states before states enacted their own do-not-call lists, were consumers told about the options that were available, that you could call the DMA or that you could -- or that you have the right to call the company and get your name removed from the list?

MS. HARRINGTON: Yeah, I think we heard at least from Wanda this morning and from Bill that the states routinely -- their states are routinely giving out that information and still are, although, you know, I think that one of the areas that all would agree as being ripe for more action is consumer education.

MR. SHERMAN: Do we know that consumers are unaware?

MS. HARRINGTON: Nope.

MR. SHERMAN: With millions on each list? Why do we think they're unaware? We have got 3 million on the DMA list. There are companies, individual companies with millions on their own list. Why are they unaware?

MS. HARRINGTON: Okay, Gordon?

MR. MCKENNA: I felt that if I didn't say something the Chair would be mad, so I wanted to make sure that at least from the American Teleservices

Association that we would not be in favor of a national do-not-call list. I don't think it solves the problems that exist. Right now, until we can get our hands around it, it looks like we are just going to have to live with the lists that are being done by each state. I think we have about seven now, probably have 30 in legislation, but as an industry, as soon as we can get our hands around the best way to handle that, we'll give you some response on that.

MS. HARRINGTON: Okay, Jeff and then Bill.

MR. KRAMER: I guess -- sorry.

Yeah, again, you know, we talked earlier, and I mentioned before about AARP's support for a national do-not-call list, and obviously there are some concerns from other people around the table that this wouldn't work, so I guess I want to ask a question of DMA, because we've talked about TPS and about consumers' current ability to call to stop, you know, specific companies individually.

What is the percentage of companies that DMA members have of telemarketing calls, do you know, based on the membership of DMA? What percentage of all --

MR. SHERMAN: Of all telemarketing companies that are made, what percentage is made by DMA members?

MR. KRAMER: Yeah.

MR. SHERMAN: I don't know.

MR. KRAMER: You don't know? Could you guess how many -- I mean, is it --

MR. SHERMAN: I don't think -- I think guessing wouldn't move the ball. I mean, I could try to find out and supplement the record if we could come up with some number, either number of calls or what we estimate to be the percentage of calls, but I don't know that. I'm sorry.

MR. KRAMER: Okay. And I just want -- I just wanted to get back to the awareness, and again, this may be for older consumers, but we are finding people out in the field doing these fraud fighter training sessions, around 5 percent of the people are aware that there is a federal provision, a do-not-call provision. So, at least for older consumers we're finding it's a real problem.

MR. HILE: Bob, can non-DMA members use your list to scrub theirs?

MR. SHERMAN: Not only can they, they do.

MR. HILE: A lot of them do?

MR. SHERMAN: Yeah, the TPS is available to everybody. It's a condition of DMA membership if you are a member, but it's open to everybody at what we consider to be nominal cost for the marketers and zero

cost for the consumers.

MS. HARRINGTON: And I would just note that one thing that has changed in the last five years is that DMA has made that a condition of membership and has really toughened its resolve to take action against members who violate its privacy promise or fail to adhere to the requirements that its rules impose on its members. I think that DMA and the Magazine Publishers, both, are among the industry groups who have led the way in really using muscle to get members in the line, and we appreciate that.

MR. SHERMAN: Thank you, but just to add another sentence to Allen, not only is TPS available to everybody, members and nonmembers alike, at nominal cost to the marketers, but at zero cost to the consumers who sign up.

MS. HARRINGTON: Jason, I skipped over you, I'm sorry, we will go to Jason next.

MR. CATLETT: Thanks.

I'd like to address this possibility that was raised that a consumer might express a do-not-call request as a number and then that number would transfer to another party and then thereafter the poor buyer of the house would be deprived of the opportunity to receive telemarketing calls.

Now, the local exchange companies, the telephone companies, they do know if a number changes hands, and when I worked at AT&T we would routinely maintain the ownership of the number associated with the do-not-call request so that we would know that the number had changed hands and that we could -- AT&T could subsequently remarket by telephone to the new owner of that number after it had been re-assigned. Usually there's a latency period of six months or so. So, it would not be a difficult matter through cooperation with the local exchange companies to find out when a number had been re-assigned and was once again fair game.

Now, the next point I'd like to discuss is this issue of the do-not-call list. I think we should have a national do-call list and that it should be an opt-in system. I was sad to hear that the DMA opposes that, so I suppose we can completely abandon the idea.

Let's look at the question of a national do-not-call list. It would not be a difficult or expensive matter for the FTC, as I said, to do this via the internet or any other government agency to do this and to publish the numbers. The distribution costs are extremely low, and I think we should have as a topic for discussion what reason -- technical, economic, legal, jurisdictional other otherwise -- there would be for

the FTC not to do that.

MR. HILE: Could we hear next from Tim?

MR. PHILLIPS: Yes, Timothy Phillips here on behalf of NACAA.

I think that one thing that we're talking about are two different types of do-not-call lists. The do-not-call lists that are business specific are certainly going to get a group, say, that -- of companies that DMA represents, but then there's that small group, whether it's 1 percent, as has been suggested, or whether it's 3 to 5 percent or whatever that percentage is, there's a group of citizens out there who do not want to be called at all, and whether or not it's a national list or whether it's state to state, the do-not-call list that's company specific is going to miss that group. They will have to call each business or respond to each business when they call.

With respect to preemption, obviously there are several levels of preemption. I think that one thing that we have to be -- we have to understand is that the states are out front. We've got -- as was suggested, we have got nine states who have registries coming online. I think there's legislation in other states. If I could, I would recommend that if there is any sort of preemptive language, you not -- when you are doing the

do-not-call registry for the nation, don't look to Kentucky's law, find someone else, maybe Tennessee, I'd like to recommend that one, simply because --

MR. HILE: But is there any effort to make them consistent? Is there any move among the states for consistency?

MR. PHILLIPS: No, not that I know of, and I don't think you're going to get that.

MS. DELAPLANE: I would agree with that.

MR. PHILLIPS: I think there would have to be some type of association, whether or not it is NAAG or some -- or the commissioners on standard laws, but no, and I don't think that's going to happen, in large part I think because especially at the state level, you have things that happen like in Kentucky where yes, the citizens want it, but there are a lot of groups who want their exemption in there, and frankly that's probably what happened at the end, in order to pass it, they had to give in to get the necessary votes. So, I think you're going to have a certain amount of differences from state to state.

Now, whether or not that actually affects the numbers, I don't know. If you've only got 1 percent, then just put them on a do-not-call list.

MR. HILE: Can someone in the industry tell me,

do -- are you able to factor in this kind of nuanced law that has all these different exceptions on a state-to-state basis, or do you just take people out, period? Do the exemptions mean anything, in other words, as a practical matter?

MR. DUNCAN: In a very gross sense. I mean, for example, if there's a provision that says retailers who have been in business for X period of time are not covered, you might -- a company might survey its stores in that area and decide whether or not they meet that, and if they are, then they come out.

On the other hand, if it's -- if it's -- if they think it -- if the company's cut in half, the more reasonable thing to do is simply to take all the names off the list.

MR. PHILLIPS: If I could, I wasn't quite finished.

MR. HILE: I didn't mean to cut you off.

MR. PHILLIPS: The idea of enforcement, too, we have heard from industry and everyone that we think that enforcement is important, you know, what are the states doing, what is the FTC doing. When it comes to preemption, I think there's, of course, an enforcement issue there. With respect to anything the FTC does, please preserve the state rights to enforce what you do,

what you have in place, and also I would suggest preserving the private right of action, as well.

MS. HARRINGTON: Bill?

MR. GILLES: Yeah, I wanted to follow up a little bit on Linda's comment that we shouldn't go down the national do-not-call list without preemption, if only as a footnote, that I think we shouldn't go down the road of preemption, that to the extent that the law allows it, states do have a responsibility to protect their citizens if they feel that the federal level is not doing so. I offer that as a footnote.

To comment more directly, it actually strikes me that a national list may be a perfect opportunity for a federalist approach to dealing with this problem. To the extent that that list can be coordinated and shared across the country, that strikes -- it strikes me that it can be efficient for everybody. It can be efficient for the marketing community, it can reduce the number of lists they have to deal with and manage. It can be efficient from the standpoint of the states that do want to maintain their own lists, because they can be shared.

I'm not quite as I guess pessimistic that there isn't also the possibility for more consolidation and coordination across states. If the effort was

approached as a federalist effort and with a goal orientation of thinking about, well, the end goal is to achieve the protection that consumers need and make it as least burdensome as possible.

MS. HARRINGTON: Let me ask a question of Bob, if I might. Does the DMA -- Bob Sherman -- does the DMA scrub its telephone preference service list against the state do-not-call lists?

MR. SHERMAN: No, the states won't give us their lists. They make money when people access their lists, and they don't want us giving them out for free.

MS. HARRINGTON: Does anyone have any idea whether there --

MR. SHERMAN: But I didn't mean --

MS. HARRINGTON: -- whether there is such correlation --

MR. SHERMAN: That's not the sole reason. The lists are incompatible. DMA's list is maintained by name, telephone number and address and is segmented and kept by zip code. The states are probably -- I can be corrected -- I think just name and telephone number, and there's an incompatibility the way they both exist now, but the other reason has been expressly stated to us that there are -- not every single one of the eight that are in existence, but I'd rather not name them, but

Mr. TAUZIN. Thank you very much Ms. Harrington.

Mr. Hatch-Miller, from the State of Arizona, welcome. It is Representative?

Mr. HATCH-MILLER. Yes, it is.

Mr. TAUZIN. Give us a picture of what is happening in the home field.

STATEMENT OF HON. JEFF HATCH-MILLER

Mr. HATCH-MILLER. I would be glad to. Thank you for inviting me here today and also your efforts on behalf of citizens in our State and across the country. When I first started thinking about coming to talk to you, I was thinking of the Fuller Brush salesmen from 1906, when they first started going door to door. In those days it was pretty easy. You didn't want solicitors, you just painted a little sign and hung it on your door and most of the solicitors would stay away.

Mr. TAUZIN. Or you got a dog.

Mr. HATCH-MILLER. Or you got a dog. Things are certainly a lot more complex nowadays in this world of telecommunications. Putting up a no solicitor sign is actually a process where you have to put one up for every solicitor that comes calling. And then along with predictive dialing and answering machine detection and sophisticated sales techniques, the telemarketers have some powerful arsenal at their disposal.

Telemarketers I think intimidate a lot of people, and some people still feel that it is impolite to hang up. And quite frankly telemarketers are practiced in how to turn a no into a yes. So they are sophisticated. They intimidate many people. Some people feel that it is reasonable for them to want to say that I don't want to receive a phone call but they don't know how. And I am not talking about fraudulent schemes here. Even in legitimate cases the target is sometimes convinced to buy products that they don't want or don't need or can't use and often can't afford. And some citizens are simply not emotionally or intellectually able to ward off repeated calls. Senior citizens are often targeted relentlessly and some report getting more than 20 calls a day.

The Arizona departments that I talked to frequently get these telemarketing complaints from citizens, and one gentleman called up, he was furious that he had to pay the telephone company for caller ID and pay them again when the caller ID was blocked from finding out who had called him and find out he had to pay even more to get it listed in the phone book as somebody that didn't want to be called. A woman called us and she was very thankful that the voice calls eventually stopped after a while, but then she started receiving fax calls in the middle of the night.

These nuisance calls are bad enough, but even worse are the ones that are schemes. And in Arizona we do get a lot of fraudulent scheme type calls, especially to our elderly citizens. I learned of victims who were persuaded to mortgage their home to claim a nonexistent sweepstakes prize or make a money losing investment.

It is difficult to tell the honest from the dishonest salesperson. You certainly can't do it by their telephone number or the sound of their voice. So in Arizona the Secretary of State and the Attorney General have focused their attention on this problem for sev-

eral years and we have passed as a State legislature a number of bills on this subject. And we were forced to update our laws in 1999 because what we discovered was that even though we had regulations supposedly in place, out of the hundreds of telemarketing operations that existed, only four companies were registered in the State and two of those four didn't have to comply with our regulations because they were exempted. Everyone else fell through the cracks.

Our purpose in revising statutes and having the regulations in Arizona is very simple. We want to develop a registry of those companies engaged in telemarketing so that we can ban—and then we also ban intrusive practices. You can imagine the debate was pretty heated and that the arguments for free commerce were pretty strong. And I am certainly a proponent of free commerce. But society's need to define and require appropriate business practices prevailed in our discussions.

In Arizona now we require that basic information be filed by a company that wants to conduct telemarketing. And there are two levels of that. We had a lot of loopholes, as mentioned over here. We had 17 loopholes in our State. We closed 11 of them. And we asked for those 11 who were previously exempted to provide limited information, just the name of their company and a basic contact person and phone number. They can register their information online, they can do it, there is no fee, there is no bond and they are not required to provide annual reports, just an update if things change.

Our largest telemarketers of course are fully registered and we do have a fee for them and a bond and an annual report. And we even ask that those that say they are exempt from our process file a report, at least giving us their name and telling us why they think they are exempted.

In addition to regulation or registration, bans have been placed on caller ID blocking, prerecorded messages and similar kinds of technology. And complementing H.R. 3180, companies in Arizona must maintain "do not call" lists. Unfortunately at present we do not have a State call list in place. And we do hope to establish that in the next year or 2. And there are really a lot of numbers in our state, hospitals, nursing homes, emergency facilities, there are numbers that shouldn't be called and we know them and it would be fairly easy to put those on a list. And also we have people that call the Secretary of State's Office and Attorney General'S Office and say we don't want to receive any phone calls anymore. So it would be fairly easy to put those names again on that list.

So even though citizens ask us to put them on a "do not call" list, right now citizens have to deal with each company separately, in effect being forced to put up a "no solicitors" sign for every salesperson that comes calling.

We also have another serious limitation. First of all, the language is fairly narrowly crafted. It only applies to sellers. So if you are calling to set an appointment for later sale, it doesn't apply to you. If you are calling to set up an investment relationship, it doesn't apply to you. There are a lot of companies for the purpose of our law they remain unregulated because of that sales definition in particular. And then there are also ways to circumvent the law.

One way is that our law says that you have to have permission in order to use a prerecorded message. So you have to have prior permission. So we have people calling up saying will you hold for a very important message. It is a live person that asks you that, then the recorded message starts.

Another continuing difficulty is establishing the fact that a citizen actually did say do not call me. Sometimes the numbers change, the names of the companies change even though it is the same marketer, and how do you prove that I said I don't want that call. And then of course we don't regulate faxes or e-mail and those can be just as problematic. Some agencies have also expressed the concern that at least in Arizona the penalties for noncompliance and violations are too low. So we have a difficulty there.

We have advertised our changes around the State. We get lots of people calling every time we do, telling us they want these regulations. They say thank you for controlling telemarketing, now do more. And what I am hoping that you will do is do more by amending the Telemarketing Consumer Fraud and Abuse Prevention Act and provide our citizens with additional protections. A national "do not call" data base linked to State data bases makes sense to me for both businesses and citizens. Requiring notification that these data bases exist give citizens added power to decide whether or not they do want to be called. And I thank you, Mr. Chairman.

[The prepared statement of Hon. Jeff Hatch-Miller follows:]

PREPARED STATEMENT OF HON. JEFF HATCH-MILLER, MEMBER, ARIZONA HOUSE OF REPRESENTATIVES

Mr. Chairman and members of the committee.

My name is Jeff Hatch-Miller, a resident of Arizona and a member of the state House of Representatives. I thank you for this opportunity to discuss telemarketing laws. Your efforts to solve problems related to undesired telemarketing practices are greatly appreciated.

In 1906, when the first Fuller Brush salesmen began going door to door, I'm certain that many residents were irritated at being disturbed by the unwanted intrusion. Those that were bothered could easily print "No Solicitors" on a small sign and post it on their door. The honest and considerate salesman stayed away.

In today's world of telecommunications, putting up a "No Solicitor's" sign is not nearly that simple. With predictive dialing, answering machine detection, high pressure sales tactics and other modern techniques, the phone solicitor has a powerful arsenal.

They intimate many people. Some people still feel that it's impolite to hang up. Telemarketers have practiced how to take control of a conversation, learned how to turn that "no" into a "yes."

I'm not necessarily talking about fraudulent schemes. Even in "legitimate" cases the target is convinced to buy products they don't want, don't need, can't use, and often can't afford.

Some citizens are simply not emotionally or intellectually able to ward off repeated calls. Senior citizens are often targeted relentlessly, some getting more than 20 calls a day.

Staff officials frequently receive telemarketing complaints from distressed citizens. One gentleman was furious that he had to pay the telephone company for Caller ID, and then pay more to find out who it was when the call information was blocked. He was doubly upset to learn he had to actually pay the phone company to be listed in the phone book as someone who did not want to receive telemarketing calls. A woman called us, thankful that voice calls did eventually stop, but now wanting to know how to stop the fax calls that came all night long.

These "nuisance" calls are bad enough. Even worse are those telemarketing schemes that are truly fraudulent. I've learned of victims that were persuaded to mortgage their homes in order to claim non-existent sweepstakes winnings or make money-loosing investments. It's difficult to tell the honest from the dishonest sales-

person—certainly one cannot from the phone number used nor from the sound of the salesperson's voice.

In Arizona the Secretary of State and Attorney General have focused attention on this problem for several years amid growing concerns raised by both consumers and businesses. The state legislature passed several bill on the subject. We were forced to update our laws again in 1999 after learning that even though regulations were supposedly in place, only four companies were actually registered in Arizona as telemarketers, and two of these four were exempted from our regulations. Everyone else simply fell through the cracks.

Our purpose in revising the statutes was simple. Develop a registry of those companies engaged in telemarketing in Arizona and ban intrusive and inappropriate practices. Debate was heated. Arguments for free commerce were strong. But society's need to define and require appropriate business practices prevailed.

In Arizona we now require that basic information be filed about who was calling our citizens, from where, and for what purpose—so when problems arise we know whom to contact.

We closed gaping loopholes in prior legislation. Of the 17 types of telemarketers exempted previously, 11 now must provide our Secretary of State with "limited" information. These solicitors can register online, without a fee or bond, must provide only basic information about themselves, and are not required to file an annual report.

Our largest telemarketers are required to complete full registration including payment of an application fee, posting of a bond, and an annual report of activities. Even those that believe they are exempt must now register their exemption, letting us know who they are and why they believe they are exempt.

In addition to registration, bans were placed on Caller ID blocking, prerecorded messages, and similar technologies.

And, complimenting H.R. 3180, companies in Arizona must maintain "do-not-call" lists. Unfortunately, at present we have no provision for a statewide list. I hope to establish such a list next session. There are numbers for hospitals, nursing homes, emergencies and other locations that no telemarketer should call—but we don't keep track of them on a central database. Many citizens ask us to put them on a general "do-not-call" but as of now they must deal with each company separately—in effect being forced to put up a new "no solicitor" sign for every salesperson who comes calling.

A serious limitation to Arizona's new statutes is that the language is very narrowly crafted. The rules only apply to "sellers" and many telemarketers are not technically sellers. Some offer "informational programs" about time shares, others are brokerage firms wanting to establish an investment relationship, and others are telecom companies offering their services. The description of unlawful practices only applies to sellers—so these companies, for the purposes of these laws, remain unregulated.

There are also ways to circumvent the specific restrictions in the law. For example, we say that a telemarketer cannot use a pre-recorded message without prior consent. So, some companies will have a live person ask "will you please hold for a very important message . . ." Once the citizen says "yes," they have technically given their permission.

One continuing difficulty is establishing in fact that the citizen really did say "do not call." Another is that the regulations don't apply to faxes or e-mail, which can be just as intrusive and difficult to stop when undesired.

Some agencies have expressed concern that the penalties for non-compliance and violations are too low and that enforcement is made more difficult as a result.

We've advertised these changes broadly. Whenever a staff member addresses a public meeting the topic of telemarketing generates a great deal of interest. Invariably telemarketing complaints increase immediately afterwards.Since passing our revised laws, state offices have received hundreds of calls saying "Thank you for controlling telemarketing. Now do more."

That is why I welcome your complimentary federal law.

I'm hoping that you can do more by amending the "Telemarketing and Consumer Fraud and Abuse Prevention Act"—providing our citizens with additional protections. A national "do not call" database, linked to state lists, makes sense for both businesses and citizens. Requiring notification that these databases exist gives citizens added power to decide whether or not they want to be called.

In closing, I encourage you to apply these requirements to everyone who makes unsolicited calls to our citizens for the purpose of sales, proposals and other offers of products or services.

Thank you, Mr. Chairman, for your work on this very important issue and for giving me the opportunity to address your committee. I welcome your committee's questions.

Mr. TAUZIN. Thank you. Appreciate it.

Now we will turn to the AARP and we are pleased to welcome Ms. Virginia Tierney, a Member of the Board of Directors in Washington, DC. I might mention to you that despite what my friends teasingly said my mother gets angry when I don't call. So I have that additional problem. We are pleased to hear your testimony.

STATEMENT OF VIRGINIA TIERNEY

Ms. TIERNEY. Being a mother I can relate to that. As you said, my name is Virginia Tierney, and I am a member of AARP's board of directors. On behalf of the Association I thank you for inviting us to offer testimony on two pieces of legislation that aim to curtail the practice of telemarketing fraud. Both H.R. 3100, the Know Your Caller Act of 1999, and H.R. 3180, the Telemarketing Victims Protection Act, offer consumers needed protection from the general nuisance of telemarketing while working to shield them from potential fraud. In our comments this morning, AARP will provide the committee with input on two of these important bills.

Telemarketing fraud is a major concern to AARP because of the severe effects it has on older Americans who are victimized in disproportionate numbers. In 1996 we launched a campaign against telemarketing fraud that involved research examining older victims and their behaviors, partnerships with enforcement and consumer protection agencies and repeated delivery of a consistent research based messages and that fraudulent telemarketers are criminals, don't fall for a telephone line.

For the past 3 years AARP has repeated this warning to consumers through public service announcements, educational workshops and program activities. AARP believes that these two pieces of legislation, if enacted into law, will make it easier for consumers to heed AARP's advice and will reduce consumer susceptibility to deception over the phone.

H.R. 3100 includes provisions that are consistent with AARP's work on telemarketing fraud legislation at the State level as well as supporting comments the Association has made to the Federal Trade Commission. The main component of H.R. 3100 is the section 2 prohibition of interference with caller identification services. AARP believes that telemarketers should be prohibited from blocking caller identification devices used by consumers. Telemarketers routinely argue that consumers can screen calls they do not wish to receive through the use of answering machines or call identification services. But unfortunately many telemarketers render the caller identification devices useless by blocking the name and phone number, preventing a consumer from viewing the information. The prohibition in section 2 will assist consumers in screening unwanted calls consistent with the argument made by the telemarketers.

AARP also supports the provision in H.R. 3100 that requires that a telephone number be provided to consumers if they want to be included on a "do not call" list. The requirement will help facilitate greater information about and access to being placed on these lists.

H.R. 3180 includes provisions that would protect consumers as well. Amending the Telemarketing and Consumer Fraud and Abuse Prevention Act to require that telemarketers notify consumers that they have the right to be placed on either the Direct Marketing Association'S, DMA, "do not call" list or the appropriate State "do not call" list will foster greater knowledge and use of these lists.

Since AARP research has shown that many consumers are unaware that this right exists, the individual notification is critically important. Additionally, the prohibition on calls being made between the hours of 5 and 7 p.m. is a welcome relief to consumers who have grown weary of dinner time interruptions.

While the vast majority of the provisions of H.R. 3180 are consistent with AARP's advocacy efforts, we are concerned about one element of the bill. There is a clause in the bill that requires a telemarketer to have the consumer's name added either to the DMA or appropriate State "do not call" list. AARP would prefer that the consumer call to place his or her name on the respective lists rather than the telemarketer. This would reduce the likelihood of an error occurring that would leave that consumer off a list and would ensure that the consumer would get a firsthand account of the extent or limitations of protections the DMA or State specific "do not call" lists would provide.

Mr. Chairman, in conclusion, AARP welcomes your efforts to enact legislation designed to reduce fraudulent telemarketing situations. H.R. 3100 and H.R. 3180 are well crafted efforts to accomplish that goal. Passage of legislation that combines the key provisions in these bills will go a long way toward providing consumers with safeguards against deceptive telemarketing calls, keeping those consumers who will be susceptible to falling for a telephone line from ever speaking to a telemarketer if they so choose. Thank you, and we would be very glad to answer any questions.

[The prepared statement of Virginia Tierney follows:]

PREPARED STATEMENT OF VIRGINIA TIERNEY, MEMBER, AARP BOARD OF DIRECTORS

Mr. Chairman and Members of the Committee: My name is Virginia Tierney and I am a member of the Board of Directors of AARP. On behalf of the Association, I thank you for inviting us to offer testimony on two pieces of legislation that aim to curtail the practice of telemarketing fraud. Both H.R. 3100, the "Know Your Caller Act of 1999," and H.R. 3180, the "Telemarketing Victims Protection Act," offer consumers needed protection from the general nuisance of telemarketing while working to shield them from potential fraud. In our comments this morning, AARP will provide the Committee with input on these two important bills.

Telemarketing fraud is a major concern for AARP because of the severe effects it has on older Americans, who are victimized in disproportionate numbers. In 1996, the Association launched a campaign against telemarketing fraud that has involved research examining older victims and their behavior, partnerships with enforcement and consumer protection agencies, and repeated delivery of a consistent research-based message. That is: "Fraudulent telemarketers are criminals. Don't fall for a telephone line." This slogan came into being after AARP qualitative research revealed that although older consumers knew telemarketing fraud was wrong, they found it hard to believe that it was a crime. Our research suggested that older consumers must be convinced that fraudulent telemarketers are criminals before they will exercise greater caution.

The Association believes that the two pieces of legislation under discussion today, if enacted into law, will make it easier for consumers to heed AARP's advice and will reduce their susceptibility to deception over the phone.

H.R. 3100, the "Know Your Caller Act of 1999," introduced by Congressman Frelinghuysen, includes provisions that are consistent with provisions AARP has ad-

vocated the state level and to the Federal Trade Commission (FTC). AARP has voiced support for a similar piece of legislation that has been introduced in the Senate, Senators Frist and Robb.

The main component of H.R. 3100 is the Section 2 "Prohibition of Interference with Caller Identification Services." AARP believes that telemarketers should be prohibited from blocking caller identification devices used by consumers. Telemarketers often argue that consumers can screen calls they do not wish to receive through the use of answering machines or caller identification services. Unfortunately, many telemarketers render the caller identification devices useless by blocking the name and phone number, preventing a consumer from viewing the information. The prohibition in Section 2 of H.R. 3100 will assist consumers in screening unwanted calls, consistent with the argument made by telemarketers. Further, the provision is written so as to ensure that the law is applied fairly. A telemarketer would not be liable for the inadvertent failure of a caller identification system.

AARP also supports the provision in H.R. 3100 that requires that a telephone number be provided to consumers if they want to be included on a "do-not-call" list. This requirement will facilitate consumers' learning about and being placed on these lists. Finally, Congressman Frelinghuysen's legislation addresses another of AARP's concerns by prohibiting the use of "do-not-call" lists for any other direct marketing purpose. This will protect consumers who unwittingly request to be on such lists, only to be targeted by direct mail or other telemarketing solicitations.

The "Telemarketing Victims Protection Act," H.R. 3180, introduced by Congressman Salmon, includes consumer protection provisions as well. Amending the Telemarketing and Consumer Fraud and Abuse Prevention Act to require that telemarketers notify consumers that they have the right to be placed on either the Direct Marketing Association's (DMA) "do-not-call" list or the appropriate State "do-not-call" list, should foster greater knowledge and use of these lists. Since AARP research has shown that many consumers are unaware that this right exists, individual notification is critically important. Additionally, the prohibition on calls being made between the hours of 5 and 7 p.m. is a welcome relief to consumers who have grown weary of dinner-time interruptions.

While the majority of the provisions of H.R. 3180 are consistent with AARP's advocacy efforts, we are concerned about one element of the bill. There is a clause in the bill that requires the telemarketer to have the consumer's name added to either the DMA or appropriate state "do-not-call" list. AARP would prefer that the consumer call to place his or her name on the respective list rather than the telemarketer. This would reduce the likelihood of an error occurring that could leave that consumer off of the lists. It would also ensure that the consumer would get a first-hand account of the extent or limitations of protections afforded them by either the DMA or state-specific "do-not-call" lists.

Mr. Chairman, in conclusion, AARP welcomes your efforts to enact legislation designed to reduce fraudulent telemarketing situations. H.R. 3100 and H.R. 3180 are well-crafted efforts to accomplish that goal. Passage of legislation that combines the key provisions in these bills will go a long way toward providing consumers with safeguards against deceptive telemarketing calls, and keeping those consumers who may be susceptible to "Falling for a Telephone Line" from ever speaking to telemarketer, if that is their choice.

On behalf of AARP, thank you again for providing us with this forum to discuss deceptive telemarketing practices and to comment on the legislative proposals before you. AARP stands ready to work with you in seeking final passage of these important bills.

Mr. TAUZIN. Thank you very much, Ms. Tierney.

Finally, Mr. Steven Brubaker, Senior VP of InfoCision Management Corporation, but also representing the American Telemarketers Association.

Mr. Brubaker.

STATEMENT OF STEVEN R. BRUBAKER

Mr. BRUBAKER. Thank you, Mr. Chairman and members of the subcommittee. It is my privilege to address you today on behalf of the ATA and my company InfoCision. We at InfoCision specialize in providing inbound and outbound teleservices for many groups, nonprofit groups and commercial companies. We are members not only of the ATA but also of the Direct Marketing Association, the

DMA. The ATA is dedicated to representing solely the teleservices industry.

We represent the providers and users of teleservices in the U.S. And around the globe. Today we have more than 2000 members in 43 States and 19 countries. According to a report issued by the Texas House of Representatives last year, telemarketing is now the single largest direct marketing system in the country employing more than 3.4 million people nationwide and generating—now the number is even going up again—$550 billion in revenue.

Mr. SAWYER. Told you.

Mr. BRUBAKER. We like that one better. Job growth in this industry is more than three times than the national job growth average. With those kind of numbers it is obvious that consumers are using the telephone to make informed decisions and that many—and the majority of the companies are doing it legally and ethically and responsibly.

The Association is dedicated to promoting a positive image of our industry to talk about our ethical practices. We have established a code of ethics, which I will show you here, which attempts to educate our members on the legal and ethical behavior, how to do it responsibly.

We are also a founding member of the FTC's Partnership for Consumer Education as part of our continuing effort to help law enforcement agencies identify and prosecute criminals posing as telemarketers. The ATA and the FTC have joined with the nationwide consumer education program that began in 1996. As part of this campaign we have distributed a brochure which we call Consumer Guidelines. In here we tell consumers their rights and give them the 800 number for the National Fraud Information Center. We basically suggest to consumers if an offer sounds too good to be true it probably is.

Our commitment to encouraging and conducting honest telemarketing is without question. It is with that background that we offer comments to the proposed legislation. We are strongly opposed to the major provisions of H.R. 3180, which would restrict telemarketing calls to residential consumers by entities that fall under the telemarketing sales rule between the so-called dinner time hours of 5 and 7 p.m. Under Federal regulations, implemented by both the FCC and the FTC, telemarketers are guaranteed the right to call residential consumers between 8 a.m. and 9 p.m., and we feel that is a rule of reasonableness. Stating a dinner time hour restriction would negatively impact our industry, particularly those companies who focus on marketing to consumers.

As an example, one of our members in Charlotte, North Carolina, Personal Legal Plans, they conduct 100 percent of their business contacting consumers between 5 and 7 p.m. Reducing their calling by 50 percent would put this 20-year firm out of business. Company sales would drop drastically and its ability to hire a qualified labor force would certainly be impossible. Few people would be willing to drive to work for only 2 hours of work. They pay on average over $14 an hour to a labor force consisting of retirees, single patients and daytime stay at home moms, all of whom rely on the evening employment to meet their living expenses.

The wisdom of government legislating meal times is really a problem. Meal times differ from household to household. And just setting a standard meal time of 5 to 7 will still result in calls being made during someone's dinner time whether they eat before 5 or after 7. In short there will still be calls during dinner.

Now, when our company reaches someone that tells us they are having dinner, we apologize profusely and ask them if there is a better time for us to call. We certainly never want to upset anyone because our clients want us to build a relationship with the customer. As we have seen with other legislative and regulatory attempts at both the Federal and State level to restrict calling, any legislation would certainly cause exemptions for favored groups and we talked a bit about that.

We are all aware that there are several areas of constitutionally protected speech that use telemarketing to contact consumers, nonprofits, political campaigns, and that this regulatory scheme will not apply to those types of calls. These exemptions will frustrate consumers and frustrate the purpose of the legislation when people were promised 2 hours free from telemarketing.

Applied to this legislation, the practice of granting exemptions would simply create an exclusive 5 to 7 p.m. niche for marketing for the favored entities. Our experience has been that those who profess to be annoyed at telemarketing are not selectively annoyed. They are universally annoyed regardless of who the caller is. A call from an exempted group during the restricted hours is still a call. The excluded groups are then pushed to the 7 to 9 p.m. timeframe, which would result in an upsurge of calls, as we have stated.

How would restaurants survive if they couldn't open until 7 p.m. After the dinner time hour? How would retail establishments survive if they weren't able to be open the 2 weeks or even 2 days before Christmas? How would movie theaters survive if they couldn't be open in the evenings?

The consumer has options. They can use an answering machine, install caller ID or privacy manager type product, have a cell phone or get an unlisted number. While the intent of H.R. 3108 is to protect consumers from fraud, consumers and legitimate users of the telephone will ultimately be the ones who bear the burden of this bill.

Telemarketing provides many benefits to consumers and the economy. We provide a cost effective way for legitimate business to reach potential consumers. We also provide consumers with lower costs for goods and services, a wider variety of choice, and increased convenience to make their purchase decisions. Consumers are able to complete their transactions quickly and conveniently from the comforts of their own home, thereby saving any inconvenience.

H.R. 3180 also contains a provision that would require telemarketers to advise consumers they have the right to be placed on a "do not call" list, even if the consumer does not make such a request. Such a requirement is inconsistent with the telemarketing sales rule. Any person requesting to be placed on a list can already—already has that right. Making a telephone contact is a legal action. It is inappropriate to require honest businessmen and

women engaged in a lawful legitimate business practice to Mirandize the customers they contact.

The proposed legislation would also require telemarketers to obtain and reconcile on a regular basis the DMA's telephone preference service list. This is a voluntary program. We believe it is inappropriate for the FTC to codify a voluntary program. The legislation presented here assumes that consumers do not already know their rights. How can we assume this? Last year every household in America received a postcard from Project kNOw Fraud listing their rights when receiving a phone call. Every phone book in the country has a page at the beginning listing telemarketing consumers' rights. And we have already documented the FTC's Partnership for Consumer Education.

I personally have proof in our company that consumers do know their rights. We manage internal company specific lists for all our clients whether they are exempt or not. And we have seen the requests to be added to the list triple in the last few years.

As we mentioned earlier, the industry is already regulated by both the FCC and the FTC. One of the key areas in each rule is requiring companies keep specific "do not call" lists. We feel that the company specific list is the best way to empower consumers to choose which calls they want to receive and which calls they would like to keep out of their home. We feel the best way to protect consumers from fraud is to provide additional funding for the Federal and State law enforcement agencies and to help to protect consumers in that way.

And the final provision of 3180 and the major tenet of 3100 is to prohibit the blocking of caller ID. I would welcome questions on that because we have no opposition to the point of blocking. We believe that using a blocking of any kind, whether it is per call blocking, per line blocking or any other method, is wrong.

We are proud of the business we are in and we have supported measures in several States just like this; however, we have been told from the telephone companies that it is not possible to provide that information. In my own company I have asked the telephone company that we work with to allow us to provide our name and number to consumers over our T-1 and DS-3 digital lines, and they have told us that is not possible.

Thank you.

[The prepared statement of Steven R. Brubaker follows:]

PREPARED STATEMENT OF STEVEN BRUBAKER ON BEHALF OF THE AMERICAN TELESERVICES ASSOCIATION

Mr. Chairman and Members of the Subcommittee: I appreciate the opportunity to appear before the Subcommittee today to discuss the important legislation pending before you on telemarketing concerns. I have a prepared statement, which I would like to present to the panel.

It is my privilege to address you today on behalf of the American Teleservices Association, the ATA. My name is Steve Brubaker. I am Senior Vice President of Operations for InfoCision Management Corporation headquartered in Akron, Ohio. We are a leading teleservices agency employing nearly 2000 people. We specialize in providing inbound and outbound call center services for many non-profit organizations and commercial companies. We are members not only of the ATA, but also of the Direct Marketing Association, the DMA.

The ATA is the trade association dedicated solely to the teleservices industry, representing the providers and users of teleservices in the United States and around the globe. The ATA was founded in 1983 to provide leadership and education in the

professional and ethical use of the telephone, to increase service effectiveness, enhance customer satisfaction and improve decision-making.

Today, the ATA has more than 2,000 members in 43 states and 19 countries, representing all segments of the industry, including telemarketing service agencies, consultants, customer service trainers, providers of telephone and Internet systems, and the users of teleservices, such as advertisers, non-profit organizations, retailers, catalogers, manufacturers, financial service providers, and many others.

According to a report issued by the Texas House of Representatives in 1999, the telemarketing industry is now the single largest direct marketing system in the country, employing more than 3.4 million people nationwide and generating $550 billion in annual revenue. Job growth in this industry is more than three times that of the overall national job growth average. With those kind of numbers, it is obvious that U.S. consumers are making use of the telephone to purchase goods and services, they enjoy having that option, and will continue to use it. Those numbers also suggest that the vast majority of telemarketing companies are doing it legally, ethically and responsibly.

The ATA membership is made up of a wide range of businesses and other entities, large and small, national and local. It is important to note that while our membership includes major players in the American economy such as AT&T, Chase Manhattan, the Chicago Tribune, IBM, GTE and SBC, it also includes a multi-faceted group of users of teleservices, such as the American Cancer Society, the Maryland Department of Business & Economic Development, Highlights for Children, the City of Austin, Texas, the Metropolitan Opera, Ohio State University, St. Judes Children's Research Hospital, the Collin Street Bakery, and the Texas Work Force Commission.

The Association is dedicated to promoting a positive image of telephone marketing through the highest standards of ethical practices throughout the industry. A primary mission of the ATA is to educate its members on the laws that govern teleservices through its annual legislative conferences, other educational seminars and conferences, and through its membership bulletins detailing trends in legislation affecting the industry. The ATA also serves as a resource to the Congress, state legislatures, state attorneys general and federal regulatory agencies in drafting appropriate and focused legislation and rules to combat deceptive practices. In support of that goal, the ATA has established a Code of Ethics, which attempts to educate Association members, the public and public officials concerning the legal and ethical behavior for telemarketing. The Code is provided to all members as they join the Association and is available by request to the general public. It is also posted on the ATA's website (www.ataconnect.org).

The ATA is also a founding member of the FTC's Partnership for Consumer Education. As part of our continuing effort to help law enforcement agencies identify and prosecute criminals posing as telemarketers, the ATA and the FTC launched a nationwide consumer education program in 1996. The campaign's goal was to promote the Telemarketing Sales Rule. As part of that nationwide education campaign, the ATA distributes a brochure, entitled Consumer Guidelines, which contains tips for consumers on how they can obtain safe and satisfying sales and services through the convenience of the telephone and identify those tactics used by criminals in their fraudulent activities.

The ATA's commitment to encouraging and conducting legitimate and honest telemarketing programs is without question. It is with that background that we offer the following comments regarding the legislation pending before the Subcommittee today.

We are strongly opposed to the major provisions of H.R. 3180, which would restrict telemarketing calls to residential consumers by entities that fall under the FTC Telemarketing Sales Rule between the so-called "dinner time" hours of 5:00 pm and 7:00 pm. Under federal regulations implemented by the Federal Communications Commission in 1992 and the Federal Trade Commission in 1995, telemarketers are guaranteed to the right to call residential consumers between the hours of 8:00 a.m. and 9:00 p.m.

Instituting a "dinner time" hour restriction would negatively impact the telemarketing industry, particularly those companies who focus on marketing goods and services to consumers. As an example, small companies such as Personal Legal Plans, one of our members in Charlotte, NC, generate 100% of its business contacting consumers between the hours of 5 PM and 9 PM. Reducing the calling hours by 50% would put this twenty (20) year firm out of business. Company sales would drop drastically and its ability to hire a qualified labor force would be almost impossible. Few prospective employees would be willing to drive to work for only two (2) hours of work. Personal Legal Plans pays on average over $14 per hour to a labor

force consisting of retirees, single parents, and daytime stay-at-home moms—all of whom rely on this evening employment to meet their living expenses.

The justification provided for the bill is based on constituent feedback that objects to telemarketer contacts at mealtimes. While no elected official can take voter concerns lightly, there is some question as to whether those that complain are in fact representative of the voting population. No scientifically based data has been presented in support of this premise. What has been advanced is essentially anecdotal in nature. Since industry reports that sales figures show the evening hours are the overwhelming prime period for consumer contacting, the question arises—If the majority of consumers object to evening contacts, then who is conducting all this business? The complaints clearly are not manifest in consumer turn-off.

The wisdom of government legislating mealtimes for society is fraught with far-reaching implications. Mealtime differs from household to household. An arbitrary selection of a "standard" mealtime will result in calls being made during mealtimes of those who do not conform to the federal standard. In short, there will still be contacts during the dinner hours, whenever they might be. As we have seen with other legislative and regulatory attempts at the federal and state level to restrict calling, any legislation would be laden with exceptions for favored groups.

We are all well aware that there are several areas of constitutionally protected speech that use telemarketing to contact consumers, including non-profits and political campaigns, and that this regulatory scheme will not apply to those types of calls. These exemptions will serve to frustrate the purpose of this legislation and frustrate those consumers that had been promised two hours free from telemarketing each night.

Applied to this legislation, the practice of granting exemptions would simply create an exclusive 5pm-7pm niche for telephone marketing for the favored entities. So we must ask the question: does a dinner time bill stop calls during the legislated timeframe? No, it simply leaves the field to the exempted groups.

Our experience has been that those who profess to be annoyed at telemarketing contacts are not selectively annoyed; they are universally annoyed, regardless of who the caller is. A call from an exempted group during the restricted hours is still a call. The excluded groups are then pushed to the 7pm-9pm timeframe, which will surely result in an upsurge of calls at those times. This will, no doubt, result in calls for more legislation to protect the "post dinner time" hours. Carried to its logical conclusion, we will soon have "breakfast time" hours, "lunch time" hours, "after school" hours, and "daylight savings" hours. In no time, the entire telemarketing industry will have just that—no time.

How would restaurants survive if they couldn't be open after 7 PM (after the so called dinner hour)? How would retail establishments survive if stores were required to be closed the last two weeks, or even the last two days, before Christmas?—How would movie theatre's survive if they couldn't be open in the evenings? The consumer—not only has the option of not answering the telephone, they could use an answering machine, install caller ID or a "Privacy Manager"-type product, have a cellular phone, and get an unlisted number.

While the intent of H.R. 3180 may be to protect consumers from fraud, consumers and legitimate users of the telephone will ultimately be the ones who bear the burden of this bill. Telemarketing provides many benefits to consumers and the economy. Telemarketing provides a cost-effective way for legitimate businesses to reach potential consumers. Telemarketing also provides consumers with lower costs for goods or services, a wider variety of choices, and increased convenience to make their purchasing decisions. Consumers are able to complete their transactions quickly and conveniently from the comforts of their own home, thereby saving the time, effort and inconvenience of traveling to the store.

H.R. 3180 also contains a provision that would require telemarketers to advise consumers they have the right to be placed on a do-not-call list, even if the consumer does not make such a request. Such a requirement is inconsistent with the provisions of the Telemarketing Sales Rule (TSR) administered by the Federal Trade Commission. Any person requesting to be placed on a do-not-call list already has that right. Making a telephone contact is a legal action. It is inappropriate to require honest businessmen and women, engaged in a lawful, legitimate business practice, to "Mirandize" the consumers they contact.

The proposed legislation would also require telemarketers to obtain and reconcile, on a regular basis, the Direct Marketing Association's do-not-call list or the appropriate state list. The DMA's Telephone Preference Service was developed as a voluntary program; it is wholly inappropriate that the Federal Government should now attempt to codify a voluntary program. Additionally, for the Federal Government to endorse a private company is ethically questionable.

The legislation presented here assumes that consumers do not already know their rights. How can we assume this? Last year every household in America received a postcard from "Project kNOw Fraud" clearly listing their rights when receiving a call. Every phonebook in the country has a page at the beginning listing telemarketing consumers' rights. And, we have already documented the FTC's Partnership for Consumer Education.

I personally have proof that a large number of consumers do know their rights. Our company manages internal company-specific do not call lists for each of our clients and we've seen the requests to be added to the list triple in the last few years.

As we mentioned earlier, the telemarketing industry is already regulated nationwide by both the FCC rules implementing the Telephone Consumer Protection Act and the FTC's Telemarketing Sales Rule ("TSR"). One of the key areas in each of these rules is the requirement that companies keep specific Do-Not-Call lists of individuals who have requested not to receive any more telemarketing calls from that company.

The telemarketing industry is a unique industry. The primary expenses of the business are determined by the time spent on the telephone. A company is often measured by an amount of dollars generated per telephone or per chair. The single greatest predictor of failure in the industry is low per chair production. And the single greatest contributor to low per chair production is spending time on the telephone with people who don't want to talk to you. Thus the industry goes to great lengths to target only those consumers who are likely purchasers of their products. The successful telemarketer is the business that talks to the fewest uninterested parties. Consequently, it is in the industry's best interests to keep a detailed "Do-Not-Call" list. Not only does it make sense for a company's bottom line, but it increases morale and production among the sales force if they are not talking to hundreds of people who say "No" at the beginning of the call.

Additionally, the company specific "Do-Not-Call" list is the best way to empower consumers to make the type of informed purchasing decisions that are necessary for a satisfactory sale. For consumers who do not want to receive calls from a particular company telemarketing them goods or services, all they have to do is tell the telemarketer during the call. However, for those consumers who want to receive calls or really only want to receive certain types of calls, the existing federal rule allows them the freedom to determine which calls they want to receive and prohibits those calls they don't. This is an area where consumers alone hold the key to keeping telemarketers out of their home.

We maintain the best way to protect consumers from fraud is through increased consumer education and funding for the federal and state law enforcement agencies, namely, the Federal Trade Commission, Federal Communications Commission, and the Department of Justice and Federal Bureau of Investigation, so efforts can be further continued and coordinated to get the perpetrator of fraud off the telephone and protect consumers—senior citizens in particular—from becoming victims of telemarketing fraud. The solution is not to limit the telemarketing industry's right to call to consumers or establishing a precedent that would not be cost effective or beneficial to industry or consumers.

A final provision in H.R. 3180, and the major tenet of H.R. 3100 is to prohibit the blocking of Caller ID devices. The ATA has no opposition to this point. We believe that using Caller-ID blocking of any kind, whether it is per-call blocking, per-line blocking or another similar method, is wrong. The members of the ATA are proud of the business they are in and the service they provide to consumers. They would rather consumers knew exactly who they were taking calls from and who they were purchasing goods or services from. The ATA supported similar measures in several states in recent years. However, any requirement that either the telemarketer's name or the word "telemarketer" show up on a consumer's Caller-ID will pose a significant problem for the majority of telemarketers, as in most instances, the technology does not exist to allow such a designation to be displayed.

It is my understanding that in most cases, telemarketing calls originating on a telephone service outside the consumer's local calling area and being routed over a switch such as a T-1 line that is different from the consumer's local service provider will not allow the caller's name or any other information to be displayed. Obviously we cannot support legislation that we cannot, despite our best efforts, comply with.

Thank you, and I am happy to take any questions.

Mr. TAUZIN. I thank the gentleman. I thank you all. The Chair recognizes himself and other members in order. Let me first, Mr. Brubaker, your testimony, what you have been told contradicts what Ms. Herrington apparently was told that there was no prob-

lem with the T-1 lines. I think obviously we are going to need to hear from the phone companies to find out what is correct. If your position is that the marketers don't oppose legislation that requires companies not to block information, which I am glad you took that position because frankly I was going to question you about it, you know, because what is our consumer rights if I can't call you because I don't know who you are when you are bothering me at any time of the day I don't want to be bothered. So obviously we need to find out what are the technological problems with that. But clearly there seems to be some consensus that that at least ought to be part of some legislative remedy.

Let me on the other hand, however, tell you that you make a great point. I want to hear comments from the other witnesses here. You make a great point that these laws tends to have a lot of exemptions. The first panel was met with questions about exemptions from some of our members. Are physicians exempt, are teachers exempt from calling their students? I raise the question of political call exemptions, nonprofit exemptions. In other words—and this is the point I think you made—if we were to adopt and could adopt constitutionally the no call between 5 and 7 p.m. rule, it would only apply to a certain class of calls. The consumers would still get political solicitations, nonprofit solicitations, they would still get physicians calling patients and teachers calling kids all during the so-called dinner hour, and my suspicion is that consumers would think that the legislation was a fraud, that we defrauded them. They are still being bothered.

The fact is that the nonprofits and the political solicitations would concentrate on the hours when the commercial callers are not permitted to engage consumers and that would probably get as many calls. They would just be different calls during the lunch hour. And that I think is probably the best point you made. I would love to hear comment, feedback from the rest of you on the panel. Any one of you on that point?

Mr. Hatch-Miller, you commented on the many exemptions. If I am right about that, if all we would be doing if we passed a law that said some callers can't bother you, the commercial ones defined in the law, but everybody else can, including political calls and nonprofit solicitations and calls by other people not necessarily selling a product, maybe only trying to set up a meeting with you to sell their product, all these exemptions would end up bothering us as much as the current calls bother us and yet people would have said I thought you passed a law to protect us. What the heck is wrong with you all? I can't write a good law? Would we be better with that problem?

Please come back to me. Any one of you. Ms. Harrington.

Ms. HARRINGTON. We have concern about the exemptions that are already written into the FTC Act. Our jurisdiction under the telemarketing sales rule goes only as far as our general jurisdiction goes. I think that the Congress wisely defined telemarketing to cover plans, programs and campaigns in connection with the sale of goods. "Sale" seems to me to be a fair term of inclusion. So our concern——

Mr. TAUZIN. So we have done that.

Ms. HARRINGTON. It has been done, but already the playing field is uneven because——

Mr. TAUZIN. But Mr. Hatch-Miller told us when we try to legislate in this area, when we tightly define who is prohibited, even then the politics of exemption works its weight and that all of the States have experienced that. I suspect we would experience it in this committee. There would be members on both sides of the aisle saying, hey, I want an exemption for my favorite entity that is making these phone calls. Would we not be faced with the same problem? Would we end up not producing legislation that had to constitutionally exempt a bunch of people and politically exempt a bunch of people, and where would we be when that happened?

Mr. HATCH-MILLER. You raise a very important point. My citizens are pretty straightforward. They are saying that they don't want to be hassled by an intrusive call by someone offering a product or a service, whether they are selling it to them right then or they are trying to get them to sign up on a list to try to get them to come to a meeting. It is the fact they don't know who is calling them and they are being called for a commercial purpose during a time they would rather have for their own purposes. The simplest remedy also is for that citizen to have a right to say I don't want to be called for these kind of matters.

Mr. TAUZIN. So let me interrupt you. Would a better, simpler approach be instead of saying no calls by these entities within these hours, to simply say that if a person wanted to they could make a call, as Ms. Tierney pointed out, themselves to put their names on a no call during whatever hours they don't want to be on a call list that would be maintained by either DMA or telemarketers or the state, whoever we want to put in charge of such a list.

Please come back to me.

Ms. TIERNEY. I think AARP's main concern about this is the fraud and any way of eliminating fraud or preventing abuse in that way, and so the telemarketers who are fraudulent are the ones that we are particularly concerned about for the elderly population. But another area is we found in a survey that was done that many people did not know, they weren't aware that they could be on a do not call list, and so we are very anxious that that be made more available to a large number of people and there be education and awareness about this. And some of the other points that you have brought up about this in retrospect don't seem to be as important to the elderly population as the two I have mentioned.

Mr. TAUZIN. Thank you very much. Let me turn now to the ranking member, Mr. Dingell, who is here and I would like to recognize him for a round of questions.

Mr. DINGELL. Mr. Chairman, thank you, appreciate your courtesy. Mr. Brubaker, you are here to oppose the legislation, is that right?

Mr. BRUBAKER. We are definitely opposed to 3180. As I do say, we do support the efforts of 3100 to block.

Mr. DINGELL. Now, I'd like to address if I could, please, your opposition to some of your current business practices. As I note under existing law, the FTC has the power to put forward regulations and to require certain kinds of behavior and compliance with the law. The Commission has said, and I now quote, shall have—shall in-

clude in such rules respecting other abusive telemarketing acts or practices, and then coming on down under paragraph (c), a requirement that any person engaged in telemarketing for the sale of goods or services shall promptly and clearly disclose to the person receiving the call that the purpose of the call is to sell goods or services and to make such disclosures as the Commission deems appropriate, including the nature and price of goods and services. You are aware of that law, are you not?

Mr. BRUBAKER. Yes.

Mr. DINGELL. Do you support it or you oppose it?

Mr. BRUBAKER. We support it.

Mr. DINGELL. Now, it was reported yesterday in Roll Call and in the Washington Post that your company InfoCision Management has been placing telemarketing calls to doctors' offices, is that correct?

Mr. BRUBAKER. I am not familiar with that article.

Mr. DINGELL. Has your firm been placing calls to doctors' offices as a part of business for clients, or do you know?

Mr. BRUBAKER. I am not sure what——

Mr. DINGELL. Let me put this question. Your firm has been placing calls, your firm has not been placing calls or you don't know which is the answer ?

Mr. BRUBAKER. We have a number of different campaigns for our clients running. I couldn't speak to any particular one today.

Mr. DINGELL. Well, I tell you what, I think you ought to have a copy of the article here, and let's then address the article. Are you going to tell me then that employees of your firm did not place calls to physicians' offices? You either did or you did not or you don't know. Which is the case?

Mr. BRUBAKER. I will be happy to review it.

Mr. DINGELL. No, no, no. I have got you here now and I won't have you in a little bit. I don't want you to review it. I just want you to tell me whether your firm placed these calls or not or whether you know about it.

Mr. BRUBAKER. I would need to review that and take it for the record and respond later.

Mr. DINGELL. Did your employees identify themselves when placing these calls?

Mr. BRUBAKER. Again I am not familiar with this particular campaign.

Mr. DINGELL. What is your precise position in the company?

Mr. BRUBAKER. I oversee our operations.

Mr. DINGELL. Pardon?

Mr. BRUBAKER. I oversee our operations.

Mr. DINGELL. What does that mean?

Mr. BRUBAKER. It means I am responsible for our call center operations, the hiring, the development of the staff.

Mr. DINGELL. You don't know what the staff does?

Mr. BRUBAKER. Well, excuse me, if I may say that I do know. I am——

Mr. DINGELL. Who would know what the staff does?

Do you know what the staff does? Do you know what the staff does or do you not know what the staff does?

Mr. BRUBAKER. Of course I do, sir.

Mr. DINGELL. You do.

Do you have a client, Physicians Referral Service?

Mr. BRUBAKER. Not that I am aware of.

Mr. DINGELL. Not that you are aware of.

Have you ever heard the name, Physicians Referral Service?

Mr. BRUBAKER. I apologize. I honestly would have to look into that. I do not know.

Mr. DINGELL. Is the National Republican Campaign Committee a client of your firm?

Mr. BRUBAKER. Well, I cannot discuss particular clients; our confidentiality precludes me from talking about that.

Mr. DINGELL. You can't tell us whether you have clients?

Mr. BRUBAKER. I would ask whether that is relevant to our discussion today, to talk about H.R. 3180.

Mr. DINGELL. Well, we are talking here about abuses of telemarketing practices which are referred to in articles which have appeared in the press, first Roll Call, and then second of all, The Washington Post. You have not read The Washington Post?

Mr. BRUBAKER. I don't read The Washington Post or Roll Call.

Mr. DINGELL. Where are you stationed?

Mr. BRUBAKER. Akron, Ohio.

Mr. DINGELL. Akron, Ohio. And this has not been reported in Akron, Ohio?

Mr. BRUBAKER. I am not familiar with it.

Mr. DINGELL. Okay.

Now, when your company places telemarketing calls on behalf of other businesses, do you disclose the name of the business for whom you are calling?

Mr. BRUBAKER. Absolutely. That is our intent.

Mr. DINGELL. Do you always do that?

Mr. BRUBAKER. It is my understanding that we do.

Mr. DINGELL. Well, just yes or no. I gather you are saying the answer to that question is yes.

Now, when you place calls on behalf of political entities, do you identify the parties on behalf of whom you are calling?

Mr. BRUBAKER. I believe that we do. We are——

Mr. DINGELL. Well, you either do or you don't. Which is the answer?

Mr. BRUBAKER. We are clearly, in any of our campaigns for our clients, supporting the——

Mr. DINGELL. Do you identify the client on behalf of whom you are calling?

Mr. BRUBAKER. We——

Mr. DINGELL. Or do you not?

Mr. BRUBAKER. In every case that I am aware of, we do.

Mr. DINGELL. Do you have written instructions which you give to your callers?

Mr. BRUBAKER. Yes, we do.

Mr. DINGELL. Would you submit copies of those written instructions that you submit to your callers so that we can know?

Now, we have already agreed that it is a requirement by law or regulation that you identify the party on behalf of whom you call; is that correct? That was part of—that was the provision that I read to you earlier; is that right?

Mr. BRUBAKER. My question is, I don't understand this line of questioning.

Mr. DINGELL. You don't?

Mr. BRUBAKER. I don't understand what we——

Mr. DINGELL. Well, just play along with me, because it is interesting. Your firm has achieved a certain prominence in the press into which we are inquiring on the subject.

Mr. TAUZIN. The gentleman's time has expired.

Mr. GREEN. Mr. Chairman, if I could ask that this panel be sworn. I just left an O&I committee hearing, and I would like to have this panel sworn just like we do in Oversight and Investigations.

Mr. TAUZIN. The Chair will remind all members, this is not an O&I hearing, this is a general information hearing on the subject of two bills, neither of which has anything to do with political solicitations, and therefore it is outside the scope of the hearing.

The gentleman is not in order.

The Chair will be glad to extend the time of the gentleman——

Mr. DINGELL. If the Chair would permit, I would simply like to observe, I am talking about specific telemarketing practices of the firm which is the employer of the witness of whom I am inquiring.

Mr. TAUZIN. The gentleman is permitted to ask his questions. My only point is that this is not an O&I hearing. The subject of this hearing is two bills which are before the Congress, both of which deal with commercial telemarketing sales practices, not with political solicitations or political fund-raising nor, for that matter, other types of activities.

So the questions—I have tried to give the gentleman as much latitude as I can. I simply want to point out that the hearing is not about Mr. Brubaker's firm or his firm's activities and political activities; the hearing is about two commercial sales practices, of bills that are before the committee only.

The gentleman's time has expired.

The Chair will be generous if the gentleman asks for an extension of time.

Mr. DINGELL. I will get more time on the next round, but I would ask unanimous consent that the two articles from which I am working be inserted in the record, the one from the Washington Post and the one from Roll Call.

Mr. TAUZIN. I think the two articles are already in the record at this time.

Mr. DINGELL. They are?

Mr. TAUZIN. Yes, sir.

Mr. DINGELL. Oh. May I ask that both of them are made available then to the witness, so that he will know what it is I am questioning him about. When the next opportunity comes to the members of the committee, I will persist.

Mr. TAUZIN. If the gentleman wishes to see those articles, he certainly may.

Mr. DINGELL. I thank the Chair.

Mr. TAUZIN. The Chair recognizes the gentleman from Illinois, Mr. Shimkus, for a round of questions.

Mr. SHIMKUS. Thank you, Mr. Chairman. I want to kind of go back to the intent of the legislation proposed.

I would ask each panel member, starting with Ms. Harrington, do you support—would you support legislation that would require that anyone using the telephone not have the ability to block their phone number?

Ms. HARRINGTON. I don't think so. I think that when Caller ID first became available, there was a very vigorous discussion about the tension between the right of a call recipient to know who is calling and the privacy interest that some have in being able to block their identity.

For example, I remember that there was a concern about women who might be calling from domestic violence shelters being able to block the phone number that they are calling from so that the location couldn't be discerned.

Mr. SHIMKUS. Why would a phone number address the location?

Ms. HARRINGTON. Because there are Polk and other directories widely available.

Mr. SHIMKUS. I think we discussed initially how, in telephone that either phone numbers can be—they can be not listed and addresses can be unlisted.

Ms. HARRINGTON. That is true, but I am recalling quite a vigorous debate about tensions between disclosure and privacy for—if you are getting into all phone uses. The FTC, of course, is concerned with commercial practices, not all uses.

Mr. SHIMKUS. Okay. Let's go to commercial practices. You would be supportive of the all commercial practices of phone numbers being listed?

Ms. HARRINGTON. Yes.

Mr. SHIMKUS. Mr. Miller.

Mr. HATCH-MILLER. Yes, I, too, would support that commercial calls be open.

Mr. SHIMKUS. Ms. Tierney.

Ms. TIERNEY. I don't know that I have the right to speak for AARP on the exact support of this legislation. Our interest is that our membership be aware of what is available, what is out there, and what we help them do if they wish to protect their privacy, or to help them in any way possible.

Mr. SHIMKUS. Well, since you all have been invited to testify in support or in opposition to the two pieces of legislation, my friend and colleague, Rodney Frelinghuysen's bill, is it the AARP's duty to support these two pieces of legislation?

Ms. TIERNEY. These two pieces of legislation we do support.

Mr. SHIMKUS. Could you take back to the board the question of what AARP support the requirement that commercial use of the telephone must follow the display of the commercial phone number?

Ms. TIERNEY. I would be very glad to take it back to the board.

Mr. SHIMKUS. Thank you.

Mr. Brubaker, you have already testified that you would support that?

Mr. BRUBAKER. Well, we are in support of prohibiting the blocking of Caller ID. We are not in support of enforcing a mandatory disclosure, because it is our understanding that that is not technologically possible.

Mr. SHIMKUS. But we are talking about the same thing.

Mr. BRUBAKER. They are two different things really, though, because you are talking about blocking. We are against the blocking of Caller ID in any way. But if it is not there, if we are using a T-1 line, which is a group of 24 circuits, there is no number.

Mr. SHIMKUS. Congressman Salmon mentioned that. I really concur with him, especially having served on this committee for 4 years. Technology, given the time, effort and energy and finances, can overcome all of those. If you have to resort to Direct Dial and prohibit the caller from doing star or pound 69 or star 69, prohibiting that, then they would be identified.

Mr. BRUBAKER. Well, we obviously would not be in support of going back to Direct Dial.

Mr. SHIMKUS. I agree. But we do want our consumers to know commercially who is calling them.

Mr. BRUBAKER. Sure we do. And if there is any way technologically to do it, we would support it.

Mr. SHIMKUS. I would suggest that the industry start looking for that option.

In the military, Mr. Chairman, we have that acronym KISS, which means "Keep it simple, stupid." and if you listen to this debate and all of the permutations, we can evolve ourselves into a do-not-call list, how is it funded, how is it controlled, what are the time limits, what are the exemptions.

Mr. Chairman, I think a simple way to address this is, I don't know if it is going to be possible to merge the two pending bills together, because I think they represent—Congressman Largent brought the questions, what are you trying to do? Congressman Salmon's legislation is trying to prohibit the actual calling, Congressman Frelinghuysen is really trying to allow people to see who is calling them; and they are different.

I don't know if it is going to be possible, but I would say that if we can provide the ability of the consumer to see who is calling them, and if it is at a time that they don't like, then they have a number by which they can call back and make formal application to no longer be put on that list. That is a very simple, precise way of trying to address this without addressing the unfunded mandate, who does it.

And I see us all trying to get to the same arena, and we want to know who is calling us.

I think—Ms. Harrington, I think we have as much right to know who is calling us as we do of placing a call to someone. I don't think there is any difference. If you are talking free speech—free speech, if a person goes to a corner and gets on a soap box, and he is proclaiming free speech, everyone sees who he is; and if someone comes to your door, you see who he is.

What I think is incumbent upon us is to make sure that when someone intrudes on our house in making a phone call, we know who that is, and then it is up to us to decide whether to pick it up.

I am kind of doing a little filibuster, but I think that is where my support would lend itself; and I think something could move on a requirement that commercial calls be listed, and I think—I would be very optimistic about the success of that, and I appreciate the hearing.

I learned a lot, and I appreciate the panel's participation.

Mr. TAUZIN. At this point, the right of free speech does not include the obligation to listen, it is kind of up to you.

The gentleman from Ohio, Mr. Sawyer, is recognized.

Mr. SAWYER. Thank you very much, Mr. Chairman.

At least in H.R. 3100, what we are really talking about is the ability to know who is calling. In a sense, though, Ms. Harrington, don't we already have that through the Telephone Consumer Protection Act in which you promulgate rules requiring the clear identification of who is making the phone call and on whose behalf it is being made?

Ms. HARRINGTON. Yes. The Telephone Fraud Abuse and Consumer Protection Act is the statute that we enforce; the Telephone Consumer Protection Act is a law that the FCC enforces. Under the statute that we enforce and the telemarketing sales rule that we issued to implement that statute, there is a requirement that in telemarketing, the caller must promptly identify the calling entity and state the purpose of the call.

Mr. SAWYER. What is the process for investigating alleged misrepresentation?

Ms. HARRINGTON. Well, the Commission staff has fairly wide latitude to commence nonpublic investigations and the process for investigating is a fact-gathering one.

Mr. SAWYER. Is there a difference between the process for nonprofit, for-profits and political entities?

Ms. HARRINGTON. Well, there is always a question about whether we have jurisdiction over the subject complained of, and generally, we would not use our resources to investigate something over which we have no jurisdiction. We can legally investigate to determine whether or not we have jurisdiction, but as a matter of——

Mr. SAWYER. You are suggesting there is a difference, though, is that right, among the categories?

Ms. HARRINGTON. Oh, yes, yes. Commercial practices, generally we have jurisdiction over. Telemarketing is defined, as I have mentioned, in the statute.

Mr. SAWYER. How do you distinguish between a call made by a commercial, for-profit telemarketer and the party on whose behalf that call is being made, if it is not—if it does not fit into one of those specific categories?

Ms. HARRINGTON. Well, generally if the call is made by a commercial telemarketing company, our position is that we have jurisdiction. There may be some limitations on that jurisdiction, though, that we determine further down the road when we gather more facts.

Mr. SAWYER. But that doesn't preclude you from looking into that to begin with——

Ms. HARRINGTON. No.

Mr. SAWYER. [continuing] as long as it involves a commercial entity conducting the campaign?

Ms. HARRINGTON. Right. And as long as there aren't some other limitations, for example——

Mr. SAWYER. Well, let me ask you, does political speech shield a commercial entity acting on behalf of a political entity or a nonprofit?

Ms. HARRINGTON. Well, telemarketing is defined in the statute that I referred to as including telephone calls that are made as parts of a plan, program or campaign to sell. Political speech isn't selling something; political speech is trying to—is expressing protected—views that are protected——

Mr. SAWYER. Well, that is expressing views. What about solicitation of donations, or the offering of a position in return for money; when does this stop being speech and start becoming commerce?

Ms. HARRINGTON. Generally, we have taken the view that soliciting contributions does not involve sales, but you are asking a question that really would require investigation and parsing through facts before we would make some sort of general——

Mr. SAWYER. Does it shield people from identifying who they are and whether or not they are calling on behalf of an entity? It seems to me that is the threshold, the opening threshold.

Ms. HARRINGTON. Well, if the call is not part of a telemarketing campaign, then the rule doesn't apply.

Mr. SAWYER. Sure. But if it is professional telemarketing, then presumably it does?

Ms. HARRINGTON. Well, professional telemarketers telemarket or make calls in connection with programs that aren't part of what the Congress defined as "telemarketing". That is, if I am calling for one of the charities——

Mr. SAWYER. I am trying to get back to the question of, as a receiver of a call, whether I have the right to know on whose behalf the call is being made, particularly when the call is placed by a commercial telemarketer.

Ms. HARRINGTON. Well, the telemarketing sales rule imposes an obligation on the caller if the caller is engaged in commercial sales. So the question about whether that obligation applies depends on the purpose of the call.

Mr. SAWYER. Mr. Chairman, I am not sure that my time got turned on, so I am not sure——

Mr. TAUZIN. Actually, it didn't get turned on, but we are monitoring, and you are at about 5 minutes and 30 seconds right now.

Mr. SAWYER. We will have a second round, won't we?

Mr. TAUZIN. If you would like.

Mr. SAWYER. Thank you, sir.

Mr. TAUZIN. The Chair recognizes the gentleman from Texas, Mr. Green.

Mr. GREEN. Thank you, Mr. Chairman.

Ms. Harrington, is the FTC familiar with the types of technologies that telemarketers use to circumvent Caller ID systems or devices?

Ms. HARRINGTON. Our staff is generally familiar and working hard as we review our telemarketing sales rule to make sure that our knowledge is completely current, yes.

Mr. GREEN. Mr. Chairman, I apologize. Could we have the—there are some other questions I would like to ask and I know other members might, if we could open the record so that we could submit questions.

Mr. TAUZIN. It is a practice of the committee to hold the Record for 30 days and to allow members to submit additional questions

in writing to the witnesses, who are requested to respond within a similar period of time.

Mr. GREEN. Thank you, Mr. Chairman.

Mr. TAUZIN. Without objection.

Mr. GREEN. Mr. Miller, having served 20 years in the legislature in Texas, I understand the concern, and in fact, I mentioned earlier a bill that Congresswoman Wilson and I have that I picked up the bill from a State rep in Texas on spam, because there was no way they could do it on a State level.

Is that your same frustration?

Mr. HATCH-MILLER. Yes, it is, sir. I see this as cooperative. We have things that we are doing at the State level, and I believe if you are doing things at the Federal level, we could work together and actually make a better product.

Mr. GREEN. In working with my State rep, we have actually been able to put that legislation together, for telemarketing doesn't recognize State lines any more than spam does. Frankly, sometimes they don't recognize international boundaries, and that is something we have to deal with the State Department on, I guess.

Mr. Brubaker, is your company a member of the Direct Marketing Association?

Mr. BRUBAKER. Yes, we are.

Mr. GREEN. And do you comply with their guidelines, as far as you know?

Mr. BRUBAKER. Yes.

Mr. GREEN. And do you distinguish between your commercial telemarketing and your political telemarketing?

Mr. BRUBAKER. Well, certainly there are differences in how we approach those two different entities.

Mr. GREEN. But the guidelines are used for your company; so whether you have a staff member making a call for a product or a political issue, for example, would you still be under the guidelines of the Direct Marketing Association?

Mr. BRUBAKER. Well, we apply the guidelines based upon the type of call that we are doing.

Mr. GREEN. Okay. So the guidelines—and I know what the guidelines are because you are a member of the Direct Marketing Association. So you distinguish between the type of call on whether those guidelines apply?

Mr. BRUBAKER. Well, it depends upon the laws that are in place for each type of——

Mr. GREEN. We are not talking about the laws, we are talking about the guidelines, the Direct Marketing Association guidelines, because one of the bills we have today would be to encourage the compliance with those guidelines.

Mr. BRUBAKER. Sure.

Mr. GREEN. And since they are voluntary, you don't have to be a member of the Direct Marketing Association.

Do you agree by being a member, though, to comply with those guidelines?

Mr. BRUBAKER. Yes.

Mr. GREEN. But you are saying that those guidelines in your company are used, depending on the type of call?

Mr. BRUBAKER. We enforce the guidelines depending on the type of call that we are doing. When we are involved in a commercial sale, there are certain types of issues that we are responsible for, such as the Telephone Preference Service, and when we are calling for a nonprofit organization, that guideline does not apply.

Mr. GREEN. Okay. So the Direct Marketing Association guidelines don't apply to nonprofit, to political calls that you do?

Mr. BRUBAKER. Depending on exactly which terms we are talking about, but the Telephone Preference Service list applies only to sales of products and not to nonprofit organizations.

Mr. GREEN. I know it is difficult in the sale of a product, and I know you had the article there, but if your company called and offered to a physician, for example, a chance to join a physicians advisory board in return for a campaign contribution, those guidelines would not be covered by that effort, then?

Mr. BRUBAKER. The Telephone Preference Service would not. But again, we are calling—if we are calling doctors, that would be a business and the Telephone Preference Service would cover consumers, so we are talking about two different things.

Mr. GREEN. Okay. Well, what I am trying to find out is that by being a member of the Direct Marketing Association, you agree to comply with guidelines. One is to identify yourself.

Mr. BRUBAKER. We agree to comply with the guidelines that are appropriate for the type of business we are in, absolutely.

Mr. GREEN. That apply to the type of business, which is a telemarketer.

Mr. BRUBAKER. Telemarketing, whether it is a commercial sale or whether it is requesting donations for a nonprofit organization; they are two different things.

Mr. GREEN. So you don't have the same guidelines for commercial sale——

Mr. BRUBAKER. Not completely, no.

Mr. GREEN. If you are calling for a time share or resort property, or if you called me for the Republican National Committee or the National Republican Congressional Campaign, the guidelines would not be used for the Republican congressional campaigns.

Mr. BRUBAKER. Those are two separate campaigns. The Telephone Preference Service—and I am speaking of that particular guideline, the Telephone Preference Service, meaning the do-not-call list, would be used for commercial solicitation.

Mr. GREEN. Okay. So you do have two separate guidelines between nonprofit and political calls and commercial calls?

Mr. BRUBAKER. Correct.

Mr. GREEN. Although when we cut away everything, you are still trying to receive money from somebody you are calling; is that correct?

Mr. BRUBAKER. Well, I think you have to look at the campaign and what the client is asking for at that point: Are we building a relationship and asking for a donation?

Mr. GREEN. You are considering what the client is asking for and not necessarily what—because if you call a doctor or a lawyer or someone—what I am saying is that the whole point is to receive an amount of money from that person you are calling, whether it be a doctor, lawyer, school teacher, or anything else, and whether

it is to sell a product, a time-share and a condo, or a telephone service, or to solicit money from a nonprofit.

I guess my concern is that I don't want to infringe on free speech, but I think that as a telephone consumer, when someone calls from a commercial telemarketer, they ought to be required to identify what they are doing, because their goal is to separate me from my money, one way or the other, whether it is a donation or whatever.

You don't think we ought to have the same guidelines?

Mr. BRUBAKER. No, there are two different types of calls being made there.

Mr. GREEN. Well, I think the person receiving those calls might think that they are the same type of call, because the goal is to buy a product or separate them from their money whether it is $125 or $2,500.

Mr. TAUZIN. The time of the gentleman has expired.

The Chair recognizes the gentleman from Illinois, Mr. Rush, for a round of questions.

Mr. RUSH. Thank you, Mr. Chairman. Mr. Chairman, my understanding is that we are here to talk about telemarketing abuses; and I believe that—in light of your comments earlier, Mr. Chairman, I believe that Mr. Brubaker's testimony would be within the scope of this discussion.

Mr. TAUZIN. If the gentleman would yield, you are permitted to ask him any questions you want. The subject of this hearing has to do with two bills filed by members of this body, each of which deals with commercial sales and telemarketing on telephones.

And let me say it again: This is not an O&I hearing, not a hearing about the practices of either one of the two political parties in soliciting funds. Both use telemarketing extensively; both, I assume, use all kinds of practices in trying to separate people from their money for political purposes. I assume that would make a great hearing at some other committee, but this is not the one for it.

I would urge the gentleman to direct his questions to the subject of the two bills before the committee.

The gentleman is recognized for 5 minutes.

Mr. RUSH. Mr. Chairman, I just want to state that both bills that we are addressing here contain exemptions for political action committees, and it would seem that that would make it within the purview and within the scope of this discussion to engage in the line of questioning that we have embarked upon earlier.

Mr. TAUZIN. If the gentleman is inquiring again, the Chair is going to give the gentleman as much leeway as I gave other members to ask as many questions as he wants to ask these 5 minutes. I would simply admonish my friend, as I admonished all members of the committee, to keep to the subject of the hearing which is the two bills before us.

The gentleman is recognized for 5 minutes.

Mr. RUSH. Thank you, Mr. Chairman.

Mr. Brubaker, are you a member of two different telemarketing associations?

Mr. BRUBAKER. We are members of the ATA, the American Teleservices Association, as well as the DMA, the Direct Marketing As-

sociation. The Direct Marketing Association covers various types of direct marketing mediums; telemarketing is one of those.

Mr. RUSH. And you are here representing the——

Mr. BRUBAKER. I am representing the ATA, as well as my company, yes.

Mr. RUSH. And does the Direct Marketing Association have a code of ethics?

Mr. BRUBAKER. Yes, they do.

Mr. RUSH. And what about the ATA?

Mr. BRUBAKER. Yes, the ATA does as well, yes.

Mr. RUSH. Can you give us some provisions of that code of ethics of both, and how would they differ?

Mr. BRUBAKER. Well, I don't know that they are much different. The organizations have similar goals, but the ATA, one of the major concerns is educating our members on how to comply with the telemarketing sales rule and the Telephone Consumer Protection Act. So the focus of that is on making calls for commercial campaigns involving the sale of a product, and we include in the code of ethics compliance guidelines for the telemarketing sales rule and the TCPA as well.

Mr. RUSH. And does any of the code of ethics for the Direct Marketing Association, and also the American Teleservices Association—do they address abuses at all?

Mr. BRUBAKER. Well, certainly.

Mr. RUSH. And do they have any provisions for taking any corrective action or any punitive action against any member who engages in abusive practices?

Mr. BRUBAKER. I don't know exactly how that process would work. I would have to talk to the board of directors.

Mr. RUSH. You don't know whether or not——

Mr. BRUBAKER. I don't know if a trade association has that ability or not.

Mr. RUSH. There is no way to, in order to deal with anyone who breached the code of ethics in terms of your association——

Mr. BRUBAKER. That would be something I think we would have do leave to the board of directors of that association.

Mr. RUSH. To your knowledge, has that ever happened?

Mr. BRUBAKER. I do not know.

Mr. RUSH. Do you have any information regarding—if someone were found to have breached the code of ethics, do you have any information about what would happen to them?

Mr. BRUBAKER. I am sorry, I do not have any information on that.

Mr. RUSH. What about self-policing in terms of either association? Is there any component—is there any ethical——

Mr. BRUBAKER. The TPA is an educational association, and their focus is to educate not only their members, but consumers and the public at large as to what the laws are that are in place and how companies can comply with those laws. So the main effort of the ATA is to educate members and educate consumers. Beyond that, I am not familiar with the additional things that they do.

Mr. RUSH. Now, these two bills that we are discussing today, both deal with abuses.

Mr. BRUBAKER. The tone of the bills, as I read them, is to focus on fraud, but as I go through the bill, there is very little that would actually stop fraud. We are very much concerned about fraud, the scamming of senior citizens, or anyone that is using the telephone to perpetrate a crime. We believe that law enforcement should take every action possible to stop that.

But we don't believe that these bills will, in fact, eliminate fraud; it will simply put additional burden on legitimate business.

Mr. RUSH. It is my understanding that we are also dealing with abuses of the industry, the telemarketing industry, particularly as it relates to not identifying itself, or the companies not identifying themselves when they place a call to a consumer; is that right?

Mr. BRUBAKER. Companies like ours and other members that I am familiar with in the association have never intentionally chosen not to provide information to consumers on who they are, or to display Caller ID information in any way like that. The intent is to never to block Caller ID, as I said.

The issue is that we have not had the technology to this point to be able to do that. Again, we would be happy to work with telecommunications providers, common carriers, to work that kind of thing out. But to this point, we haven't been able to.

Mr. RUSH. Well, there is—again, I want to refer back to both The Washington Post article and also to the Roll Call article, because there is almost a full page of documentation and comments, by both members of your company and also by consumers that receive calls from your company, where the members of your company have not identified themselves and what the purpose of their call is.

Mr. BRUBAKER. Again, I haven't read the article; I have been paying attention to the hearing. However, everything that I read in the paper I don't take as fact either.

Mr. RUSH. Mr. Chairman, I want to ask unanimous consent of the committee, Bart Gordon, one of our colleagues, will not be present, but he has asked me to introduce into the record a letter from the Tennessee Regulatory Authority, and I would like to ask unanimous consent that this be included in the record.

Mr. TAUZIN. Without objection, the letter is admitted into the record.

[The letter follows:]

TENNESSEE REGULATORY AUTHORITY
May 24, 2000

The Honorable BART GORDON
United State Congress
2201 Rayburn House Office Bldg.
Washington, DC 20515-4206

DEAR REPRESENTATIVE GORDON: We are writing you requesting your support for House Bill 3100. This Bill, captioned as the "Know Your Caller Act of 2000," was introduced by Congressman Frelinghuysen and is designed to allow consumers to better control telemarketing calls to their homes. Senator Frist introduced the companion Senate Bill.

All of us have heard the stories from consumers receiving an annoying telemarketing call during the middle of their family meal. Many times these consumers call the Tennessee Regulatory Authority ("TRA") and ask us to do something to stop these intrusive calls. Many Tennessee consumers feel that telemarketing calls are an intrusion on their privacy and have taken steps to control these calls. The Tennessee General Assembly recognized the importance of this issue last session when it passed the Do Not Call statute. This statute, among other things, requires the

TRA to initiate and maintain a state do not call register. As of May 22, 2000, over 340,000 Tennesseans have signed up to be put on the register.

Another indication of the importance of this issue is the number of Tennesseans subscribing to the telephone service Caller ID. Over 1.1 million Tennessee homes and businesses have signed up for this service. Caller ID allows a consumer to see who is calling and grants the option of rejecting the call. But, Caller ID can only be used as a screening device to avoid unwanted telemarketing calls if the caller's name and number is transmitted. Many telemarketers have discovered ways to use technology to block their name and number from appearing on caller ID devices thereby diminishing the effectiveness of the service. House Bill 3100 addresses this problem by prohibiting telemarketers from actively blocking their name and number from appearing on caller ID devices.

We believe House Bill 3100 compliments and reinforces the actions the State's General Assembly has taken to place Tennesseans in more control of the telemarketing calls they receive. We encourage your consideration and support of this Bill. Please call us if you wish to discuss this matter or any issue that you feel we could provide assistance.

Respectfully submitted,

MELVINE MALONE
Chairman
LYNN GREER
Director
SARA KYLE
Director

Mr. TAUZIN. The gentleman's time has expired.

The Chair will entertain a short second round before we wrap up. I understand the gentleman, Mr. Sawyer, has a few questions. Mr. Sawyer is recognized.

Mr. SAWYER. Thank you, Mr. Chairman.

Mr. Brubaker, welcome to the subcommittee.

Mr. BRUBAKER. Well, we are happy to be here.

Mr. SAWYER. You may have been happier to be at other places at other times, but I appreciate your response.

We have been talking about DMA and ATA guidelines. Could you tell us what, under either or both of those guidelines, what "identify" means.

Let me be very direct with you. I am trying to get at what would misidentify or misrepresent mean?

Mr. BRUBAKER. "Identify" would, in my understanding, mean representing whatever purpose the call was made for.

Mr. SAWYER. As a matter of general policy, would you feel compelled, in working for a commercial entity, to identify that commercial entity, rather than simply to say that you are InfoCision.

Mr. BRUBAKER. Absolutely.

Mr. SAWYER. Would you feel the same obligation with regard to nonprofit to identify the nonprofit?

Mr. BRUBAKER. Well, when a call is made for a nonprofit, the issue is to determine what specifically that call is in reference to. There may be——

Mr. SAWYER. Should I, as the recipient receiving the call—if I ask who you are calling on behalf of, should I have the right to know that?

Mr. BRUBAKER. Sure, when asked, absolutely.

Mr. SAWYER. And I assume the same thing would apply for virtually any client that you would——

Mr. BRUBAKER. Any client.

Mr. SAWYER. So let me ask you if failure to disclose, when asked, would constitute a misrepresentation or a misidentification; is that correct?

Mr. BRUBAKER. Depending on the situation, I would have to look at that.

Mr. SAWYER. Oh.

I am trying to ask these as directly as I can, and at some point I would hope that you could give me a direct answer.

Mr. TAUZIN. Well, if my friend will yield, we have had problems in this town understanding the meaning of the word "is" from time to time. I would suggest that the gentleman is trying to answer your question as honestly as he can.

The gentleman may proceed.

Mr. SAWYER. That was wonderful testimony, Mr. Chairman. Thank you.

Mr. TAUZIN. You are welcome.

Mr. SAWYER. Frankly, Mr. Brubaker, I am concerned that the law does not go far enough in asking you to identify who you are working on behalf of. But I will also tell you that I don't get the sense from what the Roll Call article says that you failed to obey the law, if this article is accurate. And I am not asking you to comment on it, because you can't.

What I am really interested in, as much as anything, is to give InfoCision the opportunity to characterize—and perhaps you will have to do this in a subsequent response—to characterize the circumstances that surround the two articles, and to tell us what you think is the appropriate response on behalf of DMA, the ATA and the condition of the law with regard to identifying not only who is making the call, but on whose behalf the call is being made.

I am troubled that Infocision's soliciting participation in the Physicians Advisory Board and asking for a donation of $300,000 to $500,000, in return for which a physician would get a certificate to hang on his wall and participation in a New York Times full page ad, that that becomes a thing of value for which a payment is being asked. And that, I suspect, is walking a fine line.

I am not suggesting at this point that you have crossed that line, but it is a very close approach to a commercial transaction and one that I hope that in your subsequent response to these questions you will feel comfortable in characterizing for me.

Thank you very much.

Thank you, Mr. Chairman.

Mr. TAUZIN. I thank the gentleman.

Mr. Rush.

Mr. RUSH. Mr. Chairman, I have one additional question.

Mr. Brubaker, you have indicated that—and I heard testimony from the other panelists, and you have indicated in response to my previous question about the fraud, particularly as it relates to senior citizens.

I am somewhat concerned about what has been reported in the two articles in that a caller called a consumer, got a secretary on the line, and indicated to that secretary that this particular individual had been recommended for a national award. And then—and this person was given a 1-800 number to call back. And in this instance, the physician called back, and then at this point in time,

he was told that he would get the award, but only if he was able to pay a certain monetary amount, and then he would get that award.

Now, in my estimation—and I can see a senior citizen, and they, in my experience, have certainly—I have become aware of the senior citizens who would be used in the same kind of process by unsavory sales persons, telemarketers, some seniors who have given up titles, deeds to their homes, savings accounts and very—just other things, with the same kind of technique being utilized. It seems to me that that is a serious ethical concern.

My question, still, to you is, do you find that that type of practice is the subject of any of the code of ethics of either organization that you belong to?

Mr. BRUBAKER. I feel strongly that any calls that we have made at InfoCision are ethical.

Mr. RUSH. Even if—if any other company would make those types of calls, would something be wrong with that?

Mr. BRUBAKER. I would have to review that campaign thoroughly to make sure that I understood it before I passed judgment on it.

Mr. RUSH. So you have no opinion, based on the information I have given you and——

Mr. BRUBAKER. I really don't have any opinion at this point because we are talking theoretically, and I would like to look at something factual.

Mr. RUSH. Well, here is an article.

Mr. TAUZIN. Well, I thank my friend. Has the gentleman concluded?

Mr. RUSH. Yes, I have.

Mr. TAUZIN. Let me just point out, there were some fine articles printed in the press for years about phone calls made from the White House and fine distinctions about whether the phone solicitation occurred at one end or the other. There are some interesting articles about Buddhist temples. There have been all kinds of suggestions of improper political practices and solicitations by both political parties.

This is not a hearing about that issue. I suggest that if we were to have a hearing about that issue, we would have an exceptionally well-balanced panel of miscreants from all over the country who have performed all kinds of improper solicitations to sneak money away from people for political purposes.

This is not about that, and the gentleman and my colleagues again are admonished that this hearing is about two very serious bills dealing with commercial practices, and there are some very serious issues dealing with political practices that both parties need to address at some point, and I suspect that we are going to continue to address them in the political context. This is not about that today.

I want to thank the witnesses for—I want to thank the witnesses for appearing today, and I thank you for your contributions.

If the gentleman has nothing for the good of the order, the Chair will recognize him; otherwise, this hearing will stand adjourned.

Mr. SAWYER. Well, I hope I do. I hope that the Chair will note that I have taken great care not to mention any political organizations.

Mr. TAUZIN. The Chair would acknowledge that, and I wish to thank the gentleman from Ohio. I wish that his colleagues had been so careful.

This hearing stands adjourned.

[Whereupon, at 1:30 p.m., the subcommittee was adjourned.]

[Additional material submitted for the record follows:]

DIRECT MARKETING ASSOCIATION, INC.
June 13, 2000

The Honorable W.J. "BILLY" TAUZIN, *Chair*
Subcommittee on Telecommunications, Trade and Consumer Protection
Committee on Commerce
United States House of Representatives
Washington, D.C. 20515

DEAR CHAIRMAN TAUZIN: The Direct Marketing Association (The DMA) would like to go on record as opposing the two bills on which the Telecommunications, Trade and Consumer Protection is holding a hearing on Tuesday, June 13, 2000. The bills are H.R. 3180, titled the "Telemarketing Victims Protection Act," sponsored by Representative Salmon, and H.R. 3100, sponsored by Representative Frelinghuysen.

Of particular concern is H.R. 3180. The bill directs the Federal Trade Commission to promulgate regulations that would:

1. Require telephone marketers to notify consumers when called of their right to be placed on The DMA's "do-not-call list" (known as the Telephone Preference Service (TPS)) or the appropriate state list. If the consumer asks to be placed on the lists, the telephone marketer must then inform The DMA or the appropriate state;
2. Require that all telephone marketers subscribe to The DMA's Telephone Preference Service;
3. Ban telephone marketing calls between 5:00 p.m. and 7:00 p.m.; and,
4. Forbid telephone marketers from blocking the identity of the telephone from which they are calling.

The DMA is very proud of its TPS and adheres to the principle underlying H.R. 3180 that consumers have a right not to be called if they so desire. However, the bill makes such major changes to the service and potentially adds such great costs to the administration of the list that it could jeopardize its very existence.

First, the TPS does not accept names from a third party, such as a telephone marketing company. The reason is simple. We want to be assured that the consumer actually wants to be taken off of telephone lists. We cannot be assured of that if the list comes from a third party. Acceptance of third party lists could open to TPS to many abuses, which could be detrimental to both the consumer and to the telephone marketer.

Second, a requirement that *all* telephone marketers use the lists could potentially cost The Direct Marketing Association millions of dollars. The service is run as a free service and telephone marketers pay a minimal amount to participate, and there is no provision in the legislation for reimbursement of expenses. Also, it is unclear whether telephone marketers who are calling existing customers must also use the lists. The DMA's own guidelines do not require that existing customers' names be removed from any telemarketing lists. Clearly, this provision of the bill should be reconsidered.

Third, the bill could require The DMA to take on considerable legal liability, again with no reimbursement or legal protection for conducting what would in essence become a government service.

Fourth, we believe that the ban on calling between 5:00 p.m. and 7:00 p.m. is both arbitrary and unreasonable. It is arbitrary because it apparently attempts to define America's dinner hour, a very questionable endeavor, to say the least. It is unreasonable because it would prohibit calls when it is most likely that people would be home. It would not be unlike requiring stores to close during the hours that customers would be most likely to patronize them. The DMA strongly supported the Telephone Consumer Protection Act that limits calls to between 8:00 a.m. and 9:00 p.m. We believe those to be reasonable restrictions.

Fifth, we agree that telephone marketers should not specifically block the transmission of their caller identification numbers. However, current technology does not allow the numbers to be transmitted in some cases. As long as the restriction applies only to specific attempts to block transmission of the numbers, we have no objection. (See comments below on H.R. 3100.)

With respect to H.R. 3100, The DMA is also deeply troubled by its language, which also appears to impose requirements that, to the best of The DMA's present understanding, exceed the limits of current technology, and therefore, would place unreasonable burdens on marketers.

Specifically, the bill would prohibit anyone from interfering with or circumventing "the ability of a caller identification service to access or provide to the recipient of the call the information about the call . . . that such service is capable of providing." Moreover, the regulations to be promulgated under the legislation would have to require that telephone solicitations be made "in a manner such that a recipient of the solicitation having caller identification service capable of providing such information will be provided by such service with" prescribed information including the name of the person or entity on whose behalf the solicitation is being made and a telephone number consumers may contact to make a "do-not-call request."

The DMA is concerned that the bill as drafted could be interpreted not merely to prohibit interference with the display of caller identification data when the solicitor's telecommunications services, facilities, or equipment are capable of permitting the display of such information, but go much farther and require that telephone marketers upgrade to or otherwise obtain telecommunications services or facilities that will ensure the display of such information anytime a consumer has subscribed to a caller identification service. It is our understanding that, based on technological constraints, neither local nor long distance telephone common carriers presently make transmission of originating line information-the calling party's number—available for certain types of telecommunications services or facilities, such as the trunk lines that telephone marketers and other large-volume communications users frequently use. Thus, The DMA must oppose the bill because it seemingly ignores not only current limits on the technology available to telephone marketers, but also the potential costs and burdens they could face in obtaining or providing such technology.

Finally, I would urge you to consider the economic importance of the teleservices industry to the overall national economy. In 1999, the teleservices industry was responsible for more than $538 billion worth of sales and employed more than 5.4 million people. These bills could impose significant new restrictions that could have far-reaching, unintended economic consequences. Thank you for the opportunity to present our views on H.R. 3100 and H.R. 3180. We would be happy to supply any further information regarding telephone marketers that you might find useful in your deliberations.

Sincerely,

RICHARD A. BARTON
Senior Vice President, Congressional Relations